Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2686

Appeal PA07-107

Ministry of Transportation

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The requester, a newspaper reporter, submitted a request to the Ministry of Transportation (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

> … any documents discussing the Ministry's Accessible Parking Permit Program [APPP] between the dates of January 25, 2007, until the receipt of this letter.
>
> Specifically … emails, briefing notes and correspondence relating to the APPP. These documents (etc.) can be found in either Minister Donna Cansfield's office or the office of [named individual] and others who administer the program … information that relates to how the program is run and the validity of permits issued under the program.

The Ministry issued an interim access decision containing a fee estimate of $635.00, broken down as follows:

• Estimated Search Time	6.5 hours at $30.00 per hour	= $ 195.00
• Estimated Preparation Time	8 hours at $30.00 per hour	= $ 240.00
• Photocopies	1000 pages at $0.20 per copy	= $ 200.00
	Total Estimated Fee	= $ 635.00

In the decision, the Ministry indicated that approximately 25 per cent of the responsive records may be subject to severances pursuant to sections 12(1) (cabinet records), 13(1) (advice or recommendations), 19 (solicitor-client privilege), and 14(1) (law enforcement) of the *Act*.

Following receipt of the interim decision, the requester submitted a request for a fee waiver. In his letter, the requester also stated that the Ministry's interim decision only provided him with a blanket statement that 25 per cent of the material will be exempt and requested that the Ministry provide him with a more detailed fee estimate based on a schedule of records. The Ministry denied the request for a fee waiver and did not provide a more detailed fee estimate, indicating that its decision was made in accordance with standards set by the Commissioner's office.

The requester, now the appellant, appealed the Ministry's decision.

During the course of mediation, the appellant clarified that he takes issue with both the amount of the fee estimate of $635.00 and the Ministry's decision to deny his request for a fee waiver.

The Ministry advised that its position with respect to the fee estimate and the fee waiver remain unchanged.

As the parties were unable to resolve the fee estimate and fee waiver issues through mediation, the file was transferred to the adjudication stage of the appeal process.

As a first step in the adjudication process, this office sought representations simultaneously from the Ministry and the appellant. Initially, the Ministry was asked to address the issue of the fee estimate. The appellant was first asked to address the issue of the fee waiver.

Representations were received from both the Ministry and the appellant. Both parties provided their consent to share their representations with the other. Accordingly, each party was provided with a copy of the representations of the other party (including attachments and affidavits) and asked to provide second representations on the issue that it had not previously addressed. The Ministry and the appellant both provided representations in response.

In the Ministry's representations on the issue of fee waiver, it argued that disclosure of the records will not benefit public health or safety as well. It also assessed whether it would be fair and equitable in the circumstances to grant a fee waiver.

The appellant was then provided with a complete copy of the Ministry's representations and invited to reply to its arguments with respect to the issue of the fee waiver issue. The appellant provided representations in reply.

DISCUSSION:

INTERIM ACCESS DECISION AND FEE ESTIMATE

Section 57(1) of the *Act* requires an institution to charge fees for processing requests. That section provides:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

Section 57(3) provides that the head shall give the requester a "reasonable" estimate of the fee to be charged. That section provides:

> The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over $25.

More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 460 under the *Act*. Those sections state:

> Section 6
>
> The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
> 2. For floppy disks, $10 for each disk.
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person,
> 5. For developing a computer program or other method of producing a record from a machine readable record, $15 for each 15 minutes spent by any person.
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.
>
> Section 7
>
> (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is $100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request. O. Reg. 516/90, s. 7(1); O. Reg. 21/96, s. 3.
>
> (2) A head shall refund any amount paid under Subsection (1) that is subsequently waived. O. Reg. 516/90, s. 7(2).
>
> Section 9
>
> If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record. O. Reg. 516/90, s. 9.

Pursuant to section 57(3), where the fee exceeds $25, an institution must provide the requester with a fee estimate. Pursuant to section 7(1) of Regulation 460, where the fee is $100 or more, the institution may require the requester to pay a deposit equal to 50% of the fee estimate before the institution takes any further steps to process the appeal. A fee estimate of $100 or more may be based on either:

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.

[P-81, MO-1699]

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460 that I have set out above. In conducting its review, this office may uphold the fee estimate or vary it.

Interim access decision

Under the *Act*, an institution must issue a fee estimate together with an access decision within 30 days of receiving a request, unless a time extension is requested or a notice to affected parties is required (sections 19, 20, and 21 of the *Act*). It cannot simply issue a fee estimate and refuse to provide any indication of whether access will be granted to the responsive records. This office has recognized, however, that it may be unduly expensive for an institution to respond to a request that involves a large number of records that require a significant amount of search and/or preparation time. As a result, this office has developed an interim decision process that permits an institution to give a requester an idea of what information he or she is likely to obtain, and at what cost, without the institution having to do all the work necessary to respond fully to the request. Therefore, if denial of access in whole or in part is contemplated, the institution must either indicate which exemptions apply to what information and why (final decision), or address the extent to which access is likely to be granted based on the possible application of specific exemptions (interim decision).

The purpose of the interim access decision and fee estimate is twofold: to permit an institution to meet its obligations to a requester under the *Act* while not putting it to the expense of searching, preparing and making a final access decision for a large number of records and to give the requester sufficient information to make an informed decision on whether or not to pay the fee and to pursue access to the requested records [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699 and PO-2299]. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

However, if an institution wants to take advantage of this procedure, the interim decision must meet certain minimum standards established in a line of decisions starting with Order 81, issued by former Commissioner Sidney Linden. In that order, Commissioner Linden set out the procedures to be followed. These procedures contemplate that an interim access decision is based on a review of a representative sample of the requested records and/or the advice of an individual who is familiar with the type and content of the records and that the decision should give the requester an indication of whether he or she is likely to be given access to the requested records, together with a reasonable estimate of any proposed fee.

Where the interim decision is found to be inadequate, this office may order the institution to:

- issue a revised interim access decision;
- undertake additional work for the purpose of issuing a revised interim access decision; or
- issue a final access decision; or disallow some or all of the fee

[Order MO-1614].

Having reviewed the interim decision issued by the Ministry, I find that it meets the requirements established by this office. The decision states that the Ministry is prepared to grant partial access to approximately 1000 responsive records. It identifies that, based on a preliminary view, approximately 25 per cent of the information in those records will be severed pursuant to the exemptions at sections 12(1) (cabinet records), 13(1) (advice and recommendations), 19 (solicitor client privilege) and 14(1) (law enforcement). The decision also provides the appellant with a fee estimate, which I will discuss further in this order. Therefore, the decision provides the appellant with an approximate idea of how many records are responsive to the request, which exemptions might apply, how much of the information in the records is likely to be disclosed to him, and what fees will likely be applied.

In my view, the interim decision in this case contains sufficient information to allow the requester to make an informed decision as to whether to pay the fee and pursue access to approximately 75 per cent of the records that are responsive to his request. Accordingly, I find that the interim decision issued by the Ministry is adequate.

Fee estimate

In determining whether to uphold a fee estimate, my responsibility under section 57 is to ensure that the estimated amount is reasonable. The burden of establishing the reasonableness of the fee estimate rests with the institution. To discharge this burden, the institution must provide me with detailed information as to how the fee estimate has been calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

Order 81 and subsequent orders have established that a fee estimate that accompanies an interim decision must contain a number of specific requirements [see, for example, Orders M-555, M-1123, MO-1614, PO-2299]. In Order MO-1980, Adjudicator John Swaigen summarized these requirements as follows:

1. A reasonable estimate of proposed fees under section 45(3) [the provincial equivalent of section 57(3)] should be accompanied by an interim notice under section 19, indicating whether the requester is likely to be given access to the requested records [including an indication of what exemptions might be relied upon by the institution to refuse access];

2. A requester must be given sufficient information to make an informed decision regarding payment of fees;

3. It is the responsibility of the head of the institution to take whatever steps are necessary to ensure the estimate is based on a reasonable understanding of the costs involved in providing access. Anything less would compromise and undermine the underlying principles of the *Act*;

4. To be satisfied that the fee estimate is reasonable without actually inspecting all the records, the head must do one of two things:

   (a) Seek the advice of an employee of the institution who is familiar with the type and content of the requested records

   (b) Base the estimate on a representative sample of the records.

5. The head's notice to the requester should include:

   (a) A breakdown of the estimated fees;

   (b) A clear statement of how the estimate was calculated; and

   (c) Whether it is based on consultations or a representative sample;

6. If the institution does not indicate in its fee estimate that access to the records will not be granted, it is reasonable to conclude that the records will be released in their entirety upon payment of the required fees.

Representations

As noted above, in its interim decision letter, the Ministry outlines the fee estimate for partial access to the responsive records:

• Estimated Search Time	6.5 hours at $30.00 per hour = $ 195.00
• Estimated Preparation Time	8 hours at $30.00 per hour = $ 240.00
• Photocopies	1000 pages at $0.20 per copy = $ 200.00
	Total Estimated Fee = $ 635.00

In its representations, the Ministry submits that its estimate of $195.00 for search time is based on the search time spent in various different Ministry offices where searches for responsive records were conducted. It submits that the estimate can be broken down as follows:

- Licensing Production Services Office $90.00
- Service Delivery Partnerships Branch – Director's Office $15.00
- Licensing Services Branch – Director's Office $30.00
- Operational Policy Office $30.00
- Minister's Office $30.00

The Ministry submits that based on estimates provided by the various Ministry offices where searches were conducted, its Freedom of Information and Privacy Office determined that approximately 1000 pages of responsive records would be located, 25 per cent of which would be subject to severances pursuant to four different exemptions. Based on these estimates, the Ministry estimated $200.00 in photocopy fees and $240.00 in preparation time fees.

The Ministry submits that its estimate was based on reviews of representative samples and the advice of employees familiar with the type and content of the records. In support of its representations, the Ministry enclosed five affidavits sworn by staff members who conducted searches for the responsive records and/or prepared fee estimates based on those searches.

Responding to the Ministry's representations on the issue of the fee estimate, the appellant submits:

> Due to the limitations of the [access to information] process, we cannot see whether fee estimate is correct. But we have read the affidavits, and the estimate appears to have been arrived at fairly.
>
> That said, we wonder if the amount of manpower the Ministry has spent fighting our request has been far in excess of $635.

Analysis and findings

The issue before me is whether the Ministry's $635.00 fee estimate is reasonable and is calculated in accordance with the *Act*.

Search time fees

The Ministry estimates that its search time would be 6.5 hours spread out between five different Ministry offices. The maximum time spent searching in a particular office is 3 hours while the minimum time is 1.5 hours. Given the approximate number of records and the fact that separate searches have to be made in different offices, I find the 6.5 hour estimate to be reasonable. Also, I find that the Ministry's search fee calculation of $195.00 (6.5 hours of search time, at the rate of $30.00 per hour) is in keeping with paragraph 3 of section 6 of Regulation 460 under the *Act*.

Preparation time fees

Under section 6 of Regulation 460, the Ministry is entitled to charge $30 per hour of preparation time, including severances. The Ministry estimates that approximately 25 per cent of the responsive information would likely require severances based on several exemptions. It estimates that it would take Ministry staff approximately 8 hours to sever the records.

Generally this office has accepted that it takes two minutes to sever a page that requires multiple severances [Orders MO-1169, PO-1721, PO-1834, PO-1990]. Taking this into account and given that the Ministry estimates that there are 1000 pages of responsive records, if severances were made on 250 of those pages (or 25 per cent of the records) at the rate of two minutes per page, it would take a Ministry staff member approximately 8.3 hours to sever the records in preparation for disclosure. Following this reasoning, I find that the Ministry's estimated fee of $240.00 for preparation time is both reasonable and in accordance with the *Act*.

Photocopy fee

As previously state, the Ministry has provided an estimate of approximately 1000 pages of responsive records and has advised that it will charge $0.20 per copy for a total estimated photocopying fee of $200.00. This is clearly reasonable and in accordance with section 6 of Regulation 460.

Having completed a detailed analysis of the three components parts of the Ministry's fee estimate, I have found that the estimated fees outlined in the Ministry's interim decision letter are reasonable and calculated in accordance with the *Act*. Accordingly, I uphold the Ministry's fee estimate. However, once the processing of the request has been completed, this charge will have to be reviewed and possibly adjusted by the Ministry based on the actual number of hours spent on searching for and preparing the records, as well as the actual number of pages to be photocopied.

I will now consider whether a fee waiver is warranted in the circumstances of this appeal.

FEE WAIVER

Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 460 under the *Act* sets out additional matters for a head to consider in deciding whether to waive a fee.

Section 57(4) provides:

> A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

> (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
>
> (b) whether the payment will cause a financial hardship for the person requesting the record;
>
> (c) whether dissemination of the record will benefit public health or safety; and
>
> (d) any other matter prescribed by the regulations.

Section 8 of the Regulation 460 provides, in part:

> The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> 1. Whether the person requesting access to the record is given access to it.
>
> …

A requester must first ask the institution for a fee waiver and provide detailed information to support the request before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F]. The institution or this office may also decide that only a portion of the fee should be waived [Order MO-1243].

Section 57(4) requires that I must first determine whether the appellant has established the basis for a fee waiver under the criteria listed in section 57(4) and then, if that basis has been established, determine whether it would be fair and equitable for the fee to be waived. The institution or this office may decide that only a portion of the fee should be waived.

It has been established in previous orders that the person requesting a fee waiver (in this case the appellant) bears the onus of establishing the basis for the fee waiver under section 57(4) and must justify the waiver request by demonstrating that the criteria for a fee waiver are present in the circumstances [Orders M-429, M-598 and M-914].

Basis for fee waiver: section 57(4)(c) public health or safety

Previous orders have established that the following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest

- whether the subject matter of the record relates directly to a public health or safety issue

- whether the dissemination of the record would yield a public benefit by

    (a) disclosing a public health or safety concern, or

    (b) contributing meaningfully to the development of understanding of an important public health or safety issue

- the probability that the requester will disseminate the contents of the record

[Orders P-2, P-474, PO-1953-F, PO-1962]

This office has found that dissemination of the record will benefit public health or safety under section 57(4)(c) where, for example, the records relate to:

- quality of care and service at group homes [Order PO-1962]

- quality of care and service at long-term care facilities (nursing homes) [Orders PO-2278 and PO-2333].

Representations

The appellant submits that he is entitled to a fee waiver based on the application of section 57(4)(c) because dissemination of the record will benefit public health or safety. In his representations, the appellant has addressed each of the relevant factors listed above concerning the application of section 57(4)(c).

The Ministry submits generally that it has exercised its discretion not to grant the fee waiver because, based on the appellant's correspondence to the Ministry and to this office, the appellant did not meet the onus of demonstrating why it is in appropriate case for departing from the user pay-principle enshrined in the *Act*. Additionally, it argues that dissemination of the record will not benefit public health or safety as contemplated by section 57(4)(c). In responding to the appellant's representations, the Ministry has also addressed the factors listed in previous orders in its submissions.

Is the subject matter of the records a matter of public interest?

The appellant submits that the subject matter of the responsive records is a matter of public interest because the records relate to a program that is both created for and funded by the public. The appellant argues that information collected on behalf of the public should be public and that given taxpayers pay once for the information, they should not have to pay twice.

The Ministry does not dispute that the subject matter of the records is a matter of public interest.

Does the subject matter relate directly to a public health and safety issue?

The appellant submits that the subject matter relates directly to a public health and safety issue because disabled people require the permits. He submits that if permits are "being abused by able-bodied people, legitimate permit holders would not have the ability to use something that improves their health." He also submits that the records relate to a safety issue because disabled people may be injured if they are forced to park a distance from their destination.

Although the Ministry agrees that the subject matter of the records is one of public interest, it takes the position that the records do not directly relate to a public health or safety issue. The Ministry submits:

> The Accessibility Parking Permit Program (APPP) is primarily concerned with accessibility, not with public health or safety. The goal of accessibility programs such as the APPP, while certainly not inconsistent with programs related to public health or safety, is to facilitate the participation of disabled persons in society on an equal footing with those not suffering from disabilities…
>
> The Ministry submits that the APPP should clearly be seen as an accessibility program, as it is primarily concerned with removing the barriers to the mobility of disabled persons, not with preventing disability, the protection of the health of disabled persons, or with their physical safety, laudable as these other objectives are. To the extent that accessibility programs can be related to any other category of public policy issues, the Ministry submits that it is more properly viewed as an extension of human rights law and policy, in that accessibility programs are concerned with eliminating the barriers to the disabled due to inaccessible structures and practices. These structures and practices appear "normal" to the non-disabled population, but they constitute a form of systemic discrimination against the disabled.

The Ministry submits that to include the APPP under the rubric of public health or safety would attribute a meaning to that term beyond what it can reasonably bear. The Ministry cites a statement made by the Ontario Ministry of Health and Long-Term Care on its website, describing the term public health:

> Public Health focuses on three areas: preventing conditions that may put health at risk (health protection), early detection of health problems (screening), and changing peoples and societies attitudes and practices regarding lifestyle choices (health promotion).
> (http://www.health.gov.on.ca/english/public/probram/pubhealth/public_mn.html)

The Ministry also submits that the APPP cannot be said to relate directly to public safety mandates of the federal and provincial government which are more concerned with issues of law enforcement, emergency services management, national security and crime prevention.

The Ministry submits that the APPP, as described in a Ministry press release, has the goal of "build[ing] an accessible Ontario that allows all of our citizens to participate as fully as possible in the life of their communities" and that it relates to human and equality rights, not to public health and safety. It submits that "had the Legislature intended to include benefit to equality rights and non-discrimination as a relevant factor, it could have made specific mention of this factor under s.57(4)."

In reply, the appellant submits that the Ministry's submission that the APPP does not relate to public health and safety but rather to human and equality rights is "patently false." He submits:

> Consider the elderly person with a legal permit who cannot park near his or her destination because people illegally using permits have clogged the street. In winter, this becomes a particular problem in many areas of the province.

The appellant also argues that the APPP relates to health and safety because, based on the Ministry's own publication, to qualify for a permit, the individual must have their health practitioner certify that they have one or more certain identified medical conditions.

Will dissemination of the record benefit public health and safety?

The appellant submits that dissemination of the record will benefit public health and safety. He submits that although he does not know what information would be revealed by the records, it is likely that the records show "both greater detail of how serious this problem is and provides an explanation of either what the government is doing or proof that nothing is being done at all." The appellant submits that he believes that the publication of the records at issue in this appeal "will prompt the government to make a concrete change to a system that is clearly broken."

The Ministry argues that even if it is held that the APPP is a public health or safety issue, dissemination of the records will not benefit public health or safety by disclosing a public health or safety concern, or by contributing to the understanding of an important public health or safety issue. The Ministry submits that the health and safety concern, such as it is, has already been disclosed in the series of articles published by the [newspaper]. The Ministry states that the appellant's articles on this subject matter that were attached to his representations reveal that:

> [N]either the health nor the safety of legitimate accessible parking permit holders is the main, or even a minor theme of this reporting. Rather, the emphasis is on the abuse of the system by able-bodied persons …and the deficiencies of the system itself.

The Ministry also submits that "it is unclear how learning about the government's intentions will contribute meaningfully to the development of an important public health or safety issue."

In reply, the appellant responds with the following:

> We can think of no better way to answer this than by providing you with the words of the Right Honourable Dalton McGuinty, Premier of Ontario (stated in 2004):
>
> *I know when citizens are engaged, governments make the best choices. I know that when citizens are engaged, together we build stronger communities.*
>
> The Premier goes on to say that he will promote "*more transparency and accountability in government, and increasingly meaningful opportunities for citizens to have an impact on the issues that matter to them."*
>
> Finally, the Premier says: "*We are saying that the government's information is the public's information."*

Will the appellant disseminate the record?

The appellant submits that as a reporter for a large newspaper that is committed to the issue (as evidenced by earlier articles that he enclosed with his representations), he will disseminate information contained in the record through newspaper articles.

The Ministry submits that it is unable to comment on whether the appellant will disseminate the contents of the records at issue because it presumes that the decision on dissemination hinges on whether the newspaper feels that the information contained in the records is newsworthy.

Analysis and finding

Having carefully considered the representations of the appellant and the Ministry, I am not persuaded that section 57(4)(c) applies in this case. While I agree that the subject matter of the responsive records is one of public interest, I am not satisfied that the appellant has established that it relates directly to a public health and safety issue.

I understand that to qualify for a permit under the APPP program, an individual must consult a health practitioner to certify the existence of a disability or medical condition. I also accept that the misuse of such permits could possibly give rise to individual health and safety concerns as a result of individuals attempting to reach certain destinations which were rendered inaccessible to them by inconsiderate citizens. However, in my view, these are neither matters related to *public* health and safety issues nor are they matters to which the responsive records relate *directly*.

I agree with the Ministry's position that the subject matter of the records at issue relates to the APPP which is best characterized as an accessibility program with the primary concern of eliminating barriers to the disabled rather than the health and safety of those who use the program. Accordingly, in my view, the subject matter of the records directly relates to accessibility and the equality rights of the disabled and does not directly relate to a matter of public health and safety.

Having determined that the appellant has not established that the subject matter of the records directly relates to matters of public health and safety as contemplated under section 57(4)(c), I find that a fee waiver is not justified in the circumstances of this appeal, subject to the application of any other relevant factors.

In my view, none of the considerations set out in section 57(4) of the *Act* or section 8 of Regulation 460 are present in this appeal. I have not found that there is any public safety or health benefit that will flow from disclosure of this information. In addition, the appellant has not argued that to pay the fee would cause him, or the newspaper for which he works, financial hardship, and there is no suggestion that the extent to which the actual cost of processing, collecting and copying the records varies from the amount of the payment required by section 57(1).

In making this finding, I am mindful of the fact that the appellant is not being denied access to the information that is at issue in this appeal, rather, in order to gain access to an estimated 75 per cent of the requested information, he is being asked to pay in accordance with the *Act* for the processing of his request. The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 are mandatory unless the appellant can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it.

To summarize, based on all the circumstances surrounding the appellant's request for a fee waiver, coupled with the user-pay principle inherent in the fee provisions, I find that the Ministry has been fair and equitable in declining to waive the fee in this case.

ORDER:

1. I uphold the Ministry's fee estimate of $635.00.

2. I uphold the Ministry's decision not to grant a fee wavier.

3. I dismiss the appeal.

Original signed by: June 26, 2008
Catherine Corban
Adjudicator