



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2705

Appeal PA08-42

Ministry of Natural Resources



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/Télééc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a non-profit organization for:

All minutes of meetings of the Kawartha Highlands Signature Site Advisory Board;

All correspondence between the Ministry and the Advisory Board (including all correspondence between Parks Ontario and the Advisory Board);

All correspondence between the Minister of Natural Resources and the Advisory Board;

All comments made by the Minister of Natural Resources on the Preliminary Park Management Plan; and,

All public comments received on the EBR [Environmental Bill of Rights] January 23/04 posting on the Kawartha Highlands; and the extent of the consultation and how the comments were considered.

The Ministry contacted the requester to obtain clarification regarding the scope of its request. As a result, the requester confirmed that it:

- was not seeking access to administrative records such as meeting agendas, scheduling, meal arrangements, expense accounts, Board Appointments, etc;
- wished to obtain access to records related to Board sub-committees and their work;
- did not wish to limit its request to formal correspondence because it wished to obtain access to routine e-mails; and,
- was not looking for information about specific subjects.

The Ministry located the responsive records and issued a fee estimate and interim decision. In its decision letter, the Ministry advised that an estimated fee of \$2,285.00 would be charged for producing the records or a fee of \$2,035.00 would be charged if the requester wished the records to be provided on a CD. The estimated fee was arrived at as follows:

Search time (64.50 hours x \$30. per hour)	1,935.00
Record preparation (3 hours x \$30. per hour)	90.00
Photocopies (1,300 pages x .20 cents per page)	<u>260.00</u>
Total	2,285.00

The Ministry also advised that it expected that section 13 (advice to government) and section 21 (personal privacy) of the *Act* may apply to exempt some of the information in the records.

The Ministry asked that the requester pay a deposit of 50 percent of the estimated fee before the request would be fully processed.

The requester (now the appellant) appealed the amount of the estimated fee and also sought a waiver of part of the fee in its appeal letter.

During mediation more records were located by the Ministry. As a result, there are a total of 2,475 pages of records responsive to the request.

As all attempts to resolve this appeal by mediation were not successful, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the Ministry, seeking its representations. I received representations from the Ministry. I sent a complete copy of the Ministry's representations to the appellant, along with a Notice of Inquiry. I received representations from the appellant in response.

DISCUSSION:

FEES

I will first determine whether the Ministry's fee estimate should be upheld.

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

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.

More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 460. Those sections read:

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 records provided on CD-ROMs, \$10 for each CD-ROM.
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 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.

6.1 The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For developing a computer program or other method of producing the personal information requested from machine readable record, \$15 for each 15 minutes spent by any person.
4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the personal information requested if those costs are specified in an invoice that the institution has received.

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.

(2) A head shall refund any amount paid under Subsection (1) that is subsequently waived.

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.

Where the fee exceeds \$25, an institution must provide the requester with a fee estimate.

Where the fee is \$100 or more, the fee estimate 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.

[MO-1699]

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699].

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].

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, as set out below.

Calculation of fee

Along with its representations, the Ministry provided a spreadsheet that details the specifics of its search. It submits that it calculated the fee estimate as follows:

Estimated total # of search hours: 64.5 hours

Estimated total # of pages: 1500 (quoted 1300) pages

Estimated Total # of preparation hours: 3 hours (misstated in representations as 30 hours)

The Ministry submits that:

[It] received the actual records from the programs with actual times. In total, there were actually 3296 pages of records of which 821 were duplicates so that the actual number of responsive records was 2475... The actual search time was 64.5 hours.

In addition, [3.5 hours of additional] searches were also conducted... However the Ministry did not charge for these 3.5 hours of search time, although legally entitled to do so.

The appellant does not agree with the Ministry's position that the fee is fair and reasonable, but it did not specifically dispute the amounts claimed by the Ministry for the search and preparation time fees. The appellant is agreeable to receiving the records in CD form; therefore, the Ministry's claim for photocopies is not at issue. In the circumstances, I will determine whether the Ministry's fee estimate of \$2,035.00 was calculated in accordance with the fee provisions of the *Act*.

Analysis/Findings

Search Time

As stated above, the purpose of a fee estimate is to provide the requester with sufficient information to make an informed decision on whether or not to pay the fee and pursue access to the requested records. In the current appeal, the Ministry's fee estimate was based on the actual work done to locate responsive records. The Ministry then reduced its search time by 3.5 hours and charged the appellant the rate prescribed by the *Act* of \$7.50 for each 15 minutes spent by any person, or \$30.00 per hour. The Ministry agreed to cap the actual search fee at the reduced search time of 64.5 hours.

The Ministry provided the appellant with the search fee based on the actual work done by ten employees, who are familiar with the type and contents of the responsive records. According to the Ministry, the responsive information is stored both in paper form and electronically and searches were done manually and electronically. Specifics of the actual searches conducted by the Ministry are detailed in the spreadsheet that accompanied the Ministry's representations.

Given that the Ministry has placed appropriate reliance on the advice of expert employees in connection with this fee and has provided a detailed breakdown of the time spent, I am satisfied that the Ministry's search fee is justified to respond to the appellant's request.

Preparation Time

Section 57(1)(b) includes time for

- severing a record [Order P-4]

- a person running reports from a computer system [Order M-1083]

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].

Section 57(1)(b) does not include time for

- deciding whether or not to claim an exemption [Order P-4, M-376, P-1536]
- identifying records requiring severing [MO-1380]
- identifying and preparing records requiring third party notice [MO-1380]
- packaging records for shipment [Order P-4]
- transporting records to the mailroom or arranging for courier service [Order P-4]
- time spent by a computer compiling and printing information [Order M-1083]
- assembling information and proofing data [Order M-1083]
- photocopying [Order P-184]
- preparing an index of records [P-741, P-1536]

The Ministry claimed 3 hours of preparation time in its decision letter. In its representations, it misstated the preparation time at 30 hours to prepare the records for disclosure. In any event, it did not provide me with representations as to how the 3 hours of preparation time to prepare the records for disclosure was calculated.

As I do not have representations on what actions were required to prepare the records for disclosure and whether the preparation time included non-allowable costs, I will disallow the Ministry's fee for preparation time.

In conclusion, I uphold the Ministry's search fee of 64.5 hours at \$30.00 per hour, for a total of \$1,935.00, but I do not uphold the Ministry's preparation fee of 3 hours at \$30.00 per hour.

FEE WAIVER

I will now consider whether all or part of the \$1,935.00 fee should be waived.

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 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

57. (4) 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.

8. 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.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

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 decide that only a portion of the fee should be waived [Order MO-1243].

The Ministry submits that:

Based on the above and attached, it is the position of the Ministry that the fee estimate is fair and reasonable and should be upheld. The request was fairly wide. To respond diligently to the request, the Ministry identified those individuals or offices where responsive records could reasonably [be] assumed to be located and had searches conducted. Although it was entitled to do so, it did not charge for the search time for three offices which had no or only duplicate records. Accordingly, the fee estimate is fair and reasonable; and should be upheld

The appellant submits that:

[It is] one of four original signatories to a document known as the Kawartha Highlands Signature Site Charter [the Charter], has attempted through the Freedom of Access to obtain certain documents, which we believe to be germane to the issues that are currently under discussion around the Charter and subsequent *Kawartha Highlands Signature Site Park Act*. Our ability to access this material has become increasingly important, given that the government has admittedly undertaken certain actions that may have contravened the spirit, if not the body, of the Charter and [the *Kawartha Highlands Signature Site Park Act*], and given that discussions continue with respect to certain aspects of the agreement which the government, through Parks Ontario, is seeking to change in direct violation of the original agreement.

[The appellant] has attempted to define the parameters of our request to save time and money for both parties. [The] Ministry sought clarification of our request in order to further reduce the manpower and costs of addressing the request. We were pleased to assist in this matter and responded by indicating that there was some material we were prepared to forego in an effort to limit our request to the pertinent materials. Recognizing the need to reduce time spent, waste and costs, we also indicated that we would be pleased to have the requested material provided on CD ROM. Unfortunately, this did little to reduce the overall cost estimate for the search and provision of relevant material, which was assessed at \$2,035 for the CD version.

On [date], we received a call from [Ministry representative] who suggested that we narrow the scope of our inquiry further, in order to reduce costs. Upon review, we were unable to do so, without severely compromising the reasons for our original request. We therefore were left with no alternative but to appeal the fee.

The [appellant] is an 80-year-old membership-based, nonprofit, registered charity, whose activities are primarily focused on the conservation and wise use of our valuable natural resources. We work with all levels of government, but our funding comes primarily from our members and must be spent judiciously...

Given that we file several [freedom of information] requests each year, which is often the only means available to us to obtain necessary materials, the prohibitive costs sometimes associated with the process can severely inhibit our ability to function. In every case, we seek every opportunity to reduce the cost and dislocation associated with these requests, but only to the point where financial constraints imposed upon us by the Ministry inhibit our ability to represent our members' interests and to protect the resource.

Part 1: basis for fee waiver

Based on its representations it appears that the appellant is relying on paragraphs (b) and (c) of section 57(4). I will deal with each of these sections separately.

Section 57(4)(b): financial hardship

Generally, a requester should provide details regarding his or her financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1142, P-1365, P-1393].

In this case, I find that payment of the fee would not constitute financial hardship for the appellant as contemplated by section 57(4)(b) of the *Act*. The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship [Order P-1402].

I have taken into consideration all of the information before me with respect to the issue of whether the payment of the fee results in financial hardship to the appellant. I find that the appellant has not provided me with sufficient details regarding its financial situation, including information about income, expenses, assets and liabilities. The appellant has failed to provide an adequate explanation related to its expenses or other commitments that might help support a finding that the financial hardship asserted by the appellant is actually manifested.

Therefore, while I accept that the appellant's financial resources may be limited, I have insufficient evidence to find that section 57(4)(b) is applicable in the circumstances as a basis for either a partial or full fee waiver.

I will now consider the appellant's claim that a waiver is warranted on the basis of benefit to public health or safety.

Section 57(4)(c): public health or safety

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:

- compliance with air and water discharge standards [Order PO-1909]
- a proposed landfill site [Order M-408]
- a certificate of approval to discharge air emissions into the natural environment at a specified location [Order PO-1688]
- environmental concerns associated with the issue of extending cottage leases in provincial parks [Order PO-1953-I]
- safety of nuclear generating stations [Orders P-1190, PO-1805]
- quality of care and service at group homes [Order PO-1962]

The appellant is concerned about the Kawartha Highlands Signature Site Charter and *Kawartha Highlands Signature Site Park Act*. However, the wording of the appellant's request is so broad that I am unable to establish a connection between this request and the disclosure of records concerning these two items. Although the appellant would probably disseminate the records, it has not demonstrated that the subject matter of the records relates directly to a public health or safety issue and that the dissemination of the records would yield a public benefit by disclosing a public health or safety concern. The appellant has not specifically sought specific records concerning either of these two items, nor has it provided sufficient details as to how its five-part request for records spanning a non-specific time period is related to these items. Therefore, I cannot find that section 57(4)(c) is applicable in the circumstances as a basis for a fee waiver.

As I have found that sections 57(4)(b) and (c) do not apply, it is unnecessary for me to consider whether it is fair and equitable for the appellant to be granted a fee waiver.

ORDER:

1. I uphold the search fee estimate of \$1,935.00 provided by the Ministry.

2. I do not uphold the preparation fee estimate of \$90.00 provided by the Ministry.
3. I uphold the Ministry's decision not to grant a fee waiver under section 57(4) of the *Act*.

Original signed by: _____
Diane Smith
Adjudicator

July 31, 2008 _____