



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

ORDER PO-2835

Appeal PA08-263

Ministry of Transportation



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NATURE OF THE APPEAL:

The Ministry of Transportation (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for statistics relating to automobile accidents that occurred in Ontario in the years 2006 and 2007. Specifically, the requester was seeking accident statistics related to mortality, mortality factors and street racing during these two years.

In response to the request, the Ministry issued a fee estimate that would cover the costs to search for, and prepare, the records at issue. The fee estimate stated that the fee for providing accident statistics for 2007 would be \$300.00 and the fee for the 2006 statistics would be \$60.00, for a total fee of \$360.00.

The fee estimate letter further stated that the fee could be waived if the Ministry was of the opinion that a waiver was fair and equitable. The letter that stated a waiver would be considered if the requester could show that paying the fee would cause financial hardship, or the dissemination of the record would benefit public health or safety.

In response to the fee estimate, the requester wrote to the Ministry by e-mail to seek a fee waiver and provided financial information in support of his request for a waiver.

The Ministry responded to the requester's e-mail by providing a revised fee estimate stating that the original fee estimate would be reduced by 25% from \$360.00 to \$270.00.

The requester (now the appellant) appealed the Ministry's decision to deny the fee waiver to this office. The appellant confirmed that he is not objecting to the amount of the fee estimate. The appellant's letter of appeal indicates that he is seeking a fee waiver due to both financial hardship and his view that dissemination of the information at issue would benefit public health or safety.

During the mediation stage of the appeal process, a mediator had discussions with both the appellant and the Ministry with a view to clarifying the positions of both parties and to attempt a resolution of the appeal. During these discussions, the mediator also discussed the application of the section 57(4) fee waiver provision of the *Act*.

Mediation was unsuccessful and the file was transferred to the adjudication stage for an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry, seeking representations first from the appellant on the fee waiver issue. The appellant responded with representations.

I then sought representations from the Ministry and included with a Notice of Inquiry a complete copy of the appellant's representations. The Ministry responded with representations.

I then shared the Ministry's representations with the appellant and invited him to provide reply representations. The appellant responded with reply representations.

DISCUSSION:

FEE WAIVER

General principles

Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. That section states:

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 Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee:

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 standard of review applicable to an institution's decision under this section is "correctness" [Order P-474].

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 [Order MO-1243].

Basis for fee waiver

The appellant has raised both financial hardship [section 57(4)(b)] and public health or safety [section 57(4)(c)] in support of his application for a fee waiver.

Financial hardship

Under section 57(4)(b), the onus of establishing financial hardship must be met by the appellant.

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 support of his position under section 57(4)(b), the appellant claims that he is “personally destitute” and has “no income of any kind and thus [...] no money to pay any sort of fee with.” He states that he had an interior design business, but in or about the late 1990s had to abandon that business when his business did not qualify for registration under the then newly established government regulation. He submits that a combination of government regulation and a series of physical disabilities have prevented him from earning any money. He states that he has been supported by his spouse since 2001.

The appellant has provided very little independent documentary evidence to support his position regarding his financial plight. The documentary evidence the appellant has provided consists of the following:

1. a bank statement from March 26, 2009 that contains account balances for a personal account in the amount of \$383.70 and his business accounts in the amounts of \$25.02 and \$38.95 respectively, and the amount owing on a line of credit registered against his home (\$107,308.19).
2. a Canada Pension Plan statement dated October 2008, which reflects the appellant’s contributions from 1967 through 2007. For 2007, both reported contributions and pensionable earnings are zero.

He states that he cannot generate T4 slips because “he has not worked anywhere that would generate one.” He adds that he has “not filed personal income tax in years” because he has “no income to declare and no ability to pay an accountant to do [his] taxes.” He states that he cannot do his taxes himself because of the “legal issues surrounding [his] business.” He submits that because he has always been self-employed he does not qualify for social benefits and his disabilities are not considered severe enough to generate a disability pension.

Regarding his spouse's income, the appellant states that her income is "no one's business but hers." He adds that he has no intention of using his spouse's money to pay the fee, as she has nothing to do with his request.

In response, the Ministry states that the appellant has failed to provide adequate documentary evidence to support his claim of financial hardship, including information regarding his spouse's income. The Ministry submits that since the appellant is asking the Ontario government to pay the fee for his request, his spouse's income is relevant because the appellant relies upon her income for financial support.

The Ministry also notes that the appellant has a line of credit registered against his home and while the appellant may not want to add the \$270.00 fee amount to the line of credit, doing so would not, on its own, cause financial hardship.

The Ministry also questions the appellant's failure to submit other financial documents that might shed greater light on his overall financial situation, such as a Notice of Assessment.

Having carefully reviewed the parties' submissions on this issue, I find that the appellant has not provided sufficient financial disclosure to meet the criteria for the application of section 57(4)(b). As noted above, the onus is on the appellant to establish financial hardship. Although self-described as a person with "zero income", the appellant has not provided me with sufficient independent documentary evidence regarding his income, expenses, assets and liabilities. I appreciate the appellant's desire to pursue this matter without his spouse's financial involvement. However, owing to the nature of the appellant's dependence upon his spouse for financial support, in my view, it is necessary to have a more fulsome picture of the appellant's total family income, including evidence of his spouse's income, expenses and liabilities. Absent that information and further information regarding the appellant's personal financial circumstances, I find that there is a lack of clear and convincing evidence to support a finding that the payment to the Ministry of the \$270.00 fee estimate would pose a financial hardship on the appellant.

Accordingly, I find that the criteria set out in section 57(4)(b) have not been met.

Public health or safety

In previous orders of this office, the following factors have been found to 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]

The appellant submits that the information he is seeking has for several years been published annually by the Ministry on its website on a no fee basis in the form of the Ontario Road Safety Annual Report (ORSAR). The appellant questions how the Ministry can charge a fee for a report that it makes publicly available. The appellant states that he is seeking the ORSAR reports for 2006 and 2007 in order to complete research and publish a book on concerns he has with Bill 203 (*Safer Roads for a Safer Ontario Act*), known colloquially as the Street Racing Law. He feels that the information in the 2006 and 2007 ORSARs will assist him in exposing serious flaws in the legislation that he argues will provide a public health and safety benefit.

In response, the Ministry submits that pursuant to section 205(1)(e) of the *Highway Traffic Act*, it is required to report annually on motor vehicle collision statistics and to make recommendations for the prevention of motor vehicle accidents and the resolution of traffic problems. The Ministry states that it meets its reporting requirements under the *Highway Traffic Act* through the publication of the ORSAR. The Ministry states that it uses the ORSAR for “policy and program analysis, road safety research, public education/marketing and performance measurement.” The Ministry adds that the ORSAR is used by “road users, road user safety and injury prevention organizations, transportation associations, research institutions, other ministries and police services.” The Ministry states that it makes every effort to “produce the ORSAR in a timely manner with the most up-to-date figures, including recommendations for the prevention of motor vehicle collisions.” The Ministry indicates that the ORSAR is “normally” released “between 18 months and two years after the year to which it applies.”

Having carefully considered the representations of the appellant and the Ministry, I am persuaded that section 57(4)(c) applies in this case. In my view, it is clear that dissemination of the ORSAR will benefit public health or safety and, accordingly, that it would be fair and equitable to waive any fees associated with disclosing this information to the appellant. My reasons for reaching this conclusion are as follows:

1. The contents of the ORSAR are of significant public interest, as acknowledged in the Ministry's representations. The ORSAR provides valuable statistical information that informs the public and public interest groups about trends related to motor vehicle collisions and various road safety issues. It also impacts government policy, research, public education, marketing and decision-making with regard to motor vehicle accident prevention and traffic reduction.
2. The very nature of the information contained in the ORSAR is directed at improving public health and safety.
3. The information is made available on the Ministry's website, which represents clear evidence of its public value.

Under the circumstances, I see no reasonable basis for the Ministry having charged a fee for the 2006 and 2007 ORSARs. However, I note that the 2006 ORSAR is currently available on the Ministry website free of charge and I would invite the appellant to visit the Ministry website to view it. With regard to the 2007 ORSAR, while it has been almost two years since the end of 2007, I note that it has not yet been posted to the Ministry website. I will order the Ministry to provide the appellant with a complete hardcopy of the 2007 ORSAR upon its publication, without the payment of a fee by the appellant.

ORDER:

1. I waive the Ministry's fee in the amount of \$270.00.
2. I order the Ministry to immediately deliver a complete hardcopy version of the 2007 ORSAR to the appellant upon its publication.
3. I remain seized of this matter to address any compliance issues arising out of Provision 2 of this order.

Original Signed by: _____
Bernard Morrow
Adjudicator

October 27, 2009