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

ORDER PO-2886

Appeal PA09-210

Ministry of Health and Long-Term Care

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NATURE OF THE APPEAL:

The Ministry of Health and Long Term Care (the Ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information about a specified seniors' residence:

> Complaint/Referral Registers, incident, unusual occurrence reports (names of individuals removed), electronically or handwritten for period January 1, 2007 to February 15, 2009. Compliance inspection reports, including but not limited to annual nursing, environmental, dietary, special visits, infection control, cease admission orders, public health reports for January 1, 2007 to February 15, 2009.

The Ministry issued an interim decision to the appellant, granting partial access to the records identified in an attached index of records. The Ministry further advised that based on its review of a representative sample of the records, there would be approximately 761 pages and that personal information would be withheld pursuant to section 21(1) (personal privacy) of the *Act*. The Ministry also advised the appellant that the estimated fee for the records requested was $669.70, as itemized on an enclosed statement of the fee.

The requester (now the appellant) appealed the Ministry's decision to this office, which appointed a mediator to explore resolution of the appeal. The appellant sought a waiver of the fees associated with preparation time ($457.50) and search time ($60.00), but advised that she was prepared to pay for the photocopying costs ($152.20).

During mediation, the parties explored the possibility of narrowing the scope of the request, and discussed the basis for the appellant's fee waiver request. The appellant confirmed that she did not take issue with the withholding of personal information pursuant to section 21(1). Accordingly, any such severances to records that are disclosed to the appellant are not in dispute. Regarding the basis of her fee waiver request, the appellant claimed financial hardship (section 57(4)(b)) and also claimed that she would disseminate the requested information to benefit public health or safety (section 57(4)(c)).

In an effort to resolve the appeal, the Ministry provided the appellant with a customized "Home Status Report" containing certain categories of information identified by the appellant as being of interest to her. However, the appellant was not satisfied with the extent of the information provided in that report. In addition, the Ministry responded to the appellant's fee waiver request only at the close of the mediation stage and denied it on the basis that the requirements under section 57(4) had not been established.

Since it was not possible to resolve this appeal through mediation, it was transferred to the adjudication stage, where it was assigned to me to conduct an inquiry. Initially, I sent a Notice of Inquiry outlining the facts and issues to the Ministry, and seeking its representations. At this time, I received unsolicited correspondence from the appellant, which I agreed to consider along with the representations. I sent a modified Notice of Inquiry and a complete copy of the Ministry's representations to the appellant, in order to invite her response on the fee waiver and

fee issues, with specific reference to the tests for fee waiver and past orders of this office. The appellant submitted representations for my consideration.

RECORDS:

Based on the representative sample identified by the Ministry, there are approximately 761 pages of responsive records, including complaint investigations reports (132 pages), critical incident reports (201 pages), and unusual occurrence reports (104 pages), as well as other enforcement and risk assessment reports (324 pages).

DISCUSSION:

FEE WAIVER

The appellant relies on sections 57(4)(b) and (c) in support of her request for a waiver of the $517.50 fee levied by the Ministry for search and preparation charges. Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. The relevant parts of that provision state:

> 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,
>
> (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; …

Section 8 of Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee; however, those provisions are not relevant in the circumstances of this appeal.

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].

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 requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees [Order PO-2726]. In other words, while the burden

of proof for establishing that its fee estimate is reasonable and is calculated in accordance with the *Act* and Regulations rests with the Ministry, in the case of my review of the fee waiver request, the burden of proof rests with the appellant [Orders M-429, M-598, and MO-2495].

There are two parts to my review of the Ministry's decision under section 57(4) of the *Act*. I must first determine whether the appellant has established the basis for a fee waiver under the criteria listed in subsection (4). If I find that a basis has been established, I must then determine whether it would be fair and equitable for the fee, or part of it, to be waived [Order MO-1243].

In the Notice of Inquiry provided to the Ministry, I set out the background for my consideration of this issue by noting that the appellant had provided information during mediation to substantiate her past volunteer efforts. I acknowledged that several past orders of this office relevant to the issue of fee waiver in similar circumstances had been identified and drawn to the Ministry's attention during mediation. Finally, I asked the Ministry to provide representations responsive to Orders PO-2333, PO-2278 and MO-2173, all of which addressed the issue of the public health or safety basis for fee waiver under section 57(4)(c) [or section 45(4)(c) of the municipal *Act*] regarding access to records related to long-term care facilities.

I will begin by reviewing whether the appellant has established the basis for a fee waiver under section 57(4)(c).

Public health or safety – section 57(4)(c)

In past 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
  - disclosing a public health or safety concern, or
  - 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 and PO-1962]

The focus of section 57(4)(c) is "public health or safety." It is not sufficient that there be only a "public interest" in the records or that the public has a "right to know". There must be some connection between the public interest and a public health and safety issue [Orders MO-1336, MO-2071, PO-2592 and PO-2726].

Representations

Respecting the public health or safety basis for fee waiver, the Ministry acknowledges that the subject matter of the records - nursing home care - is a matter of public interest. However, the Ministry submits that:

> Although the records relate to health issues concerning a given segment of the population, the information does not necessarily render it a "public health" issue. The Ministry expresses a concern that an overly broad interpretation of section 57(4)(c) would result in its application to almost all Ministry records, as a fundamental aspect of the Ministry's mandate is to oversee and promote the health and well-being of the "people of Ontario."

As to whether dissemination of the records at issue in the present appeal would yield a public benefit, the Ministry submits that "an earlier audit report has brought a number of the problems" highlighted by the appellant to the forefront. Furthermore, the Ministry submits that it has been actively involved in a review of all long-term care reporting requirements and procedures, including a "Compliance Transformation Project." No further information is provided about this initiative. The Ministry also refers to the age of the requested records and submits that they are "unlikely to relate directly to a current public health or safety issue" or to benefit the public if disseminated.

In any event, the Ministry takes the position that the appellant has not satisfied the "threshold evidentiary requirements" for the application of waiver under section 57(4) because she has not provided adequate evidence to establish that she will disseminate the records in a way that will benefit public health or safety. The Ministry adds that:

> In Orders PO-2333, PO-2278 and MO-2173 the requesters provided evidence such as samples of letters or articles that were written to support dissemination. Therefore, the Ministry respectfully submits that the Appellant's fee waiver request does not even warrant consideration by the IPC, as the Appellant has not provided 'detailed information to support' her request.

The Ministry submits that although the appellant claims that her volunteer activities put her in a position to disseminate the information, this "does not necessarily mean that she will, in fact, disseminate the records." The Ministry states that when the appellant was asked about dissemination during the mediation stage of the appeal, she "clearly offered no details about how she intends to use the vast amount of information being requested." Referring to the reference letter about the appellant provided from the Toronto Police Services Superintendent, the Ministry states the appellant's "longstanding status in the community as an active volunteer does not provide sufficient evidence of her … situation."

The appellant submits that she is requesting this information "to serve the public interest and safety with regard to the treatment and care of residents at the long-term care facility" in question. The appellant maintains that access to this information is necessary because of serious and recurring breaches of standards of care and because the publicly posted annual reviews at the

facility and "a website containing nothing more than glossed over summarization of items" does not serve the best interests of public health and safety.

With regard to the Ministry's position that the subject matter of the records represents public "interest," but not a public health or safety issue because they relate to the "daily operation of a facility," the appellant states that the public "could not comprehend such a casual view being taken by the Ministry … about incidents which are obviously considered serious enough to require reporting to the government." Further, the appellant submits:

> These records reflect the care and treatment of an extremely vulnerable segment of the population, from age 18 into their 90's. The number of institutionalized long-term residents, already in the range of 75,000, is increasing exponentially as evidenced by the rampant expansion of the nursing home industry in the province. There is sufficient evidence through media accounts, countless complaints made by families and others, and the Ministry's own inspections and investigations to support the view that systemic ongoing maltreatment and improper care of residents in nursing homes is a public health issue.
>
> The well-being and safety of the public in the community and in institutions holds equal weight where there is neglect, tragic premature deaths through preventable circumstances, exposure to communicable diseases, medication errors, food poisoning, unsanitary and unhygienic conditions. Details of such problems are not found on the Ministry's public reporting website but they are detailed in reports written by Ministry compliance advisors.
>
> … [T]he extraordinary number of pages shown in the Index pertaining to this facility for a relatively short period of time is a strong indication that there has been an unusual amount of concern over the safety and care of residents.
>
> It is my view that the subject matter is a public health and safety issue and the records I have requested contribute significantly to educating the public about the serious systemic problems that exist in provincial publicly-funded long-term [care] institutions.

The appellant refers to media reports of substandard care, maltreatment of residents and an "unusual" tragic death at the facility, and she submits that whatever actions the Ministry has taken to address the longstanding issues with this facility have not ensured the safety of its residents. The appellant also refers to the Ontario Ombudsman's announcement in July 2008 of a systemic investigation into the Ministry's oversight of nursing homes as evidence of the need to "examine the Ministry's inability to scrutinize its own information." The appellant submits that the Ministry's "Compliance Transformation Project" cannot compensate for the lack of accessibility to the type of information she has requested. Further, she states:

> It is interesting to find a similar comparison to the Ministry's claims made in Order PO-2278 about being "actively involved in a review of long-term care

> procedures and reporting requirements." That was 6 years ago and the chronic and systemic problems in nursing homes still have not abated.

The appellant submits that the Ministry's position that dissemination of these records that are more than two years old would not likely yield a public benefit is "short-sighted." The appellant argues that even reports a few years old provide insight to the public as to the consistency of care and compliance with regulations. According to the appellant, historic information gleaned from these reports is important for benchmarking the current services and provision of care to residents and provides a vital link in educating the public to make decisions about the placement of family members in nursing homes.

The appellant expresses the view that the Ministry's position with respect to her intentions respecting dissemination of the records is "unfair and unjustified." The appellant states:

> I am a respected member of the community with credible credentials as evidenced in the letter … provided from the Toronto Police Services Superintendant… Copies of the two civic awards I received for community activism, November 25, 2009 and January 17, 2010 are attached. …
>
> I have the ability and the means to disseminate the information that I requested through the community newsletter I write, through my involvement with Toronto Police Service functions and events, with families and residents of nursing homes and hospitals where I visit, and others I meet who express their serious concerns about the treatment of nursing home residents and conditions in long-term care facilities.

Analysis and Findings

I have considered the appellant's representations and those of the Ministry, as well as other relevant factors related to the issue of fee waiver under section 57(4)(c) of the *Act*. In the circumstances, I am persuaded by the appellant's evidence, and the guidance provided by past orders of this office, that dissemination of the information contained in the responsive records would benefit public health or safety for the purposes of section 57(4)(c). For the following reasons, I find that this basis for fee waiver has been established.

In Order P-754, Inquiry Officer Laurel Cropley reviewed the Ministry of Health's (as it was then known) fee waiver decision regarding a request for records relating to complaints received from current or former patients of the Queen Street Mental Centre alleging physical or sexual abuse by staff. Regarding the public health or safety basis for fee waiver, Inquiry Officer Cropley stated:

> In my view, institutionalized psychiatric patients are, like many other individuals such as the elderly or developmentally handicapped who have been placed in institutionalized environments, among the most vulnerable individuals in our society. I am also of the view that the care and safety of these vulnerable individuals is a public responsibility and of public concern.

> In reviewing the sample records and the Ministry's explanation of how the information contained in them is to be interpreted, it is clear that they identify allegations of abuse and that this information is related directly to a public health and safety issue.
>
> In order to monitor and lobby effectively for change, groups such as the patients' council must be able to substantiate their position with statistical and other documentation. Allegations of abuse are serious and significantly impact on the facility, its staff and its patients. In my view, dissemination of this information would yield a public benefit by disclosing a public health or safety concern.

These comments were cited with approval by Adjudicator Sherry Liang in Order PO-2278 in a fee waiver decision relating to seniors' residences, and Senior Adjudicator John Higgins in Order PO-2515-F, which addressed records related to complaints against daycare centres. Along with Order PO-2278, a number of other past orders of this office have reviewed the public health or safety basis for fee waiver in situations where the responsive records related to the quality of care provided at provincially-funded long-term care institutions [see Orders PO-2333 and MO-2173].

Indeed, because Orders PO-2278, PO-2333 and MO-2173 all recognized that the quality of care and service at long-term care facilities funded by the government were matters of public concern and that dissemination of records containing this type of information will benefit public health or safety, I specifically sought the Ministry's response to them. However, the Ministry did not provide submissions that were directed specifically at addressing or distinguishing the findings of Orders PO-2278 and PO-2333 respecting the public health or safety basis for fee waiver respecting the type of records at issue in this appeal. Rather, the Ministry's representations reiterated arguments previously submitted to other adjudicators, notably in those appeals resulting in Orders PO-2278 and PO-2333. In particular, I note that the Ministry's verbatim argument that "although the records relate to health issues concerning a given segment of the population, the information does not necessarily render it a "public health" issue."

Accordingly, based on the nature of the requested records and adopting the findings of Orders PO-2278 and PO-2333, I find that the subject matter clearly relates to a public health or safety issue. The records relate directly to complaints about the services provided or incidents occurring at a seniors' residence regulated by the Ministry and the actions that may have been taken by the Ministry with respect to those matters. I am also satisfied that this is a public, rather than a private, interest.

Furthermore, in my view the public will benefit from the dissemination of the records, regardless of the fact that there may be other mechanisms in place to monitor the procedures and reporting requirements at these facilities [Orders PO-2333 and PO-2515-F]. In this regard, I note the appellant's comments respecting the Ministry's claim, also made in Order PO-2278, that it is "actively involved in a review of long-term care procedures and reporting requirements," I agree that the "Compliance Transformation Project," which was not described by the Ministry in any event, does not replace active citizen inquiry, scrutiny and involvement in addressing the challenges faced in long-term care facilities for seniors. I find, therefore, that dissemination of the records would yield a public benefit by disclosing a public health or safety concern or by

contributing meaningfully to the development of understanding of this important public health or safety issue.

Finally, based on the representations received from the appellant, I am satisfied that it is highly probable that the appellant will disseminate the contents of these records to the public. I note that the Ministry submitted, with respect to the reference letter provided on the appellant's behalf by the Toronto Police Services Superintendant, that the appellant's "longstanding status in the community as an active volunteer does not provide sufficient evidence of her current financial situation." While this submission refers to the financial hardship basis for fee waiver, I find it relevant to my consideration of the probability of dissemination of the information by the appellant. This letter, along with copies of civic awards given to the appellant by her local City Councillor and MPP, highlight her activism in the community and weigh in favour of the finding that it is highly probable that she will disseminate the information disclosed to her.

For all of these reasons, I conclude that the appellant has established the basis for fee waiver on the grounds of public health or safety under section 57(4)(c) of the *Act*. Having concluded that section 57(4)(c) of the *Act* applies in the circumstances, the appellant is entitled to a few waiver, provided it is "fair and equitable" to do so in the circumstances.

At this point, I acknowledge the Ministry's reiterated concern "that an overly broad interpretation of section 57(4)(c) would result in its application to almost all Ministry records, as a fundamental aspect of the Ministry's mandate is to oversee and promote the health and well-being of the "people of Ontario." As Adjudicators Liang and DeVries did in Orders PO-2278 and PO-2333, respectively, I will consider this latter concern in deciding whether it would be fair and equitable, in the circumstances, to waive the fee.

Part 2: fair and equitable

For a fee waiver to be granted under section 57(4), it must be "fair and equitable" in the circumstances. Relevant factors in deciding whether or not a fee waiver is "fair and equitable" may include:

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;
- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether the requester has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

[Orders M-166, M-408 and PO-1953-F]

Representations

The Ministry submits that it would not be fair and equitable in the circumstances to require the Ministry to absorb the costs of processing this "broad" request since charging a fee in this appeal is consistent with the user-pay principle which has been recognized and upheld by this office in many past orders.

The Ministry submits that the appellant did not work constructively towards narrowing the scope of her request to reduce the cost nor did she offer a solution of her own to resolve the appeal. The Ministry refers to the following sources or materials it provided to the appellant to resolve this appeal, but which were not satisfactory to her:

- the Long-Term Care Homes portal is a "web-based environment" that acts as a clearing house for information exchange and provides access to the "last update on the public reporting website [representing the period from] … July 2007 to June 2008 which falls within the timelines specified in the request. The information provided … is similar to the Home Status Report [offered to the appellant]"; and

- the Home Status Report "relates to the specific Long-Term Care home and contains certain categories of information identified by the Appellant as being of interest to her," such as inspections, complaints, critical incidents, and outbreaks.

As noted above, the Ministry expresses concern that "repeatedly providing access to data free of charge in response to this and similar large FOI requests" would unreasonably shift the burden of the cost for processing such requests from requesters to the Ministry.

The appellant states that, like the appellant in Order MO-2173, she does not receive any compensation for her advocacy. With specific reference to the user-pay principle, the appellant states that "retirees who receive meagre government pensions, who volunteer their time freely without any type of compensation, who are committed to educating the public about the issues and problems in nursing homes, [should not] be expected to pay such fees."

The appellant acknowledges, however, that the user-pay principle is understandable with regard to "photocopying, or fees for documents which are of private interest or are not related to public health and safety." The appellant notes that in addition to agreeing to pay the photocopying costs involved with processing this request, she also advised the Ministry that she would pick up the materials from the Ministry's offices to offset the costs of shipping.

The appellant submits that she considered the Ministry's request to reduce the number of documents, but concluded that the two year span requested was necessary. Furthermore, the appellant submits that the fact that "there happens to be the number of pages there are… is a good indication as to the importance of the public being [made] aware [of] the recurring problems that exist at this facility."

Regarding the Ministry's suggestion that she use its website to see if she could "retrieve something of value in order to reduce costs," the appellant argues that, contrary to the Ministry's suggestion, the website is not useful for this purpose. The appellant states that the detailed inspection and various other reports are not posted online, either in their current or past versions; nor are they available to the public through other direct means. According to the appellant, access to this information must therefore be sought through freedom of information requests. The appellant provided printouts from the Ministry webpage titled "Reports on Long-Term Care Homes," including the report for the specified seniors' residence. In addition, the appellant submits that she was unable to access the Long-Term Care Homes portal mentioned in the Ministry's representations because access is restricted to authorized users. In support, the appellant provided a printout of the face page for this portal. The appellant submits that "unless the Ministry is prepared to share the access code information with the public, it is obvious that the information this site contains is not intended to be shared with the public-at-large."

As for the Home Status Reports being a constructive suggestion to narrow the request on the Ministry's part, the appellant explains that this report is not a suitable compromise because it does not contain the requisite information and is "statistical in nature."

Analysis and Findings

As the parties acknowledge, 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 8 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. For the following reasons, I find that it is fair and equitable to waive the fees for search and preparation.

In my determination of whether it would be "fair and equitable" to waive the fee in the circumstances of this appeal, I reviewed the considerations outlined above. To begin, I am not persuaded by the Ministry's evidence that the compromise solutions it offered to the appellant should factor against her in this analysis. I accept the appellant's evidence that the information available on the Ministry's website ("Long-Term Care Reports") or in the Home Status Report is not sufficiently detailed to be fully responsive to her request. Based on my own review of the portal address given in the Ministry's representations as another means of accessing responsive information, I agree with the appellant that it is not accessible to the public. In the circumstances, the Ministry's suggestions cannot be taken as constructive nor can much value be placed on the fact that the Home Status Report was provided to the appellant free of charge.

On the other hand, the Ministry's estimate of the number of pages (761) suggests that there are a significant number of records that would be responsive. However, I note that the appellant concedes that it would appropriate for her to pay for photocopying the records disclosed to her.

As has been noted, the Ministry is concerned that a liberal interpretation of the public health or safety basis for fee waiver in section 57(4)(c) would result in the application of the provision to almost all records created and held by the Ministry. This same concern was expressed by the

Ministry in Orders PO-2278 and PO-2333. In Order PO-2278, where the media requester sought access to complaints registered against long-term care facilities in Hamilton and Halton regions over a two year period, Adjudicator Liang addressed the concern in the following manner:

> In assessing whether waiver of the remaining fee would shift an unreasonable burden of the cost from the appellant to the Ministry, I also acknowledge the Ministry's concern about the broad scope of its mandate, and the possibility that almost all Ministry records might arguably relate to the health of the people of Ontario. It is not intended that the fee waiver provisions undermine the user-pay principles of the Act. The circumstances of this appeal are not extraordinary. They involve, in essence, a request by a member of the media for records kept by the Ministry in the ordinary course of its monitoring responsibilities over one sector of its mandate. I accept that a waiver of fees in this case would make it difficult for the Ministry to deny a waiver of fees in many other cases.
>
> In considering all of these circumstances, I might have been inclined to order a partial waiver of the fees. However, given that the Ministry has already agreed to a substantial reduction in its fees, I am satisfied that no further waiver is appropriate.

In Order PO-2333, Adjudicator DeVries acknowledged the comments and findings contained in Order PO-2278, but in the circumstances of that appeal, where there was also a media requester, he found that it would be fair and equitable to waive the search and preparation fees, although not the photocopying fees. I find these orders helpful in my review and I will adopt the approaches outlined therein.

In the circumstances of this appeal, the requester is not a member of the media, but is a community activist whom I have already found is likely to disseminate the information she receives as a result of this request. The appellant is also an independent volunteer advocate, and I have taken note of the evidence provided by her of recognition of this work by leaders and politicians in her community. For these reasons, I am satisfied that the granting of the appellant's fee waiver request with respect only to search and preparation charges in the present appeal would not shift an unreasonable burden of the cost from the appellant to the Ministry. The amount of those fees ($517.50) is considerable for this appellant, but does not, in my view, represent a significant financial burden to the Ministry.

I find further support for my approach in Order MO-2173, where Adjudicator Diane Smith made a similar finding in favour of another appellant who was an independent advocate. In that appeal, Adjudicator Smith's balancing of the considerations related to the fair and equitable determination led to the following finding:

> Although the above factors weigh in favour of the Municipality, I find that a waiver of the fees in the present appeals would not shift an unreasonable burden of the costs from the appellant to the Municipality. The appellant is an independent advocate; her interest in the records is not private. The advocacy work she does is completely voluntary. The cost of the search fees does pose a

> financial barrier to the information being sought because she does not receive any compensation for her advocacy. The strong letters of support that the appellant has provided with her representations have convinced me that the appellant, as an independent advocate for the rights of the elderly and the disabled, will widely disseminate the records in order to seek to improve the public's understanding of this health or safety issue in the Municipality. Accordingly, I find that it would place an unreasonable burden on the appellant to bear the cost of the $165.00 search fees and I will order the Municipality to waive these fees.

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 have concluded that it would be fair and equitable to order the Ministry to waive its fees in relation to search and preparation (*i.e.*, severing) time. Furthermore, and as agreed by the appellant, the Ministry is permitted to charge the appellant for photocopying the records to be disclosed to her in accordance with section 6(1) of Regulation 460.

In view of my finding on the issue of fee waiver, it is unnecessary for me to review the other claimed basis for fee waiver or the amount of the fee estimate.

ORDER:

1. I order the Ministry to waive its fees for search and preparation time in connection with this request.

2. If the Ministry decides not to ask for a deposit, I order it to issue a final decision letter and statement of photocopying charges, no later than **May 31, 2010**, without recourse to a time extension and to provide copies of the records being disclosed to the appellant forthwith after payment of any outstanding fees.

3. In the event that the Ministry requires payment of a deposit, I order it to advise the requester of this requirement forthwith, and to provide a final access decision and statement of photocopying charges no later than 30 days after receipt of the deposit. I further order the Ministry to provide copies of the records being disclosed to the appellant forthwith after payment of any further outstanding fees.

4. I order the Ministry to provide me with a copy of the decision letters referred to in paragraph 2 or 3, as applicable.

Original signed by: April 29, 2010
Daphne Loukidelis
Adjudicator