



**Information and Privacy
Commissioner/Ontario**

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

ORDER 117

Appeal 880289

Ministry of Health



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November 15, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 117
Appeal Number 880289
Ministry of Health

This letter constitutes my Order in your appeal from the decision of the Ministry of Health (the "institution") regarding your request for information made under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

The appeal file indicates that on August 10, 1988, you wrote to the institution asking for access to the following:

1. Any available information relating to the contracts between Charan Industries Inc., Partytime Products Ltd., Randim Marketing Inc. & Art Frame Co., and the PMHC, Oak Ridge or the Ministry.

By letter dated August 18, 1988, the institution acknowledged receipt of your request and informed you,

[IPC Order 117/November 15, 1989]

Under our file no. GR-172-88 you were informed that no records exist for Charan Industries and Partytime Products.

By letter dated August 19, 1988, the institution informed you,

File number GR-232-88 has been given to your request for any available information relating to contracts between Randim Marketing and Art Frame Co., and P.M.H.C., Oak Ridge, or the Ministry...

The institution also informed you that:

- a) the Act allows fees to be charged for processing applications in accordance with an established fee schedule;
- b) under section 57 you must be given an estimate of any fees over \$25.00;
- c) a deposit is required where fees are in excess of \$100.00; and
- d) no work would be undertaken that was chargeable without your consent.

On September 7, 1988, the institution's Freedom of Information and Privacy Co-ordinator responded to your request by advising you of the following:

Further to your access request under the Freedom of Information and Protection of Individual Privacy Act, please be advised that the estimated fee for the record you have requested is \$234.00.

Your written acceptance of this fee and a deposit of \$58.50 is required before we can proceed further with the request. A breakdown of the fee estimate is attached for your information.

Please respond by October 6, 1988. If we do not hear from you by that date, the file will be closed.

On September 12, 1988, you appealed this fees estimate to my office. As you are aware, as soon as your appeal was received by my office, an Appeals Officer was assigned to investigate the circumstances of the appeal and attempts were made to mediate a settlement. Correspondence between you and the institution was obtained and reviewed. Since it appeared that this appeal was unlikely to be settled, it was decided that this matter should go on to an inquiry.

Accordingly, an Appeals Officer's Report was prepared and sent to you and the institution on May 12, 1989, together with a Notice of Inquiry. You and the institution were asked to make representations to me concerning the subject matter of the appeal.

Representations were received from the institution. Apparently, you chose to rely on the argument which you made in your letter of appeal and did not submit any further representations. I have taken all representations into account in reaching my decision.

It is my understanding that the institution has, in the spirit of the Act, sent to you a letter outlining a revised fees estimate. This action was taken to bring the file into accordance with the guidelines set out in my Order 81 (Appeal Numbers 880117-880121) released on July 26, 1989. The issuing of a revised fees estimate does not resolve this appeal inasmuch as it is still incumbent upon me to examine the fees estimate as it is now presented (i.e., \$102.00 for one year's records: August 1987 to August 1988).

The issues that arise in the context of this appeal are as follows:

- A. Whether the amount of estimated fees was calculated in accordance with the terms of the Act.
- B. Whether the head's decision not to waive fees under subsection 57(3) of the Act was in accordance with the terms of the Act.

ISSUE A: Whether the amount of estimated fees was calculated in accordance with the terms of the Act.

Subsection 57(1) reads as follows:

Where no provision is made for a charge or fee under any other Act, a head may require the person who makes a request for access to a record or for correction of a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours 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; and
- (d) shipping costs.

You submit that the fees estimate is "unreasonable". The head has submitted that he properly exercised the discretion afforded him by subsection 57(1) of the Act by examining the actual costs, by revising the fees estimate and by offering two options of payment.

In this case, in the revised fees estimate for one year's records, the charges were \$78.00 for photocopies and \$24.00 for search time. The head further submitted that all the records requested are maintained in paper files that are located in storage boxes in an office in the Penetanguishene Mental Health Centre.

Subsection 57(1) provides the head with discretion as to whether or not a fee is charged in an individual case. I have reviewed the head's representations and I find no error in the exercise of discretion in favour of charging a fee, subject to consideration of the issue of fee waiver, below.

ISSUE B: Whether the head's decision not to waive fees under subsection 57(3) of the Act was in accordance with the terms of the Act.

Subsection 57(3) provides that:

A head may waive the payment of all or any part of an amount required to be paid under this Act where, 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;
- (d) whether the record contains personal information relating to the person who requested it; and
- (e) any other matter prescribed in the regulations.

The Act is silent as to who bears the burden of proof in respect of subsection 57(3). However, it is a general principle that a party asserting a right or a duty has the onus of proving its case and, therefore, the burden of establishing that subsection 57(3)(b) applies falls on you, the appellant.

You were asked by the Appeals Officer to provide details concerning your financial situation. Beyond providing the statement that the costs should be waived due to financial hardship, you have provided no other details to support your request for a fee waiver under the subsection and, as such, you have not discharged the burden of proof.

In summary, my Order is to uphold the decision of the head and to dismiss the appeal.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Elinor Caplan, Minister of Health
Mr. Andrew D. Parr, FOI Co-ordinator