



Information and Privacy  
Commissioner/Ontario

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

# ORDER 95

Appeal 880344

Ministry of Health



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

September 25, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 95  
Appeal Number 880344  
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 May 24, 1988, you wrote to the institution asking for access to the following:

A copy of the information used by the Financial Officer of the Mental Health Centre, Penetanguishene (including Oak Ridge) in order to prepare the Monthly annual report for the year of 86-87.

On May 27, 1988, the institution requested that you clarify your request. On September 29, 1988, you clarified your request by stating that you wanted the following, in a letter to an Appeals Officer:

a copy of the information used by the Financial Officer of the Mental Health Centre Penetanguishene (including Oak Ridge) in order to prepare the Provincial Psychiatric Hospitals Hospital Monthly Operating Report 1986 - 87.

[IPC Order 95/September 25, 1989]

The line underlined is what the annual budget for 1986-87 is titled. Therefore my statement made to the F.I.O. of the Ministry of Health in the above file was factually correct when I used the words: 'Monthly/ Annual Report'. This clarification was forwarded by an Appeals Officer to the institution. On November 17, 1988, the institution's Freedom of Information and Privacy Co-ordinator responded to your request by advising the following:

...the estimated fee for the record you have requested is \$672.00.

Your written acceptance of this fee and a deposit of \$168.00 is required before we may proceed further with the request. A breakdown of the fee estimate is attached for your information.

If, however, you are requesting a copy of every individual detailed source document, (e.g. purchase Orders, invoices, etc.) involved in the preparation of Monthly Annual Report, the fee cost has been estimated in excess of \$4000.00. In this instance, a fee deposit of \$1500.00 along with your written acceptance will be required, before proceeding further with your request.

On November 30, 1988, you responded to the institution as follows:

...I want the full documentation available (\$4000 fee estimate).

I am enclosing an "Official Confirmation of my present and projected financial earnings during my confinement" in order for you to assess my claim of financial hardship.

I am claiming financial hardship and asking that the 4000 fee be waived.

On December 7, 1988, the institution denied your request for a fee waiver, stating that "confinement cannot be considered grounds for hardship."

On December 13, 1988, you wrote to me asking me to review the decision of the institution. You stated:

I had asked that the fee be waived under section 57, subsection 3(b). I am enclosing evidence from my hospital's Financial Officer as to my project (sic) earnings in order to prove that the payment of the fees will cause severe financial hardship.

I also further seek that the fee be waived and the Record be disclosed as soon as possible.

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 attempt to mediate a settlement. Correspondence between you and the institution was obtained and reviewed. In view of the fact that a previous appeal (880293) involving you and the same institution and substantially the same issues remained unresolved to date, it appeared that this appeal was unlikely to be settled and that the matter should go on to an inquiry.

Accordingly, an Appeals Officer's Report was prepared and sent to you and the institution on July 14, 1989, together with a Notice of Inquiry. Both parties were asked to make representations to me concerning the subject matter of the appeal.

Representations were received from the institution, while you chose to rely on the argument which you made in your letter of appeal. I have taken all representations into account in reaching my decision.

The sole issue arising in this appeal is as follows:

Whether the head's decision not to waive fees under subsection 57(3)(b) of the Act is 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 related 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.

In the Appeals Officer's Report, you were asked to provide me with evidence as to your net worth, however you did not respond to that request. Beyond providing the institution and myself with a statement of your present and projected earnings during your confinement, you have provided no other details to support your request for a fee waiver under that subsection and, as such, have not discharged the required burden of proof.

I found the initial response of the institution to your request for a fee waiver somewhat unusual, in its reference to your "confinement" not being considered as "grounds for hardship". However, from subsequent submissions, it became clear that the institution had directed itself to the basis for waiver which was, in fact, being claimed by you, i.e., your financial status. The head, in her submissions, has indicated that she considered the application of the waiver provisions contained in subsection 57(3) generally and particularly the provision set out in 57(3)(b) and concluded that there is no evidence as to their applicability, whether provided by the requester/appellant or otherwise. I have reviewed a sample of the records, the submissions of the head and your correspondence, and I am in agreement with the head's decision.

Accordingly, I uphold the decision of the head that the fees not be waived.

Yours truly,

Sidney B. Linden  
Commissioner

cc: The Honourable Elinor Caplan  
Minister of Health

Mr. Andrew D. Parr, FOI Co-ordinator