Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3743

Appeal PA16-276

Ministry of Community and Social Services

June 29, 2017

Summary: The appellant made a request to the Ministry of Community and Social Services for documentation involving the expert panel involved in the development of Ontario Regulation 299/10, Quality Assurance Measures, and in the development of the policy directives for Service Agencies including information pertaining to the use of secure isolation/time-out. The ministry issued an interim decision advising that the fee estimate was $571.00. Subsequently, the requester submitted a request for a fee waiver, which was denied by the ministry. In this order, the fee estimate is upheld but the adjudicator finds that disclosure of the information would be a benefit to public health or safety and orders that part of the fee be waived.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 57(1), 57(4)(b), 57(4)(c).

Orders and Investigation Reports Considered: PO-1962,

Cases Considered: *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056.

BACKGROUND:

[1] The appellant made a request to the Ministry of Community and Social Services (the ministry) under the *Freedom of Information and protection of Privacy Act* (the *Act)* for:

1. Any documentation in the form of briefing materials, meeting minutes, discussions, or any other correspondence or transcript involving the Expert Panel that was involved in the development of the Ontario Regulation 299/10 Quality Assurance Measures, including information pertaining to the use of secure isolation/time-out.

2. Any documentation in the form of briefing materials, meeting minutes, discussions, or any other correspondence or transcript involving the Expert Panel that was involved in the development of the Policy Directives for Service Agencies, including information pertaining to the use of secure isolation/time-out.

[2] The ministry issued an interim decision and fee estimate advising that the fee would be approximately $571.00 and provided a breakdown as follows:

Search Time – 5 hours @ $30.00/hour	$150.00
Preparation – 1 hour @ $30.00/hour	$30.00
Photocopying – approx., 1,955 pages @ $0.20/page	$391.00
TOTAL	$571.00

[3] The ministry noted that if the requester wished to receive the records on a CD instead of hard copy there would be a charge of $10.00 per disc instead of the photocopy fee, reducing the total fee to $190.00. The ministry also stated that section 13 (advice to government) may apply to the records and that other sections of the *Act* may also be relevant.

[4] Following receipt of this interim decision and fee estimate, the requester submitted a request for a fee waiver on the basis of sections 57(4)(b) and 57(4)(c) of the *Act*. The ministry denied the fee waiver request.

[5] The requester (now the appellant) appealed the ministry's decision and a mediator was assigned to the appeal.

[6] During mediation, the mediator had discussions with the appellant and the ministry. The appellant advised that he did not agree that he should have to pay any portion of the fee and confirmed that he was appealing the amount of the fee. During mediation, the appellant also submitted additional information to the ministry regarding the fee waiver, however, the ministry maintained its position regarding the fee estimate and the denial of the fee waiver request.

[7] As mediation did not resolve the appeal, it was transferred to the adjudication stage, where an adjudicator conducts a written inquiry under the *Act*. The parties were invited to submit representations which were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[8] In this order, the adjudicator upholds the fee estimate. The adjudicator also finds

that disclosure of the information would benefit public health or safety and that it would be fair and equitable to waive all of the fee except the photocopy charges.

ISSUES:

A. Should the fee be upheld?

B. Should the fee be waived?

DISCUSSION:

A: Should the fee be upheld?

[9] Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads, in part:

> 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;

[10] More specific provisions regarding fees for access to general records are found in sections 6, 7 and 9 of Regulation 460. Those sections read, in part:

> 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.
>
> 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.

[11] Where the fee for access to a record exceeds $25, an institution must provide

the requester with a fee estimate.[1] 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.[2]

[12] 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.[3] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees, which the hospital offered in this case.[4]

[13] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.[5]

[14] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460.

Representations:

[15] The ministry submits that its fee estimate is reasonable. The ministry has identified approximately 1,955 pages of responsive records. It states that its fee consists of 5 hours for searching for records, 1 hour of preparing the records for disclosure and the associated photocopying costs and that all the amounts quoted are permissible in accordance with the *Act* and the regulation.

[16] The ministry submits that given the large volume of records and their nature, one hour of preparation time is more than reasonable in the circumstances.

[17] In the appellant's representations, he indicates that the fee estimate is not reasonable and notes that his position was set out in a letter to the ministry, a copy of which was included as an attachment to his representations. In reviewing that letter, it is clear that the appellant takes issue with the $30.00 hourly rate for search and preparation times. He indicates that as a skilled clinician working with people with severe developmental disabilities, $30.00 per hour is more than what he earns after working in the field for 12 years. He states that it is truly inappropriate to charge $30.00 per hour when people in the province working for public agencies are paid far less to develop treatment plans for people with severally challenging behavioural developments. The appellant states that the fee estimate is therefore unreasonable and violates section 57(3) of the *Act*.

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[1] See section 57(3) of the *Act.*
[2] Order MO-1699.
[3] Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.
[4] Order MO-1520-I.
[5] Orders P-81 and MO-1614.

Finding:

[18] Section 57(1) sets out the fees that an institution shall charge. As stated above, section 6 of Regulation 460 sets out a quarterly hour rate ($7.50) for both searching and preparing a record. Given that the ministry is charging $30.00 per hour for each of the search and preparation time, I find that the hourly rate charged by the ministry is in accordance with the *Act*. Furthermore, given the broad nature of the appellant's request and the number of identified responsive records, I find the fee for search and preparation to be reasonable.

B: Should the fee be waived?

[19] 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.

[20] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters pay the prescribed fees associated with 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.[6]

[21] 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.[7]

[22] The institution or this office may decide that only a portion of the fee should be waived.[8]

Fair and equitable

[23] For a fee waiver to be granted under section 57(4), the test is whether any waiver would be "fair and equitable" in the circumstances.[9] Factors that must be considered in deciding whether it would be fair and equitable to waive the fees include:

Section 57(4)(b): financial hardship

[24] The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship.[10]

[25] For section 57(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities.[11]

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

[26] 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

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[6] Order PO-2726.
[7] Orders M-914, P-474, P-1393 and PO-1953-F.
[8] Order MO-1243.
[9] See *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056.
[10] Order P-1402.
[11] Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

- 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[12]

[27] 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.[13]

Representations:

[28] The ministry submits that the requester has not established a persuasive basis on which to grant a waiver of the fee. In its initial representations, it takes the position that in order to rely on section 57(4)(b), a requester should provide details regarding his or her financial situation, including information about income, expenses, assets and liabilities. It refers to a number of orders to support this position.[14] The ministry notes that the only information the appellant provided in support of his fee waiver on the basis of financial hardship is found in his letter from April 2016. The ministry claims that the appellant only stated his income with no detailed information about expenses, assets or labilities which would have allowed it to make an informed determination as to whether or not the fee would cause financial hardship.

[29] Finally, the ministry submits that it was reasonable to request supporting documentation of the financial hardship claim in order to justify the fee waiver given the user-pay principle of the *Act* and the risk of placing an undue burden on the public purse.

[30] With respect to public health or safety, the ministry states that the appellant has not provided a sufficient connection between his very broad request and a public health or safety issue. It suggests that the appellant supported this claim with reference to generalized comments about alleged deficiencies in the ministry's regulations and directives.

[31] In the appellant's representations, he set out in great detail why dissemination of the record would benefit public health or safety. He notes that the regulation for which he is seeking information (Ontario Regulation 299, Quality Assurance Measures) is

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[12] Orders P-2, P-474, PO-1953-F and PO-1962.
[13] Orders MO-1336, MO-2071, PO-2592 and PO-2726.
[14] P0-2912, citing M-914, P-591, P-700, P-1141, P- 1365, P-1393.

designed almost exclusively to regulate the quality of care and service at group homes. He submits that this information clearly meets the criterion as outlined in the IPC's fee waiver guide.[15] The appellant notes that details relating to this guide in support of his claim regarding public health or safety were shared with the ministry during the mediation process after he became aware of the guide.

[32] The appellant referenced Order PO-1962 stating that it supports that quality of care and service at group homes and day programs funded by the ministry is a public rather than a private interest and dissemination of the records benefits public health and safety.

[33] The appellant also refers to the Ombudsman's Report of August 2016 which outlined the state of the developmental services sector in Ontario. The appellant notes that there is a written record of recognition on the part of the ministry, with regard to the Ombudsman's report, that severe deficiencies exist in the ministry's regulations and directives regarding developmental services in Ontario. The appellant notes that the ministry has openly agreed to implement all of the Ombudsman's recommendations and admitted to the fact that deficiencies in its regulations exist and are factual in basis as opposed to "alleged" as asserted by the ministry in their representation.

[34] The appellant refers to recommendation 41 of the Ombudsman's report which states:

> The Ministry of Community and Social Services should continue to support the development, based on best practices, of guidelines and protocols for responding to physical aggression by adults with developmental disabilities, balancing the need to protect clients and staff with the goal of avoiding criminalization of those with developmental disabilities.

[35] The appellant states that best practice as described in this recommendation is predicated upon the use of scientifically verified and logical strategies and approaches. He states that his initial inquiry was related to understanding what the evidence was in relation to policy formation with respect to Ontario Regulation 299 (Quality Assurance Measures) so that he can work as a clinician in the field in good conscience and ensure the most effective supports for his clients.

[36] The appellant also notes that the Province has openly apologized to Ontarians with developmental disabilities in terms of its poor track record of providing these vulnerable citizens with appropriate, adequate, scientifically-backed, and ethical supports. In 2013, the Premier of Ontario released a formal statement of apology to

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[15] The appellant is actually referencing the Fee, Fee Estimate and Fee Waiver Guideline for Government Institutions, October 2003.

people who had suffered abuses while living in institutions in Ontario.[16] The appellant states that this apology is further proof that ministry policies have been historically and contemporarily problematic.

[37] The appellant also provided evidence with his representations to demonstrate the progression of how policy on developmental services is made, interpreted, and accepted or modified based on the fact that it is allowed to go through public scrutiny. He references that in March 2016, the ministry, which forms policy on services and supports for children with developmental disabilities in Ontario, announced changes to the Ontario Autism Program. The appellant states that these announcements were met with immediate backlash from people with developmental disabilities, advocates, researchers, and even the expert panel with whom this ministry had indicated that it had consulted in developing these changes. The appellant also includes an article published in the Toronto Star that describes how one of the experts on the panel communicated to the ministry that their conduct in terms of policy change was not based on the recommendations of the expert panel.

[38] The appellant notes that based on the public scrutiny of the policy put forward by the ministry in relation to the freely available information and expert panel report, the ministry modified its policy on autism services.

[39] The appellant also submits that he is not required to provide actual evidence to support his claim of financial hardship. In the appellant's view, he supplied enough information to the ministry to show that payment would cause financial hardship. He refers to a few of the earlier IPC orders where documentary evidence was not alluded to in the order yet the adjudicator found that the requester met the financial hardship test.

[40] The ministry was sent a copy of the appellant's representations and was asked to provide reply representations. The ministry provided a reply, however, its reply representations did not address the public health or safety consideration.

[41] With respect to the appellant's claim of financial hardship, the ministry referenced the wording of section 57(4) and stated that the inclusion of the phrase "after considering" and "and" indicates that the Legislature intended that all factors set out under subsection 57(4) be considered by the head in forming his or her opinion as to whether it is fair and equitable to grant a fee waiver. The ministry notes that the appellant appears to rely solely on only one of the factors, namely, section 57(4)(c), however, the ministry submits that this is not the appropriate legal test and all considerations must be assessed and weighed, as per the language of the provision.

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[16] Ontario's Apology to Former Residents of Regional Centres For People with Developmental Disabilities, December 9, 2013.

Analysis and finding:

[42] First I will deal with the ministry's submission that all considerations must be assessed and weighed. In this appeal, the appellant is claiming that 57(4)(b) and (c) apply. However, I do not agree that if 57(4)(b) does not apply then the appellant is not entitled to a fee waiver. The considerations in section 57(4) must each be considered however, if only one applies, or even if none of the considerations in 57(4) applies, a fee waiver may still be granted. This is supported in the already mentioned *Mann v. Ontario (Ministry of the Environment)*, where the Divisional Court stated:

> In deciding whether the fee should be waived, the Adjudicator applied s. 57(4) of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, which reads:
>
> (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 in the regulations.
>
> As is apparent from the plain wording of the subsection, waiver of "all or any part" of an amount required to be paid is mandatory, if the head determines, in his or her opinion, that it is fair and equitable to do so, after considering the factors outlined in the subsection.
>
> I do not agree with the respondents that the subsection involves a two part test, although I accept that one could approach the analysis in two stages. **There is only one requirement in the subsection for waiver of all or any part of a fee and that is whether, in the opinion of the head, it is fair and equitable to do so. The head is guided in that determination by the factors set out in the subsection, but it remains the fact that the sole test is whether any waiver would be fair and equitable.** [emphasis added]

Financial hardship:

[43] The appellant has referred to earlier IPC orders where the adjudicator found that financial hardship existed in the absence of actual evidence supporting the claim. More recently, however, actual proof of financial hardship has been the accepted standard in IPC orders. While providing this evidence is not meant to be an onerous task, IPC adjudicators have consistently found that some form of proof is required in order to prove financial hardship.[17]

[44] In this instance, the appellant states that he has provided enough information to the ministry in his statement about his finances. I disagree. While the information provided by the appellant is supportive of a finding of financial hardship, without further evidence, which ought to be easily obtainable, I find that this consideration does not apply. The appellant had a number of opportunities to provide this evidence and supporting documentation could have been provided directly to the IPC during this appeal process if the appellant had confidentiality concerns in giving it directly to the ministry. The appellant has chosen not to do so.

[45] Accordingly, I find that the consideration of financial hardship is not applicable. However, this does not defeat the appellant's claim for a fee waiver and I will now consider the public health or safety consideration.

Public Health or Safety:

[46] Having reviewed the representations of the parties and the factors identified as relevant to determine whether section 57(4)(c) applies, I find that the dissemination of the responsive records will benefit public health or safety within the meaning of that provision.

[47] In order PO-1962, an appeal involving the ministry, former Assistant Commissioner Tom Michinson found that "the quality of care and service at group homes and day programs funding by the Ministry is a public rather than a private interest." The Assistant Commissioner noted that "[n]ot only are these agencies funded by tax dollars, but they also provide services to a wide range of people across the province," noting that the parties' representations acknowledged that "a significant number of people with developmental disabilities use the services provided by these organizations."

[48] The Assistant Commissioner also found that the subject matter of the records related directly to a public health or safety issue with his finding supported by the ministry's representations, he stated:

> Services funded by the ministry and delivered through community agencies include:

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[17] Orders M-914, P-591, P-700, P-1142, P-1365, PO-3191 and P-1393.

> • in-home and out-of-home respite;
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> • specialized community supports which assist people with developmental disabilities to remain in the community;
>
> • community participation supports which provide people with developmental disabilities support for both competitive and non-competitive employment opportunities;
>
> • community living supports and residential services which include supports to assist individuals to live independently in the community, 24-hour group living situations, and associate living arrangements.
>
> Programs directly delivered by the ministry include:
>
> • Special Services At Home (SSAH), a program focused on supporting families in caring for a family member within their home; and
>
> • three provincially operated facilities that provide supervised living and day programs for adults who require specialized care.
>
> Community agencies receive funding to deliver specific services or combination of services that include safeguarding the health, safety and welfare of the clients.

[49] In its representations, the ministry does not actually speak to the public health or safety consideration except to say that the appellant has not properly identified how the information requested will benefit public health and safety. In its reply representations, the ministry does not address the very detailed argument put forward by the appellant in his representations concerning public health or safety (as set out above). I also note that most of the appellant's argument were set out in a letter to the ministry from April 2016, so the ministry was well aware of the details of the appellant's claim concerning public health or safety. I do not find the ministry's representations helpful in my analysis concerning public health or safety.

[50] I find that the appellant has shown that disclosure of the information will be a benefit to public health and safety. His request concerns the use of secure isolation in agencies that support adults with developmental disability who have challenging behaviours. After considering the representations of the parties and Order PO-1962, I find that documents surrounding the development of regulations and policy directives concerning the use of secure isolation in agencies that support adults with developmental disability relate directly to a public health or safety issue.

[51] Also, I am satisfied based on his representations, that the appellant who has

been studying as a graduate student in the area of disability studies will disseminate the contents of the records. The appellant noted that he is a committed professional in the field of developmental services in Ontario and is pursuing professional credentials as a Board Certified Behavior Analyst. He submits that he is also accountable to the people he provides support for and believes that it is objectively necessary to understand how and why the government asks professionals to implement supports for vulnerable people (especially when some of the relevant polices may not be evidence-based). The appellant confirms that he wants to learn more about how governments make policy with respect to this area, and is interested in how this affects Ontarians with developmental disabilities. The appellant states that he intends to continue to study the information from the ministry, and pursue further graduate-level education. Finally, he states that he is committed to disseminating this information in his capacity as a student and in other ways as well for the benefit of the public and vulnerable Ontarians for whom he provides support.

Other relevant factors:

[52] While I have found that dissemination of the requested records would benefit public health or safety, I will now consider whether other relevant factors apply in order to determine if it would be fair and equitable to waive the fee in the circumstances.

[53] For a fee waiver to be granted under section 57(4), it must be "fair and equitable" in the circumstances. Additional 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.[18]

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

Representations:

[54] In its representations, the ministry submits that the appellant has not established a persuasive basis on which to grant a fee waiver. It notes that the majority of the fee is attributable to the cost of photocopying a large amount of records which could be reduced greatly if the appellant agreed to receive the records on CD. The ministry refers to the fee provisions of the *Act* noting that it established a user-pay principle founded on the premise that requesters should be expected to carry at least a portion of the processing of the request unless it is fair and equitable that they not do so.

[55] The appellant refers to the ministry's representations where it submits that it "worked productively with the requester to try to assist him with his request." The appellant states that, in fact, the ministry's actions demonstrate a lack of fairness and equitability in dealing with this matter. The appellant referred to "the sheer amount of detail and scope" that he provided to the ministry in terms of his initial email inquiries, subsequent freedom of information request, and mediation process as far in excess of any attempts made by the ministry to communicate with him.

[56] The appellant indicated that email correspondence with the ministry shows that the Minister herself instructed the ministry staff to answer his specific inquires pertaining to this matter. The appellant's representations include the Minister's email. The appellant included all of the submitted materials, in support of his view that the ministry staff did not follow her instructions to answer his questions. He states that although the ministry supplied him with information related to policies and procedures, this "information" was redundant, and did not offer any responses to his initial, specific questions.

[57] Additionally, the appellant notes that he followed any and all directions from the ministry. For example, when it was acknowledged by the ministry that they could not answer his questions, they asked him to contact the Canadian Networks of Specialized Care (CNSC), however, this organization also was not able to answer his specific inquires. It was at this point, after several months of attempting to work with the ministry on this matter that the appellant claims he initiated his freedom of information request.

[58] Further, the appellant notes that he took great effort to communicate all of the relevant information to the ministry during the IPC mediation process. The appellant submits that he is at a loss to figure out how the ministry believes that his actions were not fair and equitable, especially in comparison to their own.

[59] With regard to the user-pay principle, the appellant states that the ministry is relying on a poorly-constructed argument around violation of the user-pay principle in defense of their conduct. He states that the ministry's conduct with respect to this matter has cost taxpayers much more than allegedly preserving the sanctity of this principle. The appellant states that to assert that waiving of the fee will result in a

financial burden for the ministry is completely absurd given the circumstances.

[60] In its reply representations, the ministry attempts to distinguish PO-1962 noting the Assistant Commissioner's finding that the institution was "not particularly helpful" in providing assistance to the appellant. The ministry states that the evidence in this appeal does not support the conclusion that the ministry made no or little attempt to assist with the appellant's request.

Analysis and finding:

[61] My finding above that dissemination of the records will benefit public health or safety is a factor in favour of granting a fee waiver.

[62] Another important factor to consider is whether waiver of the fee would shift an unreasonable burden of the cost of processing the request from the appellant to the ministry. I am mindful of the legislature's intention to include a user-pay principle in the *Act.* The user-pay system 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) 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.[19]

[63] After considering the representations of the parties, and given my finding concerning public health or safety, I find that the evidence supports that it is fair and equitable to waive part of the fees.

[64] The ministry notes in its representations, that most of the fee is taken up by photocopying charges and that it had offered to the appellant to place the records on a CD which would be charged at $10 per CD and drastically reduce the amount claimed for photocopying. There is no information in the appellant's representations as to why a CD would not be appropriate and given the user-pay principle in the *Act*, I find it would not be fair and equitable to waive the photocopying fee referenced in the fee estimate. However, in all the circumstances, I am satisfied that it would be fair and equitable to waive the estimated search and preparation time fees. With regard to the photocopy fees, if the appellant chooses instead to receive the records on CDs, he will only be responsible to pay $10 per CD, instead of the $391.00 estimated photocopying charge.

ORDER:

1. I uphold the ministry's fee of $391.00.

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[19] Order PO-2726.

2. I do not uphold the ministry's fee waiver decision. I order the ministry to grant the appellant a fee waiver, in part.

Original Signed by:	June 29, 2017
Alec Fadel	
Adjudicator	