

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

ORDER 2000-025

January 24, 2001

ALBERTA GOVERNMENT SERVICES

Review Number 1923

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant asked the Public Body to excuse him from the estimated fees on an access request. The Public Body denied his request, and continued to require payment of the fees as a condition of further processing. The Applicant requested a review of that decision. Finding that the Applicant gave no proof for his claims, the Inquiry Officer made an Order confirming that the Public Body had properly exercised its discretion under Section 87(4).

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c.F-18.5, s. 87(4)

Authorities Cited: AB: Order 96-002

I. BACKGROUND

[Para 1.] Alberta Government Services (the “Department”) received two separate requests, one from an individual (“Mr. X”) and another from a corporation (the “Corporation”, of which Mr. X is a corporate officer).

[Para 2.] For its own reasons, and likely because the Mr. X could be seen as, and by his own actions did claim to be, able to speak for the Corporation, the Department joined the requests into a common request for processing. It gave the joined requests the single number “GS No. 2000-G-0015.” For my purposes in this Order, I distinguish between the two components of the request by calling them “0015a”, from Mr. X, and “0015b”, from the Corporation.

[Para 3.] The presence of really two applicants seeking two classes of records leads to four possible combinations of disclosure, only one of which can be for personal information of the applicant:

1. Mr. X's information to Mr. X (personal: Request 0015a)
2. Mr. X's information to the Corporation (general: Request 0015b)
3. Corporation's information to Mr. X (general: Request 0015a)
4. Corporation's information to the Corporation (general: Request 0015b)

[Para 4.] As the applicants and the Department seem comfortable with the joined approach, I continued this inquiry into fees with the objective of producing a decision that can be separated and applied up to four ways. I am confident the logic of third-party protection required by Sections 15 and 16 of the Act will compel the Department to divide the request in the event this access request is continued to the next stages of processing. I note that the Department's estimate is built around the fee schedule for personal information requests, which would be a windfall for an applicant making a large general information access request (where cost factors are normally broader and deeper).

[Para 5.] The Department might want in future to exercise closer discernment in identifying and isolating parties when requests of this nature are received from private-sector corporate officers. In this FOIP access matter, and in the larger historical dialogue that lies beneath it, the Corporation and Mr. X have separate legal relationships with the Department. Ultimately each would be a third party to the other, and each would have the right to protection of its own interests from disclosures being made to the other party.

II. RECORDS AT ISSUE

[Para 6.] In request 0015a, Mr. X requested:

“Every single document the government has that relates to me since 1982. Including all computer records and interpersonal/office memos, notes from meetings, all correspondence from all offices. This is for everything existing in the government relating to (his own name).”

[Para 7.] In request 0015b, the Corporation wrote:

“I request all information on (Named) Corporation & every document, note message, tape, internal correspondence, record, computer notes, copies of internet correspondence with Eugene at Justice & others. Info on every employee I want to have exact knowledge the Government has including computer files off the J drive including all employee info.”

[Para 8.] As these records were, in the summer of 2000, being amassed for an administrative hearing involving the Corporation and the Department, there was no contention between them

over what body of records would be responsive to the requests. The satisfaction of the applicant on that point will not be known until after the records are processed.

III. ISSUE BEFORE THE INQUIRY

[Para 9.] In its letter setting this matter down for a written inquiry, the Commissioner's Office indicated the question at inquiry to be:

“Did the Public Body properly refuse the Applicant's request for a fee waiver under section 87(4) of the Freedom of Information and Protection of Privacy Act?”

As neither party has petitioned to vary that question or include any other matter, I take that to be the sole issue before me.

IV. CHRONOLOGY AND DOCUMENTATION

[Para 10.] The relevant events and objects in this case are as follows:

March 2, 2000 Mr. X sends request 0015a seeking personal information about himself.

March 2, 2000 The Corporation, per Mr. X, sends request 0015b seeking information about itself and about its dealings with some government employees and about some unnamed and undescribed employees. The two March 2nd requests are covered by a common note in the form of a partial letter wherein the sender indicates that he understands these to be two separate requests, and includes the initial \$25 fee payment for that which he sees as the general information request. Both requests asked to examine the original records and to receive a copy of the records.

April 6, 2000 The Corporation, per Mr. X, writes to the Department requesting a fee waiver along with an expansion of the search to include more records. In that letter the applicant lists seven reasons, here cropped to their essence, that would move the Department to excuse the fees:

1. *“...it is reasonable...”*
2. *“...it is in the public interest as a ...Service for ...Business ...”*
3. *“...it is in the public interest...”*
4. *“...the information should (be) provided free of charge..”*
5. *“...the government has limited my ability to pay....”*
6. *“...the Government should have notes about ...this matter...”*
7. *“...the government makes allegation ...so notes are required.’*

April 26, 2000 The Department, per its Deputy Minister, writes to Mr. X at the Corporation advising that his:

“request for a fee waiver cannot be accepted based on the following:

- *Although you have requested records containing your personal information and the company’s information, since the records include your personal information, only photocopying charges were included in the fee notice. No charge was included for locating and retrieving the records or for preparing them for release.*
- *Based on the criteria established by the Information and Privacy Commissioner in his Order Number 96-002, the records do not appear to be related to a matter of public interest.”*

The letter reiterates the fee estimate of \$2000, requesting a 50% payment to begin processing the request.

June 11, 2000 The Corporation, per Mr. X, faxes to the Commissioner a letter requesting that a fee waiver be given and that “the improper biased decision by the Government to decline a fee waiver be overturned for several reasons.” The letter contains, in numbered form, a disparate list of grievances against the Department, all evidently intended to stand as reasons for receiving a fee waiver. Twelve reasons are enumerated:

- Reason #1 is “It is in the Public Interest.”
- Reason #2 is “It would be unreasonable to excuse the fee”.
- Reason #3 is “It is only fair to waive the fee”.
- Reason #5 is “Hardship...”
- Reasons #4, 6, 7, 8, 9, 10 and 11 are sub-claims, unsubstantiated evidence and charges in the general theme of fairness, and so are part of #3.
- Reason #12, that “The Government has Multi Billion dollar surpluses”, is really argument material under Reason #5.

In summary, the reasons put forward in Mr. X’s June 11th letter are that it is fitting to excuse the fees under the criteria of:

- a) public interest;
- b) fairness
- c) hardship; and
- d) otherwise reasonable

June 13, 2000 The Commissioner simultaneously notifies the Department and Mr. X at the Corporation that he has received the request for review and is assigning a Portfolio Officer to investigate and try to settle this matter. The mediation attempt proves unsuccessful.

July 21, 2000 The Corporation, per Mr. X, requests that the Portfolio Officer “proceed to an inquiry.” That letter to the Portfolio Officer raises the general topic of fairness and the perceived lack of fairness in dealings between the Corporation and/or Mr. X and the Department, but does not state a particular reason for the inquiry.

July 31, 2000 The Portfolio Officer notifies the parties that the Commissioner will conduct a written inquiry into the matter. The Commissioner’s Office identifies the public body as Alberta Government Services, being the Alberta Government’s Department of Government Services. The Commissioner identifies the applicant as being Mr. X at the Corporation. Following the pattern laid down in Order 96-002, the Portfolio Officer rested the burden of proof on the applicant’s shoulders. Initial briefs were scheduled to be received by September 13th, and rebuttal briefs were due September 27th.

August 8, 2000 The Commissioner delegated his powers to conduct an inquiry and to issue an Order in this matter to John Ennis, a member of his staff.

September 8, 2000 The Inquiry Officer set the inquiry date for October 4, 2000.

October 4, 2000 At 10:00 a.m., the Inquiry Officer convened the inquiry, and received the submissions.

V. DISCUSSION AND FINDINGS

[Para 11.] The Department made its submission within the prescribed deadline. Mr. X and the Corporation made no submission at all, despite two reminder letters written to Mr. X at the Corporation by the Portfolio Officer. It is indeed unusual at an inquiry to have the party tagged with the burden of proof decline to submit a representation to the tribunal. By not contributing proofs to a proceeding that they themselves propelled, Mr. X and the Corporation risked being criticized for abuse of a process held at public expense.

[Para 12.] As the delegated Inquiry Officer in this matter, I have decided to proceed to an Order on the basis of the Department’s submission and what information I have in Mr. X’s request for review. I am satisfied that the Department’s submission contains proper copies of the correspondence it sent to Mr. X at the Corporation and received from Mr. X on the matter before me. The only references I have used from outside the received submission are Mr. X’s letters requesting a review and later confirming his insistence on an inquiry, and the letter from the Portfolio Officer to Mr. X setting the matter down for written inquiry.

[Para 13.] I choose to sort the claims, evidence and arguments of the parties to the following six sub-headings:

A. What Mr. X and the Corporation claim

[Para 14.] The seven reasons listed in Mr. X's letter to the Department of April 6, 2000, are similar to the 12 reasons that Mr. X provided in his letter to the Commissioner of June 11, 2000. He claims that the fees should be waived because it is in the public interest to do so, fair to do so, otherwise reasonable to do so, and because the fees present a hardship.

[Para 15.] Section 87(4) of the Act states that:

The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or

b) the record relates to a matter of public interest, including the environment or public health or safety.

Mr. X's themes of fairness, hardship and public interest all fit within the range of reasons contemplated by Section 87(4).

B. What Mr. X and the Corporation offer as evidence

[Para 16.] I can see no evidence in what Mr. X, both as corporate officer and as individual, has provided to this inquiry.

C. What Mr. X and the Corporation would have me accept

[Para 17.] Mr. X asks that the fiscal surplus situation of the Government be accepted as a reason to excuse him from payment. The Act makes no reference to the circumstances of government accounts as a criterion for waiving the fees.

D. What the Department claims

[Para 18.] The Department claims the fee estimate was justified, based on the predicted dimensions of the body of responsive records. I note that the size of the fee estimate or the method of calculation are not in question here, and I do not intend to consider either topic.

[Para 19.] The Department further claims that the applicant has provided no evidence that the fee should be waived. Based on the correspondence Mr. X put to the Department when the fee waiver was requested, and based also his correspondence to the Office of the Information and Privacy Commissioner requesting a review and an inquiry as part of that review, I must agree with the Department's observation: Mr. X has provided no evidence to support his request for a waiver. Nor has he provided evidence to support his claims to have the Department's refusal overturned.

E. What the Department offers as evidence

[Para 20.] The Department has shown that the fee was based on the processing and copying of approximately 11,000 records that are predicted to be within the scope of the access request. The Department discounted that number for anticipated duplicates, basing its final estimate on the copying of 8,000 records.

[Para 21.] The Department made its estimate by factoring the volume of records against the more generous personal information fee formula set out in Section 11 of the Regulations to the Act, thereby foregoing the greater revenues to be recouped through using the general information fee structure outlined in Schedule 2 of the same Regulations.

[Para 22.] The Department has provided a chain of correspondence showing that it gave Mr. X its decision after it had received his request for a waiver.

[Para 23.] The Department has not provided direct evidence on the making of the actual decision under challenge. It has made effective arguments about the merits of its position, but has provided me no intelligence about how the decision was made, when and by whom. The Department has left to me to infer that some or all of the same reasons it presents today were invoked back at the time when the discretionary denial decision was actually made. I make that inference, but only after some hesitation given the lack of evidence. I do note that the applicant did not provide any concrete information on which the Department could base a decision to waive fees.

F. What the Department would have me accept

[Para 24.] The Department repeats that it has calculated the estimate based on the schedule that is most advantageous to the applicant given that there may be both personal and general information responsive to the request. I believe the Department wants to show that it has exercised some discretion already in giving the applicant a break on fee calculation, and that this generosity on its part is proof of its openness in dealings with Mr. X. I accept that this indication effectively counters the venomous view of the Department's behaviour portrayed without proof in Mr. X's letters, but I see it having no bearing on the question before me.

VI. DECISION

[Para 25.] Mr. X carried a burden of proof to show that the Department should, in a proper exercise of its discretion under Section 87, see fit to waive the fees. But Mr. X offered no evidence and made no arguments, and so did not offer proof of his claims.

[Para 26.] The Department reproduced its arguments for denying the request, but its submission was deficient in not shedding more light on the decision-making. Nevertheless I am satisfied from the display of reasoning in the Department's submission that the head, or a proper delegate

of the head within the Department, did face squarely the question of fee waiver and did decide, consciously and dispassionately, to deny the waiver request.

[Para 27.] Given the lack of proof supplied by Mr. X to the Department, I do not see how the discretion could have been exercised in favour of his request. The following Order confirms the Department's decision as proper conduct within the discretion accorded to public bodies under the Act. I have found no reason to overturn that decision, and have been presented with no reason to replace that decision with an Order in some new direction.

VII. ORDER

[Para 28.] Under Section 68 of the Act, I make the following Order:

I do confirm and order that Alberta Government Services did properly use its discretion in deciding to not excuse Mr. X and the Corporation from having to pay the estimated fees on access request GS No. 2000-G-0015.

John Ennis
Inquiry Officer