

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

ORDER 2001-042

April 5, 2002

CALGARY POLICE SERVICE

Review Number 1854

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

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* to the Calgary Police Service for access to several types of records including specific internal and external investigation reports. The Applicant subsequently asked the Calgary Police Service to waive the estimated fee under section 93(4) [previously section 87(4)] of the Act. At the date of inquiry, the last fee estimate provided to the Applicant was in the amount of \$641.50.

The Commissioner reduced the fee to nil. The Commissioner held that given the protracted and longstanding issues between the Calgary Police Service and the Applicant, it was fair to excuse payment of the fee under section 93(4)(a) [previously section 87(4)(a)] of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 72 [previously section 68], 93(4) [previously section 87(4)]

Authorities Cited: AB: Order 96-002

I. BACKGROUND

[para 1] The Applicant had initiated several citizen complaints against a number of police officers pursuant to the *Alberta Police Act* dating back to 1993.

[para 2] On December 16, 1999, the Applicant made an access request to the Calgary Police Service (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The request asked for access to several types of records, including specific internal and external investigation reports.

[para 3] On January 12, 2000, the Public Body wrote to the Applicant requesting that the Applicant clarify his request.

[para 4] On January 24, 2000, the Public Body sent a fee estimate to the Applicant in the amount of \$1582.75. In that letter, the Public Body informed the Applicant that if the Applicant wanted to narrow his request and thereby reduce the fees, the Applicant should contact the Public Body. The Public Body also suggested a number of ways in which the Applicant could narrow his request.

[para 5] On February 15, 2000, the Applicant sent a letter to the Public Body requesting a fee waiver “due to financial hardship and previous lack of honest and full disclosures” by the Public Body under section 93(4)(a) [previously section 87(4)(a)] of the Act. In that letter, the Applicant also stated that he would try to reduce the cost of his request by revising his access request to exclude documents that he already had in his possession.

[para 6] On March 2, 2000, the Public Body denied the Applicant’s request for a fee waiver and stated that it would require some verification of the Applicant’s financial hardship before reconsidering the decision. In that letter, the Public Body also suggested ways that the scope of the request could be narrowed.

[para 7] On March 17, 2000, the Applicant wrote to this Office requesting a review of the Public Body’s decision to refuse a fee waiver under section 93(4) [previously section 87(4)].

[para 8] Since March 17, 2000, the Public Body wrote to the Applicant numerous times in order to assist the Applicant in revising the access request so as to reduce the fee estimate. As of the date of the inquiry, the last fee estimate provided to the Applicant was in the amount of \$641.50.

[para 9] Mediation was unsuccessful and the matter was set down for a written inquiry.

[para 10] The Public Body and the Applicant each submitted an initial submission to this Office. Neither party submitted a rebuttal.

II. RECORDS

[para 11] The Applicant requested access to several types of records including specific internal and external investigation reports. The Public Body provided my Office with a sample of the records at issue.

III. ISSUE

[para 12] As of January 1, 2002, the Revised Statutes of Alberta 2000 came into force. Although this did not result in substantive changes to the *Freedom of Information and Protection of Privacy Act*, various sections of that Act have been renumbered. As such, for ease of reference, in this Order I will refer to both the new and the previous section numbers. I have also rephrased the issue to reflect this change. The inquiry notice previously identified the issue as:

Is the Applicant entitled to a fee waiver under section 87(4) of the Act?

[para 13] As a result of the renumbering that occurred in the Revised Statutes of Alberta 2000, the issue in this inquiry now reads:

Is the Applicant entitled to a fee waiver under section 93(4) [previously section 87(4)] of the Act?

IV. DISCUSSION **Is the Applicant entitled to a fee waiver under section 93(4) [previously section 87(4)] of the Act?**

[para 14] Section 93(4) [previously section 87(4)] states:

93(4) 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.

[para 15] Section 93(4) [previously section 87(4)] states that the head of a public body may excuse an applicant from paying all or part of a fee if one or more of the following circumstances are met:

- (a) the applicant cannot afford the payment;
- (b) it is fair to excuse the payment; or

(c) the record relates to a matter of public interest.

[para 16] In this inquiry, I will address the issue of whether it is fair to excuse payment before I address the other two grounds under section 93(4).

A. Section 93(4)(a) [previously section 87(4)(a)] – Fair to Excuse Payment

[para 17] In the Public Body's submission, the Public Body argued that it would not be fair to excuse payment under section 93(4)(a) [previously section 87(4)(a)] as much of the records relate to issues connected to Law Enforcement Review Board appeals that have been dismissed. The Public Body also argued that the Applicant had received at least some of the records at issue through another disclosure process and, therefore, in fairness to the taxpayer, the Public Body should not have to pay twice for the provision of the same records without some reasonable expectation of cost recovery. The Public Body also stated that it has spent a great deal of time responding to the request and that allowing a fee waiver would shift an unreasonable burden from the Applicant to the taxpayer.

[para 18] The Applicant's written submission did not address whether it would be fair to excuse payment under this section.

[para 19] In Order 96-002, the Commissioner established that a person requesting a fee waiver bears the burden of proof. The Commissioner stated that an applicant is in the best position to argue why the waiver is justified and must provide sufficient information to allow the head of a public body to make an informed and objective decision. However, I note that notwithstanding the Applicant's burden of proof, section 72(3)(c) [previously section 68(3)(c)] provides me with the power to substitute my own decision on whether to waive all or part of a fee, after looking at all of the evidence and circumstances that existed when the Public Body denied a fee waiver and at the time of the inquiry.

[para 20] The Public Body did an outstanding job in identifying and cataloguing the records for the Applicant and assisting the Applicant in clarifying and narrowing the request. I commend the Public Body for its responsiveness and assistance to the Applicant in processing the Applicant's access request.

[para 21] However, after a careful review of all submissions and all arguments of all parties, I find that given the protracted and longstanding issues between the Public Body and the Applicant, I am going to grant a fee waiver under section 93(4)(a) [previously section 87(4)(a)]. It is my view that waiving the fee would assist the Applicant in bringing closure to the issues and concerns that have remained outstanding between the Public Body and the Applicant for nearly nine years. Although some of the records may relate to Law Enforcement Review Board appeals that have been dismissed, I do not find that this circumstance, in and of itself, is enough to deny the Applicant a fee waiver in this inquiry. In addition, the Applicant's receipt of at least some of the documents in another disclosure process is not a relevant circumstance in this inquiry. I also do not

agree with the Public Body that waiving the \$641.50 fee would shift an unreasonable burden from the Applicant to the taxpayer.

B. Section 93(4)(a) [previously section 87(4)(a)] – Inability to Afford Payment

[para 22] As I have found that it is fair to excuse payment under section 93(4)(a) [previously section 87(4)(a)], it is not necessary for me to decide whether the Applicant is entitled to a fee waiver on the ground of his inability to afford the payment.

C. Section 93(4)(b) [previously section 87(4)(b)] – Public Interest

[para 23] As I have found that it is fair to excuse payment under section 93(4)(a) [previously section 87(4)(a)], it is not necessary for me to decide whether the Applicant is entitled to a fee waiver under section 93(4)(b) [previously section 87(4)(b)]

V. ORDER

[para 24] I make the following Order under section 72 [previously section 68] of the Act.

[para 25] I excuse the Applicant from paying the \$641.50 fee to the Public Body.

[para 26] I do not find it necessary to decide whether the Applicant is entitled to a fee waiver on the ground of his inability to afford the payment under section 93(4)(a) [previously section 87(4)(a)] or whether the Applicant is entitled to a fee waiver under section 93(4)(b) [previously section 87(4)(b)].

Frank J. Work
Acting Information and Privacy Commissioner