

**ALBERTA**  
**OFFICE OF THE INFORMATION AND PRIVACY**  
**COMMISSIONER**

**ORDER F2002-023**

October 31, 2002

**ALBERTA HUMAN RESOURCES AND EMPLOYMENT**

Review Numbers 2290 and 2294

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

**Summary:** The Applicant requested both personal and general information, in two separate requests, from Alberta Human Resources and Employment (the “Public Body”). The Applicant also requested a full fee waiver on the grounds that she could not afford to pay. The Public Body denied the request for the general information, a manual, under section 29(1)(a) of the *Freedom of Information and Protection of Privacy Act*, indicating that the manual was available to the public for purchase. The Public Body also refused to waive the fees for the records containing the Applicant’s personal information.

The Adjudicator agreed that the manual was available for purchase and confirmed the Public Body’s decision to refuse access. In dealing with the fee waiver, the Adjudicator decided to divide the records containing the Applicant’s personal information into two groups. The first group contained correspondence between the Applicant and the Public Body after February 1, 2000. The Applicant indicated in her submission that she already had copies of these records. The Adjudicator confirmed the Public Body’s decision to charge fees for these records. For the remainder of the records containing the Applicant’s personal information, the Adjudicator excused the Applicant from paying the fees on the grounds that the Applicant could not afford the payment.

**Statutes Cited:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1) [previously section 9(1)], 29(1)(a) [previously section 28(1)(a)], 89(1) [previously section 84(1)] and 93(4)(a) [previously section 87(4)(a)]; *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95, s. 10(3).

**Order Cited:** Order 96-002

## I. BACKGROUND

[para 1] On June 21, 2001, the Applicant submitted to Alberta Human Resources and Employment (the “Public Body”) a formal request for personal information and general information as well as a request for a full fee waiver under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The personal information requested was for:

1. Copies of all the Applicant’s records from the Supports for Independence (SFI) and Assured Income for the Severely Handicapped (AISH) programs.
2. Copies of all the SFI and AISH appeal decisions.
3. Files from the offices of the Assistant Deputy Minister (ADM), the Deputy Minister and the Minister of the Public Body.

[para 2] The general information requested was for:

1. A copy of the Supports for Independence (SFI) Policy Manual
2. A copy of the Social Development Act
3. A copy of the Social Allowance Regulation

[para 3] The Applicant’s request for general information did not include the initial application fee of \$25.

[para 4] On July 17, 2001, the Public Body denied the request for general information, advising the Applicant that the records were publicly available. The Applicant was provided with information as to where the records could be located and accessed for examination or copying. On the same date the Public Body provided the Applicant with a cost for copying estimate (\$2,350.00 for approximately 9,400 pages at 25 cents per page) for the personal information requested.

[para 5] On July 23, 2001, the Applicant responded to the Public Body’s fee estimate by once again requesting a full fee waiver. The Applicant noted that with the general information request, she could not afford to photocopy the publicly available documents and again requested a copy of the SFI Policy Manual.

[para 6] On July 26, 2001, the Public Body requested the Applicant to consider narrowing her request for personal information so that the Public Body could accurately examine her request for a fee waiver. The Public Body believed the Applicant to already have copies of most of the personal information she requested. The Applicant did not respond.

[para 7] On August 17, 2001, the Public Body wrote to the Applicant making a request identical to the one made on July 26, 2001.

[para 8] On August 31, 2001, the Applicant responded to the Public Body advising that she would narrow her request allowing that duplicated copies could be eliminated and asked that a listing of the duplicated documents be provided to her. To support her

application for a fee waiver, the Applicant also provided supportive financial status documentation.

[para 9] On September 11, 2001, the Public Body wrote to the Applicant once again requesting that the Applicant narrow her request for personal information. The Public Body did not accept the request of the Applicant to make “one copy of each duplicated document and then making [sic] a list of everywhere else it appears” as sufficient narrowing of the request. The Public Body suggested that the Applicant could exclude from her request documentation that she had previously received from the Public Body.

[para 10] On September 18, 2001, the Applicant responded that she did not wish to narrow her request to exclude documents and returned to her original request for all documents.

[para 11] On September 24, 2001, the Public Body wrote the Applicant advising her that her request for a fee waiver had been denied.

[para 12] On September 27, 2001, the Applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the decision of the Public Body denying the fee waiver for personal information. Review number 2290 was opened and mediation was authorized.

[para 13] On October 10, 2001, the Applicant requested that the OIPC review the Public Body’s denial of the request for general information. The Applicant noted that she was able to download the Social Development Act and the Social Allowance Regulations. Therefore, the only record at issue regarding the request for general information is the SFI Policy Manual. Review number 2294 was opened and mediation was authorized.

[para 14] The mediation process did not resolve the issues and the two matters proceeded to a combined written inquiry.

[para 15] The revised *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, F-25 came into force on January 1, 2002. Most of the section numbers of the Act changed but not the substance of the sections. Consequently, in this Order, I have set out the new section numbers. The previous section numbers appear in square brackets after the new section numbers.

## **II. RECORDS AT ISSUE**

[para 16] The personal information requested consists of applications for financial benefits, budget sheets, medical reports, annual reports, social workers’ comments, appeal decisions, other financial, and related information, numbering approximately 9,400 pages.

[para 17] The general information requested (the SFI Policy Manual) consists of two volumes numbering approximately 1,280 double-sided pages.

### III. ISSUES

[para 18] The two outstanding issues are:

A. Did the Public Body properly apply section 29(1)(a) of the Act [previously section 28(1)(a)] to the general information (the SFI Policy Manual) (Review Number 2294)?

B. Should the Applicant be excused from paying all or part of the fee, as provided by section 93(4)(a) of the Act [previously section 87(4)(a)] for the personal information (Review Number 2290)?

### III. DISCUSSION OF THE ISSUES

#### Preliminary Matters

[para 19] The Public Body argued that because the Applicant did not include a \$25 initial fee (the “initial fee”) with the general information request, as required by section 10(3) of the *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95 (the “Regulation”), the general information request was not processed as a formal request.

[para 20] Section 10(3) of the Regulation reads:

*10(3) Processing of a request will not commence until the initial fee has been paid.*

[para 21] In my view, if there is a request for access made under the Act, a public body must process the request under the Act. The public body cannot treat the request as an informal request. The only issue will be whether the public body chooses to process an access request without receiving the initial fee.

[para 22] As provided by section 10(3) of the Regulation, a public body is well within its rights to refuse to process an access request under the Act if the initial fee is not paid. However, once the public body has accepted the access request, without requesting the initial fee, it cannot subsequently stand on its rights under section 10(3) and refuse to process the access request. In these circumstances, unless otherwise notified, it is reasonable for an applicant to assume that the public body has waived the initial fee.

[para 23] Since the Public Body accepted the access request for general information, without receiving the initial fee, the Public Body must be presumed to have waived the initial fee.

[para 24] The Public Body also argued that because the Applicant failed to provide the initial fee, a formal access request did not exist and therefore there is no jurisdiction for the Office of the Information and Privacy Commissioner to deal with the Applicant. My

response is that as this matter concerns an access request made under the Act (the initial fee only being part of the issue), the Office of the Information and Privacy Commissioner has jurisdiction to address the issues raised.

[para 25] The Public Body had concerns related to the issue of payment of the initial fee. The Public Body asked:

1. Can an access request be processed without payment of the initial fee?

In my view a public body has the discretion to accept an access request without the initial fee. Section 93(1) of the Act [previously section 87(1)] allows the head of a public body discretion as to whether or not to require an applicant to pay fees as provided under the Regulation.

Section 93(1) [previously section 87(1)] reads:

*93(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.*

Section 9 of the Regulations includes the initial fee of section 10(2) of the regulations as “fee for services”.

Section 9 reads:

*9 Where an applicant is required to pay a fee for services, the fee is payable in accordance with sections 10, 11, 12 and 13.*

Sections 10(1) and (2) address initial fees and read:

*10(1) This section applies to a request for access to a record that is not a record of the personal information of the applicant.*

*(2) An applicant is required to pay*

*(a) an initial fee of \$25 when a non-continuing request is made, or*

*(b) an initial fee of \$50 when a continuing request is made.*

The Act and the Regulation do not prevent a public body from deciding to waive the initial fee but, in the interest of fairness, if the public body decides to waive the initial fee, the public body should do so at the outset. The public body should, in writing, clearly advise the applicant that it is waiving the initial fee. If the public body decides not to accept the access request without an initial fee, it must at the outset, in writing, clearly advise the applicant that it will not consider or process the access request without the initial fee. Following the processes outlined above will assist the applicant in knowing what exactly is expected regarding the initial fee

and doing so will prevent the initial fee from becoming an issue after the public body begins processing the access request.

2. Does a request for a waiver of “any service fees” apply to the initial fee?

My view is that the interpretation of “any service fees” can be broad enough to comprise the initial fee.

Section 93(1) [previously section 87(1)] and section 9 of the Regulation do not distinguish between service and initial fees.

If a public body is in doubt when a fee waiver request is made, the public body can always ask the applicant for clarification. The public body can ask the applicant if the waiver of “any services fees” is to be interpreted to include the initial fee, and the public body can exercise its discretion based on the response of the applicant.

3. If the answer to #2 is “yes”, then is there a need to submit the initial fee before the request for a fee waiver can be considered?

Based on my responses to questions 1 and 2, the public body may exercise its discretion as to requiring an initial fee before accepting access requests. All will depend on the submission before the public body. Some submissions may arrive with a request for a complete waiver from all applicable fees, while others will attach a fee. Applications should be reviewed on an individual basis. Public bodies may or may not require an initial fee before a fee waiver is to be considered, provided the public body, at the outset, makes it clear to the applicant as to how it is going to treat the initial fee.

**ISSUE A: Did the Public Body properly apply section 29(1)(a) of the Act [previously section 28(1)(a)]?**

[para 26] Section 29(1)(a) [previously section 28(1)(a)] reads:

*29(1) The head of a public body may refuse to disclose to an applicant information  
(a) that is available for purchase by the public, ...*

[para 27] In its initial response letter refusing access to the SFI Policy Manual, the Public Body made the Applicant aware of where the SFI Policy Manual could be obtained and copied. This advisory, the Public Body contended, was in accordance with section 89(1) of the Act [previously section 84(1)].

[para 28] Section 89(1) [previously section 84(1)] states:

*89(1) Within 2 years after this section comes into force, the head of every public body must provide facilities at*

- (a) the headquarters of the public body, and*
- (b) any offices of the public body that, in the opinion of the head, are reasonably practicable,*

*where the public may inspect any manual, handbook or other guideline used in decision-making processes that affect the public by employees of the public body in administering or carrying out programs or activities of the public body.*

[para 29] Under section 89(1) [previously section 84(1)], the Public Body is required to make available to the public for inspection, policies that are used in the decision-making processes that affect individuals. Therefore, the Public Body argued that it did comply with provisions of section 89(1) [previously section 84(1)] by advising the Applicant of the location and availability of the SFI Policy Manual.

[para 30] The Public Body also argued that it has clearly established that the records at issue can be reviewed, or copied, at either a public library or through its office. The Public Body says it made the information sought available for purchase, as set out in section 29(1)(a) [previously section 28(1)(a)]. The purchase involves the Applicant paying to photocopy the record. Therefore, I am satisfied that the SFI Policy Manual is available for purchase by the public.

[para 31] Based on the availability of the SFI Policy Manual, I am also satisfied that the Public Body properly exercised its discretion under section 29(1)(a) of the Act [previously section 28(1)(a)], in refusing the Applicant's access request. Therefore, I find that the Public Body properly applied section 29(1)(a) [previously section 28(1)(a)] to the general information. I intend to confirm the Public Body's decision.

**ISSUE B: Should the Applicant be excused from paying all or part of the fee, as provided by section 93(4) of the Act [previously section 87(4)]?**

[para 32] The Applicant clearly argued that due to financial concerns, she was unable to pay "any fee" and sought a complete fee waiver, including the initial fee of \$25. The Applicant contended that she has provided the Public Body with ample evidence to substantiate that she cannot afford the fees associated with her request, including photocopying fees.

[para 33] The Public Body determined that the personal information requested is subject to a fee that is based on photocopying charges only. The estimated cost is \$2,350.00 based on approximately 9,400 pages at 25 cents per page.

[para 34] The Applicant relied upon section 93(4) of the Act [previously section 87(4)]. Section 93(4) [previously section 87(4)] reads:

*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 35] The Applicant noted that the Public Body rejected as insufficient her offer to reduce the size of the request. The Applicant later withdrew her offer, as she believed she required all the information originally requested and she was concerned that the Public Body may have pertinent information that she may require. The Applicant also noted that some of the documents that she received in the past from the Public Body might have been stolen or lost.

[para 36] The Applicant believed the consequences of the Applicant's research would ultimately impact funding for individuals in similar circumstances as the Applicant and therefore her request is of public interest. Insufficient evidence of this argument was submitted and therefore I will not address the public interest argument any further.

[para 37] The evidence of her financial status, which the Applicant provided to the head of the Public Body to apply section 93(4)(a) [previously section 87(4)(a)], was well substantiated and her financial status was not disputed by the Public Body.

[para 38] The Public Body argued its decision to deny the fee waiver for the records was correct because of:

1. the size of the Applicant's request,
2. the fact that the Applicant had previously received a good portion of the information, and
3. the Applicant refuses to narrow her request.

[para 39] The Public Body in its submission noted that it had previously supplied personal information to the Applicant and that the Public Body views this renewed and extensive request as "unfair and unreasonable". The main issue for the Public Body is that the Applicant refuses to narrow her request to something more manageable and with less cost involved.

[para 40] The Public Body also noted that it is accountable for use of public resources and under these circumstances it would not be reasonable to allow a waiver of fees. The Public Body, noting the expense involved, made reference to Alberta Order 96-002 where



the Commissioner commented that the head of a public body is accountable for the use of public resources.

[para 41] The Applicant in her submission noted that she was prepared to narrow her request to eliminate copies of her letters to the Public Body and copies of letters to her from the Public Body for the period from February 1, 2000 to the present.

[para 42] I am sympathetic to the Public Body's position that it should not be required to offer the Applicant multiple copies of the records at no charge. In my view, section 93(4)(a), as it relates to the inability of an applicant to pay the fees, should allow an applicant on a low income to have access to the applicant's personal information held by the public body. If it comes down to the difference between giving an applicant access or not, strictly on the basis of ability to pay, the Public Body should allow for the waiver. However, just because an applicant is on a low income, an applicant should not expect to ask for the same records on numerous occasions and not expect to pay fees.

[para 43] In this case, the Public Body stated that it had given copies of many of the records to the Applicant on previous occasions. Unfortunately, the Public Body did not offer evidence regarding what records, on what dates, and what, if any, fees were charged. It is my view that the Public Body is in the best position to keep records regarding this type of information. Had this information been available to me, it would have weighed heavily in my decision. As it is, the Applicant was the only party to offer me evidence about what specific records she had previously received. Specifically, the Applicant has already received correspondence between the Applicant and the Public Body, from February 1, 2000 to the present.

[para 44] Consequently, for the purposes of this Order, I have decided to divide the records that are subject to the Applicant's request for personal information into two groups. The first group is the correspondence between the Public Body and the Applicant from February 1, 2000 until present. For this group of records, I do not intend to excuse the Applicant from paying fees. I intend to confirm the Public Body's decision to charge fees for those records. It is likely that the Applicant will no longer wish to have these records supplied. However, if the Applicant wishes another copy of these records, the Applicant must pay the appropriate fees to the Public Body.

[para 45] The remainder of the records containing the Applicant's personal information constitutes the second group. For this group of records, I intend to excuse the Applicant from paying the fees, on the ground that the Applicant cannot afford the payment. I intend to reduce the fees to zero for those records.

## **V. ORDER**

[para 46] I make the following Order under section 72 of the Act [previously section 68].

[para 47] I find that the Public Body properly applied section 29(1)(a) of the Act [previously section 28(1)(a)] to the general information (the SFI Policy Manual). I confirm the Public Body's decision to refuse access.

[para 48] I do not excuse the Applicant from paying fees for the first group of records consisting of correspondence between the Public Body and the Applicant for the period from February, 1, 2000 to the present. I confirm the Public Body's decision to charge fees for those records.

[para 49] I excuse the Applicant from paying fees for the second group of records consisting of the Applicant's personal information. I reduce the fees to zero for those records.

[para 50] The Public Body will now be expected to process the Applicant's request for the second group of records.

Dave Bell  
Adjudicator