

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

ORDER F2003-022

January 12, 2005

MEDICINE HAT POLICE SERVICE

Review Numbers 2682 and 2733

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

Summary: The Applicant requested access to general information under the *Freedom of Information and Protection of Privacy Act* (the “Act”) from the Medicine Hat Police Service (the “Public Body”) relating to a series of incidents in 2002. The Applicant requested a waiver of the initial \$25 fee based on inability to pay. Notwithstanding the evidence of limited financial means of the Applicant, the Adjudicator found that it was not an appropriate case to grant a waiver of the \$25 fee on the basis of inability to pay. The fee was not a barrier to access in this case.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 55, 93(1), 93(4), 93(4)(a) and 72; *Freedom of Information and Protection of Privacy Regulation* AR 200/95, ss. 9, 10, 10(2), 10(3), 10(4), 11, 12, 13.

Authorities Cited: Orders 96-002, 2000-008, 2000-011, F2002-028, and Adjudication Order #2.

I. BACKGROUND

[para 1] On March 6, 2003, the Applicant submitted a request to the Medicine Hat Police Service (the “Public Body”) for the complete files relating to a series of incidents in 2002 relating to an alleged illegal search of a residence, an alleged assault, alleged unlawful arrests, an alleged questioning of a minor without the consent of parents. In addition, a request was made for transcripts of 911 calls made in relation to some of the alleged incidents (“the Records”). This request was made under the *Freedom of*

Information and Protection of Privacy Act R.S.A. 2000, c. F-25 (the “Act”). From the outset, the Applicant requested a waiver of fees based on inability to pay.

[para 2] The Public Body responded to the Applicant’s request on March 12, 2003 by pointing out that the Applicant had previously requested the Records. Furthermore, the Public Body stated that on December 24, 2002, it had made a request to the Information and Privacy Commissioner under section 55 of the Act to “disregard thirty-four of your requests”. As such, the Public Body was awaiting determination by the Commissioner and would react to the Applicant’s request once that determination had been received.

[para 3] On March 17, 2003, the Applicant wrote to the Public Body asking that her request for information dated March 6, 2003 be dealt with immediately. On March 24, 2003 the Public Body responded by providing a summary of the incidents in 2002 and asking that the Applicant confirm that it was for these incidents that the request for the Records related. The Public Body stated that it would require the initial fee of \$25 before processing the access request.

[para 4] On March 26 and March 27, 2003, the Applicant provided further information to the Public Body, including some information regarding her inability to pay and a willingness to provide verification to bank accounts and other financial circumstances. She also confirmed the events and incidents for which she was seeking Records.

[para 5] On April 1, 2003, this Office received the Applicant’s Request for Review of the Public Body’s refusal to waive the initial fee on the basis of inability to pay. The Applicant submitted an initial submission to be exchanged among the parties and a rebuttal *in camera* submission. The Public Body provided a submission which consisted of a covering letter and a copy of the police incident report in relation to the access information request. The Public Body stated that “it was determined that preparing a brief in relation to a request for \$25 waiver was not an appropriate use of resources”. The Public Body did not submit a rebuttal.

II. RECORDS AT ISSUE

[para 6] As this is a request to waive fees based on inability to pay, the records are not directly at issue.

III. ISSUE

[para 7] There is one issue in this inquiry:

Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?

IV. DISCUSSION OF THE ISSUE

[para 8] Section 93(4)(a) of the Act 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 reasons it is fair to excuse payment, ...

[para 9] The Applicant raised only the issue of inability to pay in requesting a fee waiver. The fee the Applicant wants waived is the initial \$25 application fee. Section 93(4) applies to the initial application fee of \$25 and not just other fees relating to production of records (Order F2002-028).

[para 10] The Applicant has the burden of proof to establish that she is unable to pay. She has to offer some personal financial information that provides sufficient information for the decision maker to make an objective decision about inability to pay (Order 96-002, pages 10, 13, 14; Order 2000-008, paragraph 25; Order 2000-011 paragraphs 27-33). In this case, the Applicant has provided information in her *in camera* submissions as to her financial circumstances. She is on a fixed income and has a number of dependents.

[para 11] The Public Body noted that it had a history of the Applicant making requests and in the past it had always attempted to be forthcoming with those information requests. In 2002 it had received over 30 requests from the Applicant and in at least one of those requests which had 10 items, the Public Body previously waived fees.

[para 12] The fact that the Public Body has waived fees in the past for this Applicant does not create a binding precedent for how it deals with subsequent access to information requests from the same Applicant.

[para 13] Two principles have previously been identified that must be recognized in considering whether it is appropriate to grant a waiver of fees. These principles are:

- a) The Act was intended to foster open, transparent and accountable government, subject to the limits contained in the Act (Order 96-002; Adjudication Order #2).
- b) The Act contains a principle that the user should pay (Order 96-002).

[para 14] These principles are reflected in section 93(1) of the Act which provides that a public body *may* require an applicant to pay fees for services, and in the *Freedom of Information and Protection of Privacy Regulation* AR 200/95 (the “Regulation”) which sets out the details of how those fees are to be implemented (sections 9-13 of the Regulation).

[para 15] Sections 10(2) and (3) of the Regulation states that an Applicant is required to pay the initial \$25 fee in an access request for general information before

processing of the request is commenced. The Public Body is completely entitled to implement the fee. Section 10(4) of the Regulation indicates that an applicant is not required to pay further fees until the total amount of fees reaches a threshold of \$150. The practical effect of this provision is that many requests for general information never exceed the initial fee of \$25.

[para 16] In my view, it would be most unusual that an applicant could not afford to pay \$25 to process an access to information request. The relatively modest fee strikes a balance between the two principles of the Act: openness and user pay. There is no evidence before me that payment of the fee would be a barrier to access in this case. Therefore, I do not find this to be an appropriate case to grant a waiver of the \$25 fee on the basis of inability to pay.

V. ORDER

[para 17] I make the following Order under section 72(3)(c) of the Act.

[para 18] I find that the Applicant should not be excused from paying the \$25 fee under section 93(4)(a) of the Act (inability to pay). I confirm that the Applicant must pay the \$25 fee.

Dave Bell
Adjudicator