

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2003-025

February 9, 2004

ALBERTA HUMAN RESOURCES AND EMPLOYMENT

Review Number 2701

Office URL: www.oipc.ab.ca

Summary: The Applicant requested that Alberta Human Resources and Employment (the “Public Body”) excuse the fee for services under the *Freedom of Information and Protection of Privacy Act*, on the basis that the Applicant could not afford to pay. When the Public Body refused, the Applicant asked the Commissioner to review that decision. The Commissioner reduced the fees to nil.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 72(3)(c), 93(4)(a).

Authorities Cited: Order F2002-023.

I. BACKGROUND

[para 1] The Applicant made an access request to Alberta Human Resources and Employment (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”). The Applicant wanted access to all the information in the Applicant’s Supports for Independence (“SFI”) and Assured Income for the Severely Handicapped (“AISH”) files for the period April 15, 2002 to February 25, 2003. The Public Body gave a fee estimate of \$425 for photocopying 1700 pages of personal information. The Applicant requested that the Public Body excuse the fee, on the basis

that the Applicant could not afford to pay. The Public Body refused to waive the fee. In the Public Body's letter to the Applicant, the Public Body said:

In regard to a fee waiver our office is required to make a decision on the waiving of the fees. As outlined in our previous letters, access requests involve use of public resources that are paid for by taxpayers. A public body is accountable for the use of public resources. Fees are intended to partially offset the costs incurred by the public body in responding to requests, so that taxpayers are not burdened with the full cost.

Section 93(4) provides some limited situations where fees can be reduced or waived entirely if you cannot afford to pay. In order to assess whether a fee waiver should be granted we require that you provide in writing detailed information which would clearly show that an inability to pay exists and the reason you require all records on file which includes correspondence to and from you and duplicate records.

[para 2] The Applicant responded by providing the following documents to support the inability to pay: an SFI appeal summary containing financial information; a bank statement; an SFI deposit statement; a lawyer's opinion letter about the Applicant's receiving AISH benefits; the Public Body's fee estimate letter and a Legal Aid letter. The Applicant also provided reasons for requiring the information.

[para 3] The Public Body refused to waive the fees on the grounds that "...more than half the records on file are records of correspondence you have forwarded to the department, duplicates and correspondence from our department to you."

[para 4] The Public Body told the Applicant that if the Applicant were willing to narrow the request to eliminate all records forwarded to the department, duplicates and correspondence from the department to the Applicant, the Public Body would grant a fee waiver for the remaining records (approximately 200 of the 1700 pages of records). If the concern was that documents were missing from the files, the Public Body said that the Applicant could submit a list and the Public Body would confirm the documents on file.

[para 5] The Applicant requested a review of the Public Body's decision on the basis of financial inability to pay. The Applicant also stated the reasons for requiring the information.

II. RECORDS AT ISSUE

[para 6] As the issue concerns a fee waiver on the basis of an inability to pay, the records themselves are not directly at issue. However, on request by this Office, the Public Body provided the Applicant's original files for review.

III. ISSUE

[para 7] The one issue for the inquiry is whether the Applicant is entitled to a fee waiver under section 93(4)(a) of the FOIP Act.

IV. DISCUSSION OF THE ISSUE

[para 8] The Applicant did not provide a submission for the inquiry. The burden is on the Applicant regarding inability to pay. However, the Applicant provided the Public Body with evidence of the Applicant's inability to pay. That evidence is contained in the Public Body's submission and the Applicant's files (which I reviewed).

[para 9] In the Public Body's submission, the Public Body says that the Applicant has made several access requests for the Applicant's files and has received records. The Public Body relies on Order F2002-023, an Order involving the Public Body in which the Adjudicator was sympathetic to the Public Body's position that it should not be required to offer an applicant multiple copies of the records at no charge. The Adjudicator stated that an applicant should not expect to ask for the same records on numerous occasions and not expect to pay fees.

[para 10] In Order F2002-023, the evidence was also that the applicant was prepared to narrow the access request to eliminate copies of the applicant's letters to the Public Body and copies of letters to the applicant from the Public Body. Consequently, the Adjudicator did not waive fees for those records, but did waive fees for the other records.

[para 11] The evidence in this case is that the Applicant has requested access to records for different time periods, requested access to different records, and occasionally has paid for records. There is also evidence that the Applicant previously requested the records for the April 15, 2002 to February 25, 2003 time period (and an extended time period), but either withdrew the access request when the Applicant got a fee estimate, or did not proceed with the request. There is no evidence that the Applicant previously received the records from the April 15, 2002 to February 25, 2003 time period. There is also no evidence that the Applicant wants to narrow the request to exclude copies of records to and from the Public Body, or duplicate records.

[para 12] The issue is the Applicant's inability to pay for these records. When considering this issue, two relevant considerations for the Public Body are whether there is sufficient evidence of the Applicant's inability to pay, and whether the Public Body provided the same records to the Applicant, without charge, on a previous access request.

[para 13] Whether the Applicant can give a sufficient reason to justify why the Applicant wants the records is an irrelevant consideration for the Public Body. Whether most of the correspondence is between the Applicant and the Public Body, or there are duplicate records, and the Applicant won't narrow the request to exclude these records, is also an irrelevant consideration for the Public Body.

[para 14] If there is a protracted relationship between an applicant and a public body, as here, it is not unreasonable that the applicant will want to see the history of that relationship with the public body. An applicant should get this once, without having to pay.

[para 15] As the Applicant has provided the Public Body with sufficient evidence of inability to pay, and as there is no evidence that the Applicant has previously received the records for the April 15, 2002 to February 25, 2003 time period, the Applicant gets the fee waiver this once for these records.

V. ORDER

[para 16] I make the following Order under section 72(3)(c) of the Act.

[para 17] I reduce the fee to nil. The Applicant is therefore excused from paying the fee. The Public Body will now be expected to process the Applicant's access request.

Frank Work, Q.C.
Information and Privacy Commissioner