

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2005-006

December 28, 2006

**APPEALS COMMISSION FOR ALBERTA WORKERS'
COMPENSATION**

Case File Number 2955

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

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for access to information held by the Appeals Commission for Alberta Workers’ Compensation (the “Public Body”). He requested access to all documents with personal and general information connected to appeals before the Public Body in which he was the claimant. The Applicant requested a fee waiver. The Public Body refused to waive the fees, first estimated at \$850.00, on the basis that the Applicant had previously received most of the records at no cost. During the course of the review by this office, the Public Body agreed to waive the fees for 190 pages of records not previously received by the Applicant at no cost.

The Adjudicator found that the Public Body’s refusal to waive the remainder of the fees was reasonable, considering all the circumstances.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25, s. 93(4), 93(4)(a), 93(4)(b), 72; *Freedom of Information and Protection of Privacy Act Regulation* AR 200/1995, s. 13(3).

Orders Cited: Orders F2002-023, F2003-025.

I. BACKGROUND

[para 1] On December 12, 2003 the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Appeal Commission for Alberta Workers’ Compensation (the “Public Body”) as follows:

Please accept this letter as a request under the Freedom of Information and Protection and [sic] Privacy Act of Alberta for “general information” and “personal information” and “any documents that are within the control of the Public Body (Appeals Commission, Alberta) (including electronic recordings or emails) that have the name of [the Applicant] as the claimant and as the causal connection of these documents to the Workers’ Compensation Board of Alberta claim #[Applicant’s claim] and participation within any appeals at the Appeals Commission, Alberta.

[para 2] On January 5, 2004, the Public Body wrote the Applicant advising that it would charge a fee of \$850.00, based on copy charges of 25 cents per page for an estimated 3400 pages of records.

[para 3] On January 9, 2004, the Applicant wrote the Public Body requesting a fee waiver, confirming the scope of his information request and that he wanted the full 3400 pages. The Applicant enclosed proof of his very limited income. He also requested that the Public Body advise him of the administrative areas in which the documents were located.

[para 4] From January 15, 2004, to March 24, 2004, there were a series of letters between the Public Body and the Applicant. The Applicant then requested that this Office review the Public Body’s decision. The letters prior to March 24, 2004, appear to be attempts by the Public Body to clarify and narrow the information request, the Applicant’s responses to those attempts, and other requests for information by the Applicant. In addition, there was an exchange of letters between the Applicant and the Public Body about access to a hearing transcript, which was external to his request for access under the Act.

[para 5] Mediation was authorized but was unsuccessful. A Notice of Inquiry was sent to the parties with one issue, as follows:

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

[para 6] From May 19, 2004 to November 17, 2004 there were letters exchanged between the Applicant and this Office attempting to clarify the information request and the scope of the Inquiry. Among other issues, the Applicant wanted to include his concern that the Public Body had refused him access to the hearing transcripts by directing him to its existing procedure for appellants to obtain transcripts. He objected to paying the prescribed cost for the transcripts. I informed the parties by letter, dated August 19, 2004, that the scope of this Inquiry would be limited to the fee waiver issue.

[para 7] On September 17, 2004, the Applicant wrote the following letter, addressed to me:

This applicant has reviewed the circumstances of this FOIP request and upon further review this applicant will **agree** to be provided a **fee waiver** and the documents stated by [name of individual], Director, Information and Privacy Office, Alberta Human Resources and Employment (behalf of the Appeals Commission) and the documents based on a fee waiver. [Applicant's emphasis]

[para 8] While this passage is open to several interpretations, the appearance of the Applicant's letter was that he had decided to accept some sort of offer made during mediation. Quite possibly, there would be no reason to continue with the inquiry. As the decision maker, I was not aware of what had happened during mediation and was not in a position to enter into further mediation. Consequently, the file was sent back to mediation in order to clarify the Applicant's wishes.

[para 9] Two letters from this office and two responses from the Applicant failed to clarify the issue. The Applicant agreed to accept 177 pages of records from the Public Body at no cost. The Applicant's second letter, dated November 12, 2004, stated:

This applicant would agree to the waiver of the fee on the 177 pages and await the processing of these documents. The payment for receiving of the rest of the documents will be funded by the applicant upon choosing to receive any. At this point in time the applicant will accept only the 177 pages.

[para 10] This response came in response to a request by this office for a simple yes or no answer to a question about whether the Applicant wanted to proceed with an inquiry on the remaining records. Like the previous letter, this one is open to interpretation. It could mean that the Applicant is satisfied with the 177 pages and has no further interest in the rest. However that is only one interpretation. The Commissioner decided that the inquiry would continue in order to bring finality to this case.

[para 11] On November 17, 2004, this Office advised the parties that an Inquiry would be held. The issue for the Inquiry was amended to exclude 177 pages of records that the Applicant was to receive from the Public Body subject to a fee waiver.

[para 12] Initial submissions were received from both the Applicant and the Public Body. The Public Body provided a rebuttal submission. The Applicant did not provide a rebuttal within the time allotted.

II. RECORDS AT ISSUE

[para 13] The Applicant's personal and general information request is set out above. The Public Body developed a list of the responsive documents that it initially estimated to be 3400 pages. The records consist of letters, telephone notes, memos, consultation requests, medical and rehabilitation reports, several entitlement decisions and previous Appeals Commission decisions.

III. ISSUE

[para 14] The inquiry was continued with the following issue:

Should the applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act, excluding the 177 pages of records that the Applicant has agreed to accept from the Public Body subject to a fee waiver?

IV. DISCUSSION OF THE ISSUE

[para 15] Section 93(4) 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 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 16] The Applicant made arguments that he should receive a fee waiver both because he was unable to pay and that the records relate to a matter of public interest.

[para 17] I do not agree with the Applicant that his request meets the public interest requirement of section 93(4)(b) of the Act. It is evident that he wants the documents to further his private interests. While government accountability might be enhanced, as he argues, there is no evidence to support a finding that the records relate to a matter of public interest.

[para 18] The evidence before me shows that the Applicant is on a very limited income from a social benefits program. The Public Body admitted the Applicant has proven a limited ability to pay fees. Therefore, the Applicant has met the onus of proving that he cannot afford payment under section 93(4)(a) of the Act. However, a finding of financial hardship by itself does not mean the Public Body must waive the fee. It must still consider all the circumstances and exercise its discretion.

[para 19] In its initial submission, the Public Body offered to produce 177 pages of records to the Applicant without charging a fee. This is the offer that the Applicant agreed to accept prior to continuation of this inquiry. In its rebuttal submission, the Public Body stated that, after its review of the Applicant's file, it released 190 documents without charge. The Public Body stated that these were the records that it could not confirm that the Applicant had previously received or were submitted by the Applicant.

[para 20] The Public Body objected to waiving the fee on the balance of the records.

[para 21] It is the Public Body's evidence that the Applicant was willing to eliminate the September 8, 2003 Appeals Package, which was estimated to be approximately 800 pages of records. A revised fee estimate of \$650, based on 2400 pages was presented to the Applicant with an offer to waive the fees on an estimated 100 records, which had not been previously supplied to the Applicant.

[para 22] The Public Body also stated in its submission that, during preparation for this inquiry, it conducted a full count of the records responsive to the Applicant's request. The total was 3804 pages, prior to the Applicant's acceptance of the Public Body's offer to disclose 177 pages without fees. As previously stated, this figure was later revised to 190 pages after an actual count was made by the Public Body.

[para 23] Therefore, by my calculations, what remains to be decided are the fees associated with the photocopying of 3614 pages for a total of \$903.50. However, it is customary for public bodies to estimate a fee and not pass on any additional fees if the estimate is found to be low. Should the estimate be high, section 13(3) of the *Freedom of Information and Protection of Privacy Act Regulation* AR 200/1995 requires that a refund be granted to an applicant. In this case, the final estimate offered to the Applicant was \$650. The practical effect of this situation is that the Applicant would benefit from a fee reduction of \$253.50.

[para 24] The Public Body's main argument for not waiving the remainder of the fee is that the Applicant has already received the remaining documents, albeit not as the result of a previous request under the Act. It argues that it is unfair and unreasonable to provide them again at taxpayers' expense. The Public Body argued that the Applicant has received copies before at no charge, he was the author of documents he submitted, or the documents are duplicates. The Public Body said it met its statutory duty to assist the Applicant, he has sufficient information for his purposes, which seem to be to pursue his rights flowing from the Public Body's decision, and that he has other avenues he can pursue if he wants further information about his WCB case.

[para 25] The Applicant stated that he has never been denied a fee waiver request before. He referred to a previous decision of the Commissioner (Order F2003-025), pointing to its conclusion that the applicant be given one copy of all documents she had not received before.

[para 26] The Public Body referred to Order F2002-023 in its submissions. In that order, I stated at paragraph 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 27] The rationale for not supplying multiple copies at no cost was also adopted by the Commissioner in the Order referred to by the Applicant (Order F2003-025). In Order F2002-023, I ordered the Public Body to reduce the fees to zero for those records that the Public Body had not proven were previously received by the applicant.

[para 28] In this case, the Public Body agreed to provide, without fees, those records for which the Public Body could not satisfy itself the Applicant had previously received. Nowhere in the evidence does the Applicant deny that he has copies of documents the Public Body says he has.

[para 29] I accept the Public Body's evidence that the remaining documents have been received previously by the Applicant at no cost. Therefore, I do not intend to order the Public Body to reduce the fees to zero for those records.

[para 30] In coming to my decision, I took into account the fact that the Public Body supplied 190 pages of records to Applicant at no cost. The Public Body also offered evidence that records are available to the Applicant, and other injured workers, at no cost through other processes outside of the Act. I also took into consideration that the remainder of the fees have been effectively reduced as a result of the Public Body's underestimate regarding the number of records. Most importantly, I am satisfied that the Applicant has already had access to the records at no cost. Finally, the Applicant is not being denied access to a further copy of the records. However, if he wants a further copy, he can pay the associated fees.

V. ORDER

[para 31] I make this Order under section 72 of the Act.

[para 32] I do not excuse the Applicant from paying fees for the records he requested.

[para 33] I confirm the Public Body's decision not to waive the fees for production of the remaining records.

Dave Bell
Adjudicator