

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2006-032**

March 2, 2007

**CAPITAL CARE GROUP**

Case File Number F3423

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant applied for a waiver of fees with respect to his request for records, in a particular format, regarding actual and budgeted expenditures and revenues relating to six seniors' care facilities over the course of six fiscal years.

The Adjudicator affirmed the Public Body's decision to deny the fee waiver, on the basis that the records do not relate to a matter of public interest.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(g)(vii), 72, 93(4)(a), 93(4)(b).

**Authorities Cited:** **AB:** Order 96-002.

**I. BACKGROUND**

[para 1] On August 23, 2005, the Capital Care Group (a "Public Body"<sup>1</sup>) received a request under the *Freedom of Information and Protection of Privacy Act* (the "Act") from the Applicant, for records with respect to six Capital Care facility sites regarding actual and budgeted expenditures and revenues for fiscal years from 1999-2000, through 2004-2005. The requested information was for records similar to those that had been provided

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<sup>1</sup> As a subsidiary health corporation of the Capital Health Authority, Capital Care Group is a "public body" by virtue of its status under section 1(g)(vii) of the *Freedom of Information and Protection of Privacy Act*.

to the residents of one particular facility. Those particular records had included a breakdown of “per diem” costs per resident.

[para 2] In a subsequent letter, the Applicant paid the initial fee of \$25, and stated that if additional fees were assessed, he would request a full fee waiver from this Office.

[para 3] The Public Body reviewed the request, and responded to the Applicant that fees over and above the initial \$25 fee, estimated at \$486, would be assessed. The estimate included a cost for locating and retrieving the data, as well as for “preparing and checking” the records. (It is not clear from the Public Body’s submission whether providing a breakdown of “per diem” costs required the creation of new records.) The Public Body treated the Applicant’s reference to the fee waiver as a request that it waive the fee, but declined to do so.

[para 4] The Applicant applied to this Office for a review of the Public Body’s decision not to waive the fee. A mediator was appointed, but mediation was not successful, and the matter proceeded to inquiry.

## **II. RECORDS AT ISSUE**

[para 5] As this inquiry is with respect to a fee waiver, there are no records at issue.

## **III. ISSUE**

[para 6] The issue is:

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

[para 7] Section 93(4)(b) provides:

*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, ...*

*(b) the record relates to a matter of public interest, including the environment or public health or safety.*

## **IV. DISCUSSION OF THE ISSUE**

[para 8] The basis for the Applicant’s request for a fee waiver is his belief that the accommodation fees charged by the Public Body to residents of a particular one of its facilities (Laurier House) “is higher than it needs to be, given the capital funding provided by the residents and the expenses incurred by the [Public Body]”. He points out that Laurier House is a public facility supported by public (provincial health care) funds. His belief that the charges are too high arises, he says, from a comparison with the charges in other “private facilities whose operators have mortgages, pay property taxes,

and must make a profit”. He points specifically to a 40% increase in monthly fees imposed on January 1, 2005, and questions if this is reasonable “in view of a comparison of five seniors’ facilities which provide the same range of services”. (However, the Applicant does not state specifically what he is comparing in this regard.)

[para 9] On the basis of this comparison, the Applicant raises the question of whether the Laurier House facility is “operating in a fiscally responsible manner”. He also thinks the people who fund (and funded) a project should have access (without paying a fee) to its financial records.<sup>2</sup>

[para 10] The Applicant contends that the information he seeks will be for the public benefit. In particular, he says all of the following will benefit from “understanding better the mechanisms or systems used by [the Public Body] to charge rents and knowing the relationship between specific accommodation charges and health care expenses”:

1. his mother (who resides in the facility and no longer can, according to the Applicant, fend for herself)
2. other residents of each of the two Laurier Houses
3. current and future residents of long term care facilities operated by the Public Body
4. management and administration of the Public Body and the Capital Health Region
5. government departments – Alberta Seniors and Alberta Health (in this regard the Applicant thinks the information may be useful for developing legislation relative to ‘life lease projects’)
6. health authorities in the province
7. private operators of seniors’ accommodation also offering Alberta Health Care-funded services.

The Applicant believes providing the information to him “might result in more accurate charges to residents and additionally, appropriate charges to the health care system”. He says: “The view of the world that people and organizations are not perfect [and thus may fail to notice operational errors or have personal agendas that conflict with public programs] may require the “public” [presumably he means via the Applicant himself] to bring certain situations to the attention of these organizations”.

[para 11] The Applicant also makes his case for a fee waiver with reference to the 13 criteria (originally stated in Order 96-002) that have, or have in part, frequently been used by this Office in deciding whether fee waivers should be granted. These are:

1. Is the applicant motivated by commercial or other private interests?
2. Will members of the public, other than the applicant, benefit from

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<sup>2</sup> I note in this regard, however, that he is seeking financial records relative to other facilities, not those of Laurier House.

disclosure?

3. Will the records contribute to the public understanding of an issue (that is, will they contribute to open and transparent government)?
4. Will disclosure add to public research on the operation of Government?
5. Has access been given to similar records at no cost?
6. Have there been persistent efforts by the applicant or others to obtain the records?
7. Would the records contribute to debate on or resolution of events of public interest?
8. Would the records be useful in clarifying public understanding of issues where Government has itself established that public understanding?
9. Do the records relate to a conflict between the applicant and Government?
10. Should the public body have anticipated the need of the public to have the record?
11. How responsive has the public body been to the applicant's request? For example, were some records made available at no cost or did the public body help the applicant find other less expensive sources of the information or did the public body help the applicant narrow the request so as to reduce costs?
12. Would the waiver of the fee shift an unreasonable burden of the cost from the applicant to the public body, such that there would be significant interference with the operations of the public body, including other programs of the public body?
13. What is the probability that the applicant will disseminate the contents of the record?

[para 12] The Public Body also makes a submission with respect to each of the criteria.

[para 13] In my view, some of the 13 criteria overlap, and some of them are not helpful in certain fact situations. I will nevertheless review the particular points made by the Applicant and Public Body relative to the criteria. I will comment as to whether I agree with what the Applicant and Public Body say about each point, and also what degree of significance I attach to the answers in this case.

[para 14] With respect to point 1 (motivation), the Applicant says he is motivated by his concern with respect to the financial interests of his mother (a resident in the facility), other residents, and ultimately himself as a potential resident. He also feels that he is particularly competent to make use of the requested information in view of his 30 years' experience in "working in social housing administration and management". The Public Body takes the position the Applicant's concern is a private or personal financial interest rather than a matter of public interest.

[para 15] I agree that the motivation of the Applicant is significant in this case. I also agree with the Public Body that the Applicant's motivation is on behalf of only a small proportion of the public. While it may be of more general public concern that publicly-funded facilities were being mismanaged, the Applicant has not provided any material that proves, or even directly suggests, that this is happening.

[para 16] With respect to point 2 (will the public (other than the Applicant) benefit?), the Applicant says residents of the facility could benefit by understanding the reason for what are, in his estimation, relatively high rates, and could benefit by a lowering of rates (presumably he means in consequence of interventions arising from his access to the information). He also thinks residents in other facilities could gain an increased understanding of their rates, and would be enabled to participate in cost control. As well, he thinks the Public Body as well as the Capital Health Region would benefit by being motivated to put systems in place to provide accurate information readily, and by understanding the nature and purpose of Alberta Health Care funding to Public Body programs.

[para 17] The Public Body points out that aggregate financial information is already available, and questions whether there will be a benefit to the public, and says it certainly will not be to the benefit of all members of the public, most of whom are not concerned with the financial operation of such facilities. It says there is no related issue that is of public concern.

[para 18] In my view, while any information about a subject contributes to public understanding of that subject, I agree with the Public Body that the Applicant has not demonstrated that the general public or even a smaller public regards the matter of the rates at the particular facility, whether they are inappropriately high, and whether this is tied to some problem with the management of the facility, as matters of concern.

[para 19] The Applicant addresses point 3 (will the information contribute to the public understanding of an issue?) by referring to the May, 2005 *Report of the Auditor General on Seniors Care and Programs* which stated that "Because the department [Alberta Health and Wellness] did not have any accommodation cost information from Authorities or facilities, the department had to use information provided by other organizations to determine the August 1, 2003 accommodation rate increase." As well, the Applicant points to an *Edmonton Journal* article of October, 2006, captioned "Capital Health Book-keeping Slammed", which stated: "It would appear that Capital Health played a

multimillion dollar game of 'hide and seek' to mask its true fiscal condition, Auditor General Fred Dunn said Monday.”

[para 20] The first point relates to the sources of information relied on by a particular department (not the Public Body in this case), and the second to the book-keeping practices of a different body. I do not see how these references support the Applicant's position.

[para 21] In response to point 4 (will disclosure add to public research on the operation of government and contribute to open and transparent government?), the Applicant asks a series of particular questions about the way sources of funding (both private and public) are or should be allocated in the operation of various facilities. I presume he thinks the answers to these questions would be informed by the information he seeks. If that is so (which is not clear), it will help the Applicant research the issues which are of interest to him. While I acknowledge the Applicant is a member of the public, I do not think this demonstrates that the information would “add to public research on the operation of government”. (I note as well that while meeting this condition may help to demonstrate, in some cases, that the “public interest” criterion has been met, there may be many matters of public interest that do not involve research into the operation of government. Thus this criterion does not need to be met in every case.)

[para 22] The Applicant answers point 5 (has access been given to similar records at no cost?) by pointing to the fact Laurier House residents were given financial information about the operation of that facility in the particular format he seeks, at no charge. He also notes that the Public Body gave him additional financial information in a different format, and that some other individuals or groups were given financial information about other facilities at no charge. In my view this criterion is significant primarily to demonstrate that a particular applicant is not being treated fairly relative to other similarly-placed applicants asking for similar information. In this case, there have been no such other applicants, so the criterion has no particular significance.

[para 23] With respect to point 6 (have there been persistent efforts by the Applicant or others to obtain the records), the Applicant outlines a number of steps he took to obtain information about the reasons for the monthly fees at Laurier House, and to obtain information in a format that would allow the comparisons he wishes to make. The Public Body concedes this point, and I agree he has been persistent. However, it is possible to be persistent about a matter even when it has significance primarily or only to oneself. Though the Applicant asserts in his rebuttal that “there are numerous residents who would like to have this information”, he does not point to any other person or organization that has made known their interest in the specific information he requests. I would regard the latter as a more significant indicator of the matter being of public interest.

[para 24] Point 7 (would the records contribute to debate on or resolution of events of public interest?) is a central criterion in this case. The Applicant says “The records would contribute to the resolution of *this problem* [emphasis added], and would certainly provide a greater understanding of monthly accommodation fees to me, residents of

LAURIER and other interested Albertans.” He also says there is a strong and ongoing interest in the care of seniors, and the cost of seniors’ care facilities is an important issue.

[para 25] I agree that seniors’ care is an important issue to the public. However, the Applicant’s assertions do not demonstrate that there is a “problem” with seniors’ care, even with respect to the single facility that concerns him, that the public is presently interested in debating or resolving.

[para 26] I acknowledge that the public may not be concerned about a matter because it is not aware a problem exists, even in situations where it does exist. Public concern may arise only when the problem is brought to light, and a requestor’s efforts to get information may be for the very purpose of bringing the matter to light. However, in my view, before public funds are expended in order to shed this light, there must be some convincing evidence or a convincing argument that a hidden problem exists or likely exists. In this case, the Applicant hints at fiscal irresponsibility, and personal agendas that conflict with public ones. However, the fact that resident fees are at a particular level which the Applicant regards as unduly high does not establish a basis for these speculations.

[para 27] The Applicant answers point 8 (would the records be useful in clarifying public understanding of a public interest established by government?) by pointing to “the 2005 provincial government discussions on long term care”. He says that the financial aspect of this care was touched on only lightly.<sup>3</sup>

[para 28] The Applicant’s points do not demonstrate that a public interest in the specific issue of the cost of fees in Laurier House was established by government. However, as with point 4, while meeting this condition may help to demonstrate, in some cases, that the “public interest” criterion has been met, there may be many matters of public interest where the interest has not been “established by government”. Thus I do not regard it as significant that the criterion is not met in this case.

[para 29] The Applicant and the Public Body give conflicting answers to point 9 (do the records relate to a conflict between the applicant and the government?). The Applicant denies there is a conflict while the Public Body says there is one. If there is a conflict, it is sufficiently mild or tentative at this point that it does not demonstrate that the Applicant has no broader concern than to win the conflict.

[para 30] Point 10 (should the Public Body have anticipated the need of the public to have the record?) presumes there is a need for the public to have these particular records.

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<sup>3</sup> The Applicant also states under this heading that it is unfair that residents should have to “pay additional dollars to see how their “investment” [their private funding of the development of the facility] works”. Even if (which is not clear) the information about other facilities that the Applicant seeks would inform the residents about how their own facility is operated, I note that the residents of the facility are not being asked to pay the fees for his information request – the Applicant is being asked to pay them. There is no suggestion he is acting on their instructions or that they know he is acting on their behalf.

The Applicant asserts that the particular residents want or need to be assured of the Public Body's competency in housing administration, or to be given "justifications of monthly charges on a regular basis", but he has not demonstrated that this is so. Thus the 'anticipation' factor does not arise.

[para 31] The Applicant and the Public Body had conflicting views with respect to point 11 (how responsive has the Public Body been to the Applicant's request?). The evidence shows there were many meetings in which detailed information about Laurier House specifically was provided to the Applicant. The Public Body is prepared to provide similar information about other facilities, in the requested format, but does not regard it as reasonable to do so without charge. In my view, the Public Body was reasonably responsive.

[para 32] With respect to point 12 (unreasonable cost burden on the Public Body), in view of the size and budget of the Public Body, waiver would not involve a significant interference with its operations.

[para 33] Finally, with respect to point 13 (will the Applicant disseminate the contents of the record?), the Applicant says that he would disseminate his analysis of the records to the residents of Laurier House and to others. I do not regard this as a significant factor unless members of the public have shown interest in receiving the records.

[para 34] The Applicant also provided an extensive rebuttal. This document again expresses the view that the monthly accommodation rates at Laurier House are excessive by reference to a number of factors, such as that this facility has no mortgage component as an expenditure. He points out that the financial documents he has already received are not in a format that enables him to make the comparisons he thinks are important to make, and blurs important distinctions between different types of costs and charges (residential versus health-related). He also reiterates that the cost of care facilities for seniors, and increasing costs, is an on-going concern for the public. As well, he complains that the Public Body's cost of defending against his fee waiver claim is higher than the cost of the waiver itself.<sup>4</sup>

### *Conclusion*

[para 35] I accept that the Applicant is genuinely concerned about the monthly costs of accommodation in Laurier House. It is quite legitimate, given his concern the costs are unduly high, that he should seek information which would help him understand the reasons for the costs, and whether there is some explanation for them that makes them unjustified. To the extent he wishes to do this on behalf of others, it is commendable.

[para 36] However, in the absence of some indication, beyond speculations such as that noted in paragraph 26, that there is some problem with the way the facility is being managed, I do not believe the Applicant's quest for this explanation should be paid for with public funds. It seems to me equally or more probable that the facility is being

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<sup>4</sup> I do not see this factor as persuasive, as I believe the Public Body is justified in paying to defend what it views as a point of principle.



properly managed and that the level of accommodation costs has a legitimate and acceptable explanation. The possibility that this is not so is not, at present, a matter of public interest. Neither has the Applicant demonstrated a significant likelihood that if the information were provided to him, and he analyzed it, the information or the results of his analysis would become a matter of public interest.

[para 37] I understand the Applicant also feels the records should be provided to him at no charge because this would allow certain people to be more informed about certain things. I acknowledge there may be people besides the Applicant who might be interested in the information, and who would be better informed if they had it. However, this does not make the matter one of “public interest” as that term is to be understood in the context of section 93(4)(b).

[para 38] I could not be certain from the material before me whether fulfilling the Applicant’s request would require the Public Body to create new records. I note that the Public Body is not under a statutory obligation to create records in a specified format. To the extent this is necessary to meet the Applicant’s request, I would not grant a fee waiver for the Public Body to do something it is under no duty to do.

[para 39] Finally, I note the principle relative to fee waivers that was expressed in Order 96-002, that “the Act contains the principle that the user should pay”. I take this to mean that an Applicant is to pay fees for record requests in the usual course, and waivers on the basis of “public interest” are to be granted only when there is something about the records that clearly makes it important to bring them to the public’s attention or into the public realm. The Applicant has not persuaded me that this is so in this case, and thus I conclude a fee waiver is not justified.

## **V. ORDER**

[para 40] I make this Order under section 72 of the Act.

[para 41] I find the Applicant should not be excused from paying the fee.

## **VI. ADDENDUM**

[para 42] In the foregoing I have reviewed, and to some extent relied on, the 13 criteria set out in Order 96-002 for determining if records relate to a matter of public interest. However, I found some of these criteria were not useful because they did not apply to the circumstances of this case. As well, some of them are repetitive or overlapping, and some are subsets of others. Also, some are not helpful for deciding if the records relate to a matter of public interest - the question in section 93(4)(b). Rather, they appear to relate more closely to the part of section 93(4)(a) that speaks of “any other reason it is fair to excuse payment”. For these reasons, I have revised the criteria somewhat, to create clearer and more discrete categories. The following are the criteria I will use in future to

help decide if a fee waiver is warranted. The list is not intended to be exhaustive, and any other relevant factors presented by parties will be considered.

[para 43] The first set of criteria (numbers 1 to 3) is relevant to decide if a record “relates to a matter of public interest”:

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it? The following may be relevant:
  - Have others besides the applicant sought or expressed an interest in the records?
  - Are there other indicators that the public has or would have an interest in the records?
2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public?<sup>5</sup> The following may be relevant:
  - Do the records relate to a conflict between the applicant and government?
  - What is the likelihood the applicant will disseminate the contents of the records?
3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government? The following may be relevant:
  - Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?
  - Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?
  - Will the records shed light on an activity of the Government of Alberta or a public body that have been called into question?

[para 44] The following additional factors may be relevant to decide if a waiver is warranted on grounds of fairness:

1. If others have asked for similar records, have they been given at no cost?
2. Would the waiver of the fee significantly interfere with the operations of the public body, including other programs of the public body?
3. Are there other less expensive sources of the information?
4. Is the request as narrow as possible?
5. Has the public body helped the applicant to define his request?

Christina Gauk, Ph.D.  
Director of Adjudication

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<sup>5</sup> Both this criterion and the next one might be seen as subsets of the first one, but they are sufficiently complex to consider separately.