

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 102-1996  
May 17, 1996**

**INQUIRY RE: A request to BC Hydro for a waiver of fees**

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**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner in Victoria on March 22, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by BC Hydro to refuse a waiver for fees levied in connection with preparation and copying of records for an applicant.

**2. Documentation of the inquiry process**

The applicant requested a variety of records from BC Hydro on September 7, 1995, including copies of BC Hydro time sheets and copies of monthly accounting charges accounts. BC Hydro's response included fee estimates for the production of copies as follows:

time sheets 440 copies @ \$0.25 = \$110.00  
monthly accounting charges 126 copies @ \$0.25 = \$ 31.50

BC Hydro indicated that it would produce the records upon receipt of the \$141.50 charge for copying.

On November 7, 1995 the applicant sent an internet E-mail to my Office to request a review of BC Hydro's assessment of the fees charged for both sets of records. He was informed that he must first submit a fee waiver application to BC Hydro. The applicant submitted this application to BC Hydro on November 21, 1995. BC Hydro refused the application on December 15, 1995 on the basis that the applicant had "not provided us with any evidence that waiving the payment of the fee in this instance is in the public interest, or that you cannot currently afford the payment of the fee." The applicant requested a review of this decision on December 21, 1995.

### **3. Issue under review at the inquiry**

The issue in this case is whether the applicant should be excused from paying all or part of the fees requested by BC Hydro under section 75(5) of the Act, which reads in part as follows:

#### *Fees*

75(1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body fees for the following services:

- (a) locating, retrieving and producing the record;
- (b) preparing the record for disclosure;
- (c) shipping and handling the record;
- (d) providing a copy of the record.

(2) An applicant must not be required under subsection (1) to pay a fee for

- (a) the first 3 hours spent locating and retrieving a record, or
- (b) time spent severing information from a record.

....

(4) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fee before providing the services.

(5) The head of a public body may excuse an applicant from paying all or part of a fee if, in the head's opinion,

- (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.

....

### **4. The records in dispute**

The records in dispute consist of BC Hydro time sheets and monthly accounting charge accounts.

### **5. The burden of proof**

The Act provides no specific guidance on the burden of proof to be applied in a request for a waiver of fees. However, I have noted in previous Orders that fees may be assessed by a public

body in accordance with the Act and its regulations. A fee estimate provided by a public body must be paid by way of a 50 percent deposit by the applicant before records are provided, unless I order otherwise under section 58(3)(c) of the Act. To be excused from paying a fee under the Act is to receive a discretionary financial benefit; conversely, the province foregoes revenue to which it would otherwise be entitled under the Act. Thus it appears logical that the party seeking the benefit should prove its entitlement on the basis of the criteria specified in the Act. This places the burden of proof on the applicant in this inquiry.

## **6. The applicant's case**

Since the applicant did not make a submission for the specific purposes of this inquiry, I have relied on his previous correspondence with BC Hydro and with my Office with respect to the issue of a fee waiver. Among various reasons advanced by the applicant for his unwillingness to pay the requested fees are the following:

It is my position that these records are required due to the incompleteness of their [BC Hydro's] initial responses and failure to provide adequate supporting documentation in the mediation phase. ...

It should also be readily apparent through my previous correspondence, and combined with the personal information that you [BC Hydro] collected improperly under OIPC file #1910, that I am in no position to pay for B.C. Hydro's photocopying charges in addition to the personal costs I have incurred to date. ...

With respect to his argument for a public interest waiver, the applicant simply quoted an article from The Globe and Mail in December 1995 about issues surrounding the Somalia inquiry. While the latter matter is of considerable public interest with respect to freedom of information, I see no comparable public interest in the present inquiry.

## **7. BC Hydro's case**

BC Hydro's position is that it acted appropriately and in accordance with the Act when it charged the applicant a fee and then declined his request for a fee waiver. One of the circumstances that it took into consideration was the many costs it has incurred in responding to the applicant's eight previous requests for information and letters and phone calls regarding his unsuccessful small claims action against BC Hydro.

## **8. Discussion**

The fee in dispute involves photocopying charges for 566 pages. BC Hydro has appropriately argued on the basis of my previous Orders that an applicant for a fee waiver must provide evidence that he or she cannot pay or that the request is in the public interest. (See Order No. 30-1995, January 12, 1995, p. 12; Order No. 55-1995, September 20, 1995, p. 10) The applicant did not supply BC Hydro with such evidence. Moreover, since the capacity to waive fees is discretionary and not mandatory, BC Hydro submits that it exercised its discretion to refuse to

waive the fee appropriately in these circumstances. (See Order No. 79-1996, January 19, 1996, p. 4)

I find that BC Hydro acted appropriately in denying a fee waiver to the applicant in this particular case.

### **9. Order**

Under section 58(3)(c) of the Act, I find that BC Hydro was in compliance with sections 75(4) and 75(5)(b) of the Act with respect to the providing a fee estimate and deciding on a fee waiver. Under section 58(3)(c), I confirm the fees charged by BC Hydro.

May 17, 1996

David H. Flaherty  
Commissioner