

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 156-1997  
March 19, 1997**

**INQUIRY RE: A decision by the City of Surrey to deny a request for a fee waiver based on inability to pay**

**Fourth Floor  
1675 Douglas Street  
Victoria, B.C. V8V 1X4  
Telephone: 250-387-5629  
Facsimile: 250-387-1696  
Web Site: <http://www.oipcbc.org>**

**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on February 21, 1997 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 of the City of Surrey to deny the applicant's request for a full fee waiver.

**2. Documentation of the inquiry process**

On October 31, 1996 the applicant requested the City of Surrey to waive fees on his request for employment records of current and former employees based on inability to pay. On November 1, 1996 the City denied his request for a fee waiver.

On November 5, 1996 the applicant initially wrote to my Office to request a review of the decision by the City to deny his request for a full fee waiver. The ninety-day period to resolve this issue actually began on November 28, 1996 and expired on February 26, 1997.

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

The issue to be reviewed in this inquiry is whether or not the head of the City of Surrey properly exercised her discretion not to grant a fee waiver under section 75(5)(a) of the Act, which reads:

***Fees***

75(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

....

Section 57 of the Act, which establishes the burden of proof on the parties in an inquiry about a decision to refuse access, is silent with respect to a review of a decision about a request for a fee waiver. I decided in Order No. 90-1996, March 8, 1996 and Order No. 98-1996, April 19, 1996 that the burden of proof is on the applicant in situations such as this one.

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

The applicant is apparently embroiled in a situation where he believes that his property in Surrey has been fraudulently rezoned and subdivided. It is not clear to me whether litigation over the matter is currently in progress. However, the applicant's submission does discuss a tangled web of land sales and litigation in which he has been involved in recent years.

The applicant states that the fee waiver he is requesting should be granted because the City of Surrey acted arbitrarily in allowing a third party to subdivide his land. He states:

Our monies have been frozen by the govts of British Columbia! If my monies were freed up, I would gladly pay the required fees for the records. Right now, I do not have the money. I need the city records to get access to justice.

#### **5. The City of Surrey's case**

The City of Surrey's position is that its head has considered the request of the applicant for a fee waiver and is not prepared to excuse him from paying the required fee. It submits that this decision has no bearing on whether or not the City acted properly with respect to some alleged past actions involving the applicant.

In its original letter to the applicant denying his request, the City informed him that his current request "requires retrieval of files from archives and hiring extra help to gather the information you request which, to some extent, is repetitive and related to the previous request. While we sympathize with your reasons for requesting a fee waiver, we do not have unlimited resources to process FOI requests without compensation." The City's estimated fee of \$342 included fourteen hours of labour to locate, prepare information, and copy documents. This amount was evidently set in compliance with By-Law No. 12500 authorizing the City to collect fees under section 75 of the Act.

## 6. Discussion

### *Section 75(5)(a): the applicant cannot afford the payment ....*

This inquiry hinges on this issue. Regrettably perhaps, the applicant has not submitted any evidence to maintain or support his burden of proof. He has not demonstrated his inability to pay beyond the assertion that the government has frozen his assets, a point not further documented or explained.

From a related perspective of fairness, the City has a much better idea of what this dispute is about than I do. After expending considerable resources helping the applicant with several previous access requests without charge, the City has decided that it is unwilling to waive the fee for this request. (See Order No. 79-1996, January 19, 1996, p. 4) In the context of the amounts of money that the applicant appears to believe that he has been deprived of unjustly, the fee proposed by the City is modest. (See Order No. 90-1996, p. 8)

### *The relevance of prior experience with an applicant to a fee waiver*

The City of Surrey informed me that in response to two previous access requests from the same applicant, it has spent over 100 hours of staff time processing them and providing the applicant with photocopies of the records requested without compensation of any kind. While I am aware that experience is not directly relevant to the current access request, I am of the view that this is a relevant consideration for a public body, especially local government, to consider in reaching a decision on a request for a fee waiver, since most municipalities receive few requests for access to information that require processing under the Act. When a particular person becomes a more frequent user of the Act, it seems appropriate to me that a public body should take into account its accumulated expenditures to assist such an individual free of charge.

In this particular case, the City concluded that it could no longer afford to continue to give the applicant staff time and photocopies at no charge. It also observed that the applicant has legal counsel, who probably does not work for free.

### *Other considerations*

To the best of my understanding, this applicant is involved in efforts to recover real property through litigation. He claims to need access to City of Surrey records for that purpose. While that may be true, it is not sufficient to justify a fee waiver, if the City decides not to grant him one. If he is actually in pending litigation, that process in the courts will allow him access to the records he requires, subject to the Rules of Court. That, in my view, appears to be the appropriate avenue for this applicant to pursue. If he wants “justice” and not “charity,” the venue for him is the courts, not a fee waiver under the Act.

I established in a previous Order that the Act does not create an unlimited right of access to government records for those who cannot afford payment. (Order No. 79-1996, p. 4) In reaching the decision in this particular inquiry, I am also taking account of the difficult financial situation of municipalities at the present time in light of cutbacks in funding by the provincial government.

## **7. Order**

I find that the head of the City of Surrey properly exercised his discretion under section 75(5)(a) of the Act not to excuse or reduce the fees to the applicant. Under section 58(3)(c), I confirm the decision of the City of Surrey on the fees to be charged in this case.

---

David H. Flaherty  
Commissioner

March 19, 1997