



F07-08-MS Cold Shoulder for Fee Waiver Request Gives Way to Lukewarm Embrace

A storm of controversy surrounded a proposal to develop a mine near a town. Because of the nature of the proposed operation, residents expressed grave concerns about the potential for air and water pollution in the surrounding area. A community group that strongly opposed the development made an access request to a provincial government ministry for all records related to the mine approval process.

In due course the ministry replied that approximately 3,170 pages of records fell within the scope of the request and that it would process the access request on receipt of \$1,585 to cover the cost of locating and retrieving the records, preparing them for disclosure and photocopying and mailing them.

Disappointed by the size of the proposed fee, the community group asked the ministry to consider waiving the fee as the record related to a matter of public interest under section 75(5) of the *Freedom of Information and Protection of Privacy Act*.

The ministry responded that it was not in the habit of granting fee waivers and could see no reason to change its practice in this case.

The community group countered that its request appeared to satisfy the criteria that various OIPC orders had said should be considered by public bodies in determining whether a fee waiver was appropriate. First, the records related to a matter of public interest (the subject of the records had been a matter of recent public debate, the subject related to both the environment and public health, and dissemination of the information could be expected to yield a public benefit). Second, the community group's primary purpose for making the request was to use or disseminate the information for public benefit. Third, the group was well placed to disseminate the information to the public through the internet and other means.

The ministry remained unmoved by these arguments.

The community group told us it had little in the way of funds and was in a poor position to be able to pay the requested fee. It asked us to review the ministry's decision not to waive the fee.

It appeared to us that the group had a fairly strong case to support its request for a fee waiver, but the ministry remained unconvinced and was not willing to negotiate.

We told the group it could either request a formal inquiry that might result in an order requiring the ministry to waive the fee or it could narrow the scope of its request to reduce the cost to a manageable level. The group decided to try reduce the scope of its request. Narrowing the time-frame and the type of records had the effect of reducing the fee estimate to \$90.25 for 181 pages.

By this time, our office had managed to convince the ministry that all of the available evidence suggested that the group's request for a fee waiver met the tests and, as a result, the ministry decided to grant a fee waiver of \$48.00, leaving the community group to pay only \$42.25.