



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2631

Appeal PA07-183

Ontario Power Generation Inc.



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

Ontario Power Generation Inc. (OPG) received a request from a non-profit organization under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the disposal of ash and other materials from 1995 through 2006.

The OPG issued an interim access decision advising the requester that some of the records may qualify for exemption under section 17 (third party information) and section 18 (economic and other interests) of the *Act*. The City also provided the requester with a fee estimate in its decision letter in the amount of \$2,565.00. The requester then agreed to reduce the scope of the request to the time period of April 1, 1999 to 2006, and also asked the OPG to waive the fee.

The OPG issued a revised fee estimate in the amount of \$1,425.00, representing 40 hours search time (\$1,200.00), six hours preparation time (\$180.00) and photocopy costs of \$45.00 calculated at \$.20 per page. The OPG also denied the request for a fee waiver.

The requester, now the appellant, appealed the fee estimate and the denial of a fee waiver.

During mediation, the appellant agreed to remove the denial of a fee waiver and the photocopy costs as issues in the appeal, but is still appealing the fee estimate for the search and preparation time.

As mediation did not resolve the issues in this appeal, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the OPG, initially, seeking its representations. I received representations from the OPG. I sent a copy of the OPG's representations to the appellant, along with a Notice of Inquiry seeking its representations. The appellant did not provide representations in response.

DISCUSSION:

FEE ESTIMATE

The appellant is appealing the search and preparation time fee estimate representing 40 hours of search time (\$1,200.00) and six hours of preparation time (\$180.00). The appellant's revised request sought:

- 1) For each year from April 1, 1999 to 2006 inclusive please state the payments made by Ontario Hydro/Ontario Power Generation to transportation service providers to ship ash and other materials from the Nanticoke, Lambton, Lakeview, Thunder Bay and Atikokan Generating Stations' [GS] boilers and pollution control equipment to off-site locations.

Please provide a break-out of the amounts of ash and other materials and annual payments by transportation service providers by year. Please provide the name of the transportation service providers. If OPG has contracts with the transportation service providers please provide the end date of each contract.

- 2) For each year from April 1, 1999 to 2006 inclusive please state the payments made by Ontario Hydro/Ontario Power Generation to third parties to dispose, recycle or otherwise

manage or treat the ash and other materials from the Nanticoke, Lambton, Lakeview, Thunder Bay and Atikokan Generating Stations' boilers and pollution control equipment to off-site locations.

Please provide a break-out of the amounts of ash and other materials and annual payments by the final destinations of the ash and other materials by year. With respect to each final destination, please state its location and the name of its owner. If OPG has contracts with the third parties please provide the end date of each contract.

As the fee estimate was over \$100, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.
[MO-1699]

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699].

The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

Section 57(1) requires an institution to charge fees for requests under the *Act*. The relevant portions of that section state:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;

- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 460. Those sections read:

6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to a record:
 1. For photocopies and computer printouts, 20 cents per page.
 2. For records provided on CD-ROMs, \$10 for each CD-ROM.
 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
 5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.
7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under Subsection (1) that is subsequently waived.
9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

Representations

The OPG submits that:

[It] requested fee estimates from each of the following sites and business units: 1) Energy Markets; 2) Nanticoke GS; 3) Lakeview GS; 4) Lambton GS; and 5) Thunder Bay/Atikokan GS. Each site responded with their estimate, which collectively totaled \$2,565.00. With the reduction in scope agreed to by the requester a new estimate from the Sites was requested. The response was that the scope change didn't impact the costs. The FOI [Freedom of Information] Office reviewed the total and made a decision to reduce this figure by 55% to \$1,425.00. This decision was made in an effort to be conservative in the dollar amount OPG charges requesters. In an endeavour to provide information under [the *Act*], the FOI Office remains vigilant in balancing the anticipated costs incurred by the corporation with the tenets of openness and transparency, thereby preventing falling into the habit of charging fees as a roundabout means of restricting access to information. OPG also informed the [appellant] that it would not be seeking recompense for any amount incurred beyond the stated estimate of \$1,425.00...

Due to its complexity and size of this request OPG determined that performing the actual work would not be in the best interests of OPG or the appellant.

It was decided instead to seek the advice of those individuals familiar with the type and contents of the requested records. The following individuals were consulted:

Supervisor Administrative Services - Fossil Nanticoke
Site Controller, Finance - Fossil Nanticoke
Manager, Human Resources - Fossil (Lakeview)
Project Manager - Lambton
Project Manager-Northwest Plant Group-Thunder Bay/Atikokan
Director, Fossil Supply Chain
By-product Specialist - Fuels
By-Products and Emissions – Fuels

All are knowledgeable regarding the subject matter of this request and familiar with the Records Management processes and systems in place for their respective generating stations.

Search

The records do not contain the requester's personal information.

Search time includes personnel time involved in searching for the records, examining file indices and listings of records, both on paper and in a computer.

The request is for records that are not routine, it is not part of OPG's usual business to pay vendors to remove ash from the Sites, and therefore much of the search time required is to determine the existence of such records in order to fulfill this request.

Because the records are not routinely maintained the following steps will have to be taken to determine existence. SAP-DM (Document Management component of SAP for Fossil Stations), CorDoc (Corporate Document Management System) Executed Documents Vault and the Financial Reporting Systems will have to be searched through to locate possible responsive records. Record Center files at the individual Stations will be accessed for contract information in addition each Site's collection of CIO-FORM-6218, Transfer of Records and Destruction of Records forms will have to be reviewed to determine if any applicable files were transferred to OPG's records storage area at Kipling, if so the files will have to be retrieved and searched through for responsive records. Supply Chain representatives for each site will be consulted for a search through local and desktop filing systems.

The Search time was estimated by the Sites as follows;

Lambton	4 hours
Nanticoke	35 hours
Lakeview	35 hours
Thunder Bay/Atikokan	0 hours
Energy Markets	<u>1 hour</u>
Total Search Time	75 hours

Explanation by Site:

Lambton

The Project Manager Lambton informed the FOI Office that they would have to search through the historical files; he is familiar with one instance that occurred sometime in 1999 ... earlier or later in the year is unknown. Given that the retention requirement for this type of record is low it would only be luck if the record still exists, however due diligence requires that OPG perform the search. He states that "this kind of shipment is a once in a lifetime event". Lambton's estimate for search time was 4 hours.

Nanticoke

The Site Controller, Finance, states that there are records from 2000 - 2006 but the information from 1999 will be more difficult to retrieve given staff changes during that timeframe.

He estimates that it will take one full week (35 hours) of a Business Analyst's time to compile the data at the level of detail requested due to the complexity of the related contract, which was simplified only upon renewal/renegotiation that became effective January 2005. Nanticoke's estimate for search time was 35 hours.

Lakeview

The Manager, Human Resources accepted the estimate from Nanticoke, as the Lead Site for Fossil, as the estimate for Lakeview. Lakeview's estimate for search time was 35 hours.

Thunder Bay/Atikokan

No records exist. Thunder Bay and Atikokan do not pay to have fly ash products shipped off site.

Energy Markets

The By-product Specialist, Fuels believes that there is one legal agreement that might be responsive to this request. He estimated 1 hour search time to locate the document.

The FOI Office reviewed the search time estimates and made a decision to reduce this figure as follows:

Lambton	4 hours
Nanticoke	17.5 hours
Lakeview	17.5 hours
Thunder Bay/Atikokan	0 hours
Energy Markets	<u>1 hour</u>
Total Search Time	40 hours

As previously stated this decision was made in an effort to be conservative in the dollar amount OPG charges requesters.

Preparation Time

The records do not contain the requester's personal information

Preparation time is the personnel time physically preparing the record for disclosure. This includes the time involved in severing exempt information prior to disclosure.

OPG's practice for severance requires the Site to highlight in yellow marker the portion of the record that will be severed and to indicate the exemption applied by writing it across from the highlighted portion.

The FOI Office will perform the "exercise of discretion" in accordance with [the *Act*] (this is not part of the cost for preparation). If the exemption holds then the FOI Office will black out the severance using a permanent black marker, photocopy the page to ensure that the integrity of the severance holds.

Preparation time is calculated at 2 minute per page (MO-1169, PO-1721, PO-1834, PO-1990).

As the records have not been collected nor a sampling taken, and the request is for Third Party Information, OPG assumed that there would be severance on 80% of the pages.

Calculation performed: 180 pages times 2 minutes per page equals 6 hours.

Conclusion

OPG believes the fee estimate to be fair and equitable and it should be noted that when the records are retrieved the actual fee will reflect the actual search time and preparation time. In addition OPG also informed the requester that it would not be seeking recompense for any amount incurred beyond the stated estimate of \$1,425.00 if the actual time is higher than estimated.

Analysis/Findings

As stated above, the purpose of a fee estimate is to provide the requester with sufficient information to make an informed decision on whether or not to pay the fee and pursue access to the requested records. In the current appeal, the OPG's fee estimate was based on the estimated work to be done to respond to the appellant's request. The OPG then reduced its search time from 75 hours to 40 hours and charged the appellant the rate prescribed by the *Act* of \$7.50 for each 15 minutes spent by any person, or \$30.00 per hour. The OPG also agreed to cap the actual search fee at the reduced search time amount.

The OPG provided the appellant with the search fee based on the advice of eight employees, who are familiar with the type and contents of the responsive records. This information is stored both in paper form and electronically and would need to be searched both manually and

electronically. The information would need to be cross-referenced in order to respond to the appellant's request completely and accurately.

Given that the OPG has placed appropriate reliance on the advice of expert employees in connection with this fee estimate, I am satisfied that it is justified based on the cost estimated to electronically and manually search the records to respond to the appellant's request.

I also find that the OPG's estimated fee to prepare the records for disclosure is reasonable.

Section 57(1)(b) includes time for

- severing a record [Order P-4]
- a person running reports from a computer system [Order M-1083]

Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances [Orders MO-1169, PO-1721, PO-1834, PO-1990]. The OPG has used this rate of two minutes per page in calculating its preparation time.

The OPG has not based its preparation time on items that section 57(1)(b) does not include time for, such as:

- deciding whether or not to claim an exemption [Order P-4, M-376, P-1536]
- identifying records requiring severing [MO-1380]
- identifying and preparing records requiring third party notice [MO-1380]
- packaging records for shipment [Order P-4]
- transporting records to the mailroom or arranging for courier service [Order P-4]
- time spent by a computer compiling and printing information [Order M-1083]
- assembling information and proofing data [Order M-1083]
- photocopying [Order P-184]
- preparing an index of records [P-741, P-1536]

Therefore, I uphold the OPG's search fee estimate of \$1,200.00 and its preparation fee estimate of \$180.00.

ORDER:

I uphold the OPG's search and preparation time fee estimate.

Original Signed By: _____

Diane Smith
Adjudicator

December 20, 2007 _____