Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2856

Appeal PA08-320

York University

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NATURE OF THE APPEAL:

York University (the University) received a request from a student group under the *Freedom of Information and Protection of Privacy Act* for:

> Personal information pertaining to [a specified student group] in all records, letters, emails or other means of communication, for the period starting 1 September, 2007 until 27 August, 2008.

Initially, the University provided the student group with an interim decision and fee estimate in the amount of $1165.00 representing approximately 800 pages of records. The student group and University subsequently met to discuss how to narrow the scope of the request. As a result of the meeting, it was decided that records already seen by the student group, as well as duplicates (276 records), would be removed from the scope of the request. After the meeting, the student group sent a letter to the University requesting a fee waiver.

The University subsequently issued a revised fee estimate in the amount of $780.00. The University also advised the student group that its fee waiver application had been denied.

The student group (now the appellant) appealed the amount of the revised fee estimate and the University's fee waiver denial. The appellant argued that payment of the fee would cause it financial hardship (section 57(4)(b)). The appellant also argued that the dissemination of the records would benefit public health or safety (section 57(4)(c)).

During mediation, the University provided the mediator and the appellant with a detailed fee breakdown. The mediator discussed the detailed fee breakdown with the appellant who confirmed that its position remains that the $780 fee should be waived.

Mediation did not resolve the issues in dispute and the appeal file was transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*.

I decided to commence my inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal and seeking the representations of the University, initially. The Notice of Inquiry also summarized portions of the appellant's letter of appeal. I received representations from the University and provided a copy, along with a Notice of Inquiry, to the appellant. The appellant provided representations in response. I also shared a copy of the appellant's representations with the University. The University was given an opportunity to provide reply representations. A copy of the University's reply representations was provided to the appellant, but they did not submit sur-reply representations.

DISCUSSION:

First, I will determine whether the fees charged by the University are reasonable. If the University's fee is reasonable, the appellant must pay these fees if they want to obtain access to

the records, unless I find that in the circumstances of this appeal the University's fees should be waived.

In determining whether the University's fees should be waived, I will consider the appellant's position that sections 57(4)(b) and (c) apply. In making this decision, I will apply a two-part test to determine whether the appellant has established a basis for the fee waiver, and whether it is fair and equitable to waive the fee in the circumstances of this appeal.

FEES

Where the fee exceeds $25, an institution must provide the requester with a fee estimate [Section 57(3)].

Where the fee is $100 or more, 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 [Order 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 and 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 [Orders P-81 and 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 University based its fee on sections 57(1)(a) and (b) which states:

> 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;

More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 460. Section 6(3) of Regulation 460 provides that institution's can charge requesters $7.50 for each 15 minutes it spends manually searching a record.

However, section 6.1 of Regulation 460 which identifies the fees that institutions are allowed to charge for access to personal information about the individual making the request for access disallows fees to manually search for a record containing the requester's personal information.

Calculation of fee

The University's revised fee estimate advised the appellant that it calculated its $780.00 fee as follows:

Search time (19.5 hours x $7.50 per 15 minutes)	$585.00
Record preparation time (6.5 hours x $7.50 per 15 minutes)	195.00
	780.00

a) Manual search time

The University submits that it charged the appellant $585.00 at a rate of $7.50 per 15 minutes to manually search its files to locate responsive records (section 57(1)(a)). This charge is prescribed by Regulation 460, section 6.3. As noted above, section 57(1)(a) does not include the time spent searching for a record if it contains the requester's personal information [Regulation 460, section 6.1].

Though the appellant appealed the reasonableness of the University's fee, it did not specifically address this issue in its appeal letter or representations. However, in its fee waiver request the student group argues that the request seeks access to information which is analogous to "personal information" and thus should be treated as a "personal information" request. The appellant argues:

> Although the [*Act*] does prescribe that the term "Personal Information" only applies to individuals, which has far reaching implications on the issue of fees charged, [the student group] believes that under the current circumstances this freedom of information request is essentially a request for "Personal Information" of the student group, although it does not fall within the strict definition of the law. [The student group] is not requesting general information about issues not related to its status and function. [The student group] is requesting information that is personal in essence, and consideration should be given to the nature of the request and the striking similarities between this situation and a situation whereby an individual is asking for "Personal Information" under the [*Act*]. [The student group] believes that because of this similarity, it is fair and equitable to treat this request, in terms of fees charged, as a "Personal Information" request.

In its revised fee estimate and fee waiver denial, the University states that it disagrees with the appellant's position that the request should be treated as a request for personal information under the *Act*, using that fee structure. The University states that the *Act* "is clear about the definition

of "personal information" as information about an identifiable individual. There is nothing analogous in the [*Act*] for information about an organization".

The detailed fee breakdown the University provided the appellant during mediation described the responsive records, as follows:

- media advisories, newspaper articles and media monitoring documents
- e-mails and other documents regarding the student group's rallies, events and activities including updates
- complaints, tribunal process and adjudication documents relating to complaints filed under the Student Code of Conduct
- meetings with the student group
- club applications
- documents containing legal advice obtained by the University

In their representations, the appellant states:

> … the University did not give any information on the nature of the records, but it is very likely that the information revealed will shed light on the nature of the relationship between the University and the student club, and the pressure that external organizations exert on the University to restrict the activities of students.

The appellant also states that the records contain information which describe a "safety concern" and "the way universities deal with these concerns".

Having regard to the representations of the parties, I am satisfied that records responsive to the appellant's request are general in nature, as opposed to being "personal information" records. Though the responsive records were not provided to me for review, there does not appear to be a dispute among the parties as to the general nature of them. I have carefully considered the representations of the parties and note that they appear to agree that the responsive records relate to the activities of the appellant organization and the University's compilation of information about it, including the University's communication with it and responses to complaints about it. In addition, the range of documents the University identified in its detailed fee breakdown appear to respond to the appellant's request for records in the University's possession about it, such as letters, e-mails and other communication. Given the nature of these records, I am not persuaded that they contain information which is "personal in essence" about the appellant. In addition, I note that the appellant is not an individual but a student group.

Furthermore, the appellant did not adduce evidence establishing that the contents of the responsive records contain "personal information", as described in section 2(1) of the *Act*, of student members of the group thus revealing something of a personal nature about these individuals [Orders P-1409, R-980015, PO-2225 and MO-2344].

I accept the University's evidence that it took 19.5 hours to manually search its record holdings to locate responsive records. In addition, as the records do not contain the "personal

information" of the appellant, I find that the Ministry is entitled to charge the appellant $7.50 per 15 minutes for its manual search as set out in Regulation 460, section 6.3.

Having regard to the above, I am satisfied that the University's search fee of $585.00 is in accordance with the *Act*.

b) Record preparation

The University submits that it charged the appellant $195.00 at a rate of $7.50 per 15 minutes to prepare the responsive records for disclosure, which includes time spent severing records (section 57(1)(b)). This charge is prescribed by Regulation 460, section 6.4.

The University advises that it estimates that it will take it a total of 6.5 hours to prepare 193 pages for disclosure. In particular, the University advises that it will spend approximately two minutes per page to sever information it claims qualifies for exemption under sections 19 (solicitor-client privilege) or 21(1)(personal privacy) of the *Act*.

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].

Given that the appellant did not provide representations on this issue, there is no evidence before me which suggests that the University's advice that it will take 6.5 hours to prepare responsive records for disclosure is unreasonable. Accordingly, I am satisfied that the University's $195.00 preparation fee is in accordance with the *Act*.

Summary

I uphold the University's fee of $780.00 representing its search fee ($585.00) and record preparation time ($195.00).

FEE WAIVER

Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee.

The appellant claims that fee in this appeal should be waived pursuant to section 57(4)(b) and (c). These sections state:

> 57. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,
>
> (b) whether the payment will cause a financial hardship for the person requesting the record;

> (c) whether dissemination of the record will benefit public health or safety; and
>
> 8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> 1. Whether the person requesting access to the record is given access to it.
>
> 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees [Order PO-2726].

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

The institution or this office may decide that only a portion of the fee should be waived [Order MO-1243].

Part 1: basis for fee waiver

Section 57(4)(b): financial hardship

The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship [Order P-1402].

For section 57(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393].

Representations of the parties

In its appeal letter, the appellant states:

> Given that [the student group] has only got $175, it is impossible to raise the fee requested. [The student group] is now being put in a situation where the members have to choose between pursuing the request or continuing with their activities, since payment of the fee means that [the student group] will have to suspend its activities for a while for lack of resources from printing and photocopying.

The University takes the position that the appellant has not demonstrated financial hardship. In particular, the University argues that the appellant has not provided "evidence of the financial position of [the] club nor evidence that [it] has considered fundraising or sought other sources of funding in order to meet the costs of this request". The University states:

> At the University, student clubs like [the appellant] do not depend on their members to pay expenses out of their own pockets. Fundraising is a frequent activity for student clubs and clubs raise money in various ways.

The appellant's representations refer to a bank account statement showing a balance of $175.01 it provided to the University and states:

> [t]his clearly shows that the [a]ppellant lacks the funds needed. Further, the University's argument that the [a]ppellant should fundraise and approach other groups to get the required sum further strengthens the argument that the [a]ppellant does not have enough resources and suffers from financial hardship.

The appellant also states:

> … [the student group] is a young student club, and does not have any sources of funding except for the small amount provided by the Student Community & Leadership Development Office, which is about $165. Because of the lack of funding, the student group activities are mostly ones that are very low budget. Most of the expenses are for printing and photocopying are mostly covered by the members. The overwhelming majority of the members are students who have little or no income, and mostly rely on [student] loans or scholarships. Almost all of the members live below Ontario poverty line.

Finally, the appellant argues that the University recently fined it $1,000.00 pursuant to the University's Student Code of Conduct and as a result its financial situation has worsened.

The University's reply representations state that the bank statement provided by the appellant is not current and there is no evidence that the student group has only one bank account. The University argues that the appellant has not provided financial statements or its budget for items such as printing or photocopying.

As noted above, the appellant was given an opportunity to make sur-reply representations, but declined.

Decision and Analysis

As noted above, for section 57(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393].

In this case, the only documentary evidence provided to me in support of the appellant's position is a bank account statement in the amount for $175.01. It appears that the statement was generated within a couple of months of the appellant's request for a fee waiver. Having regard to the evidence provided to me, I am not satisfied that the appellant has provided myself or the University with sufficient evidence to enable me to make a finding as to whether payment of the fee would result in financial hardship to the organization. In my view, the appellant failed to adduce sufficient evidence demonstrating its financial situation. For instance, I was not provided with information detailing the appellant's photocopying and printing expenses or budget. In my view, the bank statement combined with the fact that the organization is a student group alone does not demonstrate that payment of the fee would necessarily result in financial hardship.

As I find that the first part of the section 57(4)(b) does not apply, it is not necessary for me to determine whether it is also "fair and equitable" to waive the fee on that basis in the circumstances of this appeal.

Section 57(4)(c): public health or safety

The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest

- whether the subject matter of the record relates directly to a public health or safety issue

- whether the dissemination of the record would yield a public benefit by

    (a) disclosing a public health or safety concern, or

    (b) contributing meaningfully to the development of understanding of an important public health or safety issue

- the probability that the requester will disseminate the contents of the record

[Orders P-2, P-474, PO-1953-F, PO-1962]

The focus of section 57(4)(c) is "public health or safety". It is not sufficient that there be only a "public interest" in the records or that the public has a "right to know". There must be some connection between the public interest and a public health and safety issue [Orders MO-1336, MO-2071, PO-2592 and PO-2726].

Representations of the parties

The University states:

> There is no public health or safety issue. The records mainly document the [University's] discussion of the [student] club in light of its controversial political stance within the University community and certain complaints that were launched by member of the University community as a result. Many of the records describe the [University's] disciplinary processes against the [student] club under the University's Student Code of Conduct and arrangements made to adjudicate the complaints.

In its appeal letter, the appellant states:

> For the past two years, [the University has been] troubled with a series of unfortunate events that undermined the feeling of safety on campus. This has motivated the University to commission an independent third party audit of safety at [the University]. The goal of this freedom of information request is to find information that would touch on discrimination and racism. This kind of information is important and contributes to public safety.

The appellant submits that it is a human rights group, which since its inception has suffered systematic disruptions of its awareness raising activities at the University. It argues that the group and its members have been "treated by the University and other student groups in a racist and discriminatory manner". The appellant states that:

> In order to find out more information about the University's strategies in dealing with [the appellant], and the University's actions and policies directed against it, and in order to get more information that would allow it to present a good defence in the quasi-criminal process that the University is proceeding with through the University's Code of Student Conduct and Tribunals, [the appellant] decided to file a freedom of information request.

In support of its position, the appellant referred to an incident at the University involving campus security and Toronto Police services. The appellant argues that the records at issue would provide it with insight into how the University addressed the incident in question which the

appellant argues affected the safety of the University's students. The appellant's position is that the responsive records address a public, as an opposed to a private, interest and that the subject-matter of the records relates to a public safety concern.

With respect to the question as to whether it has any plans to disseminate the records, the appellant states:

> The [student group] is going to disseminate the contents of the record[s]. The main goal behind the freedom of information request is to get relevant information about the ways the University has dealt with the student club, and the external pressures on the University. All of this information would be disseminated as part of report articles in newspapers or magazines, or in a context of a human rights complaint.

The appellant submits that dissemination of the records would yield a public benefit given that the records disclose a safety concern, and the way the University deals with these concerns. The appellant also states that dissemination of the records would "contribute significantly to the understanding of public safety issues."

In response to the appellant's representations, the University argues that the appellant's evidence does not establish a connection between its "perception of the campus situation" and the records being requested.

Decision and Analysis

As stated above, for section 57(4)(c) to apply the appellant must establish a connection between the public interest and a public health and safety issue [Orders MO-1336, MO-2071, PO-2592 and PO-2726].

Though I agree with the appellant that the subject matter of the records relate to a public rather than private matter, I do not agree with the appellant's position that the subject matter of the records directly relate to a "public health and safety issue".

The appellant identified student safety and the discrimination and racism it alleges it has experienced as public health and safety issues. However, as noted above, the parties agree that the records contain information about the student group's activities and the University's compilation of information about the student group, including its communication with the student group about complaints. Having regard to the evidence presented, I find that there is insufficient evidence before me to support a conclusion that the subject matter of the records directly relate to the public health and safety issues identified by the appellant. For instance, the detailed fee breakdown prepared by the University and the appellant's submissions do not indicate that external documents, such as a security audit or police report were requested or were found responsive to the request. In any event, the general arguments and concerns raised by the appellant failed to provide the level of detail required to establish a connection between the records in this appeal and its concerns about student safety, discrimination and racism.

Accordingly, despite the appellant's evidence that it plans to disseminate the contents of the records, I find that section 57(4)(c) does not apply in the circumstances of this appeal.

As the appellant has failed to persuade me that first part of section 57(4)(c) applies, it is not necessary for me to also determine whether it is "fair and equitable" to waive the fee in the circumstances of this appeal.

ORDER:

I uphold the University's decision and dismiss the appeal.

Original signed by: December 17, 2009
Jennifer James
Adjudicator