



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

# **ORDER PO-2937**

**Appeal PA07-119-2**

**University of Ottawa**



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## **BACKGROUND:**

The University of Ottawa (the University) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all records, written or electronic, that mention or refer to the requester or his activities in any way, for the time period from September 1, 2004 to the date the University received the request.

In correspondence with the University, the requester clarified his request, as follows:

I do not require student records on which my name appears. I do not require purely administrative documents/records that involve no administrative or executive decisions/judgments/interventions/influences. I do not require forms that simply record “rubber stamp” signatures or approvals of registrations/salaries/thesis-defences/student-progress-reports and the like.

As you may appreciate, I am interested in staff exchanges and executive communications (including all council and committee meetings and all ad hoc or informal meetings) and notes or files that do not simply relate to the purely mechanical tasks of running the university.

The University issued a fee estimate decision in accordance with section 57(3) of the *Act* in which it estimated a total fee of \$28,488.20. The University requested a deposit of \$14,244.10 (50% of the total estimate) in order to resume processing the request, in accordance with section 7 of Regulation 460. The University also informed the requester that it is involved in ongoing litigation to determine the scope of its control over certain documents and that the outcome of the litigation may result in an increase in the fee estimate.

The requester, now the appellant, appealed the University’s fee estimate decision.

During mediation, the University issued a more detailed fee estimate in the amount of \$28,374.00, which eliminated the estimated cost to search for the appellant’s own personal information. Also during mediation, the appellant claimed that the University’s decision was inadequate and that the University “attempted to incorrectly reframe the scope of [his] request.” As a result, the adequacy of the University’s decision and section 24 (scope of the request) were added as issues in this appeal. In addition, section 10(1) (custody or control) of the *Act* was added as an issue, based on the University’s claim that it may not have custody or control of certain responsive records. The appellant also informed the mediator that he would be seeking a fee waiver, once he received an “adequate decision.” Therefore, the issue of fee waiver was added to this appeal.

As mediation was not successful in resolving 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 University and the Association of Professors of the University of Ottawa (APUO), a party whose interests may be affected by disclosure of the information at issue in this appeal, initially. As the University was in the midst of an arbitration proceeding with the APUO concerning which types of responsive records its members had custody or control over, I asked

the University to provide representations concerning the records which it considered it currently exercises custody or control over. I received representations from the University and the APUO. After receipt of the University's and the APUO's representations, I decided to proceed with the part of the appeal which addresses the records not subject to the arbitration proceedings only. Therefore, the portion of the appeal which concerns the records that may be in the custody or control of the APUO members was to be dealt with after the arbitration proceedings were concluded.

I sent a copy of the University's representations, along with a Notice of Inquiry, to the appellant and received his representations. I required clarification from the appellant as to the scope of his request at that time and asked him to clarify his request. The appellant's clarified request stated as follows:

(1) All (e.g., letter, fax, and email) communications about [the appellant] (other than messages sent by him), sent by or received by all professors (APUO members) at the University of Ottawa.

(2) All (e.g., letter, fax, and email) communications about [the appellant] (other than messages sent by him), sent by or received by all non-APUO member executive officers of the University of Ottawa. These executive officers include: the non-APUO member vice-deans of faculties, the deans of all faculties, the vice-presidents of the University, the Secretary of the University (including Legal Counsel's office), the President of the University, and the non-student and non-APUO member members of the Board of Governors of the University.

I then sent a copy of the appellant's representations and his clarified request to the University and sought reply representations. In particular, the University was asked to respond to part 2 of the clarified request. In response, the University issued a revised decision letter to the appellant, which included the following information:

Based on a review of a representative sample of the records and a discussion with the representative members of the Faculty of Science, Faculty of Arts, the Office of the President; the Office of the Vice-President Academic and Provost, the Office of the Secretary of the University and the Board of Governors, we estimate that there are approximately 7785 pages of records responsive to your request and the total fees to process your request will be approximately \$4,141.56 ...

As we have not yet completed the search and reviewed all of the records in detail, no final decision has been made regarding access.

Based on our discussions with appropriate staff members and our review of the representative sample of the records, we estimate that partial access to the records will be granted. Specifically, the exemptions in sections 18.1, 19, 21, 65(6) may apply to some of the responsive records or portions thereof.

I then sought and received representations from the appellant on the revised fee estimate contained in the University's new decision letter. I sent a copy of the appellant's representations to the University and received representations from the University in response.

I then issued Interim Order PO-2776-I in which I upheld the University's revised fee estimate concerning part 2 of the appellant's clarified request in the amount of \$4,141.56. In that order, I also upheld the University's decision not to waive the fee under section 57(4)(c), which reads:

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,

whether dissemination of the record will benefit public health or safety;

Following receipt of Interim Order PO-2776-I, the appellant sought a fee waiver of the \$4,141.56 fee estimate on the basis of section 57(4)(b), which reads:

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,

whether the payment will cause a financial hardship for the person requesting the record;

The University issued a decision letter denying the appellant's request for a fee waiver on this basis and agreed to accept a reduced deposit of \$830.00 before responding to part 2 of his request. The appellant appealed this decision. I then sent a Notice of Inquiry to the appellant seeking his representations concerning the application of section 57(4)(b) to the fee of \$4,141.56. I received representations from the appellant.

In his representations, the appellant again sought a waiver of the University's fee estimate on the basis that dissemination of the record will benefit public health or safety in accordance with section 57(4)(c) of the *Act*. As I have considered this issue already in Interim Order PO-2776-I, I will not revisit it as this issue is *res judicata*.

In any event, based on the broad nature of the records requested in part 2 of the appellant's request, namely, all communications about him sent by or received by all non-APUO member executive officers of the University, I confirm my findings in Interim Order PO-2776-I that:

... the subject matter of the records is a matter of private rather than public interest. The appellant provided only general representations and has not provided representations as to how the subject matter of the responsive records actually relates directly to a public health or safety issue. Nor has he provided any evidence as to how dissemination of these records would yield a public benefit by either:

- (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

Based upon my review of the appellant's representations, I find that the appellant has not provided a basis for a fee waiver [under section 57(4)(c)]. (emphasis added)

I will now decide whether the \$4,141.56 fee estimate be waived on the basis of section 57(4)(b) of the *Act*.

## **DISCUSSION:**

### **FEE WAIVER**

#### **General principles**

Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. 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 and 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 Notice of Inquiry provided to the appellant provided the following criteria to be considered when deciding whether there exists a basis for a fee waiver under section 57(4)(b):

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] *Emphasis in original.*

Will payment of the fee cause the requester financial hardship? Please explain.

In his representations, the appellant only provided some information about his current income. He did not provide information about his expenses, assets or liabilities. He asked that his representations "... not be disclosed to the University, except those parts needed to obtain the new cost-estimate ..."

By comparison, in Order MO-2529 the appellant in that appeal provided information about his income over the course of the last three years, and also listed his assets, liabilities and yearly expenses. In support of his position, the appellant in that order provided copies of his T-4 slips from his employer. In Order MO-2529, Adjudicator Frank DeVries determined that payment of the fee would cause the appellant financial hardship under section 45(4)(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the equivalent section to section 57(4)(b) of the *Act*). Adjudicator DeVries stated that:

Based on my review of the appellant's submissions and the documents submitted as evidence of his financial status, I find that the appellant has established that the criteria for fee waiver found in section 45(4)(b) exists. The appellant has provided evidence regarding his income over the last number of years, which confirms that his income (particularly last year) is not high. Furthermore, the appellant's expenses exceed his income and the value of his assets. Although the amount of the fee is not particularly large, based on the information provided by the appellant regarding his income, assets and expenses, I find that payment will cause a financial hardship.

In this appeal, the appellant has only provided limited information about his current income and also did not provide any information about his expenses, assets and liabilities. Accordingly, I find that the appellant has failed to provide sufficiently detailed evidence demonstrating his financial situation and establishing that the payment of the estimated fee of \$4,141.56 will cause him financial hardship.

Therefore, I find that a fee waiver is not justified on the basis of financial hardship. Given my finding that financial hardship under section 57(4)(b) has not been established by the appellant, it is not necessary for me to consider part 2 as to whether it would be fair and equitable to waive the fee.

Nevertheless, the appellant has stated in his representations that he is only interested in obtaining records that contain his personal information as defined in the *Act*. He submits that:

The practice of the University [Freedom of Information] Coordinator's office has changed since the last fee estimate of May 20, 2008, and the appellant expects that this will also significantly reduce the cost estimate...

The present cost estimate is \$4,141.56 and was explained in the University's letter dated May 20, 2008.

The University's May 20, 2008, cost estimate has 25% of all the search and preparation times attributed as "personal information" with zero fees.

The [appellant] wishes to clarify that he has since the time of the clarifications made in mediation only been interested in his personal information as defined in the *Act*. This would include all information "about the [appellant]" in the sense of his personal information as defined in the *Act*.

Therefore this should reduce the search and preparation costs to zero, following the University's letter of May 20, 2008, in which it attributes zero cost for personal information search and preparation time.

Under the new University [Freedom of Information] Coordinator ... it has become the practice of that office to provide disclosures electronically on CD [compact disc] rather than as photocopies. ... Only the cost of the CD is charged.

The latter practice is consistent with not using the fee as a barrier to access and is much appreciated by students and others. It also would represent a significant improvement in efficiency here where 95% or so of the original respondent records are expected to be electronic in nature.

This alone, will remove the \$1,557 in photocopy costs in the University's May 20, 2008, estimate.

The [appellant] asks that the above reductions be applied (clarification regarding personal information and electronic format of disclosures). The resulting fee should be below \$100 and will not represent a barrier to access for the [appellant].

As stated above, the appellant is requesting records that contain his personal information. That term is defined in section 2(1) of the *Act* as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

Not all information about the appellant in the responsive records would necessarily contain his personal information. For example, sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

In addition, to qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional,



official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Based on the appellant’s representations, I will order the University to provide the appellant with a revised fee estimate for part 2 of his request, taking into consideration that the appellant is only seeking records that contain his own personal information and that the appellant would like to obtain these records on a CD, not in paper format. If the appellant wishes to seek a waiver of this revised fee estimate he may then ask the University for a fee waiver and must provide detailed information to support the request as described in my reasons above [Orders M-914, P-474, P-1393 and PO-1953-F].

**ORDER:**

1. I uphold the University’s fee estimate in the amount of \$4,141.56.
2. I order the University to issue a revised fee estimate to the appellant **January 31, 2011** for records on CD which are responsive to part 2 of the appellant’s request. This request encompasses only records which contain his own personal information in accordance with the definition of that term set out in section 2(1) of the *Act*.
3. In order to verify compliance with this order, I order the University to provide me with a copy of its revised fee estimate.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ December 20, 2010