

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-3177

Appeal PA12-182

Hamilton Health Sciences

March 19, 2013

**Summary:** The appellant sought access to records relating to specified golf tournament expenses paid for by Hamilton Health Sciences (HHS), and a fee waiver for his access request. HHS located responsive records and issued a fee estimate in which it reduced its fee. HHS also denied the request for a fee waiver. HHS subsequently issued a final and further reduced fee estimate. The fee estimate is upheld in part. The cost for preparing the records is not upheld and the search time cost is reduced. The denial of a fee waiver is upheld.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 57(1) and 57(4); section 6 of Regulation 460.

**Orders and Investigation Reports Considered:** PO-3035, MO-1421.

### OVERVIEW:

[1] Hamilton Health Sciences (HHS) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

All costs associated with participation in the Ron Joyce Invitational golf tournament for the years 2008, 2009 and 2010. I would like the request to include all expenses paid or reimbursed by Hamilton Health Sciences for all employees, associates, board members, and third parties...all

expense receipts, including but not limited to those for such expenses as travel, accommodation, meals and entry fees...all costs and expenses, if any, related to the organization and operation of the Ron Joyce Invitational golf tournament, including but not limited to any costs associated with the host site of the tournament.

[2] The requester asked HHS to consider a fee waiver for access to the requested information on the basis that "the information is intended to serve the greater public good." The requester also offered to receive the information in electronic form to reduce any potential costs.

[3] HHS issued an initial fee estimate of \$1,747.69. In the same correspondence, HHS extended its time to respond to the request by 47 days in order to retrieve responsive records that were stored off-site and to satisfy its notification obligations under section 28 of the *Act*. With respect to the fee waiver request, HHS advised that it would waive the \$900.00 portion of the fee that was associated with the retrieval and processing of the documents that were located on-site, thereby reducing the estimated cost of processing the request to \$847.69. HHS asked the requester for a deposit of 50% of this fee before continuing to process the request.

[4] The requester, now the appellant, appealed the fee estimate and fee waiver decision to this office.

[5] During mediation, HHS advised that the information the appellant requested regarding "all costs and expenses, if any, related to the organization and operation of the Ron Joyce Invitational golf tournament, including but not limited to any costs associated with the host site of the tournament" was under the custody and control of the HHS Foundation which runs the tournament, and therefore, due to the operation of section 65(5.4) of the *Act*, any responsive records therein are not subject to the *Act*. The appellant did not pursue access to the records that HHS claimed were not subject to the *Act*, and therefore, these records and section 65(5.4) are not at issue in this appeal.

[6] Also during mediation, HHS issued a final fee estimate of \$766.25 based on its costs for the retrieval of the files from off-site storage, and a manual search of these files to identify responsive records. The final fee decision contained estimated preparation and copying costs. HHS advised that upon payment of 50% of the fee, it would finish processing the request and grant "100% access to 50 records."

[7] The appellant remained unsatisfied with HHS's denial of the fee waiver, and the fee, which he felt was excessive.

[8] As further mediation of the remaining issues was not possible, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[9] I sought and received representations from HHS and the appellant which were shared in accordance with section 7 of this office's *Code of Procedure and Practice Direction Number 7*.

[10] In this order, I uphold the fee estimate, in part. I do not uphold the preparation costs and I significantly reduce the search costs. In addition, I uphold HHS's denial of a fee waiver.

## **ISSUES:**

Issue A. Should the fee estimate be upheld?

Issue B. Should the fee be waived?

## **DISCUSSION:**

### **A. Should the fee estimate be upheld?**

[11] 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.<sup>1</sup> The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.<sup>2</sup>

[12] Where the fee is \$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.<sup>3</sup>

[13] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.<sup>4</sup>

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<sup>1</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

<sup>2</sup> Order MO-1520-I.

<sup>3</sup> Order MO-1699.

<sup>4</sup> Orders P-81 and MO-1614.

[14] 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.

[15] Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads:

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.

[16] More specific provisions regarding fees are found in section 6 of Regulation 460. This section reads:

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.

## **Representations**

[17] In its representations, HHS states that it prepared its fee estimate based on the advice of individuals familiar with the types and contents of the requested records, and also based on its experience posting expenses related to the *Broader Public Sector Accountability Act (BPSAA)* directive. It states that three experienced employees, an HHS Foundation Officer, the Accounts Payable Coordinator, and a Freedom of Information Specialist, compiled the list of 19 individuals whose expense information needed to be reviewed to determine which records were responsive to the request. The list was provided to the Accounts Payable Coordinator to complete a fee estimate, based on her knowledge of accounts payable invoicing and her work on the *BPSAA* expense reporting. The time involved in preparing the list was not included in the fee estimate.

[18] HHS explains that the responsive records are maintained in paper format and are filed by vendor by fiscal year, which is the generally accepted standard in the industry. It adds that due to the volume of invoices, only the previous year's invoices, in addition to the current year's, are maintained by the Finance Department on site; invoices from all other prior years are maintained off-site at a storage company. HHS provided me with an invoice payment flow chart that shows that invoices can be filed by vendor name, employee name, or credit card company name, depending on how the expense was originally paid, and then reimbursed by HHS.

[19] Regarding the manual search costs permitted under section 57(1)(a) of the *Act*, HHS explains the process that the Accounts Payable Coordinator had to follow to determine the number of vendor invoices or expense reimbursements that corresponded to the request and had to be retrieved. This process included:

- determining the method by which an expense was reimbursed
- determining the number of vendor invoices or expense reimbursements that corresponded to the date or year specified in the request and had to be retrieved
- looking up in the HHS software whether each individual had claimed expenses

- determining the nature or individual components of the payment by searching and accessing financial reports to analyse the various cost centres and expense codes that would have been used to report the expenses relating to the request
- determining the expense categories and expanding the scope of the search to include a review of both the expenses attributable to the individual and the third party vendor
- reviewing each expense account and category at a high level to determine which individual was charged with the expense relating to the request.

[20] HHS states the analysis of the Accounts Payable Coordinator described above, identified 72 expense files and two vendor files that needed to be accessed from off-site storage. The invoice from the off-site storage company provided by HHS indicates a total cost of \$836.92. HHS submits that the cost of retrieving the files from off-site storage qualifies as "any other costs incurred in responding to a request for access to a record" under section 57(1)(e).

[21] Regarding the costs for record preparation under section 57(1)(b), HHS states that the Accounts Payable Coordinator reviewed all of the invoices contained within each file to identify the invoices that were associated with the time period of the golf tournament for each year in question. It also states that it has estimated the cost of preparing the records, as preparation of the records is not complete. Finally, HHS states that a standard charge of 20 cents per page for 50 invoices was calculated in accordance with section 57(1)(c) of the *Act*.

[22] In his representations, the appellant states that his request seems simple enough, three years' worth of expenses absorbed by HHS to send employees, associates, board members and third parties to a golf tournament at a resort in a remote part of Nova Scotia. He states that he is not opposed to a process that allows for reasonable cost recovery by HHS, however, he submits that the original fee, the reduced fee, and the final fee provided by HHS, are outrageous.

[23] The appellant also asserts that the \$900 HHS apparently spent to gain access to its own information, information that also belongs to the citizens of Ontario, from off-site storage is shocking. He points out that if he abandoned his appeal and request, this \$900 fee remains spent and cannot be recouped. The appellant states that this practice raises serious questions about the fiscal responsibility of a publicly funded organization that is part of a health care system that, by all news accounts, is under tremendous fiscal pressure, year after year. He adds that many Ontario taxpayers would find this charge objectionable.

## **Analysis and Findings**

[24] Having reviewed the representations of the parties, I acknowledge the appellant's concerns about the significant cost for the retrieval of the 50 responsive records in this appeal, including the substantial cost to HHS for retrieving its own files from off-site storage. I also accept HHS's assertion that it relied on experienced employees familiar with the requested records to conduct its search, and that once the 19 individuals to whom the responsive records relate were identified, HHS had to take a number of additional steps to locate the records.

[25] That said, I find the 11 hours of search time calculated by HHS under section 57(1)(a) of the *Act* excessive, even though it appears that this figure is based on actual time spent. I base this finding on the following factors.

[26] First, the request is for expenses related to three golf tournaments held on four specific days over three years. In this regard, I find that the request is defined and narrow. Such a relatively straightforward request should not require 11 hours of search time if the records management system of HHS is adequate, particularly when HHS has software that allows it to determine whether each of the 19 individuals identified claimed expenses.

[27] Second, the records are of recent origin. In Order PO-3035, Assistant Commissioner Brian Beamish stated that when dealing with records of recent origin, it is reasonable to expect that the records "should be kept in a consistent and easily searchable manner." In Order PO-3035, Assistant Commissioner Beamish considered a fee estimate related to records from January 5, 2005, to December 31, 2010, and found that 32 hours of actual search time to produce the responsive records demonstrated that the university's "records management process [was] unwieldy and not conducive to easily focused searches for a well defined class of records." Assistant Commissioner Beamish further noted that an "appellant should not bear the financial burden of the university's failure to implement proper records management practices." Applying this reasoning to this appeal, records from the time period of 2008, 2009, and 2010 should be maintained consistently and in a manner conducive to easily performed defined and narrow searches. The multi-step process that HHS, according to its representations, had to follow to locate the records demonstrates that the records were not so maintained, and the appellant should not bear the financial burden of this failure.

[28] In respect of its records management system, HHS advises in its representations that its Finance Department has been in the process of implementing changes to improve its ability to locate requested records and minimize related costs, including standardizing the expense reimbursement and processing procedures. HHS also states that its Finance Department is in early discussions to convert its paper based invoice process to an electronic system which may lead to a significant reduction in time required for locating the responsive records.

[29] Finally, the responsive records are invoices, which are generally straightforward records that contain very few pieces of information on their face beyond the amount of the expense, the date, the name of the vendor, and perhaps, the name of the purchaser. Consequently, reviewing invoices, even 1,850 invoices as HHS states it did in this appeal, is not as time consuming as reviewing other kinds of records, such as, a page of typewritten text.

[30] For these reasons, I uphold only two hours of search time under section 57(1)(a) at \$30 per hour, for a total cost of \$60.

[31] With respect to section 57(1)(b), HHS has allocated two minutes per page at a cost of \$30 per hour, and included a total cost of \$50 in its fee estimate, as the time for preparing the records for disclosure. HHS provides no explanation of why the records require preparation prior to disclosure or what kind of preparation they require. The only information HHS provides for this estimate is that its Accounts Payable Coordinator reviewed the invoices to identify the relevant ones. This review constitutes search time, and does not qualify as preparation time under section 57(1)(b). I also note that HHS advised in its final fee estimate that it would be granting the appellant access to "100%" of the 50 records, which indicates that no severing of the information in the invoices will be required. As I have been provided with no information to justify this part of the fee estimate, I do not uphold it.

[32] I am satisfied that the \$10 estimate provided for copying the records was calculated in accordance with section 57(1)(c) of the *Act*. I also note that if the records were to be provided in electronic form, which the appellant has agreed to, the cost would be the same; \$10 in accordance with paragraph 6.1.1 of Regulation 460. Accordingly, I uphold this part of the fee estimate.

[33] The last cost included in the fee estimate is that of retrieving files from off-site storage. The actual cost incurred by HHS for this service was \$836.92, which is confirmed in an invoice from the storage company. In its fee estimate, HHS has reduced this amount by more than half, charging the appellant \$358.25 for the retrieval of the records. Previous orders of this office have accepted that storage retrieval costs, including the cost of pulling boxes from storage and transporting them to an institution, are recoverable under section 57(1)(e) as long as they are established by an invoice.<sup>5</sup> In accordance with this approach, and considering the significant reduction to this incurred fee in the fee estimate, I uphold this portion of the fee estimate.

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<sup>5</sup> Order MO-1421.



## **B. Should the fee be waived?**

[34] 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. Those provisions state in part:

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,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (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
- (d) any other matter prescribed by the regulations.

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.

...

[35] 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.<sup>6</sup>

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<sup>6</sup> Order PO-2726.

[36] 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.<sup>7</sup> The institution or this office may decide that only a portion of the fee should be waived.<sup>8</sup>

## **Representations**

[37] The appellant does not address this issue. He argues that access to basic information about expenses at a public institution should not cost \$1,747 or \$847 or even \$766. The appellant asserts that such excessive fees are a barrier to the public's right to know how its own money is being spent.

[38] In its representations, HHS states that it has incurred costs greater than those included in its fee estimate. It points out that the actual cost of retrieving files from off-site storage alone is more than the fee estimate. HHS also argues that the appellant has not provided any information to establish that payment of the fee would cause him financial hardship, and has not demonstrated how or why dissemination of the records would benefit public safety. HHS further states that the *BPSAA*, the *Excellent Care for All Act*, and the *Public Sector Salary Disclosure Act*, ensure that it is accountable to the public for expenses, and therefore, the public interest is already served. HHS also notes that its Finance Department has been implementing changes to improve its ability to locate records with a view to minimizing costs for access requests under the *Act*.

## **Analysis and Findings**

[39] Although the appellant requested a fee waiver and now appeals HHS's denial of his request, he has not identified any basis, under section 57(4) of the *Act*, for a fee waiver. He simply asserts that the fees are excessive and represent a barrier to the public's right to access this information.

[40] Conversely, HHS describes why it is of the view that its denial of a fee waiver should be upheld. HHS submits that its actual costs in processing the request surpass those included in the fee estimate. It also states that the appellant has not established any of the factors under section 57(4) apply to support a fee waiver.

[41] I agree with the position taken by HHS on this issue and I uphold its denial of a fee waiver in this appeal.

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<sup>7</sup> Orders M-914, P-474, P-1393, PO-1953-F.

<sup>8</sup> Order MO-1243.

**ORDER:**

1. I uphold HHS's fee of \$358.25 to retrieve records from off-site storage, and \$10.00 to copy the records.
2. I reduce the search time claimed by HHS to two hours, for a total cost of \$60.
3. I do not uphold HHS's estimated fee for preparation costs.
4. I uphold HHS's decision to deny a fee waiver.

Original Signed by: \_\_\_\_\_  
Stella Ball  
Adjudicator

\_\_\_\_\_ March 19, 2013