

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3181

Appeal PA12-415

Ministry of Health and Long-Term Care

March 25, 2013

Summary: The ministry issued two fee estimate decisions in response to a multi-part request for access to various records relating to the Psychiatric Patient Advocate Office. The appellant appealed the fee estimate decisions and the ministry subsequently reduced its fee estimates by approximately 40%. The reduced fee estimates are upheld and the appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 57(1)(a), (b) and (c); sections 6.1, 6.3 and 6.4 of Regulation 460.

BACKGROUND:

[1] The Ministry of Health and Long-Term Care (the ministry) received a fourteen-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the Psychiatric Patient Advocate Office (the PPAO). The ministry divided the original request into nine separate requests and issued decisions on three of them.

[2] The requester, now the appellant, commenced appeals with this office of these three decisions, and appeal files PA12-122, PA12-125 and PA12-126 were opened.

[3] During mediation, the appellant agreed to the ministry's suggestion that his fourteen-part request be reformulated and resubmitted as two broad requests:

- 1) Any policy document, options paper, briefing note and slide deck containing recommendations relating to the divestment of governance of the PPAO from the government to an external body. The date range of this request is from January 1, 2009 to May 1, 2012. This would include the (1) announced divestment of the PPAO to the Canadian Mental Health Association-Ontario division, (2) the decision to cancel this divestment with a commitment to consultation prior to any new divestment decision being made, and (3) the decision to no longer consult on any such divestment prior to decision-making.
- 2) Any e-mails, correspondence or related communications documents (1) to staff of the PPAO from the director and management team of the office and (2) from the Assistant Deputy Minister of Direct Services Division to the director of the PPAO concerning staff obligations under the Public Service Oath and communications guidelines for the PPAO. The date range of this request is from January 1, 2009 to May 2, 2012.

[4] As a result of this development, appeals PA12-122, PA12-125 and PA12-126 were closed.

[5] The ministry then issued fee estimates for the two requests. In response to the first request, the ministry provided a fee estimate of \$637.80, and an interim decision stating that partial access would be provided to these records. For the second request, the ministry provided a fee estimate of \$174.20, along with an interim access decision granting full access to the records.

[6] The appellant objected to paying any fee for the records, arguing, in his position as counsel to many financially disadvantaged and vulnerable clients of the PPAO, that disclosure of the records is in the public interest. He also suggested that the requests were only necessary because the ministry had not been transparent in its decision-making and consultation process.

[7] The ministry considered the appellant's views and subsequently reduced its fee estimates to \$397.80 for the first request, and to \$99.20 for the second request.

[8] The appellant appealed the fee estimate decisions of the ministry and this single appeal file was opened to deal with both of them.

[9] As a mediated resolution of the appeal was not possible, the file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[10] I sought the representations of the ministry and the appellant on whether the fee estimates should be upheld. The ministry provided representations and agreed to share them in their entirety with the appellant. The appellant did not submit representations.

[11] In this order, I uphold the ministry's reduced fee estimates and dismiss the appeal.

DISCUSSION:

[12] An institution must advise the requester of the applicable fee where the fee is \$25 or less. Where the fee exceeds \$25, an institution must provide the requester with a fee estimate.¹ 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.²

[13] 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.³ The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.⁴ In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.⁵ 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.

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

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,

¹ Section 57(3).

² Order MO-1699.

³ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁴ Order MO-1520-I.

⁵ Orders P-81 and MO-1614.

- (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;
- ...

[15] More specific provisions regarding fees are found in section 6 of Regulation 460, which reads in part:

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.
- ...

[16] In its representations, the ministry does not address this issue. Rather, it notes that it asked the appellant to request a fee waiver, however, the appellant did not do so. The ministry provides representations that set out its position that the fee should not be waived under section 57(4). The ministry states that its fee estimates are based on its estimated costs of searching, record preparation and copying, and it notes that it has already reduced the fee estimates by approximately 40%. The ministry further states that given the large volume of records and the extended date range of the request, it had to conduct an extensive search through its records, emails and other correspondence. The ministry adds that these extensive searches were conducted in various locations of its branch and off-site record centre relating to the PPAO, as well as, in other branches and divisions within the ministry. The ministry also points out that the appellant has not disputed the extent of the ministry's search.

[17] As noted above, the appellant did not provide representations. In his correspondence confirming his decision to not provide representations, the appellant writes that the effort spent examining the ministry's fees already exceeds the cost the ministry would have incurred had it granted a fee waiver.

Analysis and Findings

[18] The sole issue in this appeal is whether the fee estimates provided by the ministry should be upheld. The ministry provides no representations that directly address this issue, and the appellant provides no representations. Therefore, having reviewed all of the evidence before, including the fee estimate decisions of the ministry, the original fee estimate breakdowns provided by the ministry, and all of the correspondence and communications of the parties with this office, I uphold the reduced fee estimates in this appeal for the reasons below.

Search Time – section 57(1)(a)

[19] The two requests in this appeal are defined but broad in that they encompass many types of records, both paper and electronic, over a three year period. The first request is for policy documents, options papers, briefing notes and slide decks over this three year period, that relate to the ministry's decision on the divestment of the PPAO. The second includes emails, correspondence and related communications documents to PPAO staff from a number of ministry staff and representatives over the same three year period.

[20] In its fee estimate decisions, the ministry confirmed that it conducted a preliminary search of paper and electronic files in its Direct Services Division to locate records responsive to the first request, and another preliminary search for emails and other correspondence in various locations of its branch and off-site record centre to locate records responsive to the second request. Based on these preliminary searches, the ministry initially estimated that 16 hours of search time would be required to locate approximately 489 records responsive to the first request, and that five and a half hours of search time would be required to locate approximately 46 records responsive to the second request. The ministry calculated the estimated search costs at a rate of \$30 per hour for a total of \$480 for the first request and \$165 for the second request.

[21] I accept the ministry's submission that extensive searches in multiple locations of its branch, and in other ministry branches and divisions are required to locate the records responsive to these two broad requests.

[22] There is no evidence before me to suggest that the search time estimated by the ministry is unfounded or excessive. Moreover, during mediation, and in response to the appellant's objection to its initial fee estimate decisions, the ministry significantly

reduced its fee estimates by approximately 37.5% for the first request, and 43% for the second request. In respect of search time, the ministry provided a reduced estimate of eight hours for the first request, and three hours for the second request. Absent any representations challenging the reasonableness of these reduced hours of search time, and based on the evidence before me, I accept the search time as reasonable, and I uphold the corresponding costs at a rate of \$30 per hour, in accordance with section 6.3 of Regulation 460.

Copying Costs – section 57(1)(c)

[23] With respect to photocopying costs provided in the fee estimate, the ministry estimates that the 489 pages of responsive records to be copied for the first request and the 46 pages to be copied for the second request will cost \$97.80 and \$9.20 respectively. The ministry has calculated these costs at a rate of 20 cents per page in accordance with section 6.1 of Regulation 460. I uphold the photocopying costs in the fee estimates, as long as, these amounts are appropriately reduced if fewer photocopies than those estimated are ultimately provided.

Preparation Time – section 57(1)(b)

[24] Finally, the ministry's fee estimate for the first request includes two hours of preparation time at a cost of \$30 per hour for a total of \$60. In its fee estimate decision, the ministry advised the appellant that it would grant only partial access to these responsive records. The ministry explained that some information in the records would be withheld on the basis of the mandatory exemption in section 12 (cabinet records) and the discretionary exemptions in sections 13(1) (advice or recommendations), 18 (economic and other interests) and 19 (solicitor-client privilege). In its decision, the ministry also advised that other exemptions could apply to the records and that some records could fall outside the scope of the *Act*. Based on its preliminary search for and review of responsive records, the ministry has identified some of the exemptions that it determined apply to the responsive records, and has calculated its preparation fee under section 57(1)(b) as being two hours in total.

[25] Section 6.4 of Regulation 460 states that an institution shall charge a requester \$7.50 for each 15 minutes spent for preparing a record for disclosure, including severing part of a record. Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.⁶ Taking the above into account, I am satisfied that two hours of preparation time to sever exempt information in 489 pages of responsive records, is reasonable. I uphold this portion of the fee estimate to the extent of the time that is actually spent preparing the records up to a maximum of two hours.

⁶ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

ORDER:

I uphold the ministry's reduced fee estimate and dismiss this appeal.

Original Signed by: _____
Stella Ball
Adjudicator

_____ March 25, 2013