

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3334

Appeal PA13-245

Humber River Regional Hospital

April 25, 2014

Summary: The hospital received a request under the *Freedom of Information and Protection of Privacy Act* for records about the provision of homecare oxygen services and oxygen for sleep services. The hospital issued an interim access and fee estimate decision. The appellant appealed the fee estimate. This order upholds the fee estimate in a reduced amount.

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

OVERVIEW:

[1] Humber River Regional Hospital (the hospital) received a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to the following information:

...all information, including but not limited to: (i) records, documents, internal emails, agreements, purchase orders related to the Humber River Hospital home oxygen preferred partnership with homecare provider(s) which I understand has been in place since 2010; and (ii) all information related to any complaints made by patients, staff, Registered Respiratory Therapists and any other individuals or organizations concerning the operation of and payment for the services provided by homecare providers.

[2] The hospital issued an interim access decision advising, based on a review of a representative sample of records, that there were an estimated 1400 pages responsive to the request. The hospital advised that the estimated fee to search for, prepare, sever and photocopy the records would be approximately \$2,200.00.

[3] Subsequently, the request was narrowed by the requester. Specifically, with respect to part (i) of the request, the requester narrowed the scope of the request to records related to the current vendor who provided home oxygen services, including the contract with that vendor. With respect to part (ii), the requester advised that she was not seeking the names of individuals who made complaints.

[4] The hospital issued a revised decision noting that the responsive information included six vendor proposals, emails and documents from 2007 to the date of the request. As a result of this clarified request, the hospital advised the requester that it estimated there were approximately 1150 pages of records relevant to the request and the total fees to process the request would be approximately \$2,090.00

[5] The requester (now the appellant) appealed the hospital's fee estimate decision to this office.

[6] During the course of mediation, the hospital issued a revised fee estimate decision based on a search conducted in relation to the current vendor and any complaints related to the current vendor only. This search focused on email and purchasing documents only and included records from 2010 to the present. The hospital advised that another search was conducted and 236 pages were located in response to the second search. The hospital estimated that 75% of the documents would be severed pursuant to sections 13, 17 and 18 of the *Act*. In addition, the hospital advised that some information would be severed pursuant to the *Personal Health Information and Protection Act*. The hospital advised that the total fees to process this request would be approximately \$737.00.

[7] The hospital subsequently engaged in further discussions with the appellant in order to clarify the scope of the request. Following these discussions, the appellant sent an email to the hospital confirming her request as follows:

I am requesting access to:

(i) all information, including but not limited to: records, documents, internal emails, agreements, purchase orders related to the Humber River Hospital preferred partnership with its current vendor for the provision of homecare oxygen services and oxygen for sleep services(s) which preferred partnership I understand has been in place since 2010; and

(ii) all information related to any complaints made by patients, staff, Registered Respiratory Therapists and any other individuals or organizations concerning the operation of and payment for the services (homecare oxygen services and oxygen for sleep services) provided by the Humber River Hospital's current vendor for the provision of homecare oxygen services and oxygen for sleep services(s).

I am not seeking access to the names of the individuals who made these complaints.

The request covers the time period from January, 2010 - the present.

[8] Following consideration of this clarified request, the hospital issued a revised fee estimate. In that decision, the hospital advised that it estimated that approximately 900 pages were responsive to the request and the total fees to process the request would be approximately \$1387.50.

[9] Following receipt of this revised fee estimate, the appellant advised the mediator that she would like this matter to proceed to the adjudication stage of the appeals process where an adjudicator conducts an inquiry. Representations were then sought and received between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[10] In this order, I uphold the hospital's search and photocopy fee estimates, and reduce the hospital's preparation fee estimate.

DISCUSSION:

Should the fee estimate be upheld?

[11] Where the fee exceeds \$25, an institution must provide the requester with a fee estimate.¹

[12] 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

¹ Section 57(3).

² Order MO-1699.

[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

[14] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.⁴

[15] 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

[16] 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.

[17] 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.

[18] 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 Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁴ Order MO-1520-I.

⁵ Orders P-81 and MO-1614.

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.

[19] The hospital states that its fee estimates were generated based on the advice of individuals familiar with the requested records and their contents within the hospital, which is a large community teaching hospital, with approximately 3,000 employees and 650 physicians.

[20] Concerning the fee estimate at issue in this appeal, the hospital states that it estimates that there are 900 responsive pages of records, for a total fee estimate of \$1,387.00, consisting of a search fee estimate of \$37.00, a preparation fee estimate of \$1,170.00 and a photocopy fee estimate of \$180.00.

[21] The hospital states that the fee estimate provided by it was based on the scope of the request. Throughout the process, it states that it advised the appellant that the request and timeframe would generate considerable documentation from numerous sources with the organization.

[22] The hospital states that it reviewed the final request further and acknowledges that a component of the preparation time identified is unwarranted and would agree to reduce the fee overall by an additional \$270.00. The hospital states that the balance of the fee attached to preparation time is exclusively for the time required to sever approximately 900 pages of material generated by this final request. As the hospital agreed to reduce the preparation fee to \$900.00, the new total fee estimate is \$1,117.00.

[23] The appellant states that neither in response to the request nor during the course of the appeal did the hospital ever provide her with sufficient information to make an informed decision as to whether or not to pay the fee, or include a fee estimate with costs broken down into the categories of search and preparation time and photocopying fees. The appellant states that the hospital has not stated whether it based the fee estimate on the advice of an individual familiar with the type and content

of the requested records, or a representative sample of the records and the details of the same.

[24] The appellant states that she specifically referred the institution's Directory of Records in the request and the Purchasing and Logistics Department as being the likely location of the responsive records (given that they are related to service contracts with the institution). She submits that the institution should have either indicated who from that area provided the advice or advised the appellant that the requested records would not be found there. Further the appellant suggests that the hospital is required to indicate where and by whom this advice was provided.

[25] Alternatively, if the fee estimate was based on a representative sample of the records, the appellant submits that the institution should have indicated how the sample was determined and provided some examples of the nature of the records that it considered to be a representative sample.

[26] The appellant submits that the size of the institution, and the number of employees has no relevance whatsoever on its calculation of a fee estimate. Concerning the revised preparation fee, the appellant states that this amount does not appear to be related to the number of records that would be disclosed in part; nor did the hospital provide information on what it meant by an "unwarranted component of preparation time".

[27] Additionally, the appellant states that the hospital provided no information to support its photocopy fee, in particular, the number of pages that would be withheld entirely and, therefore, would not require photocopying.

[28] In reply, the hospital states that the nature of healthcare and the size of its operations are extremely relevant when considering any freedom of information requests received which contain language that is "general" in nature and will in all likelihood, extend into many facets of its operations.

[29] The hospital states that although the appellant has submitted and revised her request four times throughout this process, and despite the hospital's efforts to provide guidance, the language of each request continues to generate considerable responsive information.

[30] The hospital states that its freedom of information coordinator (the foic) reviews any requests received and then begins a process of consulting with the appropriate internal and external individuals, departments and organizations. It is the hospital's expectation, that the "Professionals/Experts" in each area will assess what information is available and appropriate to the specific request.

[31] The hospital states that many, if not all, requests cross many dimensions of its "business" both clinical and non-clinical.

[32] The hospital provided a detailed chart of the departments it would need to search for responsive records, the types of records it would be searching for, the estimated number of pages it expected to locate in each department, and the possible exemptions that may apply to any responsive records.

[33] The hospital estimated its search cost as \$480.00, which it reduced to \$37.00.⁶ It further states that it expects that 80% of the records would be kept in electronic format and 20% would be in paper format.

[34] Concerning preparation time, the hospital states that only a brief review of the records had been undertaken by those individuals in each area who are most knowledgeable in order to provide a "reasonable" fee estimate and that its estimate was based on the standard rate and time permitted per page.

[35] The hospital further states that photocopying charges only apply to per page of material the appellant receives. If an entire page was to be severed, the hospital states that it would discuss it with the appellant to ensure their understanding that the continuity of a document was not being compromised by pages that were fully severed and not provided. The estimate provided was based on the actual volume of material the request generated - 900 pages.

[36] In sur-reply, the appellant disputes the hospital's characterization of this request as containing language that is "general" in nature as it was always clear that the request related to records related to the hospital's preferred partnership for the provision of home oxygen services and oxygen for sleep services and any complaints related to the provision of the same. The appellant also states that the hospital never provided her with sufficient information on which to base a decision as to whether or not to pay the fee and pursue access.

[37] The appellant states that if 80% of the records are kept in electronic format it is difficult to see how the search time could take 75 minutes given that an electronic search using a key word(s) related to the request could identify the responsive electronic records in a couple of seconds.

[38] The appellant states that if the records have been only briefly reviewed to provide a "reasonable" fee estimate, then it is also difficult to understand how the hospital could apply the "possible exemptions", particularly those requiring an exercise of discretion - sections 13 and 18.

⁶ The hospital's reduced estimated time spent to locate the requested records was stated by it to be "75 minutes for all 8 areas", which works out to be \$37.50 by reason of part 3 of section 6 of Regulation 460.

Analysis/Findings

[39] At issue in this appeal is the hospital's fee estimate of \$37.00 for search time, its preparation fee estimate of \$900.00 and its estimated photocopy fee of \$180.00 for a total fee estimate of \$1,117.00.

[40] The appellant disputes the search, preparation and photocopy fee estimate and takes issue with the hospital's claim that the request covers a large number of records located in several hospital departments.

[41] In its reply representations, the hospital underlined certain parts of the appellant's revised request to demonstrate the breadth of records sought by her, as follows:

(i) all information, including but not limited to: records, documents, internal emails, agreements, purchase orders related to the Humber River Hospital preferred partnership with its current vendor for the provision of homecare oxygen services and oxygen for sleep services(s) which preferred partnership I understand has been in place since 2010; and

(ii) all information related to any complaints made by patients, staff, Registered Respiratory Therapists and any other individuals or organizations concerning the operation of and payment for the services (homecare oxygen services and oxygen for sleep services) provided by the Humber River Hospital's current vendor for the provision of homecare oxygen services and oxygen for sleep services(s).

I am not seeking access to the names of the individuals who made these complaints.

The request covers the time period from January, 2010 - the present.

[42] The hospital's fee estimate is based on the advice of individuals who are familiar with the type and contents of the requested records. The estimate of the time required to perform the search and prepare the disclosure, is charged by the hospital at a rate of \$30.00 per hour. Both a search and preparation fee are allowable costs under sections 57(1)(a) and (b) of the *Act*. Further, the rate of \$30.00 per hour for both a search and preparation fee is allowable under section 6 of Regulation 460.

[43] The hospital has only charged the appellant for 75 minutes of time in its fee estimate to search for the responsive information. It has reduced its search fee from \$480.00 to \$37.00. I find that the \$37.00 search fee is not only in accordance with section 57(1)(a), but also is a reasonable search fee estimate for the amount and type of records sought in this appeal. I will, therefore, uphold the hospital's search fee of \$37.00. In making this finding, I have considered both parties representations and in

particular, I have considered that 80% of the responsive records may be in electronic format.

[44] Concerning the preparation fee under section 57(1)(b), this section includes time for

- severing a record ⁷
- a person running reports from a computer system ⁸

[45] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.⁹

[46] Section 57(1)(b) does not include time for

- deciding whether or not to claim an exemption ¹⁰
- identifying records requiring severing ¹¹
- identifying and preparing records requiring third party notice ¹²
- removing paper clips, tape and staples and packaging records for shipment ¹³
- transporting records to the mailroom or arranging for courier service ¹⁴
- assembling information and proofing data ¹⁵
- photocopying ¹⁶
- preparing an index of records or a decision letter ¹⁷
- re-filing and re-storing records to their original state after they have been reviewed and copied ¹⁸

⁷ Order P-4.

⁸ Order M-1083.

⁹ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

¹⁰ Orders P-4, M-376 and P-1536.

¹¹ Order MO-1380.

¹² Order MO-1380.

¹³ Order PO-2574.

¹⁴ Order P-4.

¹⁵ Order M-1083.

¹⁶ Orders P-184 and P-890.

¹⁷ Orders P-741 and P-1536.

¹⁸ Order PO-2574.

- preparing a record for disclosure that contains the requester's personal information.¹⁹

[47] The hospital initially estimated its preparation fee at \$1,170.00, which it reduced to \$900.00, as it deemed \$270.00 of the preparation fee as unwarranted. At \$900.00, the hospital has estimated that each page of the 900 pages of responsive records would require severing. However, in one of its decision letters, the hospital estimated that 75% of the pages of the records would require severing. Calculating two minutes of time per page at \$30.00 per hour for preparation time, this would bring the preparation fee estimate to \$675.00 for severing 75% of 900 pages of responsive records.

[48] I will allow the hospital to charge a fee estimate of \$675.00 as a reasonable fee for preparation time for severing the records. Of course, once the records have been located and severed, the hospital can only charge in its final fee decision the amount of preparation time corresponding to the allowable fee of two minutes to sever a page that requires severing, as set out above. The final preparation fee required to be paid by the appellant can then be adjusted taking into account the 50% deposit paid by the appellant.

[49] The hospital has charged a photocopy fee of \$180.00, representing a photocopy fee for 900 pages of \$0.20 per page. Section 6 of Regulation 460 and section 57(1)(c) of the *Act* allow the hospital to charge this fee of \$0.20 per page for the cost of photocopies. The hospital has estimated that there may be 900 pages of responsive records. I find that this amount of pages is a reasonable estimate based on my review of the wording of the revised request and the parties' representations.

[50] I will allow the hospital to charge a fee estimate of \$180.00 for photocopies. However, as stated above for the preparation fee, once the records have been located and severed, the hospital can only charge in its final fee decision for the amount of photocopies it actually provides to the appellant in its final decision letter. The final photocopy fee required to be paid by the appellant can then be adjusted taking into account the 50% deposit paid by the appellant.

[51] In conclusion, I will allow the hospital to charge the appellant a search fee of \$37.00. It may also charge a preparation fee of \$675.00 and a photocopy fee of \$180.00 for a total fee of \$892.00. Both the preparation fee and photocopy fee should be adjusted in the hospital's final fee decision to reflect only the actual number of pages severed and photocopied, as set out above. The appellant will be required to pay a 50% deposit of the fee estimate in the amount of \$446.00 before the hospital begins processing the appellant's revised request.

¹⁹ Regulation 460, section 6.1.

ORDER:

1. I uphold the hospital's fee estimate in the reduced amount of \$892.00.
2. I order the hospital, upon receiving a fee deposit of \$446.00 from the appellant, to retrieve and review all of the requested records and issue a final access and fee decision, in accordance with sections 26, 27, 28 and 29 of the *Act*.

Original signed by: _____
Diane Smith
Adjudicator

_____ April 25, 2014