

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3331

Appeal PA13-328

Sunnybrook Health Sciences Centre

April 15, 2014

Summary: The appellant sought access to records relating to actions taken by the Sunnybrook Health Sciences Centre (Sunnybrook) as a result of media reports of care complaints at its Veterans Centre. Sunnybrook located responsive records and ultimately issued a fee estimate of \$453 provided that the appellant accepted the records on CD. The appellant requested a partial fee waiver which Sunnybrook denied. The appellant appealed Sunnybrook's fee estimate and denial of the fee waiver. Subsequently, Sunnybrook finished processing the request and advised that the final fee was \$359.50. This order upholds Sunnybrook's fee as well as its decision to deny the fee waiver.

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

OVERVIEW:

[1] A request was submitted under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Sunnybrook Health Sciences Centre (Sunnybrook) for records related to any actions that were taken as a result of media reports of care complaints at Sunnybrook Veterans Centre.

[2] Sunnybrook issued a fee estimate of \$732.50 to process the request. The fee estimate was based on copying costs for 1,000 pages of responsive records at \$0.20 a

page, 6.75 hours of search time at \$30 per hour, and \$330 for time spent to prepare the records for disclosure. Sunnybrook offered the appellant the option of obtaining the records on a CD and explained that if he were to choose this option, the fee estimate would be reduced to \$542.50 as the copying charge would be replaced with a charge of \$10 for the cost of the CD.

[3] Sunnybrook subsequently advised the appellant that after removing duplicate pages and publicly available material from the records the fee estimate was reduced to \$453. This revision was based on 800 pages of responsive records and contingent on the appellant accepting the records on a CD.

[4] The appellant requested a partial fee waiver on the basis that the matter relates to public health or safety, and there is a public interest in its disclosure. Sunnybrook denied the request for a fee waiver. The appellant appealed Sunnybrook's fee estimate and its decision to deny a fee waiver.

[5] During mediation, Sunnybrook received a fee deposit from the appellant and finished processing the request. Further duplicate records were removed and the final fee of \$359.50 was communicated to the appellant in a decision letter. The appellant paid the balance and the records were sent to him. The appellant confirmed that he wished to proceed with an appeal of Sunnybrook's fee and its refusal to grant a fee waiver.

[6] As further mediation was not possible, the file was transferred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry.

[7] I sought and received representations from Sunnybrook and shared these with the appellant in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction Number 7*. The appellant chose not to submit representations but again confirmed that he wished to proceed with the appeal.

[8] In this order, I uphold both Sunnybrook's fee and its decision to deny the appellant's request for a partial fee waiver.

ISSUES:

- A. Should the fee be upheld?
- B. Should the fee be waived?

DISCUSSION:

- A. Should the fee be upheld?**

[9] Where the fee to process an access request 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

[10] 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

[11] 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.

[12] In determining whether to uphold Sunnybrook's fee, I must consider whether it is reasonable. The burden of establishing the reasonableness of the fee rests with Sunnybrook. To discharge this burden, Sunnybrook must provide me with detailed information on how the fee was calculated in accordance with the applicable provisions of the *Act*, and it must produce sufficient evidence to support its claim.

[13] 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;

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.

- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

[14] More specific provisions regarding fees are found in sections 6 of Regulation 460. Those sections read:

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.

...

Sunnybrook's Representations

[15] Sunnybrook calculated the final fee as follows and submits that it was based on actual work done:

Category	Calculation	Fee
Search time	6.75 hrs x \$30/hr	\$202.50
Preparation	149 pgs @2mins/pg = 298 min = 4.9 hrs x \$30/hr	\$147.00
CD	1 @ \$10	\$ 10.00
TOTAL		\$359.50

[16] Sunnybrook submits that the initial and revised fee estimates were based partly on a representative sample of the records and partly on actual work done. It submits that relevant records were produced in six different offices within the hospital and it conducted an initial review of the records located by the office that had the largest volume of responsive records. Based on a review of that representative sample, Sunnybrook estimated that one-third (or 33%) of the total records would require severing. The remaining costs, it submits, were based on the actual 6.75 hours of search time and \$10 fixed cost for a CD containing the records.

[17] Sunnybrook submits that the removal of the duplicate and publicly available material reduced the number of responsive records to 149 pages and the final fee was 24% less than the revised fee estimate.

[18] Addressing the search for responsive records specifically, Sunnybrook submits that all of the records reside on its servers and each office reviewed its emails and other files for records produced during the relevant time period to extract those that dealt with the subject of the request. It submits that each office submitted a form documenting the actual time that it took to go through its files. It notes that the Veterans Centre was the office that required the most search time as the files of several personnel were reviewed while the other offices took less time as they are all staffed by one individual only. It also notes that Legal Services declined to charge for search time.

[19] With respect to preparing the records for disclosure which, in this case, meant severing the records, Sunnybrook submits that each page was reviewed to ensure that all personal information or personal health information was severed. It also submits that some information was severed pursuant to other exemptions. The application of exemptions to the severances is not before me in this appeal. Sunnybrook submits that its fee for preparing the records for disclosure outlined in its final fee was not based on the 33% that it had identified in its fee estimates but on the actual number of pages that required severing. It states that it estimated that severances took two minutes per page and applied the \$30 per hour rate stipulated in paragraph 4 of section 6 of Regulation 460 to reach the preparation fee of \$147.

Analysis and findings

[20] Based on the evidence before me, and for the reasons set out below, I find the final fee of \$359.50 to be reasonable.

[21] I accept that the search fee is based on the actual time required to locate the requested records in this appeal. In my view, it is reasonable to assume that each of the six offices required approximately one hour to search their records; perhaps slightly more for the office that required a search of the records of several individuals and perhaps slightly less for the offices that required a search of only one individual's records. I acknowledge that ultimately the requester was only granted access to 149 pages of records but one must recall that the original search located approximately 1000 records, many of which were subsequently removed as either duplicates or as publicly available.

[22] Pursuant to section 57(1)(a), the institution is entitled to claim for the actual time spent searching for records and I accept that, in the circumstances of this appeal, 6.75 hours of search time is reasonable. Accordingly, I uphold the corresponding cost of \$202.50, calculated at a rate of \$30 per hour, in accordance with paragraph 4 of section 6 of Regulation 460.

[23] Section 57(1)(b) of the Act includes time for severing a record.⁶ With respect to the time spent preparing the records from disclosure, generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.⁷ Sunnybrook submits that the fee charged for the time spent severing the records and preparing them for disclosure is calculated in accordance with this principle. Given that the calculated rate is \$7.50 for each 15 minutes, at two minutes preparation time, the allowable fee charged for preparation would be \$147. Therefore, I find that Sunnybrook's fee with respect to preparation time is reasonable and in accordance with the fee provisions in the *Act* and Regulation 460.

[24] Finally, the fee charged by Sunnybrook for the CD containing the records was \$10. As paragraph 2 of section 6 of Regulation 460 stipulates this amount, per CD, I accept that this amount was reasonable.

[25] In conclusion, I find that fee charged by Sunnybrook for search, preparation and the CD containing the records is reasonable and calculated in accordance with the fee provisions in the *Act* and Regulation 460. Therefore, I uphold Sunnybrook's fee.

B. Should the fee be waived?

[26] The appellant requested a partial fee waiver on the basis that the dissemination of the records will benefit health or safety. Sunnybrook declined the request on the basis that the subject matter of the requested records does not relate directly to a public health and safety issue. I uphold Sunnybrook's decision to deny the fee waiver.

[27] Section 57(4)(c) of the *Act* requires an institution to waive fees, in whole or in part, in circumstances where disclosure of the records will benefit public health or safety. It states:

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,

...

⁶ Order P-4.

⁷ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

(c) whether dissemination of the record will benefit public health or safety; and

...

[28] 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.⁸

[29] 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.⁹

[30] The institution or this office may decide that only a portion of the fee should be waived.¹⁰

Will dissemination of the records benefit public health or safety under section 57(4)(c)?

[31] Sunnybrook submits that the records that would respond to the appellant's request for information relate to actions that it took as a result of media reports of care complaints at its Veterans Centre reveal nothing of a public health or safety nature. It submits that the responsive records do not relate to the complaints themselves but relate to Sunnybrook's attempts to obtain an "objective evaluation of whether or not the specific complaints at issue were symptomatic of a serious problem, or whether they were generally isolated examples relating to miscommunications." It submits that the "dissemination of these records will not contribute meaningfully to the development of an understanding of public health and safety issues."

[32] Section 57(4)(c) contemplates whether the records at issue contain information that, were it disclosed, would benefit "public health or safety." Under this section, the appellant bears the onus of demonstrating that a fee waiver is justified. To discharge this onus, the appellant must establish that the records relate directly to a public health or safety issue.¹¹ Previous orders of this office have established that it is not sufficient

⁸ Order PO-2726.

⁹ Orders M-914, P-474, P-1393 and PO-1953-F.

¹⁰ Order MO-1243.

¹¹ Order PO-1962.

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.¹² In the absence of representations from the appellant, I am not satisfied that he has provided sufficient evidence to demonstrate that the dissemination of the records will "benefit public health or safety" as required by section 57(4)(c).

[33] Accordingly, I uphold Sunnybrook's denial of a fee waiver in this appeal.

ORDER:

1. I uphold Sunnybrook's fee and its decision to deny the appellant's request for a fee waiver.
2. I dismiss the appeal.

Original Signed By: _____
Catherine Corban
Adjudicator

_____ April 15, 2014

¹² Orders MO-1336, MO-2071, PO-2592 and PO-2726.