

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3610

Appeal PA15-351

The University of Waterloo

May 18, 2016

Summary: The appellant sought access to a significant volume of records relating to the application process for a university workshop. The university located over 17,000 pages of records and issued a fee estimate of \$8,252.00 to the appellant who appealed the fee estimate. The significant fee estimate corresponds to the substantial volume of records sought and it is upheld. The appeal is dismissed.

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

BACKGROUND:

[1] The appellant submitted a request to the University of Waterloo (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all of the information that the university and its Centre for Education in Mathematics and Computing have in their possession and/or have the ability to access about a specified computer science workshop (the workshop). The appellant explained that he made his access request on behalf of his minor daughter, whose application to participate in the workshop had been unsuccessful. The appellant specified in his request that he sought access to:

- all policies cited during a conversation he had with the Director of Admissions for the workshop

- all information on the selection and evaluation process for the workshop, including evaluation criteria and scoring system
- the province, city and school of each successful applicant admitted to the workshop (omitting the names and home addresses of the applicants)
- the names and titles of faculty and staff who participated in the 2015 evaluation and selection process for the workshop
- an explanation of how the lottery system works, the number of lotteries held and the names of individuals present during the lottery draws.

[2] The appellant subsequently clarified that his request included access to all of the applications submitted for the workshop excluding the personal information of the applicants.

[3] The university identified five responsive records and issued a decision on May 14, 2015, granting full access to records 1 through 4. The university noted that while the *Act* does not require institutions to create records in response to a request, it created record 3 to provide the appellant with a written description of the lottery process and of the workshop director's preference for applicants with little previous exposure to computer science. The university relied on the mandatory personal privacy exemption in section 21(1) of the *Act* to withhold the database entries, and the essays and letters of reference for each candidate who applied to the workshop. The university grouped all of these withheld records together and identified them as item 5 in its decision letter. It also explained that even if it removed the names and other obvious identifiers from the withheld records, the remaining details would contain enough information to identify the individual applicants.

[4] The appellant was not satisfied with the university's decision and appealed it to this office. During the mediation stage of the appeal, the university issued a revised decision letter on August 17, 2015, disclosing part of the database entry for all of the applicants. Specifically, it disclosed the gender, grade, home province, essay and letter ratings for each applicant, an indication of whether the applicant had applied for the workshop the previous year, and the decision made.

[5] The appellant contended that the university had additional responsive records in the form of emails which it had not identified or addressed and he confirmed he sought access to these emails. The university searched for responsive email records and then issued a fee estimate and interim access decision on October 14, 2015, identifying 7702 emails as being responsive. It explained that it had initially considered the emails to be beyond the scope of the appellant's request because they do not relate to information about the applicants, the process and the policies for selecting and evaluating applicants for the workshop. However, it now interpreted the appellant's request as seeking access to all email records relating to the workshop. The university explained

that its fee estimate was based on a representative sample of 39 emails totaling 89 pages out of the 17,560 pages of responsive emails. The university provided a fee estimate of \$8,252.00 and advised that it would likely grant the appellant complete access to 46% of the emails, and partial access to the remaining 54%. The university categorized the emails by subject and asked the appellant to advise whether he wished to have access to all or part of them. The university requested payment of a deposit of \$4,126.00 and provided information regarding fee waiver.

[6] The appellant confirmed that he did not want to request a fee waiver, but wanted to appeal the reasonableness of the fee estimate. As a mediated resolution of the appeal was not possible, it was moved to the adjudication stage of the appeal process for a written inquiry under the *Act*.

[7] I sought and received representations from the university on the reasonableness of its fee. I shared the university's representations in their entirety with the appellant and invited his representations on the sole issue in this appeal. The appellant did not provide representations.

In this order, I uphold the university's fee and dismiss the appeal.

DISCUSSION:

[8] The sole determination I must make in this appeal is whether to uphold the university's fee. Because the fee calculated by the university exceeds \$25, section 57(3) of the *Act* requires the university to provide the appellant with a fee estimate, which the university has done. The university has also appropriately based its fee estimate on a review of a representative sample of the records, which is one of the methods accepted by this office for calculating fee estimates.¹

[9] 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.² Previous orders of this office have held that an institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.³ The university has provided a detailed breakdown of its fee estimate – with a view to assisting the appellant in making an informed decision about whether to pay the fee and pursue access – and has also very helpfully listed in its fee estimate the various categories of the emails contained in the responsive records.

[10] To determine whether the fee estimate complies with the fee provisions in the *Act* and Regulation 460, I must first consider section 57(1). It requires an institution to

¹ Order MO-1699.

² Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

³ Orders P-81 and MO-1614.

charge fees for requests under the *Act* and it 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,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure[.]

[11] 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.
- ...
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

[12] In its representations, the university submits that it based its fee estimate on 39 emails (totaling 89 pages) which its Privacy Officer deemed to be a sufficient representative sample for estimating fees. The university explains that there were just over 8000 emails in two relevant email accounts, and the representative 39 emails were selected by the workshop director. It adds that the workshop director is most familiar with the emails and she selected the emails by going through one of the email accounts by date and choosing an email or two from each month.

[13] The university explains that its fee estimate of \$8,252.00 is based on a cost of \$4,740.00 for preparation of the records and \$3,512.00 in photocopying costs. It states that 48 of the 89 pages in the representative sample required the redaction of personal information of individuals, including names, contact information and other personal information. It states that expanding that sample to the full set of 17,560 pages of records would mean that approximately 9,482 pages would require severing. It adds that because the required redaction per page is minimal and not significant enough to warrant the two minutes per page that has been permitted by orders of this office, it allocated only one minute of redacting time per page in its fee estimate calculation. It submits that in accordance with section 57(1) of the *Act* it calculated 9,482 minutes of preparation time at \$30.00 per hour for a total of \$4,740.00 in preparation fees.

[14] The only other cost included by the university in its fee estimate is the photocopying fee of \$3,512.00 for 17,560 pages, calculated at \$0.20 per page. Along with its representations, the university provides a copy of its complete representative

sample highlighting the information that would require severing. The university explains that it did not calculate a fee for search time because the search time involved in looking through two email mailboxes in Microsoft Outlook was brief. However, it notes that it may assess search fees in the future if the appellant asks for only certain categories of emails because in that case, each email will have to be read in order to determine responsiveness. As noted above, the appellant did not provide representations.

[15] Having reviewed the representative sample provided by the university and its submissions on its fee estimate, I am satisfied that the university calculated its fee estimate in accordance with section 57(1) of the *Act* and the provisions of Regulation 460. The university is required by section 57(1)(b) to charge the appellant for the cost of preparing the thousands of pages of records he has requested for disclosure. This office accepts that section 57(1)(b) includes time for severing a record⁴ and that it generally takes two minutes to sever a page that requires multiple severances.⁵ The university reasonably calculated one minute of preparation time per page requiring redaction. It did so due to the minimal redaction of personal information required for the records at issue in this appeal.

[16] The university is also required to charge the appellant photocopying costs under section 57(1)(c) for the thousands of pages of records he has requested. The prescribed cost under section 6 of Regulation 460 is \$0.20 per page and the university has appropriately applied that cost. While the amount of the fee estimate is significant, it corresponds to the very substantial volume of records sought by the appellant. In the circumstances, I am satisfied that the fee estimate should be upheld.

ORDER:

I uphold the university's fee and dismiss the appeal.

Original Signed by: _____

Stella Ball
Adjudicator

_____ May 18, 2016

⁴ Order P-4.

⁵ Orders MO-1169, PO-1721, PO-1834 and PO-1990.