Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3755

Appeal PA16-156

Ministry of Economic Development, Employment and Infrastructure

July 28, 2017

Summary: The Ministry of Economic Development, Employment and Infrastructure[1] (the ministry) received a 31-item request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*) from the Accessibility for Ontarians with Disabilities Act Alliance (the Alliance) for records related to the Ontario government's compliance with the *Accessibility for Ontarians with Disabilities Act* (the *AODA*), as well as a fee waiver request for any fees charged to process the request. This order reduces the search fee to $750.00 from $4,200.00 and upholds the decision not to waive the $750.00 allowable search fee.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 57(1) and (4); *Accessibility for Ontarians with Disabilities Act*, section 1.

Orders Considered: Orders MO-1895, PO-1962, PO-2686, and PO-3602.

OVERVIEW:

[1] The Ministry of Economic Development, Employment and Infrastructure (the ministry) received a 31-item request dated June 4, 2015 under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) from the Accessibility for

[1] Now the Ministry of Economic Development and Growth.

Ontarians with Disabilities Act Alliance (the Alliance).[2] The request sought records related to the Ontario government's compliance with the *Accessibility for Ontarians with Disabilities Act* (the *AODA*), as well as a fee waiver for any fees charged to process the request.

[2] The 31-item request was divided into six categories, as follows:

> I. Regarding Levels of Compliance with the *AODA* (items 1 to 4)
>
> II. Regarding the Government's Enforcement of the *AODA* (items 5 to 18)
>
> III. Regarding Budget for and spending on the *AODA's* Implementation and Enforcement (items 19 to 22)
>
> IV. Regarding Public Education on Accessibility (items 23 to 25)
>
> V. Regarding Efforts to Incorporate the Promotion of Accessibility across Ontario's Economy in the Economic Development Ministry's Various Programs and Activities (items 26 to 27)
>
> VI. Other Topics (items 28 to 31)

[3] On July 7, 2015, the ministry provided questions for clarification to the Alliance in relation to items 10, 16, 18, 28 and 29 of the request. On July 29, 2015, after receiving the July 7, 2015 letter in an accessible format, the Alliance responded in writing to the ministry's questions.

[4] The Alliance[3] then participated on August 7, 2015 in a teleconference call with staff members from the Accessibility Directorate of Ontario (the ADO)[4] and the ministry's freedom of information coordinator (the foic) to further clarify the scope of the request.

[5] On August 31, 2015, the ministry issued a fee estimate decision which reflected the actual search fees for searching for records responsive to the Alliance's 31-item request totaling $4,250.00, for 8,500 minutes of search time.[5] The ministry asked the Alliance to provide a 50 percent deposit in order to continue to process the request. In

---

[2] The request was made on behalf of the Alliance by the Chair of the Alliance.

[3] The Chair of the Alliance was the contact person for all communications between the ministry and the Alliance.

[4] The ADO is part of the ministry.

[5] Section 6 of Regulation 460 applies. This section reads in part:

> The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.

this decision letter, the ministry did not provide details as to the possible application of any exemptions regarding access to the responsive records.[6]

[6] In its August 31, 2015 decision letter, the ministry advised that, as the Alliance had indicated that it has no funds of its own, the Alliance should provide the ministry with supporting financial statements regarding its financial situation.

[7] The Alliance responded to the ministry on August 31, 2015, providing it with further information regarding the Alliance's finances and requesting a breakdown of any information which could be provided with little or no search time.

[8] On September 24, 2015, the ministry responded to the Alliance's request for information that could be provided with minimal search time, and stated that it would proceed as soon as possible to issue a decision on access to records that respond to the following 13 items of the request: items 1, 2, 3, 6, 7, 8, 9, 12, 13, 14, 17, 26 and 30. The ministry subsequently provided the Alliance with full disclosure of these records at no cost, therefore, the search fees for these 13 items of the request are not at issue in this appeal.

[9] No responsive records were located by the ministry for item 4 of the request, therefore, this item of the request is also not at issue in this appeal.

[10] In its September 24, 2015 letter, the ministry provided a table breaking down the search time and the search fee for the remaining 17 items of the Alliance's request,[7] as follows:

Item #	Search Time	Fee ($)[8]
5	1 hour	30.00
10	50 hours	1500.00
11	2.5 hours	75.00
15	4 hours	120.00

[6] At the adjudication stage of the appeal, I asked the ministry to provide the Alliance with an interim access decision setting out an indication of the exemptions or other provisions the institution might rely on to refuse access, a description of the records, and an estimate of the extent to which access is likely to be granted. An interim access decision was issued on December 6, 2016. The interim access decision process assists requesters to decide whether to narrow the scope of a request in order to reduce the fees. See Order MO-1520-I.

[7] The $4,250 fee was reduced to $4,200 after disclosure of items 1, 2, 3, 6, 7, 8, 9, 12, 13, 14, 17, 26 and 30, being the items that required minimal search time.

[8] Although the ministry listed the fees in this table as fee estimates, the fees were the actual search fees claimed to conduct the search.

Item #	Search Time	Fee ($)[8]
16	1 hour	30.00
18	16 hours	480.00
19	1.5 hours	45.00
20	1.5 hours	45.00
21	2 hours	60.00
22	15 hours	450.00
23	8 hours	240.00
24	1.5 hours	45.00
25	1.5 hours	45.00
27	2 hours	60.00
28	12 hours	360.00
29	10.5 hours	315.00
31	10 hour	300.00
Total =	**140 hours**	**4,200.00**

[11] The ministry also advised the Alliance that the information it had provided to support the request for a fee waiver was insufficient. The ministry requested further information to support this request.[9]

[12] On November 4, 2015, the Alliance responded to the ministry, providing further information supporting its request for a fee waiver. On December 22, 2015, the ministry advised the Alliance that it had not met the requirements to qualify for a fee waiver on the basis of financial hardship. The ministry also advised the Alliance that the public interest ground it had raised was not an enumerated consideration for a fee waiver under section 57(4) of the *Act*.

[13] The Alliance subsequently responded to the ministry on January 15, 2016

[9] The ministry stated in its September 24, 2015 letter that: "For the purposes of establishing financial hardship, financial information that may be provided to support a fee waiver request includes the assets, income, expenses, and liabilities of the individual or group making the request in order to demonstrate why the payment would cause financial hardship."

concerning its fee waiver request. The ministry responded on January 27, 2016 maintaining its decision not to grant a fee waiver.

[14] The Alliance[10] then appealed the ministry's decision on both the fee and the denial of fee waiver and appeal file PA16-156 was opened in March 2016.

[15] As mediation did not resolve the issues in this appeal, on October 28, 2016 this file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry.

[16] The appellant asked for an oral inquiry. I sent a Notice of Inquiry to the Alliance and the ministry notifying them of the date for the oral inquiry[11] of January 31, 2017 and advising them to provide a list of their witnesses' names and titles, as well as any written documentation they intend to rely on at the oral inquiry, by January 24, 2017. On that date, each party provided its memorandum of argument and supporting affidavit. In addition, the appellant provided the documents referred to in its memorandum of argument. On January 30, 2017, the appellant provided a Reply memorandum and supporting affidavit.

[17] On January 31, 2017, I held an in-person oral inquiry on the issues of whether the ministry's fee and fee waiver decisions should be upheld.

[18] At the inquiry, the ministry was represented by counsel, who provided submissions on behalf of the ministry. In addition, the Manager of the Accessibility Policy Unit (the APU) of the ADO[12] provided testimony in support of her affidavit.

[19] Testifying on behalf of the Alliance at the oral inquiry was the Chair of the Alliance.

[20] At the oral inquiry, the ministry stated that it would only charge the appellant the search fee and would not charge the appellant fees for preparing the records for disclosure, photocopying fees, shipping fees or any other fees. Therefore, only the amount of the ministry's search fee of $4,200.00 and whether this search fee should be waived are at issue in this order.

[21] In this order, I partially uphold the ministry's search fee in the amount of $750.00. I also find that it would not be fair and equitable to waive that lower fee amount.

---

[10] The Alliance and the Chair are also referred to as the appellant in this order.
[11] Also referred to as the hearing in this order.
[12] Referred to as the manager in this order.

ISSUES:

A. Should the search fee of $4,200.00 be upheld?

B. Should the allowed search fee be waived?

DISCUSSION:

A. Should the search fee of $4,200.00 be upheld?

[22] Where the fee exceeds $25, an institution must provide the requester with a fee estimate.[13]

[23] 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.[14]

[24] As stated above, the $4,200.00 fee estimate was based on the actual work done by the ministry to respond to the request.

[25] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823 and may uphold the institution's decision or vary it.[15]

[26] 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;

---

[13] Section 57(3).
[14] Order MO-1699.
[15] Orders MO-2753 and MO-3121.

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

[27] More specific provisions regarding fees are found in section 6 of Regulation 460, which 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.

[28] Therefore, section 57(1)(a) of the *Act* requires an institution to charge search fees for requests under the *Act*. More specific provisions regarding search fees are found in item 3 of section 6 of Regulation 460, which allows an institution to charge $7.50 for each 15 minutes spent by any person manually searching for a record.

[29] The ministry was asked the following questions in the Notice of Inquiry regarding its search fee:

> Did the institution base its fee on the actual work done to respond to the request? If not, did the institution
>
> • seek the advice of an individual who is familiar with the type and contents of the requested records? If so, who is the individual, and to what extent is he or she familiar with the records?
>
> • base its decision on a representative sample of the records? If so, how was the sample determined, and what records were identified?

> How are the requested records kept and maintained?
>
> What actions are necessary to locate the requested records? What is the estimated or actual amount of time involved in each action?

[30] Both the appellant and the ministry submitted memorandums of argument, accompanied by supporting affidavits, prior to the hearing on the issues in this appeal. These issues were further explored at the oral inquiry.

[31] At the hearing, the ministry's evidence on the search fee included the oral testimony of the manager. The appellant's evidence on the search fee included testimony of the Chair of the Alliance.

[32] The manager testified that she provided management oversight for the coordination of the search for records. She was assigned to this role in June 2015 after receipt of the request, and only for this specific freedom of information (FOI) request, due to its complex and broad nature. In this capacity, she provided direction, assistance and advice to her management colleagues in the ADO who were tasked with searching for records related to their roles and individual files.

[33] Concerning the fee, the ministry states that the fee of $4,200.00 is based on the actual search time of 140 hours spent by the ADO and the ministry locating approximately 3,600 pages of responsive records over a period of approximately two months, between June and August of 2015. The bulk of this search time was incurred between August 7 and August 31, 2015.

[34] In the manager's affidavit, the ministry provided certain details, as set out below, of which unit's staff members conducted searches for each item of the request remaining at issue.

[35] The ministry did not breakdown the search time for each item of the request beyond the total number of hours required to search for each item, as provided to the appellant in its September 24, 2015 decision letter.[16]

[36] Both prior to and at the oral inquiry, the appellant asked the ministry to provide the back-up documents that contain the details about the specifics of the searches undertaken for each part of each item and a further breakdown of the search time beyond the global figure for each item set out in the ministry's table in its September 24, 2015 decision letter.

[37] At the oral inquiry, I also asked the ministry to provide these back-up documents. Although these documents exist, the ministry refused to provide them to either the appellant or to me.

---

[16] As set out in the table above.

[38] In particular, it was clear from the manager's testimony that there existed underlying documents, including emails to her from ministry staff, breaking down the fees claimed for each item of the request. Besides being asked to provide the back-up documents at the hearing, I also told the ministry that it could provide these back-up documents to the appellant and me after the hearing.

[39] Despite the existence of back-up documents, the ministry's counsel took the position that the ministry would not provide underlying documents to support its claims. The ministry's counsel appeared to contradict the manager about the information in the back-up documents. In particular, at the hearing, in refusing to provide the back-up documents supporting the search time, the ministry's counsel stated that:

> [The appellant] wants *Stinchcombe*[17] level disclosure. That's a criminal law term. It's as if he is defence counsel defending a murder prosecution. He wants every piece of paper the ministry has…
>
> It is not a search. It is not questioning the scope of the search. It's only the fee amount…
>
> I think that our position is that really it is my understanding that [the manager] in her affidavit has summarized everything that was done and all of the information that we could produce by producing the back-up documents. And other than the fact identifying the individuals who actually did the search, that in my submission is not relevant. It is my understanding there is no additional information…

[40] The ministry relies on only the affidavit and oral testimony of the manger to support its search fee amount of $4,200.00.

[41] Taking into account the ministry's refusal to provide the back-up documents documenting the ministry staff's specific search efforts for each item, along with the manager's oral testimony and the input from the ministry's counsel at the hearing, I find that the manager's knowledge of the search was basically limited to what she had stated in her affidavit. I have reproduced below most of the manager's evidence contained in her affidavit in my analysis as to the reasonableness of the search fee for each item.

[42] As set out below, I find that the ministry's evidence on the actual time spent and the searches conducted was inadequate in many cases to support the claimed fee for each item.

[43] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460.

---

[17] *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.

[44] The Notice of Inquiry sent to the parties set out a number of items that fees cannot be charged for under section 57(1) of *FIPPA* and Regulation 460. These items include:

- deciding whether or not to claim an exemption[18]
- identifying records requiring severing[19]
- identifying and preparing records requiring third party notice[20]
- removing paper clips, tape and staples and packaging records for shipment[21]
- transporting records to the mailroom or arranging for courier service[22]
- assembling information and proofing data[23]
- photocopying[24]
- preparing an index of records or a decision letter[25]
- re-filing and re-storing records to their original state after they have been reviewed and copied[26]
- preparing a record for disclosure that contains the requester's personal information.[27]
- for a computer to compile and print information[28]
- correspondence to notify affected parties or discharge other general responsibilities under the *Act*[29]
- time for responding to the requester[30]
- time for responding to this office during the course of an appeal[31]

---

[18] Orders P-4, M-376 and P-1536.
[19] Order MO-1380.
[20] Order MO-1380.
[21] Order PO-2574.
[22] Order P-4.
[23] Order M-1083.
[24] Orders P-184 and P-890.
[25] Orders P-741 and P-1536.
[26] Order PO-2574.
[27] Regulation 460, section 6.1.
[28] Order M-1083.
[29] Order MO-2274.
[30] Order MO-1380.

- legal costs associated with the request[32]
- comparing records in a request with those in another request for consistency[33]
- GST[34]
- costs, even if invoiced, that would not have been incurred had the request been processed by the institution's staff[35]
- coordinating a search for records[36]

[45] The ministry's decision letters of August 31, 2015 and September 24, 2015 only address the search fee.

[46] However, in the Notice of Inquiry, the ministry was asked about all of the fees set out in section 57(1) of the *Act* and section 6 of Regulation 460. The non-allowable items set out above to process a request were set out in the Notice of Inquiry with specific questions asking the ministry the specific steps taken to respond to the request.

[47] In response, the ministry only addressed the search fee questions in its affidavit and memorandum of argument. At the hearing, the ministry's evidence was about the search fee, although questions about the preparation fee[37] were also addressed by me at the hearing as discussed below. At the end of the hearing, in its closing submissions, the ministry withdrew its claim for any additional fees,[38] including preparation fees.

[48] The ministry's evidence in support of its search efforts contained in the manager's affidavit does not, for the most part, address the specifics of the search efforts. Therefore, in many of the items of the request reviewed below it is difficult to ascertain if non-allowable fees have been charged in the ministry's $4,200.00 fee. As detailed further below, the evidence indicates that part of the search time fee was for non-chargeable activities.

[49] In determining the reasonableness of the search fee for each item as set out below, as well as in considering whether a fee waiver is warranted in this appeal, I have considered the efforts made by both parties to clarify the request to reduce search fees. During the hearing and in the affidavit the ministry often referred to challenges it had in

---

[31] Order MO-1380.
[32] Order MO-1380.
[33] Order MO-1532.
[34] Order MO-2274.
[35] Order P-1536.
[36] Order PO-1943.
[37] In its affidavit, the ministry anticipated that approximately 15 percent of the records (or 540 pages) would likely contain information that may be exempt.
[38] These additional fees included fees to convert the responsive records to an accessible format.

responding to specific items in the request, thereby incurring higher time searching for the responsive records. When informed of these difficulties at the hearing, the appellant provided clarifications that would have assisted the ministry in its search efforts, thereby reducing the search fee. I will address the ministry's evidence on its search difficulties below when I discuss each item individually.

[50] Overall, as was clear from the appellant's evidence, the appellant was at all times ready to work with the ministry to save costs. In its June 4, 2015 request, the Alliance states:

> If some requested information would require extensive efforts to collect and provide, please contact me. I [the Chair of the Alliance] am open to adjusting the request for information to reduce the time and cost to the Government of complying with this request, so long as I can obtain the substance of the information I am seeking. I have assisted with just such an issue in the past, and am happy to do so again...
>
> I ask in advance that any fee for complying with this request be waived. I do so because this is a public interest application. I make the request for information under the Freedom of Information Act as a matter of public interest. I am the chair of the Accessibility for Ontarians with Disabilities Act Alliance, a volunteer position with a volunteer coalition. Our coalition is a non-partisan, non-profit community coalition advocating for the effective implementation of the Accessibility for Ontarians with Disabilities Act 2005. We have no funds of our own... [emphasis added by me]

[51] The appellant also offered several times throughout the process, aside from the offer in its request, to provide the ministry with assistance to clarify the request in order to reduce the fee. The appellant also testified that the Alliance would have readily agreed to work with the ministry at any time to clarify or narrow the scope of his request to save costs.

[52] The appellant reiterated its position on June 9, 2015 (on the same day that the ministry acknowledged receipt of the request) in an email to the ministry, which read:

> …And as in the past, if there are ways I can reduce the search time by clarifying anything, just let me know and I am happy to help out.

[53] Other than a July 7, 2015 clarification request asking three questions,[39] the appellant did not receive any other written correspondence from the ministry asking the appellant to clarify its request. In response to the appellant's invitation, the ministry sent correspondence seeking to clarify certain parts of the request. The ministry's July 7, 2015 correspondence reads:

---

[39] Received by the appellant in accessible format on July 27, 2015.

Clarification Requirements

[Item] 10 - If not already disclosed as a result of my August 15, 2013 Freedom of Information application, any plans, policies, directives or instructions for enforcement of any requirements or provisions of the *AODA* or of any accessibility standards enacted under it, including for example, for conducting any audit or inspection of that organization:

> a) In the case of any private sector organization with 20 or more employees that has not filed the required accessibility report under section 14 of the *AODA*.
>
> b) In the case of any private sector organization with 20 or more employees that has filed a required Accessibility Report under s. 14 of the *AODA*.
>
> c) In the case of any private sector organization with fewer than 20 employees.
>
> d) In the case of any public sector organization.

Clarification: The ministry assumes you are seeking any updated versions of documents that were provided in 2013 along with any net new, final documents. Is that correct?

[Items] 16, 18b and 29

Clarification: For each of these questions,[40] the ministry seeks clarification of your use of the term "records." The ministry assumes that you are asking for approved documents such as: briefing decks, decision notes, information notes. Is this correct?

[Item] 28 - From 2012 to the present, any record of proposals, options, research or recommendations produced by or on behalf of the Accessibility Directorate of Ontario, on ways to increase the accessibility of tourism or hospitality services in any part of Ontario in connection with the 2015 Toronto Pan/ParaPan American Games, or to produce a legacy of increased tourism/ hospitality services accessibility as a result of the Games. Without limiting the generality of this request, tourism and hospitality services includes restaurants, stores, public transit, taxis, hotels, and other such services available to the public.

[40] Items of the appellant's request are also referred to as questions by the ministry.

> Clarification question: The ministry assumes you are not seeking documents related to the Canadian Paralympic Committee (CPC) as these are related to sport and not accessible tourism.

[54] The cover email to the July 7, 2015 correspondence to the appellant reads:

> Thank you for your response of June 9, 2015 with respect to the search and clarification of this request.
>
> As you may be aware, in general, access requests must be responded to within 30 calendar days from the date a complete request is received. A complete request is one which has been clarified or one which provides sufficient detail to allow the institution to understand what information is being requested. Please be reminded that the 30-day time period starts the day the institution receives a complete request or final clarification of a request.
>
> The ministry has been working attentively on reviewing the points itemized in your request and it has been determined that there are portions of the request that require clarification. The assumptions indicated in the clarification questions are intended to direct searches so that the most relevant records are provided, while also reducing the amount of search time/fee estimate since, as worded, the requests for "any record" would result in undue search time and require extensive review of records and would result in a potentially longer extension of time to provide the records.
>
> Please see attached the points that require your clarification and response.
>
> Once the clarification is finalized, the ministry will determine if there are additional costs and provide a fee estimate. The ministry will take into consideration your advance request and justification to waive any additional fees associated with this request and provide you with a decision on whether or not the waiver is granted. In keeping with the FOI process the ministry will provide you with a letter outlining the estimated fee amount for this request and the guidelines.
>
> Subsequent to the fee estimate letter being sent, if an extension of time is required (e.g. to search for records, or to undertake consultations), a letter identifying the extended due date will be provided to you.

[55] The appellant responded two days after receiving the clarification request (on July 29, 2015) to the ministry's three clarification questions, as follows:

> 1. Re my [item] 10

> …My Response: I am seeking any updated versions of documents that were provided in 2013, as well as any new documents, whether or not they are "net new" or "final." I do not know what you mean by "net new" and as such, I do not include it in my clarification. I am happy to discuss this with you on the phone if that would help.
>
> 2. Re [items] 16, 18b and 29-
>
> …My Response: I am not sure what you mean by "approved documents." I am not limiting this request to documents which were approved by a high official, such as the minister, deputy minister, or assistant deputy minister. I include in this part of my application, for example, such things as memos e.g. within the ADO, discussing how the related topic might be addressed, whether or not that memo ever was formally approved by anyone other than its author. It might be best to discuss this requested clarification on the phone further, in the event that I could reduce and simplify your efforts beyond what I have written here.
>
> 3. Re [item] 28
>
> …My Response: If the Accessibility Directorate of Ontario made any proposals regarding accessible tourism and hospitality services to CPC, then I do not exclude these from my application. While I doubt the Ministry made discrete proposals on this topic to CPC alone, it may be that the Ministry presented some ideas to a meeting somewhere at which CPC was present, e.g. one which may also have been attended by the Toronto 2015 Games Ministry and/or the Toronto 2015 organization. I would not exempt any such records from my application. Here again, I am happy to discuss the requested clarification on the phone, if that would assist you.

[56] Next, on August 7, 2015, after receiving the appellant's response to the questions, the parties participated in a teleconference call, in particular to attempt to clarify what types of records the appellant was seeking for items 4, 11, 16, 17, 18 and 29 of the request.

[57] The ministry states that during this call, the appellant did not propose to significantly narrow the scope or reduce the number of items in its request. It states that the appellant advised that only final drafts of documents were to be included in the records package. The ministry's position in its memorandum of argument is that ministry officials participated in a telephone call to narrow the scope of the records sought to reduce search time and that this meeting did not result in a resolution.

[58] The appellant disputes the ministry's assertion in its memorandum of argument that he did not assist to reduce the search time in the August 7, 2015 call. The appellant states that it made it clear to the ministry during that conversation (and

elsewhere during this FOI process), that it was happy to help the ministry at any time to focus or narrow its search efforts.

[59] The appellant did not have notes from the August 7, 2015 telephone call and asked the ministry for its notes of the call. The ministry was also asked at the hearing to produce these notes. Although the ministry has six pages of notes taken at the August 7, 2015 call, it refused to provide them either at or after the hearing in order to determine what efforts the ministry made during that call to clarify the request to reduce the search time for the items in the request, other than the brief information it provided on items 4, 11, 16, 17, 18 and 29.

[60] The ministry's counsel acknowledged that it had received a request for the August 7, 2015 notes from the appellant the week before the hearing, but stated that there was not enough time to type up the six pages of point form notes. Neither the appellant nor I required that these notes be typed up. The ministry still refused to provide a copy of these notes to either the appellant or to me.

[61] The manager testified that the call of August 7, 2015 only dealt with these six items, items 4, 11, 16, 17, 18 and 29. She also stated that during this call the appellant gave the ministry a better sense as to how to narrow or search for these six specific items. Of these six items, the ministry then determined that there were no records responsive to item 4 and provided the appellant with the records responsive to item 17 at no charge.

[62] Based on the appellant's repeated offers from the time of the request to assist in clarifying the request to save cost, the ministry's evidence that the call of August 7, 2015 only dealt with items 4, 11, 16, 17, 18 and 29, and the ministry's unwillingness to produce the notes of the August 7 call, I do not accept the ministry's assertion in its memorandum of argument that the appellant was unwilling to work with the ministry to narrow the scope or reduce the number of items in its request to save costs.

[63] In fact, the manager testified that the appellant offered on August 7, 2017 to entertain a partial request or eliminate portions of the request to save costs. Instead of seeking further clarification from the appellant after that date, while the appellant was under the impression that the ministry would be in contact again to clarify further any difficulties it was having in responding to the request, the ministry proceeded to complete the search.

[64] By August 31, 2015, the ministry had completed the search and it issued a search fee estimate decision of $4,250.00. This was actually the search fee and represented 141.66 hours (or 8,500 minutes) of search time.

[65] On September 24, 2015, the ministry provided a breakdown of the fee in table form, which was now $4,200.00, for 140 hours of search time after the removal of

items 1, 2, 3, 4, 6, 7, 8, 9, 12, 13, 14, 17, 26 and 30 from the 31-item request.[41] This table, as reproduced above, provided as follows:

Item #	Search Time	Fee ($)[42]
5	1 hour	30.00
10	50 hours	1500.00
11	2.5 hours	75.00
15	4 hours	120.00
16	1 hour	30.00
18	16 hours	480.00
19	1.5 hours	45.00
20	1.5 hours	45.00
21	2 hours	60.00
22	15 hours	450.00
23	8 hours	240.00
24	1.5 hours	45.00
25	1.5 hours	45.00
27	2 hours	60.00
28	12 hours	360.00
29	10.5 hours	315.00
31	10 hour	300.00
Total =	**140 hours**	**4,200.00**

[41] The actual search fee is $4,200 for the items at issue in this appeal, being all of the items in the 31-part request, except for items 1, 2, 3, 6, 7, 8, 9, 12, 13, 14, 17, 26 and 30 which had been disclosed to the appellant at no cost as requiring minimal search time. Also item 4 is not at issue as there are no records responsive to this item.

[42] Although the ministry listed the fees in this table as fee estimates, the fees were the actual search fees to conduct the search.

[66] It is clear from the parties' evidence that the clarifications sought by the ministry prior to the fee decision of August 31, 2015 dealt primarily with the specific items listed above in its July 7, 2015 email and its August 7, 2015 teleconference call. Other than that, the ministry did not seek to clarify and address with the appellant any complications the ministry was encountering in responding to the request. Significantly, the ministry did not address the difficulties it was having with item 10 in the August 7, 2015 call.

[67] At the time of the August 31, 2015 fee decision, the search had been completed and had been completed before the appellant was informed of the search fee. If the ministry required more time to allow it to complete the search in order to seek clarification from the appellant regarding any difficulties it was having in completing the search, it could have sought a time extension under section 27 of *FIPPA*.[43] The ministry confirmed that this was a possibility in its June 9, 2015 email to the appellant, set out above.

[68] The Alliance made it clear to the ministry throughout the processing of this request that it had no funds and was seeking a fee waiver and was willing to work with the ministry to reduce costs. As referred to above, in the request the appellant states:

> If some requested information would require extensive efforts to collect and provide, please contact me. I am open to adjusting the request for information to reduce the time and cost to the Government of complying with this request, so long as I can obtain the substance of the information I am seeking. I have assisted with just such an issue in the past, and am happy to do so again.
>
> I am not seeking disclosure of any privileged legal advice sought or obtained by or within the Government.
>
> I ask in advance that any fee for complying with this request be waived. I do so because this is a public interest application. I make the request for

---

[43] Section 27 provides:

> A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,
>
> (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
>
> (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.
>
> (2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,
>
> (a) the length of the extension;
>
> (b) the reason for the extension; and
>
> (c) that the person who made the request may ask the Commissioner to review the extension.

> information under the Freedom of Information Act as a matter of public interest. I am the chair of the Accessibility for Ontarians with Disabilities Act Alliance, a volunteer position with a volunteer coalition. Our coalition is a non-partisan, non-profit community coalition advocating for the effective implementation of the Accessibility for Ontarians with Disabilities Act 2005. We have no funds of our own.
>
> I make this request for information in good faith. The search fee should not become an unfair barrier to access to information for such a community group or for people with disabilities generally. The AODA Alliance has been recognized by all parties in the Ontario Legislature as a leading voice advocating for accessibility for people with disabilities in Ontario. As one illustration of this, each of the political parties has made their election commitments on disability accessibility in the form of letters to the AODA Alliance. [emphasis added by me]

[69] The search time is set out in the table in the September 24, 2015 search fee decision letter, and is set out above. At the oral inquiry, I sought, in particular, additional evidence from the parties about the largest block of time, being 50 hours of search time for item 10 of the request, which reads:

> If not already disclosed as a result of my August 15, 2013 Freedom of Information application, any plans, policies, directives or instructions for enforcement of any requirements or provisions of the *AODA* or of any accessibility standards enacted under it, including for example, for conducting any audit or inspection of that organization:
>
> > a) In the case of any private sector organization with 20 or more employees that has not filed the required accessibility report under section 14 of the *AODA*.
> >
> > b) In the case of any private sector organization with 20 or more employees that has filed a required Accessibility Report under s. 14 of the *AODA*.
> >
> > c) In the case of any private sector organization with fewer than 20 employees.
> >
> > d) In the case of any public sector organization.

[70] Concerning item 10, the ministry only asked in its clarification request if:

> [the Alliance is] seeking any updated versions of documents that were provided in 2013 along with any net new, final documents…

[71] The appellant responded and asked what "net new" meant, which was not

answered by the ministry. Despite the difficulties in responding to this item, item 10 was not raised by the ministry for discussion with the appellant during the teleconference of August 7, 2015 or at any time after that call.

[72] In its supporting affidavit to its written representations, the ministry states concerning item 10 that:

> a. Responding to this question required searches to be conducted by eight staff members in the Compliance and Enforcement Unit, which totaled 50 hours of search time. Staff members searched paper records and several electronic databases, including shared drives, emails, the Ontario Correspondent Management System (the OCMS).
>
> b. The ministry was required to consult with Treasury Board and Ontario Shared Services for recommendations regarding disclosure of certain records identified in response to [item] 10.
>
> c. Locating records in response to [item] 10 posed challenges for ADO staff, as the time period for responsive records was uncertain. The request was for all responsive records that had not been provided in response to the Requester's prior 2013 request, and any records created since 2013. This resulted in significantly more search time as every potentially responsive record in the custody or control of the ADO that could be within scope had to be identified, then compared against the records disclosed in response to the [appellant's] prior request, then either included or excluded accordingly.
>
> d. The records search for [item] 10 also involved the evaluation of a large amount of data to determine if it was within the scope of the request. Many changes and updates have recently been made to the ADO's compliance and improvement framework, including new compliance improvement policies and procedures and updated and new inspections policies and procedures. The Compliance and Enforcement Unit also recently implemented the enforcement piece of Compliance and Enforcement Strategy. This resulted in a large volume of new policies, operational procedures, operations' documents and new linkages (for example, Ontario Shared Services which collects monetary penalties, and the License Appeal Tribunal which hears enforcement appeals under the *AODA*). Since the requester's previous FOI request in 2013, the ADO's framework for assuring compliance (from providing education and assistance to auditing and enforcement) has matured and developed.
>
> e. For example, since 2013 the ADO has begun issuing director's orders to comply under the *AODA*, some of which have included requirements to pay administrative monetary penalties. In order to collect unpaid

> penalties, the Directorate had to establish protocols and procedures with Ontario Shared Services in order to provide collections services and track payments. Similarly, protocols and procedures had to be established with the License Appeal Tribunal that was designated to hear appeals under the *AODA* made by organizations.
>
> f. For each of these new areas of business, the ADO generated new records and documents in its electronic database that had to be searched. A total of 165 responsive records were identified in response to [item] 10. Responsive records include: reports, briefing materials for decision makers, feedback from decision-makers, proposals, planning documents, decision notes over several years, templates, scripts, internal protocols and processes for the purposes of conducting compliance activities; Documents for appointing inspectors; and third party terms of reference. [Emphasis added by me]

[73] The appellant disputed the reasonableness of the time spent on this and other items in its request for a number of reasons. Concerning item 10, the appellant provided extensive representations on why the responsive records should have been readily available, based on the initiatives that had been announced by the government, and based on the ability of the ministry to locate similar records in response to its 2013 request.

[74] The appellant states that in 2013 it received much of the same information for the item 10 information and many of the other items listed in its June 4, 2015 request, albeit for records dated before the date of its August 15, 2013 request (the 2013 request). It states that in the current request of June 4, 2015 it was primarily seeking an update of the information it received in 2013.

[75] The appellant was eventually provided the records in the August 2013 request at no charge by the ministry, instead of at the fee sought by the ministry at that time of $2,325.00.[44]

[76] As set out above, significantly more search time was spent by the ministry on item 10 in locating records dated between 2013 and 2015. The ministry states that every potentially responsive record in the custody or control of the ADO that could be within the scope had to be identified, then compared against the records disclosed in response to the appellant's prior request, then either included or excluded accordingly.

---

[44] The ministry states that it provided the records responsive to the 2013 written access request at no charge pursuant to section 63 of *FIPPA*, which provides for access to be given in response to an oral request or in the absence of a request. Section 63 reads in part:

> Where a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

[77] Concerning item 10 in particular, the appellant submits that it would have agreed to obtaining the requested item 10 records as they existed as of the date of his request, if it had known that significant time and cost would have to be expended by the ministry in comparing the item 10 records as of June 4, 2015 to those same records he obtained at no cost from the ministry in response to item 5 of his 2013 request for almost the same information.[45]

[78] For item 10 records, the ministry is charging a fee of $1,500.00 for 50 hours of search time. This amount is over three times the amount of the search time for the next two largest item, item 18 at 16 hours and item 22 at 15 hours. I acknowledge the scope of the request can vary and impact the time spent, however, I find that the time spent by the ministry is excessive based on the evidence and in comparison to the claimed search time for the other items in this request.

[79] Concerning item 10, taking into account:

- the ability of the ministry to readily locate similar records in response to the 2013 request,
- the significantly higher search time for item 10 in comparison to the other items' search time in the request at issue,
- the lack of a response to the appellant's question as to what the ministry's query to it about "net new" meant,
- the ministry's decision not to clarify the time frame for this item, and
- the ministry's refusal to provide back-up documents as to the actual amount of time involved in each action undertaken in responding to this item,

and as discussed in further detail below, I find that the 50 hours of search time for a search fee of $1,500.00 is unreasonable in the circumstances of this appeal.

[80] According to the ministry's evidence, a significant portion of the 50 hours of search time searching for records responsive to item 10 was spent comparing records to those which had been previously disclosed to the appellant. The ministry was asked about the time spent in comparing the information for item 10 but did not know how much time it spent comparing records. It was well aware of the appellant's lack of funds and its willingness to assist the ministry to reduce the cost as much as possible. The ministry's evidence was that it could have easily provided the information available as of the date of the request, which the appellant would have readily accepted.

---

[45] Item 5 of the appellant's 2013 request was identical to item 10 of the 2015 request, except the 2015 request also sought records about public sector organizations, which the appellant testified should have been readily available.

[81] Based on all of the evidence, I find that before spending a substantial amount of time comparing records, the ministry should have advised the appellant as to the time consuming nature of comparing the current records to that which it had provided the appellant in 2013 and asked whether the appellant was content to simply accept all responsive records without removal of the information that had been previously provided in 2013.

[82] Section 24(2) of *FIPPA* provides that:

> If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).[46]

[83] In the circumstances, the ministry should have sought clarification from the appellant as to what responsive records would satisfy item 10 of the request. This is supported by the following ministry statements in its written representations:

- the time period for responsive records was uncertain.
- Since the requester's previous FOI request in 2013, the ADO's framework for assuring compliance (from providing education and assistance to auditing and enforcement) has matured and developed.

[84] In addition, the ministry's affidavit reveals that the ministry's 50-hour search time for item 10 included non-chargeable activities. The ministry states that it:

> …was required to consult with Treasury Board and Ontario Shared Services for recommendations regarding disclosure of certain records identified in response to [item] 10.

[85] As set out in the Notice of Inquiry sent to the parties, section 57(1) does not include time for deciding whether or not to claim an exemption[47] or identifying records requiring severing.[48]

---

[46] Section 24(1) reads:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose.

[47] Orders P-4, M-376 and P-1536.

[48] Order MO-1380.

[86] Instead of attempting to further clarify the request, particularly with respect to item 10, which it did not discuss with the appellant in the August 7, 2015 call, the ministry proceeded to locate the responsive records and complete the search in a matter of weeks from August 7, 2015 (the date of the teleconference) to August 31, 2015 (the date of the fee decision).

[87] I have considered the evidence of the parties as summarized above concerning item 10, and I have taken into consideration in particular that the ministry did not provide a breakdown of the 50 hours of search time, although requested to do so. I find that the ministry spent time unnecessarily comparing documents, which the ministry has been unable to quantify, and that the ministry has included activities in the 50 hours which are not proper search fees. Accordingly, I am disallowing the entire item 10 search fee of 50 hours totaling $1,500.00.

[88] I will now consider the remaining items in the appellant's request, in particular, the search time and hours spent per item. I have summarized the searches conducted for each item (less item 10) as set out in the ministry's affidavit, as follows:

Item	Time	Fee ($)	Searches conducted
5	1 hour	30.00	Two staff members in the Compliance Enforcement Unit (the CEU) searched the Accessibility Compliance and Tracking System (the ACTS) and the ADO's Compliance and Enforcement Database (the CED) that track all activities conducted between compliance staff and organizations required to comply with the *AODA*. One record was located.
11	2.5 hours	75.00	One staff member in the CEU, and one in the Standards Development Unit (the SDU) searched the ADO's electronic shared drive filing system, hard copy records and email records for responsive records. 52 records were located. These records were gathered by policy staff in the Standards, Policy and Compliance Branch and by Corporate Services Staff in the Business Planning and Finance Division.
15	4 hours	120.00	One staff member in the Compliance Operations Unit (the COU) searched shared drives, emails and digital reports from Service Ontario and the ACTS. One record was identified as responsive.
16	1 hour	30.00	Three staff members in the CEU and the COU searched electronic shared drive and email records. Three records were identified as responsive.

Item	Time	Fee ($)	Searches conducted
18	16 hours	480.00	Three staff members in the SDU searched electronic (shared drive), hard copy (paper filing system), and emails. The sub-questions regarding compliance outcomes also required information from other units within the ADO. 62 records were identified as responsive.
19	1.5 hours	45.00	Ministry did not provide written representations.
20	1.5 hours	45.00	Ministry did not provide written representations.
21	2 hours	60.00	Ministry did not provide written representations.
22	15 hours	450.00	Two staff members in the Public Education and Partnerships Unit (the PEPU) searched electronic shared drive records and paper records dating back to 2008.
23	8 hours	240.00	Searches were conducted by staff in the Communications Branch. 22 records were identified as responsive.
24	1.5 hours	45.00	One staff member in the Strategic Initiatives Unit (the SIU) searched for both items 24 and 25 in the electronic shared computer network drive and the OCMS. Three records were identified as responsive.
25	1.5 hours	45.00	One record was identified as responsive.
27	2 hours	60.00	Staff in the Open for Business, Policy & Strategy, and Entrepreneurship divisions searched and located 52 records.
28	12 hours	360.00	One staff member in the Strategic Initiative Unit searched. 55 records were identified.
29	10.5 hours	315.00	Three SDU staff members searched emails, electronic shared drive and OCMS, as well as hard copy records. Identifying responsive records also involved reviewing partially responsive records. Staff identified 18 records.
31	10 hour	300.00	Three Accessibility Policy Unit staff members searched the electronic shared drive and

Item	Time	Fee ($)	Searches conducted
			filing system, as well as searching through hard copy records. Staff identified 15 records as responsive.
Total =	**90 hours**	**2,700**	

[89] As referred to above, the ministry stated at the hearing that it relies on the manager's affidavit as its evidence in support of its search fee. Based on a lack of evidence, I will disallow the search time of five hours for the three items that the ministry did not provide any representations or explanation to substantiate, namely items 19 to 21, which total $150.00.

[90] I will now consider the remaining items individually, taking into account the parties' written and oral representations and the broad nature of certain items in the request.

[91] In item 5, the appellant sought:

> Please provide information on enforcement action under the *AODA* taken in 2014 on a quarterly basis, and as an annual total, and for the current year on a quarterly basis to date, and as an aggregated total, broken down by sector (private sector versus public sector) and size of organization, including, e.g.
>
> > a) The number of organizations audited for compliance with the *AODA* and any accessibility standards enacted under it.
> >
> > b) The number of organizations that were the subject of an inspection of their premises for compliance with the *AODA* and any accessibility standards enacted under it, by an inspector, appointed under s. 18 of the *AODA*, pursuant to s. 19 of the *AODA*. Included within this is a request to know the number of organizations that an inspector, appointed under s. 18 of the *AODA*, has physically visited to discharge the powers of conducting an inspection under the *AODA*.
> >
> > c) The number of notices of proposed compliance orders issued under the *AODA*, also broken down by the *AODA* requirement with which there was a lack of compliance.
> >
> > d) Numbers and amounts of proposed monetary penalties under the *AODA*, also broken down by *AODA* requirement with which there was a lack of compliance.

> e) The number of compliance orders issued and numbers and amounts of monetary penalties imposed, each also broken down by *AODA* requirement with which there was a lack of compliance.
>
> f) The number of appeals to the appeal tribunal designated under the *AODA*, from any *AODA* orders, and the outcome, also broken down by *AODA* requirement with which there was a lack of compliance. Please also provide copies of, or links to accessible postings of all appeal tribunal decisions.

[92] For item 5, the ministry states that staff members searched two electronic databases, the ACTS and CRIS, which are databases that track all activities conducted between compliance staff and organizations required to comply with the *AODA*.

[93] The ministry states that filters were applied to these databases to isolate the number of specific activities that were requested in item 5 and additional filters were applied in order to break these activities down according to the organization's sector and the quarter in which the activity took place. The total search time was 1 hour and one responsive record was located.

[94] Based on the evidence provided by the ministry, I uphold the 1-hour search fee for responding to item 5 of the request.

[95] In item 11, the appellant sought:

> Any studies, reports, option papers or other records prepared by the Accessibility Directorate of Ontario, or by any other person or organization, whether within the Ontario Government or outside the Ontario Government, subsequent to the period covered by my August 15, 2013 Freedom of Information application, on options and/or policies or practices for implementing the enforcement powers under the *AODA*, including, without limiting the generality of the foregoing, the powers to conduct audits, to impose administrative penalties, to issue compliance orders.

[96] Two and a half hours were spent searching the ADO's electronic shared drive filing system, hard copy and email records, locating 52 responsive records. Based on the evidence provided by the ministry, I uphold the search fee for responding to this part of the request.

[97] In item 15, the appellant sought:

> In her May 14, 2014 letter to the AODA Alliance, Premier Kathleen Wynne made a written election promise to establish and publicize a toll-free phone number for the public to report *AODA* violations.

> a) What specific steps has the Government taken to publicize this toll-free phone number to the public as a number for reporting *AODA* violations?
>
> b) Any plans for publicizing the toll-free number to the public as a means to report *AODA* violations;
>
> c) How many calls on that toll-free number has the Government received since January 2015, reported on a total basis and a monthly basis, limited to instances when the caller asked to report an *AODA* violation?
>
> d) A breakdown of the *AODA* violations reported on that toll-free line, e.g. based on public sector versus private sector organization, size of organization, sector of the economy if known, *AODA* accessibility standard provision alleged to be violated, and any other criteria which the Government has applied to these calls. (I do not seek the identity of the callers.)

[98] The ministry states this search required 4 hours of search time by one staff member in the Compliance Operations Unit. In item 15, the ACTS was searched along with searching shared drives, emails and digital reports from Service Ontario. One record was identified as responsive for item 15.

[99] Both items 5 and 15 were multi-part and required electronic searches and one responsive record was located for both these items. However, item 5 only required 1 hour of time to search, whereas item 15 required four hours of search time. At the hearing, the appellant testified concerning item 15 in particular that it would have been easy to narrow this item if the appellant had been advised that the ministry had not set up a communication plan for the toll-free number.

[100] Taking into account that more electronic databases were searched in item 15 than that in item 5, that the appellant specifically would have reduced the scope of this item if contacted by the ministry, the ministry's refusal to provide the back-up documents showing the specific breakdown for the 4-hour search time, I find that 1.5 hours of search time is reasonable for item 15.

[101] In item 16, the appellant sought:

> On February 19, 2015, Economic Development Minister Brad Duguid sent a letter to me, in my capacity as chair of the Accessibility for Ontarians with Disabilities Act Alliance. In it he reported that in 2013, the Government audited 1,906 private sector organizations under the *AODA*. In 2014, it audited 1,954 organizations in the private sector. Yet, in 2015, the Government plans only to audit 1,200 organizations.

> I request any records regarding the Government's decision of how many organizations to audit in 2015, including any changes to that number. Without limiting the generality of this request, I seek any record regarding who took part in any decision, options considered, and the reasons for any decision, setting that number for audits in this year, as well as the identification of the person or persons who made or approved any decision.

[102] The ministry took 1 hour to search electronically for the responsive records in item 16, which it describes as a broad request for any records regarding the ministry's decision-making process related to auditing obligated organizations under the *AODA*. I uphold the search fee for responding to this part of the request.

[103] In item 18, the appellant sought:

> In her May 16, 2014 letter to me in my capacity as chair of the Accessibility for Ontarians with Disabilities Act Alliance, setting out the Government's 2014 accessibility election pledges, Premier Wynne stated:
>
> > "With respect to additional enforcement activities, we commit to investigating the possibility of having government inspectors and investigators enforce the *AODA* within the context of existing resources and as training capacity exists."
>
> The AODA Alliance has advocated to the Government for at least four years that the Government deputize inspectors under other legislation to also serve as an *AODA* inspector or director. We understand that the Government conducted some research or investigation of this proposal.
>
> > a) What specific pilot project or projects have been conducted since 2010 on this, with what Ministry or Ministries, and over what periods?
> >
> > b) I seek records addressing any exploration, design, conduct and/or evaluation of this avenue for enforcing and/or promoting compliance with the *AODA*, as far back as 2010, and up to the date that this application is answered.
> >
> > c) How many inspectors, investigators or other public officials in other ministries were given authority to engage in enforcement activity under the *AODA*, divided by the ministry involved and the specific pilot project?
> >
> > d) How many public sector organizations were the subject of any audit or inspections as part of this program, in total and divided by year?

> e) How many private sector organizations were the subject of any audit or inspections as part of this program, broken down by year and by ministry involved in the program?
>
> f) How many *AODA* compliance orders were issued as a result of this program, broken down by public sector or private sector organization and the category or size of organization?
>
> g) How many monetary penalties were issued as a result of this program, broken down by public sector or private sector organization?
>
> h) What training was given to officials in other ministries who were deputized as an *AODA* inspector or director, and what was the duration of that training?
>
> i) What feedback, if any, was solicited from or obtained from officials of other ministries who were deputized as an *AODA* inspector or director, about their experience as such, and the effectiveness of this strategy.
>
> j) What specific plans does your Ministry have to continue or expand using inspectors or investigators at other ministries to take part in enforcement of the *AODA*? What are the time lines for these plans?

[104] The ministry states that, for item 18, it took 16 hours of search time searching electronic and paper records. The ministry did not provide a further breakdown of this time that it claims was spent in searching for item 18. It states that the sub-questions in this item covered a number of programs developed and administered by the ADO in partnership with several other ministries, including the Ministry of Labour, the Ministry of Advanced Education and Skills Development and the Ministry of Transportation. It further states that the sub-questions regarding compliance outcomes also required information from other units within the ADO.

[105] Based on my review of item 18, I find that a search time of 16 hours is excessive. By comparison, item 5 that has 6 sub-questions took 1 hour of search time by 2 staff members. I recognize that item 5 did not require a search of paper records. Taking into account the wording of item 18 and the parties' representations, I find that a more reasonable search time for item 18 is 4 hours, rendering a fee of $120.

[106] Item 22 sought information related to the ADO's administration of the EnAbling Change Program. Through the ADO, the EnAbling Change Program provides financial support and expertise to incorporated non-profit organizations, such as industry

umbrella organizations and professional associations, that have wide reach to help obligated organizations comply with the *AODA*.[49]

[107] Specifically, the appellant sought:

> For each year since 2008:
>
> a) How much was budgeted for and how much was spent by the ministry in each year on the EnAbling Change program? How much is budgeted for that program in the current fiscal year?
>
> b) In each year starting in 2008 for which this information is either already compiled or readily available, please provide a list of each EnAbling Change program or grant that the Accessibility Directorate of Ontario funded to any degree, the amount of the grant, the recipient grantee of the grant, and a description of the program funded. [emphasis added by me]

[108] The ministry's representations appear to address only item 22(b) and states that in expending 15.25 hours of search time:

> a. Searches of electronic shared drive records and paper records dating back to 2008 were required to locate responsive records. Each record had to be reviewed to verify dates, funding amounts and to create project summaries.
>
> b. Grants Ontario was also used in the search for documents. This database has archiving functions and reporting functions, but staff were still required to review some EnAbling Change files outside the system.
>
> c. Additionally, the system was only implemented in 2012, as the request goes back to 2008, substantial time was spent looking into older files created before the system was incorporated. ADO staff consolidated all the information from the various contracts into a new spreadsheet in response to [item] 22. [Emphasis added by me]

[109] The appellant states that if it had been advised that the EnAbling Change Program information was easier to gather from 2012 forward, but harder to gather before 2012 due to a change in the ministry's information technology, the appellant would have been open to discussing limiting that request to 2012 and forward.[50] The appellant made it clear in its request for item 22 that it was seeking information that was "…either already compiled or readily available."

---

[49] See http://www.grants.gov.on.ca/GrantsPortal/en/OntarioGrants/GrantOpportunities/PRDR006997.
[50] Appellant's reply affidavit, paragraph 41.

[110] The appellant in its request for item 22(b) sought information that was either already compiled or readily available. Therefore, I find that the appellant, in the circumstances of this appeal, should have been informed that as the EnAbling Change system was only implemented in 2012, substantial search time would be needed for files dated between 2008 and 2012.

[111] In my view, given the appellant's repeated stated intentions to assist in narrowing the request to save costs, the ministry should have advised of this additional "substantial time" looking into older files before proceeding to expend 15.25 hours on this search.

[112] Similar to my findings for item 10, without the back-up documents or another type of breakdown of how much of the 15.25 hours was spent for the actions set out above, I cannot find that the 15.25 hours of search time for item 22 actually was spent providing documents that the appellant sought, namely those that which this information is either already compiled or readily available. Accordingly, I am going to disallow the entire fee for item 22.

[113] In item 23, the appellant sought,

> Where available, please provide text of or speaking notes for any speeches by Mr. Brad Duguid since becoming Economic Development, Employment and Infrastructure Minister in June 2014, which address at any point in the speech, accessibility for people with disabilities, including an indication, where available or readily discoverable, of to whom and where the speech was delivered. [emphasis added by me]

[114] The ministry states that:

> Searches were conducted by staff in the ministry's Communications Branch. Locating responsive records required 8 hours of search time, 22 responsive records were identified.

[115] The appellant replies that it had verbally told the Minister's office to send the Alliance copies of the minister's speeches when Minister Duguid made a speech that addresses accessibility for people with disabilities, so it could share it with its supporters. The appellant was not provided these speeches, therefore, it sought access to them in the request at issue. The appellant submits that having put the Government on notice of that request, it should have been easy for the ministry to keep track of the speeches from the date of the Minister's appointment in June 2014[51] until the date of the request on June 4, 2015.

---

[51] See https://news.ontario.ca/profiles/en/brad-duguid regarding date of appointment to ministry as Minister.

[116] In its representations, unlike those for some of the other items, the ministry provided no details of what searches it conducted to locate the speeches, whether the searches were electronic or paper, nor did it provide details of the types of records it located, (i.e. whether speaking notes or texts of speeches). As stated above, the ministry was asked in the Notice of Inquiry to provide evidence as to:

- How the requested records were kept and maintained?
- What actions are necessary to locate the requested records?
- What is the estimated or actual amount of time involved in each action?

[117] The ministry did not provide this information with respect to this and other questions in the appellant's request. Instead, in most cases, it provided at the most a list of the databases searched and the total hours per item of search time.

[118] I find that if the Minister's speeches from the date of his appointment until the date of the request were available electronically or scanned to electronic format, then it should have been easy for the ministry to key in the words "disability" and "accessibility" to locate the 22 responsive speeches made over a one-year period. Therefore, I am only allowing a search time of 1.5 hours of the 8 hours of search time for this item, at a cost of $45.00.

[119] In item 24, the appellant sought,

> In fall 2014, the Government sponsored an advertising campaign on accessibility and compliance with the Accessibility for Ontarians with Disabilities Act. I seek:
>
> a) the duration of this campaign;
>
> b) the number of advertisements that were run respectively on:
>
> (i) radio
>
> (ii) television
>
> (iii) newspaper
>
> (iv) any other media;
>
> c) the text of the advertisements that were broadcast or published;
>
> d) the budget which the Government allocated for this campaign, and the actual cost of this campaign;

> e) records of any plans for any future campaign, including content, dates, and allocated or estimated budget;
>
> f) The approved or estimated budget for the *AODA* advertising campaign on accessibility which the Government announced on June 3, 2015.

[120] In item 25, the appellant sought:

> Economic Development Minister Brad Duguid has made public statements about the impact of the foregoing *AODA* fall 2014 advertising campaign on levels of compliance with, or inquiries to the Government, about the Accessibility for Ontarians with Disabilities Act. What information has the Government tracked and compiled on any changes in levels of compliance or numbers of inquiries of the Government associated with this advertising campaign?

[121] The ministry states that:

> The search for questions 24 and 25 required a total of three hours of search time by one staff member in the Strategic Initiatives Unit. Searches of the electronic shared computer network drive and the Ontario Correspondent Management System (OCMS) were conducted.
>
> Three records were identified in response to question 24, and one record was identified in response to question 25. Responsive documents included existing data analysis spreadsheets and research summaries that were validated to evaluate the success of the 2014 advertising campaign on accessibility and compliance with the *AODA*.

[122] Both items 24 and 25 seek information about the Fall 2014 Government sponsored advertising campaign on accessibility and compliance with the *AODA*. Two electronic databases were searched. The ministry has combined the search time for items 24 and 25, therefore, conducting one search of the two electronic databases to locate four records. Taking into account that the ministry only conducted one search, not two searches, for items 24 and 25, I find that a total of 1.5 hours (0.75 hours per item), not 3 hours of search time, is reasonable for these two items.

[123] In item 27, the appellant sought:

> What has the Ministry of Economic Development, Employment and Infrastructure done, and what new programs, policies or initiatives has it established, or existing ones has it modified, since May 28, 2013, to ensure that accessibility is integrated into all programs and activities at the Ministry, including, for example:

> a) programs aimed at economic development within Ontario;
>
> b) programs that assist in expanding international markets for goods and services originating in Ontario;
>
> c) programs dealing with employment, including but not limited to that specifically aim at expanding employment opportunities for people with disabilities; and
>
> d) programs dealing with infrastructure.
>
> Where possible, please advise when each new initiative or revised initiative was implemented to address disability accessibility, and when that initiative has terminated or is projected to terminate.

[124] The ministry states that item 27 required 2 hours of search time, stating:

> The searches for [item] 27 required 2 hours of search time, by staff in the Open for Business, Policy & Strategy, and Entrepreneurship divisions of the ministry. A total of 52 records were identified in response to question 27. Responsive records include briefing materials and Cabinet submissions.

[125] I find that, given the wording of item 27, the locations searched and the number of records located, that two hours of search time is reasonable and I uphold this search fee.

[126] In item 28, the appellant sought:

> From 2012 to the present, any record of proposals, options, research or recommendations produced by or on behalf of the Accessibility Directorate of Ontario, on ways to increase the accessibility of tourism or hospitality services in any part of Ontario in connection with the 2015 Toronto Pan/ParaPan American Games, or to produce a legacy of increased tourism/ hospitality services accessibility as a result of the Games. Without limiting the generality of this request, tourism and hospitality services includes restaurants, stores, public transit, taxis, hotels, and other such services available to the public.

[127] The ministry states that this search required 12 hours of search time by one staff member to locate 55 records and that the search time is a result of the volume of electronic records required to be searched and the time frame of the requested records (from 2012 to the request date). It also states:

> The search also involved obtaining responsive records from the Ministry of Tourism, Culture and Sport (MTCS). The ministry … also consulted with

> the Ministry of Transportation, Ministry of Government and Consumer Services, and other third party organizations including Ontario College of Art and Design and the Tourism Industry Association of Ontario for recommendations regarding disclosure of certain records.
>
> …These records were gathered by staff in the Outreach and Strategic Initiatives Branch and MTCS.

[128] As stated above for item 10, time for consulting to seek recommendations about whether to disclose a record is not a proper fee to be charged to a requester. This is not a search fee and this office has found that the preparation fee under section 57(1)(b) does not include time for deciding whether or not to claim an exemption[52] or identifying records requiring severing.[53]

[129] The ministry states that the search also involved obtaining responsive records from another ministry, the MTCS. The ministry does not state how much time was spent on this action, nor how many of the records responsive to item 28 originated from the MTCS.

[130] Before the expending of time searching for records at another institution, the ministry could have:

- advised the appellant that the records responsive to this item were located at another ministry and that additional search time was needed to conduct searches at the other institution. This would have allowed the appellant to opt to obtain only ministry records, or

- transferred item 28 to the MTCS under section 25(1)[54] of *FIPPA*, if the MTCS had a greater interest in these records.

[131] For item 28, as noted above, the ministry on July 7, 2015 asked the appellant whether CPC documents were included in this item of the request. The CPC is not an institution. The ministry did not seek clarification from the appellant as to whether another institution's records, those of MTCS, were included in the request.

---

[52] Orders P-4, M-376 and P-1536.
[53] Order MO-1380.
[54] Section 25 of *FIPPA* reads:

> (1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,
>
> (a) forward the request to the other institution; and
>
> (b) give written notice to the person who made the request that it has been forwarded to the other institution.

[132] In its July 29, 2015 response to the clarification request for this item, as stated above, the appellant included the following offer:

> Here again, I am happy to discuss the requested clarification on the phone, if that would assist you.

[133] The search for records at the ministry itself in response to item 28 involved one staff member searching electronically for records from 2012 until the date of the request on June 4, 2015. Based on my review of the ministry's evidence on item 28, I find that a two-hour search time is reasonable for the ministry to locate the ministry's responsive records, which were kept in electronic form and included proposals, contracts, research, business cases and option papers. Therefore, I am allowing the search fee for item 28 in the amount of $60.00 for two hours of search time.

[134] In item 29, the appellant sought:

> …any records from February 2010 to the present which address the development of and/or the implementation of the decision of the Government's response to this recommendation of the final Charles Beer Report. Without limiting the generality of the foregoing, I seek any records which address the question of whether the Government expected that all future mandatory reviews of existing *AODA* accessibility standards and/or the development of proposals for all new accessibility standards would be carried out solely by the persons appointed as members of [Accessibility Standards Advisory Council (ASAC)], or whether the Government contemplated or considered that multiple committees might be appointed under the auspices of ASAC, to address different accessibility standards at the same time.[55]

[135] In its March 10, 2016 memorandum of argument, the appellant states that this initiative in item 29 grew directly out of the 2010 report of the first statutorily-required Independent Review of the *AODA*. It states that the ADU was responsible for working on that report's implementation. The appellant refers to a Government news release on January 21, 2013 that announced the reform regarding the establishment of the Accessibility Standards Advisory Council.

[136] In its affidavit, the ministry states that it located 18 records and the search required 10.5 hours of search time by three SDU staff members, searching emails,

---

[55] By way of background to item 29, the appellant states that:

> In January 2013, the Government announced that it planned to consolidate all development of new accessibility standards and the mandatory review of existing accessibility standards under the auspices of the Accessibility Standards Advisory Council. It said it did so in response to the 2010 final report of the Charles Beer Independent Review of the *AODA*.

electronic shared drive and OCMS, as well as hard copy records. It states that identifying responsive records also involved reviewing partially responsive records.

[137] For item 29, the appellant is essentially seeking records as to who would carry out future mandatory reviews of the existing *AODA* accessibility standards and/or the development of proposals for all new accessibility standards.

[138] I find that the ministry has not provided sufficient detail about the searches undertaken to justify 10.5 hours of search time. The ministry was asked in the Notice of Inquiry to provide evidence on what actions are necessary to locate the requested records and the estimated or actual amount of time involved in each action. It did not provide the information about time spent on each action.

[139] By comparison, as set out above for item 11, two and a half hours were spent by the ministry staff searching the ADO's electronic shared drive filing system, hard copy and email records for responsive records to that item, locating 52 responsive records. The ministry was able to search three of the same systems in item 11 in 2.5 hours.

[140] The only additional system needed to be searched in item 29 was an electronic search of the OCMS. In Item 24, the ministry was able to search the OCMS and the electronic shared driving system in 1.5 hours. Taking these search times into account, I find that 4 hours of search time is reasonable for item 29.

[141] In item 31, the appellant sought:

> Any analysis or survey of laws in other jurisdictions in Canada or elsewhere around the world that address accessibility for people with disabilities. I do not seek any of this dating prior to 2013.

[142] The ministry states that this item required 10 hours of search time by three staff members in the APU, searching electronic shared drive and filing system, as well as searching through hard copy records, locating 15 records.

[143] In its March 2016 memorandum, the appellant submitted that if such research were conducted, the ADO senior management would know this, or know how to quickly find out what was done, and where to find it. In its affidavit, the ministry did not provide a response to this submission.

[144] In item 31, the ministry searched electronic shared drive and filing system, as well as searching through hard copy records, as was done for item 11. However, taking into account the broad nature of the request in this item, seeking any analysis or survey of laws from 2013 until the date of the request on June 4, 2015, and consistent with my findings for item 29, I find that 4 hours of search time is reasonable for this item.

Conclusion re: fee

[145] I have set out in the table below the amount of search time that I have allowed for each item:

Item	Hours charged by ministry	Search Fee charged by ministry	Hours allowed in this order	Search Fee allowed in this order
5	1 hour	30.00	1 hour	30.00
10	50 hours	1,500.00	0	0
11	2.5 hours	75.00	2.5 hours	75.00
15	4 hours	120.00	1.5 hours	45.00
16	1 hour	30.00	1 hour	30.00
18	16 hours	480.00	4 hours	120.00
19	1.5 hours	45.00	0	0
20	1.5 hours	45.00	0	0
21	2 hours	60.00	0	0
22	15 hours	450.00	0	0
23	8 hours	240.00	1.5 hours	45.00
24	1.5 hours	45.00	0.75 hour	22.50
25	1.5 hours	45.00	0.75 hour	22.50
27	2 hours	60.00	2 hours	60.00
28	12 hours	360.00	2 hours	60.00
29	10.5 hours	315.00	4 hours	120.00
31	10 hour	300.00	4 hours	120.00
Total =	**140 hours**	$4,200	**25 hours**	**$750.00**

[146] I have disallowed the entire fee for items 10 and 22, despite representations from the ministry. Even if I had not disallowed the fees, in any event, I would have waived the fee for these two items. I would have found it fair and equitable to do so,

taking into account, in particular, for these two items:

- the manner in which the institution responded to the request;
- whether the requester worked constructively with the institution to narrow the scope of the request; and
- the four factors listed in section 57(4).[56]

[147] Therefore, for items 10 and 22 if I had allowed the ministry to charge the appellant fees for these two items, I would have waived these fees.

[148] I will now discuss the issue of fee waiver in more detail and consider whether the search fee should be waived for the items of the request where I have upheld these fees in whole or in part.

B. Should the allowed search fee be waived?

[149] 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:

> 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 in 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.

[56] Section 57(4) is reproduced in Issue B.

> 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

[150] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters pay the prescribed fees associated with processing a request unless it is fair and equitable that they not do so.

[151] 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.[57]

[152] 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.[58]

[153] The institution or this office may decide that only a portion of the fee should be waived.[59]

[154] I invited the parties to provide representations on the fee waiver issue. The parties provided oral and written representations to me.

[155] After receiving representations from the ministry and the appellant, the Divisional Court released a decision that considered the issue of fee waiver in a judicial review of another IPC order.[60] In that decision, *Mann v. Ontario (Ministry of the Environment),* the Court made the following statement:

> I do not agree with the respondents that [section 57(4)] involves a two-part test, although I accept that one could approach the analysis in two stages. There is only one requirement in the subsection for waiver of all or any part of a fee and that is whether, in the opinion of the head, it is fair and equitable to do so. The head is guided in that determination by the factors set out in the subsection, but it remains the fact that the sole test is whether any waiver would be fair and equitable.

[156] I then asked both parties to provide further representations on the fee waiver issue and the test under section 57(4), taking into account the *Mann* decision.

---

[57] Order PO-2726.
[58] Orders M-914, P-474, P-1393 and PO-1953-F.
[59] Order MO-1243.
[60] *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056. Referred to as *Mann* in this order.

The test under section 57(4)

[157] The parties both provided additional representations on the fee waiver issue in light of the decision in *Mann*. Furthermore, the parties take differing positions on how the decision in *Mann* affects the analysis of the fee waiver under section 57(4). I will therefore first review the manner in which the section 57(4) test ought to be applied.

[158] The appellant states that:

> The Divisional Court's *Mann* decision arguably refines the fee waiver test, as involving only one broad discretionary issue, whether a fee waiver is fair and equitable in the circumstances. The IPC should *consider* factors such as financial hardship, and health and safety impact. However, these are neither the only criteria to consider, nor are they absolute conditions precedent to a fee waiver…
>
> The provision's wording does not require the IPC to positively *find* the presence of either or both situations, before it can move on to "fair and equitable" balancing. [It] is consistent with the overall *Mann* approach for the IPC to hold that the listed items (health, safety, financial hardship) are merely things that must be considered en route to deciding whether a fee waiver is "fair and equitable." However, as noted above, the appellant has shown that both financial hardship and health/safety concerns clearly exist here. Therefore, the IPC can find for the appellant without having to reach a categorical decision on the test's proper interpretation…
>
> *Mann* … invites a more holistic discretionary assessment of this fee waiver request, not the narrow, technical approach that the ministry advanced in its oral and written argument, exemplified by the Ministry's unduly narrow definition of financial hardship and its impoverished line-by-line assessment of health/safety. The appellant submits that a broad discretion like this must be exercised with a keen focus on the *FIPPA's* purposes i.e. promoting democracy and public accountability of public servants and officials.

[159] The ministry submits that as a result of *Mann*, the test under section 57(4) has changed conceptually, but not practically and that *Mann* now characterizes it as an "analysis in two stages" rather than a "two-part test."

[160] The ministry states that the enumerated factors under section 57(4) must be considered, and if a factor is established, a "fair and equitable" analysis must be done. It states that the factors, by themselves, are insufficient to establish a fee waiver. In support of its position that one of the factors in section 57(4) must be established, the ministry quotes from the *Mann* case as follows:

> [The appellant] asserts simply that the fee should be waived because the information sought would benefit public health and safety. The [appellant's] position would be correct if s. 57(4) required a waiver solely on that basis. However, it does not. It requires that the waiver be fair and equitable in the opinion of the head. A finding that the former exists does not dictate that the latter must follow.[61]

[161] The ministry submits that had the Legislature intended that a fee waiver could be granted without establishing at least one of the four factors, section 57(4) would have been formulated in a manner similar to the instructions provided to the head in subsection 21(2) of the *Act*[62] to consider all the relevant circumstances, including listed factors, when determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

[162] The ministry states that by enacting a provision that prescribes four factors that must be considered, without general instructions to consider all relevant circumstances or any basket clause factor, the Legislature intended that at least one of the prescribed factors be demonstrated to invoke the fair and equitable basis for a fee waiver. It submits that after considering the factors, it is not fair and equitable to grant a fee waiver in this appeal.

[163] In reply, the appellant states that because section 57(4) merely requires the IPC to *consider* financial hardship and health/safety, but does not state that the IPC must *find* these factors, that wording is sufficiently clear to support the appellant's approach, and not the ministry's approach. It also submits that the ministry's approach does not recognize that the *Mann* case determined, as set out above, that the sole test is whether any fee waiver would be fair and equitable.

Analysis regarding the test under section 57(4)

[164] In making my determination as to the proper test to be followed under section 57(4), I have considered the parties' representations, the *Mann* decision and the wording of section 57(4).

[165] I note that section 57(4) specifically requires a head to waive the payment of all or any part of a fee "if…it is fair and equitable to do so after considering, [the four enumerated factors]."

[166] The *Mann* case reflects this wording in section 57(4) by finding that the sole test

---

[61] *Mann* at para. 10 [emphasis added].

[62] Section 21(2) reads:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether, [list of nine factors].

is whether a fee waiver would be fair and equitable, recognizing that a head is guided in this determination by the factors set out in section 57(4).

[167] I adopt this approach in *Mann* that reflects the wording of section 57(4). I find that the proper approach under this section is for a head[63] to determine whether a fee waiver is fair and equitable. In making that determination, the head[64] must consider the four factors set out in section 57(4). Although these factors must be considered, they do not need to be present in order for a fee waiver to be granted. As determined in *Mann*, these factors serve as a guide in the determination as to whether a fee waiver is fair and equitable.

[168] In making my determination as to the test under section 57(4), I disagree with the ministry that one of the four factors must be present in order for a fee waiver to be granted. Rather, I find that these four factors are to be considered in the fair and equitable analysis.

[169] I do, however, accept the ministry's argument that the presence of one or more of the factors set out in section 57(4) does not automatically mean that a fee waiver must be granted.

[170] I will now consider whether it is fair and equitable to grant a fee waiver in this appeal.

Is a fee waiver fair and equitable?

[171] As stated above, for a fee waiver to be granted under section 57(4), it must be "fair and equitable" in the circumstances. In addition to the enumerated factors set out in 57(4), previous IPC orders have held that the following may be relevant considerations in deciding whether or not a fee waiver is "fair and equitable":

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;
- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;

---

[63] Or the IPC in a section 57(4) appeal.
[64] Or the IPC in a section 57(4) appeal.

- whether the requester has advanced a compromise solution which would reduce costs;

- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution, and

- the presence of the four factors listed in section 57(4).[65]

[172] Taking into account the parties written and oral evidence, as well as my findings above concerning the search fee amount, I will now review each of these considerations individually.

The manner in which the institution responded to the request

[173] It is clear from the evidence that, unbeknownst to the appellant, in the summer of 2015 (primarily between August 7, to August 31, 2015), the ministry, instead of providing a fee estimate, actually searched for and located approximately 3,600 pages of responsive records knowing that:

- the appellant was expecting a search fee estimate before the search was completed,

- the appellant had no assets to pay the search fee,

- the appellant had asked in the request for a fee waiver,

- the appellant had offered, more than once, to assist in clarifying the search process in order to reduce the amount of the search fees,

- the ministry did not seek a time extension to allow time to properly clarify and then to complete the search, but instead proceeded to search for the records expending substantial search time on certain items that may have been reduced upon clarification, and

- once the search was completed, the only way that the appellant could reduce the search fees was, not by clarifying the request, but by abandoning entire items in its request.

[174] The ministry did not consider and decide on the appellant's request for a fee waiver prior to issuing its fee decision. Instead it conducted the actual search for the records incurring significant search fees.

[175] I also note that the ministry in its decision letters of August 31, 2015, September 24, 2015, December 22, 2015, and January 27, 2016 did not advise the appellant that

---

[65] Orders M-166, M-408 and PO-1953-F.

certain information may be subject to exemptions under *FIPPA*. It was only after I asked for an interim access decision to be issued, that the ministry on December 5, 2016 advised the appellant that:

> …In response to the remaining 15 items included in Part "B"[66], there are 6 items which contain 376 documents that will likely require minor redactions pursuant to *FIPPA*.
>
> The following are some *FIPPA* exemptions that are relevant to the responsive records:
>
> • Section 12 - The records include Treasury Board submissions that contain policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees.
>
> • Section 13 - The records may contain information that is considered advice to government.
>
> • Section 19 - The records may contain legal advice that is subject to solicitor-client privilege.
>
> The ministry has not concluded the assessment and, as such, there may be additional exemptions applied in accordance with *FIPPA*…

[176] At the hearing, the ministry stated that it would not charge the appellant for information it does not receive.

[177] The purpose of the fee estimate, interim access decision and deposit process is to provide the requester with sufficient information to make an informed decision as to whether or not to pay the fee and pursue access, while protecting the institution from expending undue time and resources on processing a request that may ultimately be abandoned.[67]

[178] The interim decision process also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.[68]

[179] Without an interim access decision, the appellant would not be in a position to make an informed decision as to whether to narrow the scope of the request and to pursue access.

[180] On balance, I find that the manner in which the ministry responded to the request is a consideration that weighs in favour of the appellant.

---

[66] Part B of the request are the items of the request that are the subject of this order.
[67] Orders MO-1699 and PO-2634.
[68] Order MO-1520-I.

Whether the institution worked constructively with the requester to narrow and/or clarify the request

[181] The ministry did send the July 7, 2015 email to the appellant seeking certain clarifications on certain items of the request and did participate in the August 7, 2015 phone call on a limited number of items. However, in my view, further clarification could have resulted in a more efficient and less costly search.

[182] As such, I find that this consideration weighs in favour of both the ministry and the appellant.

Whether the institution provided any records to the requester free of charge

[183] The ministry did provide the appellant with the records responsive to items 1, 2, 3, 6, 7, 8, 9, 12, 13, 14, 17, 26 and 30 of the request at no cost, reducing the $4,250 search fee in its August 31, 2015 fee decision letter to $4,200 in its September 24, 2015 search fee decision letter. This equals a reduction of the search fee by $50.00, the equivalent of 1.66 hours of search time. The ministry states in its memorandum and affidavit that it reduced the search fee by 8 hours of search time, however, this is not reflected in these two letters.

[184] In addition, the ministry provided the documents from the 2013 request without charging the $2,325.00 search fee.

[185] During its closing submissions at the hearing, the ministry stated that it will not charge the appellant for either photocopies of the records or to receive copies of the responsive records on a CD-ROM.

[186] Therefore, I find that this consideration weighs in the ministry's favour.

Whether the requester worked constructively with the institution to narrow the scope of the request

[187] The appellant responded to requests for clarification and offered throughout to assist the ministry in order to clarify the request.

[188] This consideration weighs in favour of the appellant.

Whether the request involves a large number of records

[189] The 31 item request does involve a large number of records. This consideration, therefore, weighs in favour of the ministry.

Whether the requester has advanced a compromise solution which would reduce costs

[190] The appellant offered to assist throughout including right from the filing of the request, as set out therein:

> If some requested information would require extensive efforts to collect and provide, please contact me. I am open to adjusting the request for information to reduce the time and cost to the Government of complying with this request, so long as I can obtain the substance of the information I am seeking. I have assisted with just such an issue in the past, and am happy to do so again.

[191] However, taking into account the size and the content of the 31 item request, many being multi-part, and that the request encompassed many program areas, I find that this consideration weighs both in favour of the ministry and the appellant.

Whether waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution

[192] The ministry's position is that it is unfair to have the public assume the entire cost of a large 31-item request (containing approximately 84 questions in total) without any evidence that the Alliance has at least tried to offset the cost to the public. I agree. It is important to remember that the *Act* is founded on a user pay principle and costs that are not paid by the requester are ultimately borne by the taxpayer.

[193] While acknowledging that the appellant's goal of improving *AODA* compliance is in the public interest, many access to information requests have a public interest motive. A public interest motive cannot, alone, waive fees in all circumstances. Consideration must also be given to the many other factors included the cost of responding to the request. Furthermore, in this case, I note that the ministry provided the requester with many records only two years prior to this request without charge.

[194] Therefore, I find that this consideration weighs in favour of the ministry.

The presence of the four factors listed in section 57(4)

Section 57(4)(a): actual cost in comparison to the fee

[195] The ministry states that the actual cost of processing the request includes time for creating new records to satisfy some of the questions, and working with the Alliance (through telephone calls and correspondence) to narrow the scope of the records sought.[69]

[196] The appellant did not provide specific representations on this factor, aside from disputing the ministry's claim of the cost of converting the documents, which the ministry withdrew at the hearing.

---

[69] Midway through the oral inquiry, the ministry withdrew its reliance on the conversion cost for converting the records into an accessible format as an additional cost that weighs against a fee waiver.

[197] As I have reduced the $4,200.00 search fee to $750.00, the actual cost of processing the 31-item request is likely higher than the search fee I have allowed in this appeal.

[198] Therefore, this factor weighs in favour of the ministry.

Section 57(4)(b): financial hardship

[199] The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship.[70]

[200] For section 57(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities.[71]

[201] It is clear from the evidence that the Alliance has no assets, bank accounts or other financial resources to pay the fee. As an unincorporated community coalition, it does not produce financial statements. It has never filed a tax return as it has no income. It has no official charitable status as it solicits and accepts no donations of money. It has no employees and has never had any employees. All of its work and administration is performed by volunteers and voluntary community organizations. It has no membership fees.[72]

[202] The ministry's position is that the Alliance should fundraise from its members. This position was raised only just before the hearing on January 24, 2017 in the ministry's written representations. The ministry relies on Order PO-3602. In that order, the appellant was the editor of a small online newspaper run by volunteers and did not accept paid advertisements or donations. The editor paid some of the expenses of the organization out of her own personal income. In Order PO-3602, the ministry argued, *inter alia,* that the appellant did not provide information about the newspaper's ability to raise funds for the *FIPPA* request. Adjudicator Gillian Shaw agreed, stating:

> [T]hrough the newspaper's ability to raise funds, I find that it is not unreasonable to expect that money could be raised from the approximately 13,000 readers that the appellant indicates the newspaper reaches. It is reasonable to expect that some funds could be raised from the members of the community who will be affected by the project.
>
> This case is no different. The Alliance has been in existence for 12 years. It grew out of another organization - the ODA [Ontarians with Disabilities Act Committee] - which was in existence from 1994 to 2005. The Alliance

---

[70] Order P-1402.
[71] Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.
[72] Appellant's memorandum of argument dated March 11, 2016.

> "draws its membership" from the ODA and enjoys a "broad grassroots base." The Alliance has been "publicly recognized and commended" and [the Chair] himself has been publicly recognized in his capacity as Chair of the organization. It is reasonable to expect an organization with such prominence to make fundraising attempts prior to claiming "financial hardship." The Alliance cannot satisfy the test under [section 57(4)(b)] as it chose not to fundraise.[73]

[203] The appellant provided extensive representations disputing the ministry's claim that *FIPPA* requires an applicant to show that they did fundraising before a fee waiver can be considered.

[204] The Alliance states that it refuses to ask its supporters for funds to pay for this request. Its position is that for many years, it has had an ongoing commitment not to ask its supporters for money. It states that because the Alliance has no money, it never risks mishandling money and has no issues regarding infighting over how to spend its money. It also has no capacity to properly receive, manage, spend and account for money.

[205] The appellant states:

> Fee waivers are discretionary. It would be wrong to impose an inflexible categorical rule that a penniless applicant must prove efforts at fund-raising before a fee waiver can be considered, as a mandatory condition precedent, regardless of a case's specific circumstances. *FIPPA* imposes no such condition precedent.
>
> A mandatory requirement that a fee waiver is unavailable unless an applicant can show that fund-raising has been exhausted threatens an unfair barrier to access to information, especially for the poor and disadvantaged – those who need freedom of information fee waivers the most…
>
> Even if it were assumed that the Information and Privacy Commission must consider fundraising in some cases, despite the foregoing, this factor should not be a bar to a fee waiver here, for the reasons supra, and because:
>
> > a) The appellant's reply affidavit details how fundraising activity would work against this unusual coalition's important public-spirited work. It being an unfunded coalition has enabled it to more effectively rally its supporters to advocacy action on accessibility. Being an unfunded coalition has reinforced its credibility in its

[73] The ministry derives this information about the Alliance from the Alliance's own materials.

> important advocacy work. Fund-raising would violate a commitment it has made for years when recruiting people to get involved in the AODA Alliance. It has no existing fundraising capacity. These features distinguish this case from authorities on which the Ministry relies.
>
> b) In a world which too often associates people with disabilities with charity and begging, the very Ministry that is charged with promoting the dignity and inclusion of people with disabilities should not so vigorously seek such a restrictive approach to the *FIPPA's* fee waiver provision, a provision which the Legislature enacted to ensure that money not become a barrier to freedom of information.
>
> c) Where, as here, an individual submits an access request on behalf of an unincorporated community group, the financial hardship analysis focuses on the financial position of that group, not the individual requester.[74]

The Ministry's case law does not support this fee waiver refusal. While an organization's ability to raise funds to pay a fee may in some circumstances be a relevant factor in assessing whether a fee request would pose a financial hardship (a proposition on which there need be no ruling here), there is no authority for the proposition that attempts to fundraise are a mandatory prerequisite for a finding of financial hardship. [Order PO-3602], on which the Ministry relies, involved a more modest $968 fee, less than one-quarter of the fee here. There, the organization, unlike the AODA Alliance, maintained bank accounts and an operating budget. It actively solicited donations from its 13,000 members and through its website. Adjudicator Shaw made a fact finding based on the evidence that the organization could probably raise the required amount of money (paras. 51-52 and 55). There was no finding that to fund-raise would violate a commitment to the organization's supporters, or work against the organization's effectiveness.

In contrast, supporting the appellant's position, in Municipality of Kincardine, Re, MO-1895, Adjudicator Haly rejected a claim that the applicant group must try to raise funds to establish financial hardship. This was so, despite evidence that the group in question did in fact raise money from its membership for the project in respect of which it sought the records. She did so, based on a factual finding that the group wasn't able to raise the amount requested from its membership without hardship.

---

[74] The appellant relies on Order PO-2514.

> The appellant disputes the claim (Ministry memorandum para. 10) that the appellant must prove this fee would cause "severe suffering or privation." The authority on which the Ministry relies for its suffocating definition of "hardship" quotes a dictionary definition. (See PO-2514)
>
> The Ministry urges impoverished approach to *FIPPA's* open government objectives. Yet the rights which *FIPPA* guarantees to the public must be liberally construed. Exceptions should be narrowly construed, so they don't suffocate *FIPPA's* important purposes…

[206] Regarding the factor in section 57(4)(b), I have considered the evidence of both parties, as well as the findings of Adjudicator Shaw in Order PO-3602, relied upon by the ministry. In that order, the appellant, the editor of an online newspaper, submitted a request to the Ministry of the Environment and Climate Change. The appellant advised that the newspaper's website has a donation button, but does not accept paid advertising. The appellant submitted that the newspaper might be able to pay a nominal sum from its donation base, but could not raise substantial funds. She submitted that the newspaper raises less than $1,000.00 per year which pays for expenses including the payment for a domain, web server and other expenses. She submitted that these expenses are not fully covered by donations and the remaining funds comes out of her personal income.

[207] The appellant in Order PO-3602 provided a bank statement indicating that the newspaper had just over $1,000.00 in its account and stressed that the paper was run as a public service to the community and that the community in question was concerned about the project that was the subject of her access request.

[208] In Order PO-3602, Adjudicator Shaw found that the newspaper's current bank account balance was not evidence of financial hardship. Adjudicator Shaw stated:

> While the appellant states that some of the paper's expenses remain to be paid, she has not identified how much those expenses are. Additionally, through the newspaper's ability to raise funds, I find that it is not unreasonable to expect that money could be raised from the approximately 13,000 readers that the appellant indicates the newspaper reaches. It is reasonable to expect that some funds could be raised from the members of the community who will be affected by the project.
>
> I also note the appellant's submission that she has made additional freedom of information requests in addition to this one, and that the cumulative cost of all of them exceeds the newspaper's funds. However, the appellant has not provided any details of the other requests or the fees imposed in respect of them. In the circumstances, I cannot find that this is evidence of financial hardship.

> I find, therefore, that the appellant has not demonstrated that payment of the fee will cause financial hardship to either her personally or to the newspaper.

[209] I find that the situation in this appeal is different from that in Order PO-3602. The Alliance does not have a history of soliciting donations, nor does it maintain bank accounts and other means of collecting money.

[210] Unlike the situation in Order PO-3602, the Alliance did provide evidence of how its previous FOI request of 2013 was disposed of, namely, that the entire fee was waived by the ministry, although the ministry refers to this as providing the records requested at no charge outside the FOI system.

[211] The Alliance's evidence is that it has played a role in contributing to the implementation and the enforcement of the *AODA*. It describes itself as:

> …an unincorporated, volunteer-run community coalition of individuals and organizations. It was established in the fall of 2005, weeks after the Ontario legislature enacted the *AODA*. Its mission is to contribute to the achievement of a barrier-free Ontario for all persons with disabilities, by promoting and supporting the timely, effective, and comprehensive implementation of the *AODA*…
>
> The Ontario Government and members of the Ontario Legislature have repeatedly and publicly recognized and commended the efforts of the *AODA* Alliance, and before it, the ODA Committee, for its volunteer advocacy on the cause of accessibility for people with disabilities.

[212] In Order MO-1895, Adjudicator Stephanie Haly found that the appellant in that appeal would suffer financial hardship if he were to pay the fee. She did agree with the institution's arguments that the organization with which the appellant in that appeal is affiliated with, a group of local citizens concerned about the lack of focus and action on important local developments and issues, could pool resources or contribute to the payment of the fee. However, she found the amount of the fee quite large and that it would be onerous even if the cost were spread amongst a number of individuals.

[213] I find that a determination as to the ability of a requester without funds to raise money from outside sources to pay for the fee for processing its request, is a determination that must be made in each individual case. Relevant considerations include the requester's particular structure and financial situation, taking into account the amount of the fee.

[214] In this appeal, the ministry had ample opportunity to ask the appellant about its ability to raise funds from outside sources and to consider the appellant's responses in its fee waiver decision. The appellant asked for a fee waiver in the June 4, 2015 request. The ministry responded to this issue on a number of occasions, including in its

letters of August 31, September 24, and December 22, 2015.

[215] In its August 31, 2015 decision, the ministry only asked the appellant for financial statements. In its September 24, 2015 decision, the ministry asked for evidence of the Alliance's assets, income, expenses, and liabilities. In its December 22, 2015 decision, the ministry stated that it had not received sufficient documentation or any evidence to support the Alliance's claim for a fee waiver based on a financial hardship. It maintained this position in its January 27, 2016 letter to the Alliance.

[216] The appellant also sought a fee waiver of the fees in the 2013 request. The ministry sought financial statements in that request too. It eventually disclosed all the requested documents to the appellant at no cost. I agree with the parties that a requester's ability to raise funds to pay a fee may in some circumstances be relevant to the assessment as to whether a payment of the fee would pose a financial hardship.

[217] I agree with the ministry that the Alliance could have been required to provide submissions for the ministry's consideration on its fee waiver decision as to what efforts, if any, it has made to raise funds from outside sources to pay the fee for the request. However, in the circumstances of this appeal I will not consider the ability of the Alliance to fundraise to pay the fee, given the lateness of the ministry in raising this issue in the process, being over 18 months after the request for a fee waiver was made, and over 10 months after the appeal was filed.

[218] In the future, if the Alliance submits an access request to an institution, it may be an appropriate consideration in the determination under section 57(4)(b) as to whether the Alliance has made efforts to raise funds to pay for that particular request.

[219] Overall, I find that the payment of the fee would cause the appellant financial hardship and this factor weighs in favour of the appellant.

Section 57(4)(c): public health or safety

[220] The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
    a. disclosing a public health or safety concern, or

b. contributing meaningfully to the development of understanding of an important public health or safety issue

- the probability that the requester will disseminate the contents of the record[75]

[221] The focus of section 57(4)(c) is "public health or safety". It is not sufficient 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.[76]

[222] Nevertheless, since the findings in the *Mann* case that the sole test is whether any waiver would be fair and equitable, the presence of a public interest in the subject matter of a request is a possible consideration in the determination as to whether a fee waiver is fair and equitable.

[223] I have upheld fees in the following items:

Item	Hours allowed in this order	Search Fee allowed in this order
5	1 hour	30.00
11	2.5 hours	75.00
15	1.5 hours	45.00
16	1 hour	30.00
18	4 hours	120.00
23	1.5 hours	45.00
24	0.75 hour	22.50
25	0.75 hour	22.50
27	2 hours	60.00
28	2 hours	60.00
29	4 hours	120.00

[75] Orders P-2, P-474, PO-1953-F and PO-1962.
[76] Orders MO-1336, MO-2071, PO-2592 and PO-2726.

31	4 hours	75.00
Total =	**25 hours**	**$750.00**

[224] As noted in the appellant's representations, the Alliance's mission is to contribute to the achievement of a barrier-free Ontario for all persons with disabilities, by promoting and supporting the timely, effective, and comprehensive implementation of the *AODA*. It is clear that the subject matter of the records at issue is a matter of public rather than private interest. The request was made for records by the Alliance for the purpose of assisting it in its mission to promote enforcement of and compliance with the *AODA*.

[225] I find, based on the Alliance's well-documented advocacy role, that it would disseminate the contents of the records.

[226] The issue is whether dissemination of the records for which I have upheld fees will benefit public health or safety.

[227] The ministry submits that a direct link between health or safety and the subject matter of the records must be established. It provided extensive representations on this position.

[228] The appellant disputes the requirement for a direct link and submits that all of the records at issue relate either directly or indirectly to public health or safety. It states:

> If an organization lacks accessibility, this can in many instances create health and safety risks for people with disabilities. Barriers in health care facilities, for example, impede access to needed health care services. Barriers in access to any building can pose a safety risk for people with disabilities in those buildings.

[229] Details of the information requested in items 5, 11, 15, 16, 18, 23, 24, 25, 28, 29, and 31 are noted above. During the oral inquiry additional evidence was provided by the appellant as to the direct or indirect benefit to public health or safety in each of the items in the request.

[230] The appellant's position is that the records would promote enforcement of and compliance with the provisions of the *AODA*. It has summarized the items at issue as follows:

> 5: A quarterly breakdown of Government *AODA* enforcement action in 2014 and 2015, broken down by economic sectors.
>
> 11: Any studies or reports prepared by or for the Wynne Government since November 2013 on options for *AODA* enforcement.

15: What steps has the Government taken and does it plan to take to keep Premier Wynne's 2014 election promise to publicize the Government's toll-free number for the public to report *AODA* violations? Also a request for a breakdown of *AODA* violations reported to the Government on that phone line.

16: Records regarding the Government's decision to cut by over one third the number of organizations it would audit in 2015 for *AODA* compliance.

18: What action has the Government taken and what future plans does it have for keeping Premier Wynne's 2014 election promise to explore the possibility of having government inspectors and investigators under other laws also enforce the *AODA* and with what results?

23: Where available, please provide text of or speaking notes for any speeches by Mr. Brad Duguid since becoming Economic Development, Employment and Infrastructure Minister in June 2014, which address at any point in the speech, accessibility for people with disabilities, including an indication, where available or readily discoverable, of to whom and where the speech was delivered.

24: Specifics including money spent on the Government's fall 2014 advertising campaign on the *AODA*, and plans and budget for any future campaign like this.

25: Since Minister Duguid has made public claims about the impact of the Government's fall 2014 *AODA* advertising campaign, what information has the Government tracked and compiled on any changes in levels of compliance or numbers of inquiries of the Government associated with this advertising campaign?

28: From 2012 to the present, any record of proposals, options, research or recommendations by or on behalf of the Accessibility Directorate of Ontario, on ways to increase the accessibility of tourism or hospitality services in connection with the 2015 Toronto Pan/ParaPan American Games, or to produce a legacy of increased tourism/hospitality services accessibility as a result of the Games.

29: Records of the Government's deliberations and decision from 2010 to consolidate the development of all future accessibility standards in the Accessibility Standards Advisory Council.

31: Any analysis or survey prepared after 2013 of laws in other jurisdictions in Canada or elsewhere around the world that address accessibility for people with disabilities.

[231] The ministry submits that none of these items directly benefit health or safety. It specifically relies on Order PO-2686 and submits that the IPC has drawn a distinction between "public health and safety" and "accessibility." In Order PO-2686, a reporter sought records under the Accessible Parking Permit Program (APPP) on "how the program is run and the validity of permits issued under the program."

[232] The appellant in Order PO-2686 submitted that the subject matter of the APPP relates directly to a public health and safety issue because disabled people require the permits and that if permits are "being abused by able-bodied people, legitimate permit holders would not have the ability to use something that improves their health."

[233] In Order PO-2686, Adjudicator Catherine Corban found that section 57(4)(c) did not apply as the subject matter of the records did not relate directly to a public health and safety issue. She recognized that a health practitioner must certify the existence of a disability or medical condition for a permit to be issued and that the misuse of parking permits could possibly give rise to individual health and safety concerns as a result of individuals attempting to reach certain destinations which were rendered inaccessible to them by inconsiderate citizens. However, in her view, this was not related to public health and safety issues nor were they matters to which the responsive records related directly.

[234] Adjudicator Corban in Order PO-2686 agreed with the Ministry of Transportation's position that the subject matter of the records at issue relates to the APPP, which she found was best characterized as an accessibility program with the primary concern of eliminating barriers to the disabled rather than the health and safety of those who use the program. Accordingly, she found that the subject matter of the records directly related to accessibility and the equality rights of the disabled and did not directly relate to a matter of public health and safety.

[235] In reply, the appellant states that even if Order PO-2686 were assumed to be correct, a single case dealing with disability parking permits should not be treated *a priori* as dispositive of any FOI request having to do with any aspect of accessibility. The appellant distinguishes its request from that in Order PO-2686, and argues that it was wrongly decided and discordant with the *Charter*'s section 15 disability equality and similar *Ontario Human Rights Code* values. The appellant states that people with disabilities are members of the public and if required to travel greater distances than they are medically able from their cars to public premises, their health and their safety are clearly compromised.

[236] The appellant states that the approach in Order PO-1962, is a more commendable approach to a health and safety claim. In this order, the requester sought serious occurrence reports (SORs) and annual summaries created through the Ministry of Community and Social Services community agency program for providing services to people with developmental disabilities. The services included in those reports and aggregating summaries included some that were not related, such as

employment services. Others related to accessibility. Former Assistant Commissioner Tom Mitchinson found that a health and safety fee waiver was justified.

[237] The appellant submits that all of the items directly or indirectly benefit public health or safety, other than items 29 and 31. It states that if the ministry does not effectively enforce and educate the public on the *AODA*, the consequent lack of accessibility can in many contexts create a direct risk to public health and safety. It states that denials of accessibility eventually can directly impinge upon everyone's health and safety, even if some specific accessibility requirements, in isolation, are more remote.

[238] The purpose of the *AODA* is set out in section 1 of that statute as:

> Recognizing the history of discrimination against persons with disabilities in Ontario, the purpose of this Act is to benefit all Ontarians by,
>
> > (a) developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025; and
> >
> > (b) providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of the accessibility standards.

[239] Based on my review of the parties' representations, and taking into account in particular the IPC orders referred to by the parties and the *Mann* case, I find that the more the benefit to health or safety that will be yielded from dissemination of the records, the more weight should be given to the factor in section 57(4)(c).

[240] At issue is the information responsive to items 5, 11, 15, 16, 18, 23, 24, 25, 28, 29, and 31. I agree with the appellant that denials of accessibility eventually can directly impinge upon everyone's health and safety, even if some specific accessibility requirements, in isolation, are more remote. However, as admitted to by the appellant at the hearing, dissemination of some of the records at issue would not benefit health or safety.

[241] Based on my review of the evidence, I find that dissemination of the information at issue in items 23, 24, 25, 28, 29 and 31 would not benefit health or safety as they do not concern the enforcement of the *AODA* by revealing the efforts the Ontario government is making to enforce the *AODA* to ensure compliance.

[242] I do, however, find that dissemination of the information related to items 5, 11, 15, 16, and 18 would benefit public health or safety by disclosing a public health or

safety concern about the enforcement or compliance with the *AODA* or contribute meaningfully to the development of understanding of this important public health or safety issue. I agree with the appellant that proper enforcement of the *AODA* benefits the health and safety of those who require accessibility to access goods and services, including health care services.

[243] Accordingly, I find that the factor in section 57(4)(c) weighs in favour of the appellant to a limited degree as dissemination of the records from some of the items at issue would benefit public health or safety.

Section 57(4)(d)/section 8 of Regulation 460

[244] As set out above, section 8 of Regulation 460 reads:

> 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.
>
> 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

[245] By this order, the appellant will be given access to most of the records responsive to the items at issue at no cost or at reduced cost. As well, the fee is not $5 or less. Therefore, these factors weigh in favour of the ministry.

Conclusion

[246] As described above, I have found that there are factors and considerations that both support and do not support a fee waiver of the reduced $750.00 fee that I have upheld in this appeal. As such, on balance, after considering all of the evidence, as summarized above and as set out in the parties' oral and written representations, I find that waiver of the $750.00 fee is not fair and equitable in this appeal.

[247] In making this determination on fee waiver, I have considered the manner in which this request was processed by the ministry and have also particularly considered:

- the wording of the items that the $750.00 fee applies to,
- the directness of the benefit to health and safety for the items that the $750.00 search fee applies to,
- the size of this request that encompasses a large number of records,

- the previous disclosure by the ministry of the records from the 2013 request to the appellant at no cost,
- that the appellant has been provided with some records free of charge or by this order will be provided with a large number of records at no search fee cost,
- the appellant's position as an unincorporated, community-based volunteer coalition with no financial assets, statements or bank accounts, and
- the fee provisions in the *Act* that establish a user-pay principle.

[248] As confirmed by the ministry at the oral inquiry, the appellant can obtain access to the responsive records after payment of the fee amount I have upheld for any or all of items 5, 11, 15, 16, 18, 23, 24, 25, 27, 29, and 31. The search fee for each of these items is as follows:

Item	**Hours allowed in this order**	**Search Fee allowed in this order**
5	1 hour	30.00
11	2.5 hours	75.00
15	1.5 hours	45.00
16	1 hour	30.00
18	4 hours	120.00
23	1.5 hours	45.00
24	0.75 hour	22.50
25	0.75 hour	22.50
27	2 hours	60.00
28	2 hours	60.00
29	4 hours	120.00
31	4 hours	120.00
Total =	**25 hours**	**$750.00**

[249] For the remaining items of the request, the search fee for each of these items is zero. The appellant is entitled to receive access to all of these items, namely items 10,

19, 20, 21, and 22, without a search fee charge.

[250] As such, I will order the ministry to provide a final access decision to the appellant, providing for the disclosure of any non-exempt information in the records to the appellant upon payment of any allowable search fee.

ORDER:

1. I uphold the ministry's search fee for the following items of the request only in the following amounts:

Item	Hours allowed in this order	Search Fee allowed in this order
5	1 hour	30.00
11	2.5 hours	75.00
15	1.5 hours	45.00
16	1 hour	30.00
18	4 hours	120.00
23	1.5 hours	45.00
24	0.75 hour	22.50
25	0.75 hour	22.50
27	2 hours	60.00
28	2 hours	60.00
29	4 hours	120.00
31	4 hours	120.00
Total =	**25 hours**	**$750.00**

   I do not waive this $750.00 search fee. The appellant is entitled to choose which of these items, if any, it wishes to obtain access to upon payment of that item's allowable search fee.

2. I do not uphold the ministry's search fee in its entirety for the records responsive to items 10, 19, 20, 21, and 22 of the request and order the ministry to provide

the appellant with a final access decision disclosing the non-exempt information in these records by **August 28, 2017**.

3. I order the ministry to provide a final access decision to the appellant for the remaining items in its request, items 5, 11, 15, 16, 18, 23, 24, 25, 27, 28, 29, and 31, by **August 28, 2017**, providing for the disclosure of any non-exempt information in the responsive records to the appellant upon payment of any allowable search fee per item.

Original Signed by: July 28, 2017

Diane Smith
Adjudicator