Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3823

Appeal PA16-289-2

University of Ontario Institute of Technology

February 28, 2018

Summary: The appellant seeks access to records relating to his attendance at the university. The university granted partial access to the records withholding portions under section 49(a) in conjunction with section 13(1)(advice or recommendations) and 19 (solicitor-client privileged information). The appellant appealed the university's decision regarding the application of exemptions and questions the university's $960.50 fee estimate. In this order, the adjudicator finds that some of the withheld records contain solicitor-client privileged information and upholds the university's decision to withhold this information. The adjudicator orders the university to disclose the remainder of the records withheld under section 49(a) in conjunction with section 13(1) to the appellant and the university's $960.50 fee estimate is reduced to $497.20. The appeal is upheld in part.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss.2(1)"definition of "personal information", 13(1), 19, 49(a) and 57(1)(c).

OVERVIEW:

[1] The appellant filed a request to the University of Ontario Institute of Technology (the university or OITU) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to his attendance at the university, including an incident that was captured by surveillance cameras.

[2] The university located documents and security videos and granted the appellant partial access. The university claims that some of the records qualify for exemption under section 49(a) in conjunction with section 13(1)(advice or recommendation),

18(1)(a)(economic and other interest) and section 19(a) and (c) (solicitor-client privilege).

[3] The university also claims that disclosure of some of the withheld information contained in the records would constitute an unjustified invasion of personal privacy under section 49(b) in conjunction with section 21(1).

[4] The university also issued a fee estimate for its cost of $2,099.76 to edit the security videos.

[5] Finally, the university claims that some of the withheld information in the records do not respond to the request.

[6] The appellant filed a fee waiver on the basis of financial hardship which the university denied.

[7] The appellant appealed the university's fee and access decision and raised questions about the reasonableness of the university's search.

[8] During mediation, the appellant narrowed the scope of records and the university agreed to prepare a revised Index of Records[1] describing the records at issue. The appellant subsequently further narrowed the scope of records and thus records D1.1, D31, D54, D95.1 and D202 identified in the Index of Records are no longer at issue.

[9] During mediation, the university reduced its fee from $2,099.76 to $960.50 and advised that it no longer claims that the exemption at section 49(a) in conjunction with section 18(a)(economic and other interests) applies. It also issued a revised access decision indicating that it now takes the position that additional records are subject to the exemption under section 49(a)/19(a) and (c)(solicitor-client privilege). The appellant took issue with the university's expansion of its solicitor-client privilege claim.

[10] At the end of mediation, the appellant confirmed that he continues to seek access to the information the university identified as non-responsive but that he is no longer pursuing his reasonable search claim. The appellant also confirmed that he continues to question the reasonableness of the university's $960.50 fee. The appeal was transferred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry.

[11] The parties provided written submissions during the inquiry process. The university takes the position that it was not required to provide copies of records it has identified as containing solicitor-client privileged information and filed an affidavit of records[2] in support of its solicitor-client privilege claim. In cases where the university partially disclosed a record containing information it identified as solicitor-client privileged information, it provided copies of these records with the solicitor-client privileged information severed. The university's affidavit of records describes each

[1] The university's Revised Index of Records, dated December 20, 2016.
[2] The university's affidavit of records was not shared with the appellant for confidentiality reasons.

record by its record number, number of pages and contains a description of the record and explanation of the basis of the university's privilege claim.

[12] Accordingly, I was not provided with copies of some of the records withheld entirely under section 49(a) in conjunction with section 19. However, I am satisfied that I was provided with sufficient evidence to make my determinations in this appeal even where the records were not provided. In addition, the university had already provided unsevered copies of some of these records to this office before it expanded its solicitor-client privilege claim to a greater number of records and as a result I have had an opportunity to review those records.

[13] In this order, I allow the university to expand its claim that the discretionary exemptions under section 49(a) in conjunction with sections 13(1) and 19 apply to a greater number of records. However, I find that only some of these records qualify for exemption under section 49(a) in conjunction with the solicitor-client privilege exemption under section 19. Accordingly, the university is ordered to disclose the remaining information at issue to the appellant. The university is also ordered to reduce its fee estimate from $960.50 to $497.20.

RECORDS:

[14] At the end of mediation, the appellant confirmed that he continued to seek access to the following records identified in the revised Index of Records prepared by the university:

> D1, D8, D21, D27, D28, D28.1, D46, D83, D86, D88, D89.1, D90, D96, D98, D99, D100, D102, D103, D104, D106, D108, D113, D117, D118, D121, D122, D131, D136, D139, D142, D151, D158, D158.1, D159, D162, D164, D165, D166, D172, D174, D176, D177, D178, D184, D189, D193, D197, D198, D201, D203, D204, D206, D207, D209, D211, D212, D213, D219.1, D226, D229, D229.1 and D233.

[15] I have reviewed the records and find that Records D172, D193, D212 and D233 are not responsive and have removed them from the scope of the appeal.

PRELIMINARY ISSUE:

Should the university be allowed to late raise discretionary exemptions to records previously withheld on other grounds?

[16] The *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal. Section 11.01 states:

> In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[17] However, in this appeal the Notice of Mediation, dated September 6, 2016 sent to the university from this office indicated that it was not permitted to claim any new discretionary exemptions given that the appeal arose from a deemed refusal appeal.

[18] During mediation, the university issued a revised decision to the appellant abandoning its claim that the discretionary exemption at section 49(a) in conjunction with section 18(a)(economic and other interests) applies to some of the records. However, the university now relies on sections 13(1) (advice or recommendation) and 19 (solicitor-client privilege), as an alternative ground, to some records previously withheld on other grounds.[3]

[19] The Notice of Inquiry sent to the parties, asked them to consider the following with respect section 11.01:

- Whether the appellant has been prejudiced in any way by the late raising of a discretionary exemption;
- Whether the university would be prejudiced in any way by not allowing it to claim an additional discretionary exemption; and
- Would the integrity of the appeals process be compromised in any way by allowing the university to claim an additional discretionary exemption.

[20] The appellant submits that the university should not be allowed to raise additional discretionary exemptions to the withheld records on the basis that the university already had several months to review the records. The appellant questions the applicability of the Supreme Court of Canada's decision in *Alberta (Information and Privacy Commissioner) v. University of Calgary*[4] to the circumstances of this appeal. The university provided a copy of this decision with its representations. This decision along

[3] Despite there being some inconsistencies between the university's December 2016 revised decision and index and the records identified in its submissions it appears that the university seeks to expand its solicitor-client privilege information claim to Records D098.1, D106, D118, D151, D162, D164, D176, D184, D189, D197, D198, D201, D209, D219.1, D229 and D229.1. In addition, it appears that the university expanded its claim that section 13(1)(advice or recommendations) applies to Record D086, D121, D164, D197 and D209. My review of the university's indexes suggests that the university originally withheld these records under the mandatory exemption section 49(b) in conjunction with section 21(1)(personal privacy) but subsequently raised the possible application of section 49(a) in conjunction with section 13(1).

[4] [2016] 2 SCR 555, [2016] SCC 53.

with *Canada (Privacy Commissioner) v Blood Tribe Department of Health*[5] is frequently cited by institutions to highlight the Supreme Court of Canada's comment that solicitor-client privilege is "fundamental to the proper functioning of our legal system". These decisions are also often cited as they also found that the production power of the Alberta's Information and Privacy Commissioner and the federal Privacy Commissioner did not include the power to compel the production of solicitor-client privileged records.[6]

[21] The university submits:

> The Appellant has not been prejudiced by the timing of the University's claim to an alternative ground for exemption. These documents were disclosed in the original Index of Records that was sent to the Appellant prior to mediation. Access to all of the documents under this issue were originally refused on other grounds. The University added s.19(a) and (c) as an alternative ground for refusal of each of these documents. Because these documents were refused under alternative grounds, the timing of their disclosure is unaffected.

[22] The university also states that the integrity of the appeals process would not be comprised if it is allowed to expand its discretionary exemption claim and states:

> An important ground for exemption was identified late with respect to a relatively small number of documents, and the University now seeks to include that ground as an *alternative* ground for exemption. The University's initial oversight was *bona fide*, and was raised before this inquiry was initiated.

[23] In my view, the appellant will not be prejudiced by the late raising of section 49(a) in conjunction with sections 13(1) or 19 to records the university already had identified as qualifying for exemption on other grounds. In making my decision, I took into account all of the circumstances including that the addition of these exemptions took place before the appeal was transferred to the inquiry stage and as result, no delay has resulted from the additional discretionary exemption claims.

[24] Accordingly, I will allow the university's additional discretionary exemption claims.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1), and if so, to whom does it relate?

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[5] [2008], 2 SCR 574, [2008] SCC 44.

[6] The court's decision addressed only the production powers of the federal Privacy Commissioner and Alberta Commissioner. Ontario's freedom of information legislation, which differs from Alberta's and the federal Commissioner, was not considered.

B. Do the records contain solicitor-client privileged information under section 49(a) in conjunction with sections 19(a) and (c)?

C. Do the remaining records qualify for exemption under section 49(a) in conjunction with section 13(1)?

D. Did the university properly exercise its discretion in applying the discretionary exemptions under section 49(a) in conjunction with section 19?

E. Should the university's $960.50 fee estimate be upheld?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1), and if so, to whom does it relate?

[25] The parties agree that the records contain the personal information of the appellant and other students. The term "personal information" is defined in section 2(1). Having reviewed the records, I am satisfied that the records contain identifying information of the appellant and other students, as defined in section 2(1).

[26] As noted above, the records consist of correspondence generated between the appellant and the university as well as communications exchanged between university staff members. Also included are surveillance videos which the appellant acknowledges contain video images of other students. In his representations, the appellant confirms that he is not seeking access to the video images of other students and agrees that the faces of those not involved in the incident captured on video should be blurred. I also find that small portions of the emails contain the personal information of university staff members. I have reviewed these portions of the records and am satisfied that they relate solely to personal matters, such as personal phone numbers and work schedules. Based on the appellant's submissions, it does not appear that he is interested in obtaining access to these portions of the records. As a result, I have removed them from the scope of this appeal. Accordingly, I find that the portions of records D046, D086, D102, D121 and D226 which contain the personal information of staff members are not at issue. This decision removes records D086, D102, D121 and D226 entirely from the scope of the appeal. However, the portions of Record D046 the university claims contains advice or recommendations under section 49(a) in conjunction with section 13(1) remains at issue.

[27] As the records contain the personal information of the appellant, I will determine whether the records qualify for exemption under section 49(a) in conjunction with sections 13(1) and 19. Section 49(a) recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power

to grant requesters access to their personal information.[7]

[28] As the portions of the records containing the personal information of other identifiable individuals, including the personal matters of staff members, have been removed from the scope of this appeal, it is not necessary that I consider whether disclosure of this information would constitute an unjustified invasion of personal privacy under section 49(b).

B. Do the records contain solicitor-client privileged information under section 49(a) in conjunction with sections 19(a) and (c)?

[29] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information. In this case, the institution relies on section 49(a) in conjunction with sections 19(a) and (c) to deny the portions of the records it claims contain solicitor-client privileged information. These sections state:

> A head may refuse to disclose a record,
>
> > (a) that is subject to solicitor-client privilege; or
> >
> > (c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[30] Section 19 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. Branch 2 (prepared by or for counsel employed or retained by an educational institution) is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

[31] Based on the representations of the university, it appears that it takes the position that the common law and statutory solicitor-client communication privileges under branches 1 and 2 apply to the following records:

> Records D008, D021, D027, D090, D098, DO98.1, D099, D100, D104, D106, D113, D118, D151, D162, D164, D174, D176, D178, D184, D189, D197, D198, D201, D207, D209, D211, D213, D219.1, D229 and D229.1.

[32] For the reasons stated below, I find that the solicitor-client privilege communication privilege under branch 2 applies and that the university has not waived its privilege.

Branch 2: statutory privileges

[33] Branch 2 is a statutory privilege that applies where the records were prepared by

[7] Order M-352.

or for counsel employed or retained by an educational institution "for use in giving legal advice or in contemplation of or for use in litigation." The statutory exemption and common law privileges, although not identical, exist for similar reasons.

Statutory solicitor-client communication privilege

[34] In its representations, the university states that the records:

> … are communications in which [the University Secretary and General Counsel] provides confidential legal advice to employees acting on behalf of the University, primarily with respect to academic accommodation of the Appellant. Academic accommodation involves complex legal issues arising as a matter of (among other things) general administrative law and human rights law. The information that was shared during the process in which [counsel] was providing such legal advice was shared only on a need-to-know basis, and there is no evidence demonstrating that the University had an intention to waive its rights to assert privilege over these communications.

[35] In the affidavit of records, the university states that withheld information in the emails:

> … contain correspondence informing legal advice provided by [two individuals from the university's legal department] to UOIT representative regarding providing academic accommodation to the Appellant. This advice is aimed at ensuring UOIT upholds its duties and obligations under the Human Rights Code and the general principles of administrative law.

[36] The appellant's submissions did not specifically address the issue of whether some of the records contain solicitor-client privileged information.

[37] Based on my review of the available records and the university's affidavit of records, I am satisfied that the records at issue are privileged communications between the university and its in-house counsel. Though my review of most of the records was limited to redacted copies, I am satisfied that counsel was an active participant in the emails exchanged. This does not appear to be a case in which counsel was passively copied on communications between university staff members. Rather, it appears that counsel's legal advice was sought and given. Accordingly, I find that the following records fall within the type of communications protected by the statutory solicitor-client communication privilege under branch 2:

> Records D008, D021, D027, D090, D098.1, D099, D100, D104, D106, D113, D118, D151, D162, D164, D174, D176, D178, D184, D189, D197, D198, D201, D207, D209, D211, D213, D219.1 and D229 and D229.1

[38] In the absence of any evidence to suggest that the university has waived its privilege in these records, I find that the above-noted records are exempt under the

statutory solicitor-client communication privilege under branch 2. Given my decision, it is not necessary that I also make a finding as to whether the records also qualify for the common-law communication privilege under branch 2 or the privileges under branch 1.

C. Do the remaining records qualify for exemption under section 49(a) in conjunction with section 13(1)?

[39] Section 13(1) states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

[40] The university takes the position that the records it identified as exempt under section 49(a), in conjunction with section 13(1) fall under one of the two categories:

Advice or recommendations of university employees with respect to accommodating the appellant and related issues

[41] The university submits that records D001, D046, D083, D088, D090, D096, D103, D108, D118, D122, D136, D139, D142, D159, D165, D166, D202, D203, and D204:

> … refer to communications between University employees who were involved in the process of determining appropriate academic accommodation for the Appellant. In this context, collaboration between faculty and staff is necessary to balance academic, legal and compassionate considerations. In the course of determining appropriate accommodation, recommendations and advice are shared amongst University employees, and such advice and recommendations have therefore been redacted and/or withheld.

Advice or recommendations from an employee of the university with respect to responding to the appellant's freedom of information request.

[42] The university submits that records D028, D028.1, D089.1, D117, D131, D158, D158.1, D177, and D206:

> … refer to communications between UOIT employees tasked with compiling documents that were responsive to the Appellant's access request. These documents contain the advice and recommendations of those employees with respect to the identification and collection of a comprehensive set of responsive records.

[43] The appellant did not provide submissions on this issue.

Decision and Analysis

[44] The purpose of section 13 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[8]

[45] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

[46] "Advice" has a broader meaning than "recommendations". It includes "policy options", which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take. [9]

[47] "Advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material.

[48] Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[10]

[49] The application of section 13(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 13(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 13(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.[11]

[50] Section 13(1) covers earlier drafts of material containing advice or recommendations. This is so even if the content of a draft is not included in the final version. The advice or recommendations contained in draft policy papers form a part of

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[8] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[9] See above at paras. 26 and 47.
[10] Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.
[11] *John Doe v. Ontario (Finance)*, cited above, at para. 51.

the deliberative process leading to a final decision and are protected by section 13(1).[12]

[51] I have reviewed the records along with the university's submissions and description of the records and find that they do not constitute the advice or recommendations of university staff members. In my view, the records the university identified as containing advice or recommendations regarding the university's accommodation of the appellant relate to administrative matters or the execution of administrative decisions. Though information is exchanged between staff members about accommodation issues relating to the appellant, the discussions relate to matters such as timelines, clerical errors, course plans, scheduling exams and other logistical issues arising from the university's accommodation of the appellant. Based on my review of the records it appears that these records were prepared after the university already made a decision to accommodate the appellant. As noted above, the purpose of section 13 is to ensure that people employed by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The context of the records before me are not of a deliberative process nor is the information presented in a manner which could be described as evaluative. For example, there is insufficient evidence to conclude that a suggested course of action that will ultimately be accepted or rejected by the person being advised is being communicated in the exchange of information. Similarly, there is insufficient evidence to demonstrate that a range of views or opinions are being presented to the recipient to address the university's accommodation of the appellant. Rather, the exchange of information appears to relate to the university's coordination of efforts to facilitate its accommodation of the appellant.

[52] I also find that the records the university identified as containing advice or recommendations relating to its response to the appellant's access request do not meet the criteria in section 49(a) in conjunction 13(1). In my view, the information exchanged between university staff cannot be described as being part of a deliberative or evaluative process. Rather, the information appears to relate to the communication of administrative matters such as the scope of the request and timelines to staff identified as possibly having responsive records. In addition, the draft correspondence exchanged between staff does not appear to contain information which suggests a course of action or range of options that will ultimately be accepted or rejected by the person being advised.

[53] Having regard to the above, I find that the records the university identified as containing "advice" or "recommendations" do not qualify for exemption under section 49(a) in conjunction with section 13(1).

C. Did the university properly exercise its discretion in applying the discretionary exemptions under section 49(a) in conjunction with section 19?

[54] The section 49(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must

[12] *John Doe v. Ontario (Finance)*, cited above, at paras. 50-51.

exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[55] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[56] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[13] This office may not, however, substitute its own discretion for that of the institution.[14]

[57] The university submits that it properly exercised its discretion and took into account relevant factors such as purpose of the solicitor-client privilege exemption and nature of the information and the extent to which it is significant and/or sensitive to the university.

[58] The appellant's submissions did not address this issue.

[59] I have reviewed the university's submissions and am satisfied that it properly exercised its discretion and in doing so took into account relevant considerations such as the sensitive nature of the information that I found falls under the ambit of the statutory solicitor-client communication privilege.

[60] I am also satisfied that the university considered the purposes of the *Act,* including the principle that individuals should have a right to access their own personal information. In particular, I note that a vast amount of information was disclosed to the appellant which in my view demonstrates that the university also took into account the principle that exemptions from the right of access should be limited and specific.

[61] Having regard to the above, I find that the university's exercise of discretion was proper and it properly considered the interests sought to be protected under the solicitor-client privilege exemption.

D. Should the university's $960.50 fee estimate be upheld?

[62] The parties agree that editing of two videotape surveillance tapes (Records D44 and D48) is required to blur the images of other students before it could be disclosed to the appellant. However, they disagree as to the cost associated with editing the video tapes.

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[13] Order MO-1573.
[14] Section 54(2).

[63] Initially, the university issued a fee estimate in the amount of $2,099.76. The university advised that its estimate was based on a fee estimate obtained from a third party service provider. The appellant appealed the reasonableness of the university's $2,099.76 estimated fee and applied for a fee waiver which was denied by the university.

[64] During the request stage, the appellant raised concerns about the reasonableness of the university's fee relating to the invoice it obtained to edit the requested surveillance videos. In support of his position, the appellant provided a copy of an invoice from a third party service provider in the amount of $180.80. The invoice provided by the appellant refers to a negotiated flat rate of $160.00 plus hst for editing two video tapes to blur the faces of all persons but for staff and security personnel.

[65] During mediation, the university issued a revised fee estimate in the amount of $960.50, based on a new invoice it received from the same service provider the appellant contacted. However, the appellant continued to raise concerns about the reasonableness of the university's fee.

[66] In addition to questioning the reasonableness of the university's $960.50 fee the appellant raises questions about the length of the video recordings given the discrepancies on the invoices provided by the university.

[67] In its reply representations, the university explained that in its initial decision the only responsive recording identified was footage from a 3rd floor camera and its length was approximately 44 minutes. The university advises that it subsequently identified a recording taken from the 1st floor as responsive as a result of its discussions with the appellant. This second video is approximately 65 minutes in length. The university confirmed that the most recent invoice it obtained based its estimate on the editing of 2 hours.

[68] The new invoice provided by the university refers to a negotiated half-day flat rate of $850.00 plus hst ($960.50). The university provided a copy of its email exchange with the third party service provider in an effort to explain the difference between the quotes he provided the appellant and the university. In the email, the third party service provider advises that he had originally under-quoted the cost of editing in the invoice he provided the appellant and that his revised quote to the university takes into account additional costs. In the email, the third party service provider states:

> Off the bat, viewing two hours of footage plus rendering 2 hours of footage we are already looking at a minimum of four hours of work. At my rate of $80/hr that is $320.00 to start. I … suspect it may take 1 to 1.5 hours more.

Decision and Analysis

[69] An institution must advise the requester of the applicable fee where the fee is $25 or less. Where the fee exceeds $25, an institution must provide the requester with

a fee estimate.[15]

[70] 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.[16]

[71] The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access.[17]

[72] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.[18]

[73] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.[19]

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

[75] Section 57(1)(c) allows institutions to charge fees relating to costs relating to locating, retrieving, processing and copying a record.[20] In addition, *Regulation 460, section 6.1* states:

> 6.1 The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to personal information about the individual making the request for access:
>
> > 4. 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.

[76] I have reviewed the submissions of the parties and find that its estimate of $960.50 is unreasonable taking into account the advice of the third party service provider that he anticipates that the video editing may take up to 5.5 hours to complete. At his rate of $80.00 per hour, 5.5 hours would bring the estimate $440.00 plus gst. Based on the information provided by the university, I am not able to reconcile how $860.00 represents half-day a day of work given the service provider's advice that

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[15] Section 57(3).
[16] Order MO-1699.
[17] Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.
[18] Order MO-1520-I.
[19] Orders P-81 and MO-1614.
[20] Section 57(1)(c) states that: 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 computer and other costs incurred in locating, retrieving, processing and copying a record;

his rate is $80.00 per hour.

[77] In my view, a fee estimate in the amount of $497.20 ($440.00 plus gst) is reasonable. Accordingly, I reduce the university's fee estimate from $960.50 to $497.20.

ORDER:

1. I order the university to disclose the following records to the appellant by **March 29, 2018** which I found not exempt under section 49(a) in conjunction with section 13(1):

   Records D001, D046, D083, D088, D090, D096, D103, D108, D118, D122, D136, D139, D142, D159, D165, D166, D202, D203, and D204.

2. I uphold the university's decision to withhold the remaining records at issue under section 49(a) in conjunction with section 19.

3. I reduce the university's fee estimate to $497.20.

4. In order to verify compliance with order provision 1, I reserve the right to require a copy of the records by the university to be sent to me.

Original Signed by: February 28, 2018

Jennifer James
Adjudicator