

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4298

Appeal PA20-00175

Hôtel-Dieu Grace Healthcare

September 7, 2022

Summary: Hôtel-Dieu Grace Healthcare (the hospital) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for various records, including emails of named staff members over a period of several years. The hospital issued an interim access and fee estimate decision and also issued a time extension to issue a final access decision. The appellant appealed the hospital's fee estimate and time extension and sought a fee waiver.

In this order, the adjudicator upholds the hospital's fee estimate of \$3,911 for the appellant's revised request and the hospital's decision not to waive the fee. She also allows the hospital 105 days from the appellant's payment of the required deposit to issue a final access decision.

Statutes Considered: The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 26, 27, 57(1) and 57(4).

Orders Considered: Order PO-4042.

OVERVIEW:

[1] This order concerns a fee estimate, a fee waiver request, and a time extension to issue a final access decision for emails sought by the appellant.

[2] Hôtel-Dieu Grace Healthcare (HDGH or the hospital) received a three-part request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to records over a nine-year period. The hospital clarified the three-part

request with the appellant, as follows:

1. All emails (inbox, sent, delete, all subfolders, etc.) from January 1, 2010 until present January 29, 2019 for [7 named individuals].
2. HDGH Board of Director Resolutions regarding the “Renal Campus” or “CDPM Model” at 2480 Ouellette Avenue from the years 2011, 2012 and 2013.
3. The Windsor Regional Hospital/Hôtel-Dieu Grace Hospital Re- Alignment Agreement (formal title – Program Transfer Agreement, July, 2013).

Background - Order PO-4042

[3] The hospital issued an access decision dated February 28, 2019 to the appellant. In this access decision, the hospital advised the appellant that with respect to part 1 of the request, access was denied to the records on the basis that the request was frivolous or vexatious. With respect to part 2, the hospital advised that access could not be provided as the records do not exist. With respect to part 3, the hospital granted full access to the responsive record.

[4] The appellant appealed the hospital’s decision to the Information and Privacy Commissioner of Ontario (the IPC) and appeal PA20-00139 was opened. Appeal PA20-00139 resulted in Order PO-4042,¹ in which the adjudicator found that the request was not frivolous or vexatious and ordered the hospital to issue an access decision with respect to part 1 of the request.

The present appeal

[5] In response to Order PO-4042, the hospital issued an interim access and fee estimate decision dated May 26, 2020 with respect to part 1 of the request.

[6] The decision advised that the estimated fee to process the request was \$147,392.15 comprised of \$122,751.75 for preparation time (based on 245,504 minutes), \$90 for computer search time, and \$24,440 for photocopying (based on 122,752 pages).

[7] The decision stated that:

...because of the size of this request I am unable to provide you with the percentage of the records to which access would be granted. It is highly likely that a percentage of these records will be subject to exemptions and exclusions.

¹ In Order PO-4042, the adjudicator dealt with parts 1 and 2 of the request, finding that part 1 was not frivolous or vexatious and upholding the hospital’s search for records responsive to part 2. Part 3 of the request was not at issue in Order PO-4042, nor is it at issue in this order.

[8] This decision letter referenced the following exclusions that could apply to the records: sections 65(5.4) (hospital foundation), 65(5.5) (administrative records of a member of a health profession), 65(5.6) (charitable donations made to a hospital), 65(6) (employment or labour relations) and 65(8.1) (research or teaching materials) of the *Act*. This decision letter referenced the following exemptions that could apply to the records: sections 15(a) (relations with other governments), 18 (economic and other interests), 19 (solicitor-client privilege), and 21(1) (personal privacy) of the *Act*.

[9] This decision letter also stated that:

For demonstration purposes 245,504 minutes is 4091.73 hours which is 546 working days. I point this out so that you understand just how broad this request is and how much time would be required to complete it. There will be notices to third parties that will require additional time. If you do wish to proceed with your request, HDGH will consider whether it is appropriate to explore agreeing to a staged processing of your request.

[10] The appellant appealed the hospital's fee estimate and time extension to the IPC. Appeal PA20-00175 was opened and a mediator was appointed to attempt a resolution.

[11] During mediation, the appellant requested a fee waiver. The hospital denied the appellant's request for a fee waiver and that issue was added to the appeal.

[12] The appellant confirmed he did not seek photocopies of the records and electronic copies would suffice. As a result, the hospital issued a revised fee estimate of \$123,191.75 comprising of \$122,751.75 for preparation time (based on 245,504 minutes), \$90 for computer search time, and \$350 for 35 CD-ROMS.

[13] Also, during mediation, the appellant raised with the mediator the hospital's statement in its letter that it would take 546 working days to respond to the request. As a result, the time extension taken by the hospital was added as an issue in this appeal.

[14] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. The former adjudicator assigned to this appeal decided to conduct an inquiry and sought representations from the hospital.

[15] The hospital provided representations. The former adjudicator assigned to this appeal shared the hospital's representations with the appellant and asked him to address in his representations whether the scope of his request could be narrowed to potentially reduce the fee estimate amount.

[16] In his representations, the appellant narrowed the time-frames of the records he sought from the same seven named individuals in part 1 of his request. The revised request sought:

... all emails (inbox, outbox, other folders, etc.) for the following individuals during the following timeframes and for which the attached terms [list of approximately 100 search terms] are found within the subject or body of the email:

1. Senior VP Operations and Chief Nursing Executive (later Chief Executive Officer): June 1, 2012-Dec. 31, 2015
2. Chief Financial Officer: June 1, 2012-Dec. 31, 2013
3. President and Executive Director of the HDGH Foundation: January 1, 2012-June 30, 2013
4. Director of Strategic Planning and Project Management Office (PMO)/Research: March 1, 2015-Dec. 31, 2015
5. President and Chief Executive Officer: 2012-2015
6. Analyst (later employee special project coordinator): 2011-2012
7. employee who retired in 2011: 2012-2013²

[17] The hospital provided reply representations and provided a fee estimate of \$3,911 to process the revised request. It advised that there were no responsive records for the three individuals listed in numbers 5 to 7 of the revised request as a result of HDGH's management policy regarding the retention of email accounts for former hospital employees. The hospital advised that the non-existence of records and this policy had been explained to the appellant in the hospital's first access decision letter dated February 28, 2019, and had been reiterated to him several times since.

[18] The appellant provided sur-reply representations in response. The appeal was then transferred to me to continue the adjudication of the appeal. The issues before me are whether the revised fee estimate, and the fee waiver and time extension decisions should be upheld.

[19] In this order, I uphold the hospital's fee estimate of \$3,911 for the appellant's revised request and I uphold the hospital's decision not to waive the fee. I also order the hospital to issue a final access decision within 105 days from the appellant's payment of the required deposit.

ISSUES:

- A. Should the fee estimate of \$3,911 be upheld?

² The request referred to the names of these seven hospital staff. I have substituted their titles at the relevant times instead of their names in this order.

B. Should the fee be waived?

C. What time extension is reasonable given the nature of the request?

DISCUSSION:

Issue A: Should the fee estimate of \$3,911 be upheld?

[20] In its reply representations the hospital responded to the appellant's narrowed request. It states that to determine the scope of the records responsive to the narrowed request, it engaged its third-party service provider, Transform Shared Service Organization (TSSO),³ which built and conducted electronic search terms using the search terms from the "narrowed" request for the restricted time frame of emails for the individuals listed. These searches yielded 3,791 records.

[21] The hospital states that in consultation with TSSO's Information Security and Privacy Analyst (who was also consulted for the purposes of preparing the original fee estimate for the appellant's request and referenced in the initial HDGH representations), the hospital calculated a revised fee estimate for processing the "narrowed" request as set out below, using the following criteria:

- Preparing a record for disclosure - \$7.50 for each 15 minutes
- Permitted preparation time is 2 minutes per page (this includes severing records).

[22] The hospital states:

As with the original fee estimate, the revised fee estimate below is based on actual work completed by TSSO and advice from TSSO in relation to the size of the records involved and the contents of those records. Note that the revised fee estimate below is based on one page per record. This is a conservative estimate, given that a sample of the 3,791 records each had between three and five pages, not including the attachments to each of those records.

Activity	Calculation	Total
Time for preparing record for	3,791 [pages of] records × 2 minutes [per page]	7,582 minutes

³ TSSO is a not-for-profit, non-share-capital, supply chain Shared Service Organization created by its five member hospitals, which includes HDGH. TSSO offers a broad range of services that are divided into three business divisions, including Information Technology/Information Management Services. See https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/EN/map_erie.html

disclosure		
Fee for preparing record disclosure for	7,582 minutes/15-minute segments= $505.46 \times \$7.50$	\$3,791
Computer searches	\$90.00	\$90
CD-ROMS	3 × \$10	\$30.00
Total		\$3,911

[23] The hospital states that under section 7 of Regulation 460, because the revised fee estimate is \$100 or more, the hospital has required the appellant to pay a deposit equal to fifty percent of the fee estimate before it takes any further steps to respond to the request.

[24] In response, the appellant did not provide representations on the fee estimate. Instead, his representations focus on seeking a fee waiver.

Findings

[25] 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.⁴

[26] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.⁵

[27] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.⁶

[28] The IPC may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

[29] 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,

⁴ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁵ Order MO-1520-I.

⁶ Orders P-81 and MO-1614.

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) Computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

[30] More specific provisions regarding fees for records that do not contain the requester's personal information 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.

[31] Where the fee is \$100 or more, as is the case here where the fee estimate is \$3,911, 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.⁷

⁷ Order MO-1699.

[32] In this case, under section 57(1)(a), the hospital searched for and located the responsive records. Its search fee is \$90 based on 3 hours of actual computer search time at the allowable search fee of \$30 per hour.

[33] Section 57(1)(b), the preparation provision in *FIPPA*, includes time for

- severing a record⁸
- a person running reports from a computer system⁹

[34] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.¹⁰

[35] Under section 57(1)(b), the hospital estimated its preparation time to sever the records based on the advice of TSSO. TSSO is an Information Technology/Information Management Services company that is familiar with the type and content of the records. Based on this advice, the hospital estimated two minutes per estimated page of records at the allowable preparation fee of \$30 per hour, for a total of \$3,791.

[36] The remaining fee charged by the hospital is \$30 for 3 CDs, which is a fee allowed under section 57(1)(c) for costs in processing the records.

[37] Accordingly, based on my review of the hospital's representations and its detailed fee estimate of \$3,911 and its representations, I am upholding the hospital's fee estimate as reasonable in the circumstances of this appeal.

[38] In particular, this fee estimate of \$3,911 includes a \$90 fee for the computer search for records that has already been conducted. In support, I note that the hospital engaged TSSO to build and conduct electronic search terms using the search terms from the "narrowed" request for the restricted time frame of emails for the available records of the individuals listed in the revised request.

[39] The hospital also includes in this an estimated preparation fee of \$3,791 and \$30 for 3 CDs. The fee estimate in the amount of \$3,791 is for preparation time to sever a large number of electronic records, as indicated above. It also considered and calculated what the estimated preparation time for the responsive records based on the IPC's generally-accepted approach that it takes two minutes to sever a page that requires multiple severances.

[40] Accordingly, I uphold the \$3,911 fee estimate. I will now consider whether this fee estimate of \$3,911 should be waived.

⁸ Order P-4.

⁹ Order M-1083.

¹⁰ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

Issue B: Should the fee be waived?

[41] The hospital has estimated a fee of \$3,911 to process the revised access request. The appellant has sought a waiver of this fee estimate.

[42] 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 by 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.

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.

[43] 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. The fees referred to in section 57(1) and outlined in section 8 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.¹¹

[44] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before the IPC will consider whether a fee waiver

¹¹ Order PO-2726.

should be granted. The IPC 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.¹²

[45] The institution or the IPC may also decide that only a portion of the fee should be waived.¹³

Representations

[46] The appellant states that he seeks access to the records for a number of reasons, including to investigate issues related to the public interest. In particular, he seeks the documents requested so that he can examine the conduct of the hospital that he believes has been contrary to the public interest. For example, he is of the view that the hospital

1. misled the public about the site selection process for the new hospital site in Windsor region
2. wasted public funds in its expenditures for the new site
3. misled the Windsor City Council about the continued availability of health services in the City of Windsor, before the City Council imposed a tax levy on the public, and
4. misled the Local Integrated Health Network about its new chronic kidney disease clinic.

[47] HDGH states that it has determined that the appellant's fee waiver request should be denied after again considering section 57(4) of the *Act*. It states that the actual costs to HDGH of processing, collecting and copying the records far exceeds the payment required and allowed under section 57(1). It submits that the revised fee estimate is likely low due to the conservative page estimate used and the anticipated number of attachments.

[48] HDGH states that given the significant hospital resources required to review and prepare records for disclosure, and limitations on hospital resources generally and particularly during the ongoing COVID-19 pandemic, HDGH will likely engage a third party to conduct the review and preparation of records. It states that the estimated non-recoverable costs for third party review and preparation of records are in the range of \$30,000.

[49] HDGH submits that the revised fee estimate of \$3,911, which is a small fraction of the original fee estimate of \$147,392.15, is not an economic bar to the appellant's ability to access information, and the appellant has not provided any evidence

¹² Orders M-914, P-474, P-1393 and PO-1953-F.

¹³ Order MO-1243.

demonstrating any financial hardship.

[50] HDGH states that the appellant has not provided any compelling explanation as to how dissemination of the records will benefit public health or safety or even establish some connection between the public interest and a public health and safety issue. Instead, it submits that the appellant's submissions focus on his subjective views and conspiracy theories on a wide range of issues.

[51] The appellant submits that in relation to public health and safety, his request focuses on whether the hospital misled the public and the Windsor City Council regarding certain elements of patient care and spending of public funds. He submits that by ensuring transparency and accountability on the hospital's part, and by having the potential to expose the hospital's improper conduct, his request plainly stands to improve the administration of public health and, by extension, patient safety.

[52] The appellant refers to another request for records that he made to another hospital, Windsor Regional Hospital.¹⁴ He submits that the combined fee estimates of both hospitals are crushing and prohibitive and that it is self-evident that these fee estimates would cause financial hardship and act as a bar to accessing information for almost all individuals.

[53] The appellant further states that the hospital is also well aware that he is currently unemployed and is subject to restrictions that make it impossible for him to earn an income. He submits that the only reason for the hospital to maintain the fee appears to be to avoid producing the documents and that public institutions should not hide behind punishing cost recovery positions to prevent access to information that members of the public are otherwise entitled to.

Findings re whether it would it be fair and equitable to waive the fee?

[54] For a fee waiver to be granted under section 57(4), the test is whether any waiver would be "fair and equitable" in the circumstances.¹⁵ Factors that must be considered in deciding whether it would be fair and equitable to waive the fees are set out in section 57(4)(a) to 57(4)(d). The factor at section 57(4)(d) is not relevant to the circumstances of the present appeal.¹⁶ As discussed below, other factors may be relevant.

¹⁴ The appellant was advised that the appeals of his two requests, which were made to separate institutions and involve different records, would be considered by me in separate orders.

¹⁵ See *Mann v. Ontario (Ministry of Environment)*, 2017 ONSC 1056.

¹⁶ Under section 57(4)(d) and section 8 of Regulation 460, 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.

[55] I will consider each of the remaining sections separately.

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

[56] Where the actual cost to the institution in processing the request is higher than the fee charged to the requester, this may be a factor weighing against waiving the fee.¹⁷

[57] The hospital has indicated that the actual cost for the third party TSSO's review and preparation of the records are in the range of \$30,000. This amount far exceeds the \$3,911 amount of the fee estimate. As explained above, the appellant has not challenged the calculation of the fee estimate, nor has he challenged the hospital's estimated "actual cost."

[58] Considering that the bulk of the \$3,911 fee, the amount of \$3,791, is for preparing the over an estimated 3,791 pages of records, I find that the estimated actual cost of \$30,000 to process this request far exceeds the estimated fee of \$3,911. Therefore, this factor weighs against a fee waiver.

Section 57(4)(b): financial hardship

[59] The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship.¹⁸

[60] The appellant has indicated that the combined fees of the request at issue in the current appeal and the request at issue in a separate appeal would cause him financial hardship. He has not indicated how the payment of the specific fee at issue in this appeal for the amount of \$3,911 will cause financial hardship.

[61] The appellant was advised in the Notice of Inquiry in this inquiry that for section 57(4)(b) to apply, the he must provide some evidence regarding his financial situation, including information about income, expenses, assets and liabilities.¹⁹

[62] The appellant has provided evidence about his income, and that he is unemployed. He has not provided evidence about his expenses, assets and liabilities. As the appellant has not provided evidence of his expenses, assets and liabilities, and taking into account the amount of the revised fee estimate of \$3,911, I find that I do not have sufficient evidence to conclude that payment of the revised fee estimate of \$3,911 will cause financial hardship for the appellant. Therefore, this factor does not apply and does not weigh in favour of a fee waiver.

¹⁷ Order PO-3755. See also Order PO-2514.

¹⁸ Order P-1402.

¹⁹ Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

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

[63] 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 record²⁰

[64] 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.²¹

[65] The records responsive to the appellant’s revised request are the records of four of the hospital’s staff, namely, its Senior VP Operations and Chief Nursing Executive (later Chief Executive Officer), its Chief Financial Officer, its President and Executive Director of the HDGH Foundation, and its Director of Strategic Planning and PMO/Research for various time periods between 2012 and 2015.²²

[66] In his representations, the appellant indicates that he requires the records to examine the conduct of the hospital including examining information about:

- the site selection and expenditure of funds for a new hospital site in the Windsor region,
- the availability of health services before a tax levy, and
- the new chronic kidney disease clinic.

[67] Nowhere in his representations does the appellant explain how the records

²⁰ Orders P-2, P-474, PO-1953-F and PO-1962.

²¹ Orders MO-1336, MO-2071, PO-2592 and PO-2726.

²² The other four staff named in the appellant’s request

sought connect or relate to the issues that he wishes to examine.²³

[68] Although the records that the appellant wishes to examine appear to involve matters of public rather than private interest, the appellant has not demonstrated in his representations how the responsive records, which are dated between 2012 and 2015:

- involve a subject matter that relates directly to a public health or safety issue,
- if disseminated, would yield a public benefit by
 - c. disclosing a public health or safety concern, or
 - d. contributing meaningfully to the development of understanding of an important public health or safety issue; and,
- will be disseminated by the appellant.

[69] In my view the appellant has not sufficiently explained how the information requested would or could benefit public health or safety. Accordingly, I find that I do not have sufficient evidence to conclude that dissemination of the records would benefit public health or safety, therefore this factor does not apply or weigh in favour of a fee waiver.

Other relevant factors

[70] Any other relevant factors must also be considered when deciding whether or not a fee waiver is "fair and equitable". Relevant factors may include:

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

²³ As indicated above, although the appellant's request names seven hospital staff members, there are no responsive records for three of these staff members.

- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.²⁴

[71] The parties did not provide representations on these or any other relevant factors.

[72] I have considered whether any other relevant factors are relevant. I note that although the scope of the request was narrowed at adjudication by the appellant, it still included a request for records of three hospital staff whom he knew that records were unavailable for. The request involves a large number of records, estimated at 3,791 pages above, and the appellant has not advanced a compromise solution to reduce the \$3,911 cost. It is my view, waiver of the fee would shift an unreasonable burden of the cost from the appellant to the hospital.

[73] Having considered the factors that could weigh in favour of a finding that it is fair and equitable for the hospital to waive the fee, I have concluded that none apply. I find that in the circumstances of this appeal, a fee waiver would shift an unreasonable burden of the cost from the appellant to the hospital. For these reasons, I am upholding the hospital's decision to deny the fee waiver as I find that a fee waiver is not fair and equitable in the circumstances of this appeal.

Issue C: What time extension is reasonable given the nature of the request?

[74] After the request was narrowed at adjudication only the hospital provided representations on a time extension, as set out below, as the appellant did not provide representations in reply to the hospital's time extension representations on the revised request.

Representations

[75] As identified above, the appellant took issue with the hospital's statement that it would take 546 days to process his request before it was narrowed.

[76] The hospital states with respect to the revised request that following receipt of the required deposit it will require an extension of time to respond to the revised request. In its November 4, 2021 representations it states:

... the estimated time to prepare records for disclosure is (at least) 7,582 minutes. This amounts to (at least) 126.37 hours, or 17 working days. Additionally, ...the hospital anticipates that a percentage of these records will be subject to exemptions and exclusions and records will have to be severed accordingly.

²⁴ Orders M-166, M-408 and PO-1953-F.

Given the hospital and human resources dedicated to addressing the ongoing COVID-19 Pandemic, the time required to process the request - even if the hospital engages a third party to conduct the review and preparation of the records - will place a significant strain on the hospital's operations.

Due to the constraints and significant time required to process the request, HDGH proposes a staged approach to the review and preparation of records, as follows:

- review of tranche [a batch] of records, and related preparation of records: by December 31, 2021;
- review of second tranche of records, and related preparation of records: by January 31, 202[2]; and
- review of remaining tranche of records, and related preparation of records (with the exception of records subject to notice and representations by affected persons, as set out below): by March 31, 202[2].

HDGH anticipates that notices to affected persons under section 28 of the Act will be required. Given the ongoing COVID-19 Pandemic and the fact that affected persons are likely engaged in matters relating to the Pandemic, the hospital anticipates that it will be required to extend the time limit for notice to affected persons, and that extensions of time may be required to accommodate representations by affected persons, under section 28 of the Act. Accordingly, HDGH proposes that the records which engage or potentially engage affected persons be addressed separately from the timeline above. HDGH proposes notices to affected persons, representations and preparation and disclosure of these records be made by April 30, 2021.

Given the appellant's multiple requests for additional time and for extensions to holds on the appeal, and the appellant's additional delay in actually making the "narrowed" request, HDGH submits that there should be no issue with the timelines proposed above. These are entirely reasonable in the circumstances.

Findings

[77] Section 26 of the *Act* requires an institution to make an access decision within thirty days of receiving a request unless the time for making this access decision is extended in accordance with the *Act*. Section 26 reads:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27, 28²⁵ and 57²⁶, within thirty days after the request is received,

(a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and

(b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

[78] Time extensions are governed by section 27(1) of the *Act* which states:

A head may extend the time limit set out in section 19 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.

[79] Factors which might be considered in determining reasonableness include:

- the number of records requested;
- the number of records the institution must search through to locate the requested record(s);
- whether meeting the time limit would unreasonably interfere with the operations of the institution;
- whether consultations outside the institution were necessary to comply with the request and if so, whether such consultations could not reasonably be completed within the time limit.

[80] The hospital did not provide specific time periods in which it will process the request; instead it provided end dates to process the request, which I assume are from the date it made its representations on November 4, 2021. In other words, the hospital

²⁵ Section 28 sets out the requirements for giving notice to affected persons.

²⁶ Section 57 sets out the fee provisions.

submits that it will process the request in stages and will review and prepare one batch of records in two months, the next batch one month after that and the third batch two months after the second.

[81] The request at issue is for records of the following hospital staff for the time-frames indicated:

1. Senior VP Operations and Chief Nursing Executive (later Chief Executive Officer): June 1, 2012-Dec. 31, 2015
2. Chief Financial Officer: June 1, 2012-Dec. 31, 2013
3. President and Executive Director of the HDGH Foundation: January 1, 2012-June 30, 2013
4. Director of Strategic Planning and Project Management Office (PMO)/Research: March 1, 2015-Dec. 31, 2015

[82] The request at issue generated a large number of electronic records, however, according to the hospital these records have already been located electronically. The hospital will require time to notify any affected persons and to sever any exempt information from the records.

[83] The hospital has not indicated how many affected persons it anticipates notifying or how long it would take to notify these individuals.

[84] Overall the hospital has estimated 17 working days to review and prepare the records for disclosure. Given this estimated 17-day time-frame, it is not apparent to me why the hospital needs to review and prepare the records for disclosure in three batches, instead of in one batch. Specifically, the hospital has not indicated why it needs to review the records in three batches to sever them for any applicable exclusions or exemptions.

[85] In my view, the hospital can review the records in one batch and prepare them for disclosure. The hospital has indicated that it will take approximately 2 months to prepare the first batch of records for disclosure. I accept as reasonable a preparation time of two months (60 days) to review and prepare all of the records for disclosure.

[86] I also am allowing an extra month and a half (or 45 days) to allow time to notify any affected persons and receive their representations in response. In making this finding as to the notification of affected persons, I have taken into account that the hospital, under section 28(2)(c) of the *Act*, is required to notify any affected persons that they need to provide, within twenty days after the notice is given, representations as to why the record or part thereof should not be disclosed.

[87] Accordingly, I am allowing the hospital a 105-day time extension to issue a final

access decision to the appellant once the deposit of 50% of the \$3,911 fee is paid by him. This time extension consists of 60 days to prepare the records for disclosure and another 45 days for the notification of affected persons process.

ORDER:

1. I uphold the hospital's fee estimate of \$3,911 for the appellant's revised request.
2. I uphold the hospital's decision not to waive the fee.
3. I allow the hospital 105 days from the appellant's payment of the 50% deposit of the \$3,911 fee estimate to issue a final access decision.

Original Signed by: _____

Diane Smith
Adjudicator

September 7, 2022 _____