

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4390

Appeal PA20-00251

Queen's University

May 16, 2023

Summary: This appeal disposes of the issues arising from a fee estimate issued as part of Queen's University's response to a request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to records pertaining to a former member of the university's teaching staff and requested a fee waiver. The requester appealed the university's initial interim access decision. During mediation the university provided the requester full access to some records, without charge. The university issued a revised interim access decision, which included a fee estimate of \$601.00 to respond to the remaining parts of the request. The university stated that it required additional information in order to respond to the request for a fee waiver. The appeal proceeded to adjudication of the university's fee estimate and the issue of whether it should waive its fee.

In this order, the adjudicator upholds the university's fee estimate of \$601.00 and its decision not to grant a fee waiver.

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

OVERVIEW:

[1] This order disposes of the issues arising from an interim access decision issued by Queen's University (the university) in response to a request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to records relating to a former member of the university's teaching staff (the

affected party) and its Employment Relations program. The requester stated that his request included but was not limited to the following list of records:

- a. Current teaching schedule, Schedule of courses and seminars taught, Syllabi of courses and seminars taught, letter of appointment, date of appointment, Curriculum Vitae, List of Publications, List of Presentations and Talks, Lectures, Public Lectures, Papers, Experience, Faculty Seniority and Hire Date, Grant applications, Funded conferences, Funded talks, Funded research, Invited lectures, Clinics, Faculty review, Current projects;
- b. Role, position, title, duties, teaching, employment and relationship;
- c. Role, duties, teaching, employment and relationship with the Centre for Law in the Contemporary Workplace at [the university];
- d. Briefing notes, meeting notes, meeting minutes, faxes, letters, reports, audits, inquiries, memoranda, corporate plans and intra-Provincial Ministry correspondence including to/from all outside institutions, including but not limited to, Ontario Public Service Employees Union (OPSEU), Lancaster House, [a specified legal partnership];
- e. Emails, SMS, PIN to PIN and other mobile messages, including Message-ID and full headers;
- f. Voice Mails, Phone Recordings, Audio Recordings and transcriptions and data of the same;
- g. Correspondence notes data and records in any form relating to [the affected party];
- h. Include [the university] confidences and records subject to solicitor-client privilege; and
- i. All other records already released under [the *Act*] by [the university] on [the affected party]

[2] The requester also sought a fee waiver in his request.

[3] Pursuant to section 24(2) of the *Act*, the university sought clarification regarding the program specified in the request. The requester stated that he was seeking records relating to the affected party and the university's "Masters Program Industrial Relations" (the program).

[4] The university issued an interim access decision outlining records that it could not disclose in response to the request explaining that much of what the requester was seeking did not exist, was exempt or excluded under the *Act* or was too broad in scope

for the university to locate by searching.

[5] In the interim access decision, the university stated that it expected to be able to grant access to records responsive to parts (a) and (b) of the request and issued a fee estimate of \$152.50 for processing that part of the request. In addition, the university noted the request for a fee waiver and stated that it required more documentation before it would decide about waiving fees.

[6] The requester, now the appellant, appealed the interim access decision to the Office of the Information and Privacy Commissioner of Ontario (IPC) and a mediator was assigned to explore resolution.

[7] During mediation, the appellant advised that he objected to the fee estimate and wished to pursue his request for a fee waiver. To reduce the fee estimate, the appellant identified records from parts (a) and (b) of the request that he wished to access. The appellant identified the affected party's teaching schedules for courses and seminars from 2014 to 2019. The university issued a decision granting full access to these records, without a fee.

[8] Subsequently, the appellant advised that he wished to pursue access to the affected party's course syllabi. The university identify two syllabi that were responsive to the appellant's request and issued a supplemental decision granting full access to the syllabi, without a fee.

[9] On January 17, 2022, the university issued a revised interim access decision for the remaining records responsive to parts (a) to (c) of the request that it anticipates being able to produce and for records responsive to parts (d) to (g) of the request. The revised interim access decision included an estimated fee of \$601.00 for processing these parts of the request. The fee estimate was broken down as follows:

- Search time – 14.5 hours \$435.00
@ \$30.00/hr
- Preparation time – 2.5 \$75.00
hours @ \$30.00/hr
- Photocopying - \$0.20/page \$91.00

[10] The university stated that the appellant could pay \$10 for the records to be provided electronically on a USB drive, in which case there would be no photocopying fee. The university indicated that it required a deposit of \$300.50 in order to process the request. Regarding the appellant's request for a fee waiver, the university stated that it needed to see more detailed evidence of the appellant's assets and expenses in order to determine whether payment of the fee would cause the appellant financial hardship.

[11] The appellant advised that he wished to pursue the issue of the reasonableness of the university's fee estimate and its response to his request for a fee waiver to adjudication.

[12] As a mediated resolution of the appeal was not achieved, the file was transferred to the adjudication stage of the appeal process, in which an adjudicator may conduct an inquiry.

[13] Upon receipt of the mediator's report, the appellant stated that the issues to be decided on appeal should include the application of the exclusion and exemptions cited by the university in its interim response to his request.

[14] The decision giving rise to the appeal that is before me is an interim access decision concerning the threshold issues of fee estimate and fee waiver. The application of the exclusion or any exemptions under the *Act* is therefore outside the scope of this appeal as no final access decision has been issued in relation to the requested records. The only issues before me are the university's revised fee estimate of \$601.00 and its response to the appellant's fee waiver request.

[15] I decided to conduct an inquiry and invited and received representations from the university addressing the facts and the issues as set out in a Notice of Inquiry. I then sent the appellant a Notice of Inquiry, together with a copy of the university's representations, and invited the appellant to submit representations addressing the issues set out in the Notice of Inquiry and responding to the university's representations.

[16] The appellant initially sought an extension of time for the submission of his representations, which I granted. However, nothing was received by the new deadline and the appellant subsequently indicated that he wishes to pursue his appeal but would not be submitting representations.

[17] In this order, I uphold the university's fee estimate of \$601.00 and its denial of a fee waiver.

ISSUES:

- A. Should the IPC uphold the university's fee estimate?
- B. Should the university waive its fee?

DISCUSSION:

Issue A: Should the IPC uphold the university's fee estimate?

[18] In this appeal, the appellant challenges the reasonableness of university's fee estimate of \$601.00 set out in its revised interim access decision.

[19] Under section 57(3), an institution must provide a fee estimate where the fee is more than \$25. The purpose of the fee estimate is to give the requester enough information to make an informed decision on whether or not to pay the fee and pursue access.¹ The fee estimate also helps requesters decide whether to narrow the scope of a request to reduce the fee.²

[20] The institution can require the requester to pay the fee before giving them access to the record.³ If the estimate is \$100 or more, the institution may require the person to pay a deposit of 50 per cent of the estimate before it takes steps to process the request.⁴

[21] Where the fee is \$100 or more, the fee estimate can 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.⁵

[22] 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

[23] The fee provisions are set out in the *Act* and Regulation 460 (the Regulation). The IPC can review an institution's fee estimate and can decide whether it complies with the *Act* and the Regulation.

[24] The mandatory fee provisions in the *Act* are found in section 57(1), which provides 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,

(a) the costs of every hour of manual search required to locate a record;

(b) the costs of preparing the record for disclosure;

¹ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

² Order MO-1520-I.

³ Regulation 460, section 9.

⁴ Regulation 460, section 7(1).

⁵ Order MO-1699.

⁶ Orders P-81 and MO-1614.

- (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.

[25] More specific fee provisions are found in section 6 of the Regulation⁷. Section 6 applies to general access requests, while section 6.1 applies to requests for one's own personal information:

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.

Representations

[26] It is the university's position that the fee estimate for processing the appellant's request is reasonable and compliant with the fee provisions of the *Act*. The university provides background information about the processing of the appellant's request and states that its fee estimate is based on an initial consultation with the program chair and the work of two employees from the program's finance and administration office.

[27] In its initial fee estimate, the university focussed on parts (a) to (c) of the appellant's request and determined that for parts (d) to (g) a fee estimate could not be made due to the broad scope of these categories of records.

⁷ As this appeal does not address a request for the appellant's own personal information, the fee provisions in section 6.1 of the Regulation are not relevant.

[28] Notwithstanding its concerns that a fee estimate would not be accurate, in order to progress the appellant's appeal, the university produced a fee estimate. It determined that the searches to be carried out would include both the records of the program department and those held by the affected party. The university states that there is no central search functionality in the university whereby records can be searched across the institution by keyword.

[29] The university states that the affected party is no longer employed by the university as an adjunct professor. The university contacted the affected party and asked him to estimate how many records responsive to the request they anticipate being able to locate.

[30] The affected party (via their legal counsel) estimated that they had approximately 455 documents, including emails across multiple accounts and hard copy records, some of which are in storage, and that they would require 14.5 hours to search through. The university submits that its fee estimate is therefore based on the records in the affected party's possession. The university submits that many records held by instructors relating to their university activities are considered to be their own personal records and not within the university's custody or control. I understand this submission to mean that once responsive records are identified, the university will consider whether they are within its custody or control or they are the affected party's personal records and excluded from the access regime of the *Act*.

[31] The university states that there are other records held by the program master relating to the affected party but that most of these are not responsive to the appellant's request. In addition, the university states that there are additional records to those already located during the initial searches and disclosed to the appellant that are held by the program office and fall within parts (a) and (b) of the request. The university submits that it considers the search time to locate these records is trivial compared to the time to be spent by the affected party to locate responsive records. The university states that the estimate of 14.5 hours of search time does not include time to be spent locating additional records in the program office.

[32] Regarding the preparation time, the university estimates that one third of the responsive records would require severing. The fee estimate for time spent preparing the records for disclosure is calculated at 2 mins per page, which the university submits is the IPC's accepted allowance for this work.

[33] Regarding photocopying, the university states that it estimated this fee using the allowable rate of \$0.20 per page. The university submits that this fee was included to acknowledge the appellant's preference not to use electronic mail. However, the university states that the fee for providing the records electronically on a USB drive would be \$10, as an alternative to the photocopying fee.

[34] The university states that it does not anticipate any computer programming

would be required for it to respond to the appellant's request and it would meet the cost of shipping in the event that the appellant wished to receive the records in hard copy.

[35] As noted above, the appellant has not submitted representations.

Analysis and findings

[36] For the reasons that follow, I uphold the university's fee estimate of \$601.00.

[37] In the fee estimate, the university provided a breakdown of the work to be done to process the appellant's request, including the time to be spent searching for records, the estimated number of responsive records that will be located in the searches and an estimate of the work to be done to prepare the records for disclosure.

[38] I accept the university's submission that the fee estimate is based upon the information provided by the affected party (via their counsel) and I am satisfied that the estimate has been prepared by an individual who is familiar with the type and content of the requested records.

[39] Regarding search time, I have reviewed the parts of the appellant's request to which the fee estimate relates, namely parts (d) to (g). I find that in these parts of the request, the appellant is seeking access to a wide variety of records pertaining to the affected party, including briefing notes, meeting notes, emails, SMS and other mobile messages, voice mail and phone recording and other correspondence. I find that the appellant is seeking access to both electronic and physical records and I accept that searches will have to be made of records in both of these formats. I note that some hard copy records are held in storage, which will need to be searched.

[40] I find that the estimate of 14.5 hours of search time is reasonable in these circumstances. Section 6 of the Regulation provides for a charge of \$7.50 for every 15 minutes of search time (i.e. \$30/hour). The university's search fee of \$435.00 for 14.5 hours is therefore in accordance with the Regulation.

[41] Regarding preparation time, the university estimates that one third of the records will require severing to prepare the records for disclosure. In its interim access decisions, the university states that it anticipates the responsive records will contain personal information of the affected party and other individuals so that the mandatory personal privacy exemption in section 21 of the *Act* may apply. I accept that it is reasonable for the university to estimate that one third of the records (approximately 150 records) will require severing.

[42] The IPC has generally accepted that it takes two minutes to sever a page that requires multiple severances.⁸ The university has not estimated the number of pages to

⁸ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

be severed. However, assuming that each of the 150 records that require severing are at least a single page, this gives an allowable time estimate of 5 hours to sever 150 pages.

[43] The university has estimated only 2.5 hours to be spent preparing the records for disclosure and I find this lower estimate to be reasonable.

[44] Section 6 of the Regulation provides for a fee of \$7.50 per 15 minutes (i.e. \$30/hour) spent preparing a record, including severing part of a record. The university's fee of \$75.00 for preparation time is therefore in accordance with the Regulation.

[45] Regarding the photocopying fee, I have accepted the university's estimate that its searches will locate 455 records. I note the university's submission that the appellant has expressed a preference not to receive email correspondence. Section 6 of the Regulation provides a photocopying fee of \$0.20 per page. On the basis of 455 single page records, I find that the photocopying fee of \$91.00 is in accordance with the Regulation.

[46] In the event that the appellant elects to receive the records in electronic format on a USB drive, I find the university's fee of \$10 to be reasonable. Section 6 of the Regulation provides for a fee of \$10 for records provided on CD-ROM. The IPC has previously upheld a fee of \$10 for a USB drive on the basis that it is akin to a CD-ROM⁹ and I am satisfied that it is a comparable form of electronic document storage.

[47] Accordingly, I find the university's fee estimate of \$601.00 for processing parts (d) to (g) and the remaining records responsive to parts (a) to (c) of the appellant's request to be reasonable.

Issue B: Should the university waive its fee?

[48] The fee provisions in the *Act* establish a "user-pay" principle. The fees referred to in section 57(1) of the *Act* and section 6 of the Regulation are mandatory unless the requester can show that they should be waived.¹⁰

[49] The *Act* requires an institution to waive fees, in whole or in part, if it is fair and equitable to do so. Section 57(4) of the *Act* and section 8 of Regulation 460 set out matters the institution must 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,

⁹ See, for example, PO-3818.

¹⁰ Order PO-2726.

(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.

[50] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request. If the institution either denies this request, or chooses to waive only a portion of the fee, the IPC may review the institution's decision, and can uphold or modify the institution's decision.¹¹

[51] The appellant requested fee waiver when he submitted the access request to the university and stated that the reason for seeking the fee waiver is financial hardship.

[52] A fee must be waived, in whole or in part, if it would be "fair and equitable" to do so in the circumstances.¹² As noted above, the factors that must be considered by an institution in deciding whether it would be fair and equitable to waive a fee include whether the payment of the fee will cause a financial hardship to a requester.¹³

[53] For the financial hardship factor in section 57(4)(b) to apply, a requester must provide evidence regarding their financial situation, including information about income, expenses, assets and liabilities.¹⁴ The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship.¹⁵

[54] The institution (and, on appeal, the IPC) must consider any other relevant

¹¹ Section 57(5), Orders M-914, MO-1243, P-474, P-1393 and PO-1953-F.

¹² See *Mann v. Ontario (Ministry of Environment)*, 2017 ONSC 1056.

¹³ Section 57(4)(b).

¹⁴ Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

¹⁵ Order P-1402.

factors when deciding whether it would be fair and equitable to waive the fee. 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 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 offered a compromise that would reduce costs,
- whether the institution provided any records to the requester free of charge, and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the requester to the institution.¹⁶

Representations

[55] The university states that the appellant's access request is overly broad and it amounts to a request for access to all records relating to the affected party's teaching career in the program. The university submits that processing such a broad request is not fair and equitable for the university and will unreasonably interfere with the operations of the institution.

[56] The university states that the appellant sought a fee waiver in his initial access request and provided documentation showing his financial situation. However, the university submits that the information provided is insufficient for it to confirm whether the appellant is able to pay the estimated fee. The university submits that the appellant is required to provide evidence of expenses, assets and liabilities and cites Order PO-3383 in support of this submission.

[57] It is the university's position that the appellant's financial position is not clear from the documents that he has provided. The university also submits that the appellant has not attempted to work with the university constructively to try and narrow the scope of his request as the university has suggested in its correspondence.

[58] The university states that the subject matter of the requested records is not a matter of public interest, nor does it relate to a public health or safety issue and the appellant has not articulated in any way that dissemination of the records would yield a public benefit.

¹⁶ Orders M-166, M-408 and PO-1953-F.

[59] The appellant did not make representations in response to the issues in the Notice of Inquiry, which included the guidance set out above about the type of evidence that is required to demonstrate that the financial hardship factor in section 57(4)(b) applies. However, in the original request submitted to the university, the appellant provided information regarding his financial situation following the termination of his employment in February 2017.

[60] The appellant provided information relating to his total income in 2017 and details of his tax assessment for 2018 issued by the Government of Canada. The appellant compared his income for 2018 with published information about Canada's poverty line for a single adult at that time.

Analysis and findings

[61] For the reasons that follow, I find that there is no reasonable basis for concluding that the payment of the fee will cause the appellant financial hardship so that it is just and equitable for the university to waive its fee.

[62] The appellant has asked the university to waive its fee estimate on the basis of his financial hardship and has produced documentation regarding his change in financial circumstances following the termination of his employment in 2017.

[63] I note that the appellant's request for access was submitted to the university in January 2020, which is some time after his change in circumstances in 2017.

[64] I agree with the university's submission that the scope of the appellant's access request is broad and it encompasses all records pertaining to the affected party and his employment at the university. The request expressly states that it is not limited to the categories of records listed. I also note that the appellant has not provided any parameters, for example key words or phrases, to assist the university to focus the searches of records to be conducted to locate those responsive to the categories in the enumerated paragraphs.

[65] In addition, I accept the university's submission that the subject matter of the requested records is not a matter of public interest.

[66] The appellant relies upon financial hardship as the basis for his fee waiver request. However, I find that there are other factors that are also relevant to the question of whether it would be fair and equitable to waive the university's fee. I note that the university has provided some records to the appellant, without charge. During mediation, the appellant identified the affected party's teaching schedules for courses and seminars from 2014 to 2019 as records to which he was seeking access and the university issued a decision granting full access to these records, without a fee. The university has also disclosed the affected party's course syllabi, without a fee.

[67] In addition, the university has offered to provide the requested records in

electronic format on a USB for a fee of \$10. This would allow the appellant to avoid the photocopying fees associated with receiving the records in hard copy.

[68] As I have noted above, the fee provisions of the *Act* establish a “user-pay” principle such that the payment of the fees referred to in section 57(1) of the *Act* and section 6 of the Regulation are mandatory unless a requester can show that they should be waived.

[69] In its correspondence with the appellant responding to the request and during mediation, the university has indicated that it considers the information provided by the appellant to be insufficient to support his request for a fee waiver on the basis of financial hardship. The appellant has not provided additional information to the university, nor has he submitted representations addressing the issue of fee waiver that I set out in the Notice of Inquiry and sent to him during my inquiry. In the Notice of Inquiry, I indicated the type of evidence that a requester should provide regarding their financial situation and that it should include information about income, expense, assets and liabilities.

[70] Notwithstanding that the appellant has provided documentation relating to his change of financial circumstances in 2017, I find it reasonable for the university to decline to waive its fee without additional documentation and in circumstances where it has provided some records free of charge and offered alternative means of delivering the requested records to reduce the fee.

[71] Taking into account all the relevant factors, I find that it would not be fair and equitable in the circumstances of this appeal for the university to waive its fee under section 57(1) of the *Act*. Accordingly, I uphold the university’s decision not to grant the appellant a fee waiver.

ORDER:

1. I uphold the university’s fee estimate of \$601.00.
2. I uphold the university’s decision not to waive its fee.

Original signed by: _____
Katherine Ball
Adjudicator

_____ May 16, 2023