

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4422

Appeal PA22-00009

Ontario Power Generation

July 21, 2023

Summary: Ontario Power Generation (OPG) received a request under the *Act* from an environmental non-profit organization seeking records about pressure tubes in two nuclear generating stations. OPG issued a fee estimate of \$5,520 and sought a time extension of one year under section 27(1) of the *Act* to process this request. The requester appealed this decision.

In this order, the adjudicator finds that the fee estimate should be reduced by 50 per cent and that after payment of the applicable deposit OPG is entitled to a five-month time extension to process the access request.

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

OVERVIEW:

[1] This order concerns whether the fee should be waived for a request seeking records related to pressure tubes in two nuclear generating stations and whether the institution should receive a time extension to process this request.

[2] Ontario Power Generation (OPG) received a request from an environmental non-profit organization under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for the following records:

1. All documents in OPG's possession that contain any information, discussion or data pertaining to the pick up of hydrogen and/or deuterium by pressure tubes in CANDU¹ reactors at the Pickering, Bruce and Darlington nuclear stations; and
2. All documents that contain any mention of the so-called Design Equation used in predictive models of the corrosion of, and deuterium ingress into Zr-2.5Nb pressure tubes.

The documents should cover all data obtained in the period 2000 to 2021 through so-called scrape campaigns, or from measurements on removed pressure tubes.

For greater clarity, the documents provided should include all reported examples of the following information:

- i. The reactor and fuel channel identifier for which the sample data were obtained;
- ii. The in-reactor exposure time, expressed in effective full power hours or years, and the equivalent exposure hot hours;
- iii. The axial position of the sample as measured from the pressure tube inlet end; and
- iv. The measured deuterium concentration expressed in units of mg/kg.

An example of the type and format of the data requested may be found in the July 1998 Report:

Review and Predictions of Corrosion and Deuterium Uptake in the Body of Operating Reactor Pressure Tubes, OH Report No. A-FC-97-113-P or AECL Report No. 00-3110-200-005.

[3] OPG issued a fee estimate of \$10,890 comprised of 165 hours of search time at \$30 per hour and 198 hours of preparation time at \$30 per hour. OPG advised that there was an estimated 9,919 pages of records responsive to the request. OPG advised that the exemptions at section 17(1) (third party information) and section 18(1) (economic and other interests) of the *Act* may apply to a portion of the responsive records. OPG also advised that when it received the fee estimate deposit from the requester, a time extension would be claimed.

[4] The requester submitted a request for a waiver of the fee to OPG. OPG denied the request for a fee waiver.

[5] The requester (now the appellant) filed an appeal to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt a resolution

¹ Canadian Deuterium Uranium.

of this appeal.

[6] During the course of mediation, the appellant resubmitted a request for a waiver of the fee. The appellant also narrowed the scope of the request to records related to Bruce and Pickering nuclear generating stations and the timeframe 2016 to 2021.

[7] OPG issued a revised fee estimate of \$5,520 comprised of 92 hours of search time at \$30 per hour and 92 hours of preparation time at \$30 per hour. OPG advised that there was an estimated 5,500 pages of records responsive to the request. OPG advised that the exemptions at section 17(1) (third party information) and section 18(1) (economic and other interests) of the *Act* may apply to a portion of the responsive records. OPG advised that when it received the fee estimate deposit, a time extension of one year would be claimed. OPG further advised that it would not revisit its decision to deny the appellant's request for a fee waiver.

[8] The appellant advised that it wished to proceed to adjudication to challenge OPG's fee estimate, fee waiver decision and time extension.

[9] As mediation could not resolve these issues, the appeal was transferred to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and sought the parties' representations, which were exchanged between them in accordance with the IPC's *Practice Direction 7*.

[10] In its representations, the appellant advised that it was only pursuing its appeal of the decision on fee waiver and time extension, therefore, only these two issues, and not the reasonableness of OPG's fee, are addressed in this order.

[11] In this order, I find that the fee estimate should be reduced by 50 per cent and that OPG is permitted to have a five-month time extension to process the access request.

ISSUES:

- A. Should OPG waive its fee estimate of \$5,520?
- B. Is the time extension of one year reasonable given the nature of the request?

DISCUSSION:

Issue A: Should OPG waive its fee estimate of \$5,520?

[12] The fee provisions in the *Act* establish a "user-pay" principle. The fees referred to in section 57(1) and outlined in sections 6 and 6.1 of Regulation 460 are mandatory

unless the requester can show that they should be waived.²

[13] 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,

(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.

[14] 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.³

Representations of the Appellant

[15] The appellant states that it is a small environmental non-profit organization with annual revenues in 2021 of approximately \$250,000, the bulk of which was raised by individual donors in Ontario. It submits that, given the public health and safety issues at the centre of this request, it should not have to pay a significant fee to access information

² Order PO-2726.

³ Section 57(5), Orders M-914, MO-1243, P-474, P-1393 and PO-1953-F.

held by a government agency that should be publicly available.

[16] The appellant submits that a full or partial fee waiver for this request would be fair and equitable because the fee as estimated would cause financial hardship to it and because there are significant public health and public safety issues that would be benefited by this request.

Appellant - Financial Hardship

[17] Regarding financial hardship, the appellant states that it cannot afford to pay the fee requested by OPG as the required fee represents a significant proportion of its total budget. It states that it allocates approximately \$30,000 of its annual budget to research, which includes paying fees to access public information from the government ministries and agencies upon which its important research and communications work depends. Accordingly, the fee estimate represents 18 per cent of the appellant's total research budget.

[18] It states that it cannot afford the fee even though it is now half of what it was because it voluntarily and significantly reduced the scope of the request, the minimum amount of data that will permit the desired analysis, in the interest of finding a resolution. The fee is less, but so is the data that would be released – it has requested only 5-years of data (down from 21-years) from only Bruce and Pickering nuclear generating stations, not Darlington.

Appellant - Public Health or Safety

[19] The appellant submits that it is requesting the information at issue because of real and potentially dangerous issues that are known to impact aging nuclear reactors. It states that hydrogen can build up in pressure tubes in nuclear reactors and could rupture prematurely, which would result in the unexpected release of radioactive gases and/or dust. Given the proximity of large populations to Ontario's nuclear reactors, such as the Greater Golden Horseshoe where over half of Ontario's population lives, it submits that such an event could potentially expose millions of people to radioactivity.

[20] The appellant submits that unsafe hydrogen levels in pressure tubes are not a purely theoretical problem and gives an example of the July 2021 shut down by the Canadian Nuclear Safety Commission (the CNSC) of two reactors at Bruce Nuclear Generating Station as their hydrogen levels were far above safe levels. It states that this gives rise to questions about when and how the hydrogen levels increased and is this problem apparent in the pressure tubes of other units at Bruce as well. The appellant states that:

Moreover, there is no reason to simply accept that this issue is restricted to only two units at Bruce Nuclear Generating Station. Bruce and Pickering nuclear generating stations are both older facilities that are approaching end-of-life. Hydrogen build-up in pressure tubes is particularly problematic

and potentially dangerous in aging nuclear power stations. Given that the numbers from the units at Bruce were so startlingly high, it is possible, if not probable, that the numbers in other units at both Bruce and Pickering are similarly high and/or trending upwards...

[21] It states that it requested the information at issue upon real and potentially dangerous issues that are known to impact aging nuclear reactors infrastructure that could potentially expose millions of people to radioactivity.

[22] The appellant provided further detailed representations as to safety concerns about the reactors at Bruce and Pickering nuclear generating stations.

Appellant - Public dissemination of the information

[23] The appellant states that it has every intention of making relevant information from these documents public, as researching, analysing and then disseminating information related to Ontario's energy policy are its core activities.

[24] It states that it would typically disseminate information through its email list, which has over 33,000 subscribers, through social media and on its website, and where appropriate, through with the traditional media and petitions to the appropriate ministers and government employees.

[25] The appellant states that to understand the data, it would rely on the analysis of a its a renowned expert in the field of pressure tubes in nuclear reactors.

Representations of OPG

[26] OPG maintains that the fee should not be waived as the appellant has not demonstrated that a fee waiver would be fair and equitable. The estimated fee is less than the actual cost of producing the request as the actual time required for preparation results in higher actual costs. It states that:

...in the spirit of working collaboratively with the requester, OPG has comprised the fee estimate with only 1 minute of preparation time per page. Further, in preparing the interim access decisions, OPG undertook time sampling records which it did not include in the fee estimate, and OPG does not intend to include this time in the fees. Finally, OPG notes the fee estimate does not include any charges outside of those outlined in Regulation 460...

OPG - Financial Hardship

[27] OPG states that as the appellant has paid for legal counsel to assist it in the processing of its request and appeal, then the appellant should pay for the cost of this request just like any other operational expense.

[28] It submits the appellant has not explained the relevance of the financial statements it provided with its representations nor substantively demonstrated that the fee will result in financial hardship. It is OPG's view that, in the context of a fee waiver, the financial statements do not demonstrate meeting the definition of hardship that the IPC has previously relied on.

[29] OPG disputes that a single cost of research representing a substantial portion (18 per cent) of the appellant's research budget is not tantamount to the inability of undertaking the cost.

OPG - Public Health or Safety

[30] OPG submits that the news articles about reactors being shut down by CNSC referred to by the appellant in its representations does not establish a public health and safety benefit in disclosure of the information at issue. OPG explains that its activities in this area, including public health and safety, are subject to a comprehensive regulatory regime and the extensive oversight of the CNSC.

[31] OPG refers to the CNSC's response⁴ to the discovery of elevated hydrogen levels at Bruce Nuclear Generating Station in pressure tubes that included requiring authorization for the restart of units following outages and the establishment of an independent external advisory committee to complement the technical expertise of CNSC members.

[32] OPG is of the view that if the appellant wants to verify any of its assumptions or opinions regarding the state of any nuclear generating station, it can do so upon payment of the fee. It reiterates that it intends to release the records, subject to any applicable statutory exemptions, once payment of the fee is received.

[33] In the alternative, OPG submits that even if the IPC finds a public health and safety benefit to the request, it is OPG's opinion that, nonetheless, waiving the fee would not be fair and equitable. The fee should not be waived simply because the information sought would benefit public health and safety because section 57(4) of the *Act* does not require a waiver solely on the basis of public health and safety. It requires only that the waiver be fair and equitable in the opinion of the head – a finding that public health and safety exists is only one consideration for such opinion and does not in and of itself dictate that a fair and equitable waiver must follow. It states that:

...on a balance, favouring the refusal of the fee waiver outweighs the granting of it because of the large volume of records, the fact that OPG worked constructively with the requester to narrow the request, the fact that a waiver would shift an unreasonable burden of the cost of access from

⁴ <https://www.cnsccsn.gc.ca/eng/resources/news-room/letters/response-globe-and-mail-2023.cfm> response to Globe and Mail article, January 5, 2023, "Nuclear reactor pressure tubes are deteriorating faster than expected. Critics warn regulators are 'breaking their own rules'".

the requester to both OPG and, by extension, the ratepayers of Ontario, and the fact that a fee waiver does not by itself hinge on section 57(4)(c) of the *Act*.

OPG - Public dissemination of the information

[34] OPG submits that the appellant has not provided any evidence to suggest that it would actually share the contents of the records with the public and it seems to be only for the appellant's interests and intervening activities at the CNSC.

Reply representations of the appellant

[35] The appellant states that it does not have an unallocated pool of money available for *FIPPA* requests or \$30,000 specifically earmarked for *FIPPA* requests and that \$30,000 is its total budget for all of its research activities, including *FIPPA* requests.

[36] The appellant further states that, despite CNSC's response to the elevated hydrogen levels at Bruce Nuclear Generating Station, there are still a number of important unanswered questions regarding the safety of Ontario's aging nuclear reactors, for example:

- For how long had the hydrogen levels in the reactors where exceedances were detected been rising?
- Was the increase slow or sudden?
- Are there other reactors showing similar patterns of increase?

[37] The appellant states that it has requested records related to the historic hydrogen levels at all reactors at Bruce and Pickering nuclear generating stations, not just the units at Bruce that were forced to shut down. Given these unanswered questions and that the CNSC itself seems to have been surprised by the rate at which pressure tubes have been deteriorating, there is a considerable public health and safety benefit to having this information disclosed for free or at a reduced fee. The appellant states that it will not otherwise be able to access the requested information.

Findings

[38] The appellant is seeking records related to pressure tubes in nuclear reactors at Bruce and Pickering nuclear generating stations for the timeframe 2016 to 2021.

[39] A fee must be waived, in whole or in part, if it would be "fair and equitable" to do so in the circumstances.⁵ The appellant relies on the following factors that must be considered in deciding whether it would be fair and equitable to waive the fee are:

⁵ See *Mann v. Ontario (Ministry of Environment)*, 2017 ONSC 1056.

- whether the payment will cause a financial hardship for the person requesting the record [Section 57(4)(b)];
- whether dissemination of the record will benefit public health or safety [Section 57(4)(b)]; and

[40] OPG responded to these factors and also relied on the following factor:

- the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment. [Section 57(4)(a)]

[41] I will consider these factors separately.

Actual cost in comparison to the fee: section 57(4)(a)

[42] The appellant was provided a revised fee estimate of \$5,520, comprised of 92 hours of search time at \$30 per hour and 92 hours of preparation time at \$30 per hour. OPG advised that there was an estimated 5,500 pages of records responsive to the request and that each page would require multiple severances. OPG charged one minute per page to prepare the records for disclosure. The OPG says that it could have charge two minutes per page for each of the 5,500 pages to prepare the records for disclosure, and that each of these pages would require multiple severances under the claimed exemptions of sections 17(1) (third party information) and section 18(1) (economic and other interests). The OPG argues that if it had charged 2 minutes per page, the fee estimate would have been \$8,820.

[43] The IPC has generally accepted that it takes two minutes to sever a page that requires multiple severances.⁶

[44] However, in my view, the fee estimate is not actually an increased amount reflecting multiple severances on each of the estimated 5,500 pages of records. Whether OPG claimed one minute or two minutes, I am not satisfied that every single page would require the preparation time claimed by OPG. Considering the nature of the records, I find that OPG's estimate of each page having multiple severances to be excessive.

[45] 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.⁷ I am not persuaded that the estimated cost is lower than the actual estimated cost to OPG to process the appellant's revised request. Therefore, I do not agree that the actual cost of processing, collecting and copying the records vary from the amount of the fee estimate and I find that this factor does not weigh against waiving the fee.

⁶ See Orders MO-1169, PO-1721, PO-1834 and PO-1990.

⁷ Order PO-3755. See also Order PO-2514.

Financial hardship: section 57(4)(b)

[46] For section 57(4)(b) to apply, the requester must provide evidence regarding their financial situation, including information about income, expenses, assets and liabilities.⁸

[47] The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship.⁹

[48] Based on my review of the parties' representations, I find that payment of the fee estimate will not cause the appellant financial hardship. In arriving at this finding, I have considered that the payment of the fee estimate represents 18 per cent of the appellant's research budget. The appellant has not provided evidence as to why its research budget was only \$30,000 out of \$250,000 in revenue in 2021, nor how that \$30,000 is allocated specifically.

[49] Therefore, I find that I do not have enough evidence to conclude that payment of the fee would cause the appellant financial hardship and I find that this factor does not weigh in favour of waiving the fee.

Public health or safety: section 57(4)(c)

[50] The focus of section 57(4)(c) is "public health or safety." It is not enough to show that there is a "public interest" in the records – the public interest must relate to gaining information about a public health and safety issue.¹⁰

[51] The following factors may be relevant in determining whether distribution of a record will benefit public health or safety:

- 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 distribution of the record once disclosed would yield a public benefit:
 - a. by disclosing a public health or safety concern, or
 - b. by contributing meaningfully to the development of understanding of an important public health or safety issue; and,

⁸ Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

⁹ Order P-1402.

¹⁰ Orders MO-1336, MO-2071, PO-2592 and PO -2726.

- the probability that the requester will share the contents of the record with others.¹¹

[52] I find that the subject matter of the records is a matter of public rather than private interest, as they concern radioactivity risk from nuclear reactors. The nuclear generating stations that the records relate to, Bruce and Pickering, are in the vicinity of large urban populations.

[53] The subject matter of the records relates directly to a public health or safety issue, namely the safety of nuclear reactors. The records are about the pressure in the nuclear reactor tubes and the danger to public health that could be caused by radioactive emissions from too much pressure in these tubes.

[54] I find that the appellant has provided relevant information about how this issue showing that the pressure in nuclear reactor tubes is a current issue of concern. For example, the appellant provided a 2023 news article containing evidence that pressure tubes are deteriorating faster at Bruce Nuclear Generating Station than anticipated, which is causing problems for the regulator, CNSC. This article indicates that the CNSC's president has expressed doubts that the industry models related to determining nuclear pressure tube fitness for service are valid. The appellant also provided additional news articles that reveal other concerns about nuclear reactor pressure tubes.

[55] In making this finding, I have considered OPG's arguments that the nuclear reactors activities are subject to a comprehensive regulatory regime and the extensive oversight of the CNSC. However, I am persuaded by the appellant's arguments that concern about the integrity of nuclear pressure tubes and the CNSC's views about this issue has been a matter of public interest and has been the subject of public reporting. Accordingly, I agree with the appellant that there are potentially serious issues related to pressure tube integrity in all of Ontario's nuclear reactors.

[56] I also find that public dissemination of the records once disclosed would yield a public benefit by disclosing a potential public health and safety concern in regards to the potential for radioactive material to emanate from nuclear reactor tubes.

[57] Furthermore, I find that the appellant, a non-profit environmental group, plans to analyze and then use the information in the records to contribute to important discussions on nuclear safety. I also find that it would publicly disseminate the information in the records utilizing its website, social media, traditional media and sending emails to its over 33,000 subscribers.

[58] Accordingly, I find that dissemination of the records by the appellant would benefit both public health and public safety and I find that this factor weighs in favour of waiving the fee.

¹¹ Orders P-2, P-474, PO-1953-F and PO-1962.

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

[59] Section 8 of Regulation 460 prescribes 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.

[60] OPG has not yet given the appellant access to the records. It plans to do so (less any claimed exempt information) once the fee issue is resolved, therefore item 1 applies. The fee is not \$5 or less, therefore item 2 does not apply. As one item applies and one item does not, I find that this factor does not weigh in favour or against waiving the fee.

Other relevant factors

[61] An institution must consider any other relevant 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.¹²

[62] I find that the following factors weigh against the waiving of the fee:

- the manner in which the institution responded to the request, which included working constructively with the appellant to narrow and/or clarify the request,
- the request involves a large number of records (5,500 pages of records), and

¹² Orders M-166, M-408 and PO-1953-F.

- waiver of the fee could shift an unreasonable burden of the cost from the appellant to OPG.

[63] I find that the following factors weigh in favour of the waiving of the fee:

- the appellant worked constructively with OPG to narrow the scope of the request,
- by narrowing the scope of its request, the appellant has offered a compromise that would reduce costs, and
- OPG has not provided any records to the appellant free of charge.

Considering all the factors – is it fair and equitable to waive the fee?

[64] In deciding whether OPG should waive the fee, in whole, or in part, I must consider whether it would be fair and equitable to waive the fee. This consideration of the factors listed in the regulation, as well as any other relevant factors.

[65] An important overall consideration is whether waiver of the fee would shift an unreasonable burden of the cost of processing the request from the appellant to OPG. I am mindful of the legislature's intention to include a user-pay principle in the *Act*. The user-pay system is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) are mandatory unless the appellant can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it.¹³

[66] I have concluded that dissemination of the records will benefit public health and safety by disclosing a potential public health and safety concern in nuclear reactor tubes and also by contributing meaningfully to the development of understanding of this important public health and safety issue. Therefore, I place significant weight on this factor.

[67] Taking into account all the relevant factors, some of which weigh in favour of granting a fee waiver and some of which do not, I find that it would be fair and equitable to grant a partial fee waiver. In arriving at this determination, I have considered, in particular, the user-pay principle articulated above.

[68] In my view, however, dissemination of the records will contribute greatly to meaningful debate on a subject with significant public health and safety considerations concerning nuclear safety and the risk of radioactivity emanating from nuclear pressure tubes.

[69] Given the importance of those considerations, I find that the balance tips in favour

¹³ Order PO-2726.

of a partial waiver of the fee estimate. In all the circumstances, I find it fair and equitable to order a waiver of 50 per cent of OPG's fee estimate of \$5,520 (reducing the amount of the fee estimate to \$2,760), or a waiver of 50 per cent of the final fee should it differ from the fee estimate.

Issue B: Is the time extension of one year reasonable given the nature of the request?

[70] As identified above, the appellant takes issue with OPG's statement about how long it would take for it to process his request after it pays the required deposit.¹⁴ Time extensions are governed by section 27(1) of the *Act* which states:

A head may extend the time limit set out in section 26^[15] 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.

[71] 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;

¹⁴ Where a fee estimate is \$100 or more, as is the case here, section 7(1) of Regulation 460 under *FIPPA* allows a head to require a deposit equal to 50 per cent of the fee estimate before the head takes any further steps to respond to the request.

¹⁵ 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, 28 and 57, 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.

- 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.

Representations

[72] OPG's states that its reliance on section 27(1) of the *Act* is due to the number of records requested. OPG estimates there are approximately 5,500 pages of responsive records to the request, which span over a period of five years.

[73] OPG states that it must first search through a number of records in order to locate the records responsive to the request. This requires engaging various staff across the organization to locate records relevant to the request that may be in their possession. The records responsive to the request will also require consultations by OPG with at least six third parties. Once OPG has compiled all of the records, it states that they must be reviewed to ensure they are responsive and then be prepared for disclosure, which includes a consideration of the mandatory statutory exemptions OPG noted in its interim access decision.¹⁶

[74] OPG states that it has limited staff dedicated to the review and preparation step of an access request. OPG states that meeting the 30-day time limit would have an unreasonable interference with the daily operations of OPG as it would require reallocating staff responsibilities which would have a significant impact on other day-to-day activities.

[75] The appellant states that OPG has provided no explanation as to how it determined that it would take an entire year to complete the request. It submits that the time extension is also unreasonable due to the nature of this particular request. Given the public health and public safety issues at the core of this request, it submits that it is in the public interest that the request be completed as soon as possible.

[76] The appellant submits that undue delay in the release of public information under the freedom of information regime hinders the ability of the public to hold governments accountable.

[77] In reply, OPG maintains its position that a one-year time extension is necessary as it must compile and review the responsive records and it has to assess the impacts and disruptions to operations to complete the request.

Findings

[78] The appellant's revised request seeks:

¹⁶ Only one of the two exemptions OPG intends to claim is mandatory, section 17(1). The other exemption, section 18(1), is discretionary.

1) All documents in OPG's possession that contain any information, discussion or data pertaining to the pick up of hydrogen and/or deuterium by pressure tubes in CANDU reactors at the Pickering [and] Bruce nuclear stations; and

2) All documents that contain any mention of the so-called Design Equation used in predictive models of the corrosion of, and deuterium ingress into Zr-2.5Nb pressure tubes.

The documents should cover all data obtained in the period [2016 to 2021] through so-called scrape campaigns, or from measurements on removed pressure tubes.

For greater clarity, the documents provided should include all reported examples of the following information:

v. The reactor and fuel channel identifier for which the sample data were obtained;

vi. The in-reactor exposure time, expressed in effective full power hours or years, and the equivalent exposure hot hours;

vii. The axial position of the sample as measured from the pressure tube inlet end; and

viii. The measured deuterium concentration expressed in units of mg/kg...

[79] In my view, this is a quite detailed request for a number of items over a five-year period. I agree with OPG that the search for these records would be extensive and that time will be required to consult with third parties whose information may be contained in the responsive records. OPG has indicated that one of the claimed exemptions for the records would be the mandatory third party information exemption in section 17(1).

[80] As section 17(1) may apply to some of the information in the responsive records, I agree with OPG that consultations would be needed with the third parties whose information is contained in the responsive records. These consultations would add processing time.

[81] I found above that dissemination of the responsive records would benefit public health and public safety. I agree with the appellant that a quicker processing of this request would provide the public with more timely crucial information about the safety of pressure tubes in the Bruce and Pickering nuclear generating stations.

[82] I also find that OPG will require more time than the 30-day time limit set out in section 26. However, I do not agree with OPG that a one-year time extension under section 27 is warranted. Although OPG has provided persuasive evidence as noted above that a time extension is necessary, it has not itemized or broken down how each step of

the processing of the appellant's revised request will take. Nor has it indicated what staffing resources it allocates to process access requests under the *Act* and information about whether these resources are generally able to process these requests in a timely manner.

[83] Instead, OPG has provided a global figure of one year, without indicating specifically how this time will be allocated in the processing of the request, nor how its resources, including labour, would be allocated during this year to process this request.

[84] Based on my review of the parties' evidence and the wording of the revised request, I find that a five-month time extension is reasonable for OPG to process the request after payment of the 50 per cent deposit on the reduced fee estimate of \$2,760.

[85] In my view, this lengthy time extension takes into account the complexity of the appellant's request, the number of estimated pages of records, and the requirement for consultations with third parties.

[86] Accordingly, I will grant OPG five months to issue a final access decision on the appellant's access request from the date the appellant pays the 50 per cent deposit for the reduced fee estimate of \$2,760.

ORDER:

1. I order OPG to waive 50 per cent of its \$5,520 fee estimate resulting in the fee estimate being the amount of \$2,760. I also order OPG to waive 50 per cent of its final fee, if it differs from its original \$5,250 fee estimate.
2. I grant OPG five months to issue a final access decision on the appellant's access request from the date the appellant pays the 50 per cent deposit for the reduced fee estimate.

Original signed by: _____

Diane Smith
Adjudicator

July 21, 2023 _____