

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4641

Appeal PA24-00399

Ministry of the Environment, Conservation and Parks

April 17, 2025

**Summary:** The Ministry of the Environment, Conservation and Parks received a request for records relating to a proposed amendment of the habitat regulation for a species of fish. The ministry issued an interim decision, including a fee estimate of \$990 under section 57(3) of the *Act* and a time extension of 270 days from the completion of the appellant's other request under sections 27(1) of the *Act*. In this order, the decision-maker does not uphold the ministry's fee estimate. While she upholds the ministry's time extension of 270 days, she orders this time period to start as of December 6, 2024, and for the ministry to issue a final decision by September 2, 2025.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 27(1), 57(1) and 57(3); Regulation 460, section 6.

### BACKGROUND:

[1] The Ministry of the Environment, Conservation and Parks (the ministry or respondent) received an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a proposed amendment of the habitat regulation for reddsides dace.<sup>1</sup> The specific request was for:

All records (in any format, including zoom, WhatsApp, Microsoft Teams messages, emails, hand-written notes, memos, text messages, file sharing

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<sup>1</sup> A species of freshwater fish.

documents) pertaining to the proposed amendment of the habitat regulation for redbreasted dace ([Environmental Registry of Ontario (ERO)] 019-8016). Timeframe: January 25, 2024, to June 13, 2024.

[2] On June 28, 2024, the ministry issued an interim decision to the appellant. It claimed a fee estimate of \$990, broken down as follows:

Search Time 33 hours @ \$30/hour	Time taken to locate and retrieve records reduced from 42 hours in the interest of customer service	\$990
Preparation Time TBD hours @ \$30/hour	Time taken to sever records	\$TBD
Total Fee Estimate		\$990
Payment Required (50% of fee estimate)		\$495

[3] The ministry also claimed a 270-day extension of time upon receipt of the deposit and completion of a separate but related access request, A-2024-00499 (the other request). It advised that the other request would occupy the ministry until December 9, 2024. It also advised that although the current request was for a shorter timeframe than the other request, the length of the time extension was similar because most of the work related to the amendment was completed during the specified time period of the current request. It further advised that it located approximately 12,050 pages of records for the current request.

[4] The ministry advised that this request would significantly impact its operations due to limited resources and intensive effort required to review thousands of pages of records and suggested that the scope of the request be narrowed to records held by the Manager of Species at Risk Recovery Section, who is leading the regulation amendment (the manager).

[5] Based on its suggested scope, the ministry provided an estimate of 3,000 pages of records and the following revised fee:

Search Time 10 hours @ \$30/hour	Time taken to locate and retrieve records	\$300
Preparation Time TBD hours @ \$30/hour	Time taken to sever records	\$TBD

Total Fee Estimate	\$300
Payment Required (50% of fee estimate)	\$150

[6] On July 9, 2024, the appellant filed an appeal with the Information and Privacy Commissioner of Ontario (IPC), in response to the ministry's fee estimate and time extension.

[7] On July 16, 2024, the appellant paid the deposit of \$495 for the original request.

[8] On October 11, 2024, I was assigned as the case lead for this appeal.

[9] I engaged in informal dispute resolution discussions with the parties. The relevant details are summarized below to frame the issues remaining in dispute.

[10] As further informal dispute resolution was not possible, I decided to conduct an inquiry and issued a Notice of Expedited Inquiry to the parties, setting out the issues in this appeal and inviting written representations. In response, I received representations from both parties, which I shared in accordance with the IPC's *Code of Procedure*.

[11] For the reasons outlined below, I do not uphold the ministry's fee estimate. While I uphold the ministry's time extension of 270 days, I order this time period to start as of December 6, 2024 and for the ministry to issue a final decision by September 2, 2025.

## **ISSUES:**

- A. What is the scope of the request for records?
- B. Was the ministry entitled to extend the time to respond to the request under section 27 of the *Act*?
- C. Should the IPC uphold the ministry's fee estimate?

## **DISCUSSION:**

### **Issue A: What is the scope of the request for records?**

[12] During informal dispute resolution, the ministry advised that it would not proceed with the original scope of the request, even though its initial fee estimate was based on it and the appellant paid the deposit for this fee estimate. It also informed the appellant of the revised scope of the request that it would proceed with. The appellant disagreed with the ministry's revised scope of the request and the issue of scope was added to this appeal.

[13] Despite attempts to agree on a revised scope of the request, these discussions were unsuccessful, and an inquiry was started.

[14] However, in its representations, the ministry agreed to continue with the original wording of the request. Accordingly, the issue of scope of the request is no longer disputed and does not require a finding.

[15] For clarity, the scope of the request for records is as follows:

All records (in any format, including zoom, WhatsApp, Microsoft Teams messages, emails, hand-written notes, memos, text messages, file sharing documents) pertaining to the proposed amendment of the habitat regulation for reidside dace (ERO 019-8016). [Third party records including ERO records are excluded from the scope of the request.]

Timeframe: January 25, 2024, to June 13, 2024

[16] While no finding is made for this issue, it is important that parties work together to determine the scope of a request to avoid unnecessary delays. In addition, unilaterally narrowing the scope of a request is inconsistent with the spirit of the *Act*.

**Issue B: Was the ministry entitled to extend the time to respond to the request under section 27 of the *Act*?**

[17] 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 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.

[18] Relevant factors may 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.

### ***Parties' representations***

[19] The ministry submits it issued its interim decision 11 days after it received the request and within the 30-day time limit.<sup>2</sup>

[20] The ministry submits that its interim decision notified the appellant of a 270-day time extension upon completion of the appellant's other request, stating the same resources dedicated to the other request (which is still in progress) would need to be involved to complete this current request.

[21] The ministry submits that 12,050 pages of responsive records were located by the program area and were being uploaded to its case management system for review. It provided the following explanation:

The process of uploading records is estimated to take one minute per page, a total of 200 hours, or 28 business days (note: one business day is equivalent to 7.25 hours). The FOI Office would need to convert all presentations, word documents, email records and their attachments, into PDF format, compress each PDF, and upload the records into the Case Management System in batches of 200 pages at a time.

[22] The ministry submits it must commit a total of 410 hours to this request stating 402 hours of time would be required to read 12,050 pages at an average speed of two minutes per page and an additional eight (8) hours would be required to complete consultation with staff from the responsive program areas and legal counsel.

[23] According to the ministry, to balance responsibilities, its analyst would dedicate approximately two hours per day to the current request upon completion of the other request. As a result, the ministry asserts it requires at least 287 days to fully review the records in accordance with the *Act*. Factoring in the time required to upload the records, the ministry submits it will require at least 323 days to complete the request.

[24] It further states that, while it will require at least 323 days to complete the review, it has proposed reviewing the records in 270 days upon completion of the other request.

[25] The ministry submits that, in calculating the time extension period, it took into consideration the ministry's overall workload, which involves responding to other requests.

[26] The ministry submits that a 270 day time extension is reasonable for a request of

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<sup>2</sup> Order P-234.

involving 12,050 pages, citing past IPC orders.<sup>3</sup>

[27] The appellant submits the ministry has improperly tied the time extension on this request with the time to process the other request, where a final decision is still pending. The appellant submits that, for the other request, the ministry has advised that only a small portion of the records retrieved are responsive and able to be released. As such, the 270 days for this request plus the time for processing the other request is not reasonable.

[28] In addition, the appellant submits that, despite efforts to exclude third party records, the ministry's representations refer to the need to do outside consultations. The appellant submits their willingness to narrow the scope of the request to remove duplicates and third party records but states the ministry has not been forthcoming with information about the nature of the records that would permit the request to be refined.

### ***Analysis and findings***

[29] For the reasons outlined below, I find that section 27(1) of the *Act* applies, and I uphold the ministry's time extension decision, in part. However, I do not accept the ministry's position that processing this request is contingent on it completing the appellant's other request A-2024-00499.

[30] I am satisfied that the request is for many records, which will need to be reviewed and prepared. Previous IPC orders, including Orders PO-2950 and PO-4432 relate to time extensions found to be reasonable in relation to similar, but for fewer pages of records (3,800 pages and 5,000-7,000 pages) compared to the number of pages responsive to this request (approximately 12,050 pages). I am also satisfied that the ministry is not required to complete consultations with external parties as it has removed third party records from the scope of the request. I accept that, in calculating the time extension period, the ministry took into consideration its overall workload, including responding to other requests.

[31] However, the ministry's representations do not adequately explain why it could not process this request until it completed the appellant's other request. For example, the ministry has not explained why additional staff were assigned to process the requests. Moreover, by tying the timing of the current request to the other request, any delays in processing the previous request would result in further delays in processing the current request. This is especially the case because, while the ministry anticipated completing the other request by December 6, 2024, it had not issued a final decision for the other request. This means that the due date to respond to the current request will be further extended by at least four (4) additional months.

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<sup>3</sup> In Order PO-4431, the IPC upheld a time extension of 245 days for a review of 6000 to 8000 pages of records, and in Order PO-4432, the IPC determined that a time extension of 217 days would be appropriate to review 5000 to 7000 pages of records.

[32] In the circumstances of this appeal, I am satisfied that an extension is necessary as meeting the 30-day time limit set out in section 26 of the *Act* would unreasonably interfere with the ministry's operations.

[33] However, the ministry has provided a moving 'goal post' of when the processing of this request begins, one that we now know is delayed and may continue to be delayed until a decision is issued for the previous request. While I agree that the ministry was entitled to extend the time to respond to the request and that claiming a time extension of 270 days is reasonable in the circumstances, I do not uphold the ministry's decision to tie the start date of the time extension to an unknown date.

[34] As the appellant was expecting the ministry to issue a decision in the previous request by December 6, 2024 and for the processing of this request to also begin on this date, I will permit the ministry to claim a 270 day time extension from this date, meaning that the ministry will have until September 2, 2025 to issue a decision in response to the current request.

[35] According, in the circumstances of this appeal, I find that a time extension of 270 days is reasonable, however, I will order this time period to start as of December 6, 2024 and for the ministry to issue its final decision by September 2, 2025.

### **Issue C: Should the IPC uphold the ministry's fee estimate?**

[36] An institution must advise the requester of the applicable fee where the fee is \$25 or less. Where the fee exceeds \$25, an institution must provide the requester with a fee estimate pursuant to section 57(3) of the *Act*. Where the fee is \$100 or more, the fee estimate may be based on either:

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.<sup>4</sup>

[37] 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.<sup>5</sup> The fee estimate also helps requesters decide whether to narrow the scope of a request to reduce the fee.<sup>6</sup>

[38] The institution can require the requester to pay the fee before giving them access to the record.<sup>7</sup> If the estimate is \$100 or more, the institution may require the person to

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<sup>4</sup> Order MO-1699.

<sup>5</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

<sup>6</sup> Order MO-1520-I.

<sup>7</sup> Regulation 460, section 9.

pay a deposit of 50 per cent of the estimate before it takes steps to process the request.<sup>8</sup>

[39] In all cases, the institution must include a detailed breakdown of the fee and a detailed statement as to how the fee was calculated.<sup>9</sup> In reviewing the ministry's fee estimate, my responsibility is to ensure that the estimated amounts are reasonable in the circumstances of this appeal and that they have been calculated in accordance with the fee provisions in the *Act* and Regulation 460, as set out below. The burden of establishing the reasonableness of the estimate rests with the ministry.<sup>10</sup> To meet this burden, the ministry is required to provide an adequate explanation of how the fee estimates were calculated, as well as sufficiently detailed evidence to support the estimates. I may uphold the fee estimate or vary it.

[40] Section 57(1) of the *Act* requires an institution to charge fees for requests under the *Act*. More specific provisions detailing the fees for access to general records are found in sections 6, 7 and 9 of Regulation 460.

### ***Parties' representations***

[41] The ministry submits it provided the appellant with a fee estimate for \$990 in accordance with section 57(3) of the *Act*.

[42] The ministry submits that it estimated it would need 42 hours to complete the search and that it reduced that time by 9 hours to 33 hours in the interests of 'customer service'.

[43] The ministry submits it had provided the appellant with a revised fee estimate for \$300 in accordance with Section 57(3) of the *Act* if the scope of the request was narrowed to records from the manager leading the proposed regulation amendment.

[44] The ministry submits that the suggested narrowed scope "would provide most, if not all, of the relevant records while eliminating the large number of duplicate/triplicate records". It explained that while processing the appellant's other request A-2024-00499, it found that 6,774 out of 12,040 records (56%) were duplicates.

[45] The ministry confirmed that on July 16, 2024, the appellant paid the fee deposit of the original fee estimate and, as a result, the records retrieval process was initiated.

[46] The ministry submits that the actual time spent locating the records was approximately 1.8 hours per staff, for eight staff, for a total of 14.5 hours.

[47] According to the ministry:

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<sup>8</sup> Regulation 460, section 7(1).

<sup>9</sup> Orders P-81 and MO-1614.

<sup>10</sup> Order 86.



- locating the records involved searching relevant Outlook folders and shared drive folders for responsive records;
- search techniques involved extracting records from relevant folders or subfolders (e.g., where they were filed based on subject matter) and key word searches;
- the date range provided by the appellant was used to narrow the initial searches;
- each staff member searched their own personal emails for responsive records;
- individual staff were assigned to search the relevant shared drive folders;
- many relevant shared drive records were saved in one main folder pertaining to the regulation with several subfolders; and
- Microsoft Teams messages were also searched but there were no responsive records.

[48] Regarding preparation time, the ministry noted the permitted preparation time of two minutes per page citing past IPC orders.<sup>11</sup> It submits that the preparation time for this request could be estimated based on the ministry's review of the records for the appellant's other request due to the similar volume of records. It explained that for the other request, the ministry identified 343 pages that required partial severing under various exemptions under the *Act*.

[49] Assuming this request will require a partial severing of a similar number of pages to the other request, the estimated time for preparation would be 686 minutes or approximately 11.43 hours for a fee of \$343. Lastly, although the ministry provided this estimate for preparation, it submits that it may need to revise the estimate once its review of the records is completed.

[50] The appellant did not provide any representations on the issue of fee estimates.

### ***Analysis and findings***

[51] As explained below, I do not uphold the ministry's initial fee estimate.

[52] I am satisfied that the ministry has based its fee estimate on the advice of individuals familiar with the responsive records. I am also satisfied that the records sought are for general information, not the appellant's personal information. As such, under section 6 of Regulation 460, the ministry can charge fees for manually searching for and preparing the responsive records.

[53] The ministry's initial fee estimate provided an estimate for search only, namely, 33 hours. In its representations, the ministry provided the actual search time, which is 14.5

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<sup>11</sup> Orders MO-1169, PO-1721 and PO-1834.

hours. The permitted fee for search time is calculated as \$435 (14.5 hours × \$30/hr).

[54] The ministry's initial fee estimate did not include preparation time. In its representations, the ministry referenced the appellant's other request A-2024-00499, where it identified 343 pages that required partial severing, to calculate an estimated preparation time of 11.43 hours. The estimated fee for preparation time is \$343 (11.43 hours × \$30/hr).

[55] In the circumstances of this appeal, I find that the fee estimate should be calculated based on the actual number of hours spent on search (\$435) and the estimated preparation time provided by the ministry in its representations (\$343).

[56] Based on the above calculation, I find that the total fee estimate should be \$778 (\$435 + \$343), which is \$212 less than the initial fee estimate of \$990.

[57] Accordingly, I do not uphold the ministry's initial fee estimate and reduce the fee estimate by \$212 from \$990 to \$778. I am mindful that the ministry will calculate the final fee based on the actual time to prepare responsive records, in addition to the already determined actual search time. As the appellant has already paid a fee deposit of \$445, this can be used toward payment of the final fee once a final decision is issued by the ministry to the appellant.

## **ORDER:**

1. While I uphold the ministry's time extension of 270 days, I do not uphold the ministry's decision to start this time period upon completion of the appellant's other request. I order this time period to start as of December 6, 2024 and for the ministry to issue a final decision to the appellant, in response to the current request, without recourse to another time extension, by **September 2, 2025**.
2. I do not uphold the ministry's fee estimate and reduce it from \$990 to \$778.

Original Signed by: \_\_\_\_\_  
Asma Mayat  
Case Lead

\_\_\_\_\_ April 17, 2025