Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4712

Appeal PA22-00341

Ministry of the Environment, Conservation and Parks

August 26, 2025

Summary: An individual made a request to the Ministry of the Environment, Conservation and Parks under the *Freedom of Information and Protection of Privacy Act* for records related to the emissions of a specified company. The ministry issued an interim decision with a fee estimate. The requester asked the ministry for a fee waiver, which it denied. The requester appealed the ministry's fee estimate and its denial of a fee waiver. In this order, the adjudicator upholds the ministry's fee estimate and its decision to deny a fee waiver, and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 57(1) and 57(4); sections 6, 7 and 9 of Ontario Regulation 460.

Orders and Investigation Reports Considered: Orders P-2, P-474, P-1393, PO-1953-F, PO-1962, PO-1909, PO-2592, PO-2726, M-166, M-408, M-914, MO-1243, MO-1336, MO-2071, MO-3013, and MO-3014.

Cases Considered: *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056.

OVERVIEW:

[1] This order addresses the reasonableness of a fee estimate and the denial of a fee waiver for access to records held by the Ministry of the Environment, Conservation and Parks (the ministry).

[2] The appellant, who is an academic and freelance journalist, submitted a request under the *Act* to the ministry for access to the following information:

> "Any and all data, analysis and/or research related to human health and environmental effects (cumulative or otherwise) as a result of the exceedances of province-wide pollutant limits (i.e. site specific standards) at [specified company]"
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> Time period: January 1, 2000 to April 8, 2022.

[3] After receiving the appellant's request, the ministry contacted him to discuss the scope of the request. Following this, the appellant agreed to narrow the information he requested and shorten the period to start from June 1, 2012. The ministry then issued a fee estimate and interim decision for the revised request under section 57(1) of the *Act* and section 6 of Regulation 460.

[4] The ministry provided the following fee estimate:

Cost	**Amount ($)**
Search Time 25.5 hours @ $30/hour	765.00
Preparation Time 35.00 hours @ $30/hour	1050.00
Total Fee Estimate	1815.00
Payment Required (50% of Fee Estimate)	907.50

[5] The appellant applied to the ministry for a fee waiver, which the ministry decided to deny. The appellant filed an appeal with the Information and Privacy Commissioner (IPC) of the ministry's fee estimate and its decision to refuse his fee waiver request.

[6] The IPC attempted to mediate the appeal. At mediation, the appellant further reduced the scope of his request. He agreed to change the period to begin from June 2015 and he narrowed the records he requested to:

> "Any documents or reports related to exemptions approved for [specified company] from the provincial limits on specific pollutants, and any risk-based health analysis relating to these exemptions."

[7] Based on this narrowed request, the ministry provided a revised fee estimate that reduced the search time from 25.5 hours to 21 hours and the preparation time from 35 hours to 12 hours. This lowered the total fee estimate from $1815 to $990. Consequently, the required 50 percent deposit was reduced from $907.50 to $495.

[8] While the issues were narrowed, the appeal was not resolved, and it was transferred to the adjudication stage. An IPC adjudicator decided to conduct an inquiry under the *Act*. The adjudicator invited representations from the ministry, then from the appellant and, finally, a reply from the ministry. The representations, in full, were shared amongst the parties.

[9] Following the receipt of all representations, and before this order was issued, the ministry discussed with the appellant an index of records it had created; it reviewed it with him to identify if there were any records that could be removed from the scope of the appeal. There were not.

[10] The ministry also sent the appellant a revised fee estimate after it located and retrieved the responsive records. The ministry advised that, while the search had taken 32.5 hours, it decided to only charge for 21 hours as it had agreed during mediation. It also advised the appellant that the preparation cost would be much lower based on the records at issue, so the payment of a deposit would not be required at the fee estimate stage. This last fee estimate was $630.00 (excluding preparation costs), and the ministry requested a deposit of $315.00.

[11] I was then assigned to complete the inquiry. I contacted the appellant to ask whether the ministry's last fee estimate resolved the appeal. He advised it did not and that he still wished to proceed with his appeal.

[12] Having considered everything submitted by the appellant and the ministry, I uphold the ministry's fee estimate and its denial of the fee waiver.

ISSUES:

A. Should the IPC uphold the ministry's fee estimate?

B. Should the ministry waive its fee?

DISCUSSION:

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

[13] The appellant submits that the fee estimate is excessive, while the ministry submits that the fee estimate is reasonable and should be upheld.

[14] Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

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

[15] More specific provisions regarding mandatory fees for access to general records are found in sections 6, 7 and 9 of Regulation 460, which read:

> 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:
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> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For records provided on CD-ROMs, $10 for each CD-ROM.
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> 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.
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> 7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is $100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.
>
> (2) A head shall refund any amount paid under subsection (1) that is subsequently waived.
>
> 9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

Representations of the ministry

[16] The ministry submits that after the request was received, technical leads for the relevant program areas identified staff members in their offices who were likely to have responsive records. These staff members:

- Manually read through all hard copy folders/files/papers, including notebooks, meeting notes and telephone logs.
- Searched ministry electronic databases by entering multiple keywords into the search functions and reviewing the "hits" by opening each file and reading/scanning for responsiveness.
- Performed keyword searches in their emails and manually retrieved and read through the emails.
- Performed keyword searches in their work computer drives and manually retrieved and read through the electronic files.
- Performed key-word searches in the shared computer drive and manually read all electronic files, which returned several results including many types of documents and multiple drafts of documents at various locations within the computer shared drive.

[17] The ministry explains that the technical leads also performed a branch-wide record search to locate responsive records, which included locating hard-copy project folders and manually reading through the files.

[18] The ministry states that it charged $30 per hour for search time as is permitted. It also decided, for the benefit of the appellant, that the number of search hours it would charge would be well below the actual search time.

[19] The ministry says it identified 8,830 pages of responsive records and decided at mediation to charge $360 for only 12 hours of preparation time, significantly below the $1050 for 35 hours it initially estimated. After submitting its representations to the IPC on this appeal, the ministry advised the appellant that the preparation would be far less than 12 hours and no deposit for that activity would be required at the fee estimate stage.

[20] The ministry submits that the appellant makes no representations that the fee is unreasonable and his only submissions are that a fee waiver is justified because of a public interest, which the ministry does not accept.

Representations of the appellant

[21] The appellant accepts the ministry's calculation of the fees for search and preparation, which it provided once he narrowed the scope of his request. The appellant's

representations focus on the fee waiver issue, addressed below.

The ministry's reply

[22] The ministry notes the appellant's representations accept the ministry's calculations for search and preparation time. The ministry requests its fee estimate be upheld, noting also that it already reduced its fee estimate to the benefit of the appellant.

Analysis and findings

[23] In reviewing the ministry's fee estimate, I must consider whether its fee estimate is reasonable, considering the circumstances of this appeal and the provisions set out in section 57(1) of the *Act* and Regulation 460. The onus of establishing the reasonableness of the fee estimate rests with the ministry. To meet this onus, the ministry must provide detailed information as to how the fee estimate was calculated in accordance with the provisions of the *Act* and produce sufficient evidence to support its claim.[1] I find the ministry has met this onus.

[24] The ministry provides a detailed explanation of the staff involved, and the steps they followed, in conducting the search of records stored electronically and in hard copy. These steps comply with section 57(1)(a) and (c) of the *Act* and the related costs set out in section 6, paragraphs 1 and 3, of Regulation 460 that the ministry is required to charge.

[25] The ministry has already located and retrieved the responsive records and advises that the actual search time was 32.5 hours. However, rather than charge for that time, the ministry has offered to charge for only 21 hours of search time at $30 per hour, for a cost of $630.

[26] While it has not yet prepared the records, the ministry advises the actual preparation that includes severing some records will take less than 12 hours at $30 per hour; a potential cost of no more than $360. This complies with section 57(1)(b) of the *Act* and the related cost set out section 6, paragraph 4, of Regulation 460 that the ministry is required to charge.

[27] In summary, the ministry has significantly discounted the cost of the search time. The responsive records that need to be prepared amount to almost 9,000 pages. The appellant has also acknowledged the ministry has been diligent in locating the responsive records. Accordingly, I find that the ministry has met the onus of establishing its fee estimate is reasonable.

Issue B: Should the ministry waive its fee?

[28] Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 460 sets out additional matters for a

[1] Orders MO-3013 and MO-3014.

head to consider in deciding whether to waive a fee. Those provisions read:

> 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,
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> (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:
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> 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.

[29] The fee provisions in the *Act* establish a user-pay principle that requires requesters to pay the prescribed fees associated with processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1), and outlined in section 6 of Regulation 460, are mandatory unless the requester can present a persuasive argument that a fee waiver is justified because granting it would be "fair and equitable.[2]"

[30] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before the IPC will consider whether a fee waiver should be granted. The IPC may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision.[3]

[31] The institution or the IPC may decide that only a portion of the fee should be waived.[4]

[32] For a fee waiver to be granted under section 57(4), the test is whether any waiver

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[2] Order PO-2726.
[3] Orders M-914, P-474, P-1393 and PO-1953-F.
[4] Order MO-1243.

would be "fair and equitable" in the circumstances.[5] The factors that must be considered in deciding whether it would be fair and equitable to waive the fees are listed in section 57(4):

> (a) actual cost in comparison to the fee
>
> (b) financial hardship;
>
> (c) public health or safety, and
>
> (d) (with section 8 of Regulation 460) whether the institution grants access, fee of $5 or less.

[33] To decide whether a fee waiver is "fair and equitable," the head of an institution must consider other relevant factors that may include:

- the manner in which the institution responded to the request
- whether the institution worked constructively with the requester to narrow and/or clarify the request
- whether the institution provided any records to the requester free of charge
- whether the requester worked constructively with the institution to narrow the scope of the request
- whether the request involves a large number of records
- whether the requester has advanced a compromise solution which would reduce costs, and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.[6]

Representations of the ministry

[34] The ministry submits it decided to deny the fee waiver relying on Order PO-1953-F, which held:

> It is not sufficient that there be only a "public interest" in the records or that the public has a "right to know." There must be some connection between the public interest and a public health and safety issue."

[35] The ministry further submits that the appellant has expressed a critical or biased

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[5] See *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056.
[6] Orders M-166, M-408 and PO-1953-F

view of the specified company in his work and that the request is not in the public interest, but only his personal interest.

Representations of the appellant

[36] The appellant submits that "the fee estimate is prohibitive and therefore an undue burden for public access." Primarily, he asserts the fee should be waived as the disclosure is in the public interest and will benefit public health.[7]

[37] The appellant submits the responsive records will specifically:

- Provide the public with a greater understanding of how the ministry regulates air quality, and specifically how the ministry performs its regulatory and oversight function.

- Benefit public health and safety by informing the public about the operation and effectiveness of provincial standards that have a direct impact on public health.

[38] The appellant elaborates that the responsive records are "manifestly in the public interest as they concern the first priority of government: protecting its citizens." He submits the responsive records are directly related to public health and safety. He explains there are serious health impacts when provincial air standards are not met or enforced.

[39] The appellant submits that the disclosure of the responsive records will yield a public benefit because these records are not in the public domain. He explains that, while the ministry publishes some data related to its scientific risk-based assessments, the disclosure of the information at issue may show if the specified company's emissions have exceeded provincial air quality standards.

[40] The appellant, citing page 12 of the IPC's 2018 "Fees, Fee Estimates and Fee Waiver" guide for institutions, notes the IPC has found on many occasions that dissemination of a record will benefit public health or safety where the appeals concern environmental regulations, monitoring, and enforcement. Of note, the guide references Order PO-1909 that found information about compliance with air and water discharge standards is by its very nature a public safety concern. Disclosure of such information would likely result in its dissemination and would lead to a greater public understanding of the issue.

[41] Finally, the appellant submits the ministry's allegations about his opinion of the specified company and the ministry's criticisms of his academic work and journalism are

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[7] Although his submissions cite "section 45(4)(c)" as the statutory authority for this assertion, it is clear from the context the appellant has inadvertently referenced the similar fee provisions in the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*) rather than correctly citing section 57(4)(c) of the *Act*. For purposes of this appeal, I will treat the appellant's submissions as having been made in relation to section 57(4)(c) of the *Act*.

irrelevant in this appeal.

The ministry's reply

[42] The ministry repeats its submissions that the request has no connection to "any clear public interest or public health and safety issue" and that it is simply "vested in the personal and/or academic interest of the requester."

Analysis and findings

[43] As explained above, under sections 57(4)(a) to (d), the appellant has the onus of proving a fee waiver is "fair and equitable" considering these factors:

- whether the actual cost varies from the amount of the fee, and if so, to what extent
- financial hardship of the appellant
- public health or safety, and
- other relevant factors as prescribed by the regulation.

[44] The appellant submits a fee waiver is justified relying on only one factor, "public health or safety" in section 57(4)(c) of the *Act*.

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

[45] The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
    - disclosing a public health or safety concern, or
    - contributing meaningfully to the development of understanding of an important public health or safety issue
- the probability that the requester will disseminate the contents of the record.[8]

[8] Orders P-2, P-474, PO-1953-F and PO-1962.

[46] The focus of section 57(4)(c) is "public health or safety." As the ministry's submissions correctly note, it is not sufficient that there be only a "public interest" in the records or that the public has a "right to know." There must be some connection between the public interest and a public health and safety issue.[9]

[47] Applying the factors noted above, I find that the release of the records will benefit public health or safety under section 57(4)(c).

[48] It is a matter of public concern if the ministry has identified that there are risks to public health posed by a specific company that is not observing provincial air quality standards. The ministry asserts that the appellant has a biased opinion of the specific company. That may be true, but is not relevant because the issue being determined is whether the substance of what will be released is of public interest rather than simply a private interest. I find the information is of public interest.

[49] Next, I must consider whether the subject matter of the record relates directly to a public health or safety issue.

[50] As the appellant explains, air quality standards are enacted to protect Ontarians from being exposed to hazardous substances. If those standards are not observed, it may pose a health risk. The requested information about emissions and related health risks relates directly to public health.

[51] The appellant submits that while the ministry publishes some data related to its scientific risk-based assessments that inform provincial standards, he has not found any similar data related to the ministry's approval of exceedances of provincial air quality standards. The ministry's representations do not address that submission.

[52] Finally, the appellant has been forthright that he intends to publish the information he has requested. In turn, the ministry has acknowledged that it is concerned about what he will publish. The understood intent of the request is to disseminate the information obtained.

[53] As the adjudicator found in Order PO-1909, another appeal involving the ministry:

> [M]atters relating to the safety of Ontario's air and water, like those concerned with the nuclear industry, by their very nature, raise a public safety concern. In addition, I find that the disclosure of the information contained in the records would be reasonably likely to result in the dissemination of information … relating to possible environmental degradation. This in turn would lead to a greater public understanding of this important public issue.

[54] For these reasons, I find the appellant has established that the release of the

[9] Orders MO-1336, MO-2071, PO-2592 and PO-2726.

information will benefit public health or safety, which weighs in favour of granting a fee waiver. However, this finding does not by itself justify a fee waiver. It is one of many factors that must be considered.

Other factors

[55] The ministry's submissions demonstrate, and the appellant does not contest, that the actual costs to the ministry are significantly greater than what it has asked the appellant to pay. Under section 57(4)(a), this fact weighs against a fee waiver.

[56] The appellant provides no evidence that paying the requested fee would impose a personal financial hardship. Under section 57(4)(b), this fact weighs against a fee waiver.

[57] In reviewing the history of this matter, it is clear the appellant worked constructively with the ministry to narrow the scope and reduce the costs of his request both before and during mediation. Similarly, the ministry was diligent in responding to the request. It was also proactive, before and after mediation, in helping the appellant narrow the scope of his request. Considered together, these facts weigh neither in favour nor against granting a fee waiver.

[58] Even with the scope narrowed, the responsive records relate to a seven-year period and amount to almost 9,000 pages. This is a large number of records. Although the appellant has said the fee he is being asked to pay is a burden, the fee has already been discounted and granting a fee waiver would appear to unreasonably shift the cost to the ministry. The appellant is both an academic and a journalist; he is compensated for his work and the relatively modest fee that he is being asked to pay is a typical cost for a professional activity. These facts weigh against a fee waiver.

Conclusion

[59] Access to information under the *Act* is based on a user-pay principle. Fee waivers are granted where it is "fair and equitable" to do so, considering several different factors. In this appeal, while there is a public interest relating to public health and safety, cumulatively, the other relevant factors weigh against a fee waiver.

[60] Accordingly, I find that it would not be fair and equitable to waive the fee in the circumstances of this appeal.

ORDER:

I uphold the ministry's fee estimate and denial of fee waiver.

Original Signed by: August 26, 2025

Jonathan Batty
Adjudicator