

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 21, 2022

**CASE:** 2022-00413R

**Citation:** Shoom v York Region Standard Condominium Corporation No. 1090, 2022 ONCAT 145

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Laurie Sanford, Member

**The Applicant,**

Perry Shoom  
Self-Represented

**The Respondent,**

York Region Standard Condominium Corporation No. 1090  
Represented by Ava Naraghi, Counsel

**Hearing:** Written Online Hearing – August 23, 2022 to November 28, 2022

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] Perry Shoom is a unit owner in York Region Standard Condominium Corporation No. 1090 (“YRSCC 1090”). He is requesting records about the cleanliness, security, repairs and water issues in the common elements of YRSCC 1090 for the period from May 17, 2021 to May 16, 2022.
- [2] YRSCC 1090 submits that Mr. Shoom is not entitled to the records as he is on a “fishing expedition” and is requesting the records for an improper purpose. They also submit that the time and effort required to produce the records is excessive and unduly burdensome. Further, they submit that what Mr. Shoom is requesting are not records but “an amalgamation or an aggregation of data about various kinds of complaints”.
- [3] Mr. Shoom contends that the cleanliness and security of YRSCC 1090 have been declining and he is seeking records to confirm that belief. He is also of the view that YRSCC 1090 has either been concealing records or losing them and he is seeking the records to verify his suspicions.

- [4] The parties disagree on the appropriate cost of producing the records. YRSCC 1090 charged Mr. Shoom \$80 for an initial attempt to respond to his request. Mr. Shoom was dissatisfied with the documents he received and the parties agree that they were unresponsive to his request. YRSCC 1090 now submits that if it is ordered to provide the records Mr. Shoom has requested, YRSCC 1090 will require a total fee of \$15,606.20 to produce them.
- [5] For the reasons set out below, I conclude that Mr. Shoom is entitled to the records he has requested, subject to any redactions required or exceptions set out in the *Condominium Act, 1998* (the “Act”). YRSCC 1090 will be entitled to charge a reasonable fee for the production of these records but the fee will be substantially below the amount it has quoted. Mr. Shoom requested that YRSCC 1090 be assessed a penalty and YRSCC 1090 requested its legal costs. No order for a penalty or costs will issue. Mr. Shoom is entitled to be reimbursed for his filing fees paid to the Tribunal.

## **B. ISSUES & ANALYSIS**

- [6] The issues in this case may be summarised as follows:
1. Is Mr. Shoom entitled to the records he seeks?
  2. What fee, if any, may YRSCC 1090 charge to produce the records?
  3. Did YRSCC 1090 refuse, without a reasonable excuse, to allow Mr. Shoom to obtain records he is entitled to under the Act?
  4. What penalty or costs, if any, should either party pay under the Act?

### **Issue 1. Is Mr. Shoom entitled to the records he seeks?**

- [7] Subsection 55(3) of the Act sets out a general obligation on the part of a condominium corporation to permit an owner to “examine or obtain copies of the records of the corporation”. This general entitlement is subject to exceptions in subsection 55(4) of the Act and is subject to the provisions of Ontario Regulation 48/01 (the “Regulation”) to the Act. Section 13.3(1) of the Regulation stipulates that a request for records must be “solely related to [the requestor’s] interests as an owner . . . having regard to the purposes of the Act”.
- [8] While the original records request was phrased differently, the parties agree that Mr. Shoom is requesting records “relating to issues of cleanliness of the common areas, security and common area repairs and water issues” for the period from May 17, 2021 to May 16, 2022. Specifically, he is interested in records from the

following sources:

1. Daily and event security logs;
2. Service requests made by unit owners through Condo Control or Icon Connect (data platforms operated by the two property management companies which managed YRSCC 1090 during the relevant period); and
3. Email correspondence and/or letters received from unit owners.

- [9] Mr. Shoom submits that he has, for years, been experiencing a degradation in the way his home is being maintained. He has security and fire safety concerns. He also believes that YRSCC 1090 has failed to adhere to its governing documents and that there have been “material omissions” in meeting minutes. Mr. Shoom’s request for YRSCC 1090 meeting minutes is not the subject of this hearing. His concern about the minutes relates to the most recent Annual General Meeting during which, he contends, YRSCC 1090 did not raise the matter of a recent break-in on the premises until a unit owner addressed it. He submits that the draft minutes, when they were published, did not refer to the break-in. Mr. Shoom says that this incident was a precipitating factor in his decision to bring this application.
- [10] Mr. Shoom is forthright in saying that the motivation for his records request is “to better understand the abuse of authority occurring and the extent of problems at YRSCC 1090.” He went further during this hearing and accused YRSCC 1090 of a number of malfeasances, with little or no supporting evidence beyond his suspicions.
- [11] The condominium manager of YRSCC 1090, Ms. Cekrezi, testified in a series of witness statements. Mr. Shoom questioned her credibility and the reliability of her testimony. While some of her statements were confusing and there were some inconsistencies, I found her to be generally credible. She responded directly to my questions, even when the answers were not in YRSCC 1090’s best interests. Some of Mr. Shoom’s concerns appear to be based on misunderstandings. For example, he submitted that she had at one point said that there were over 21,000 email records and at another point said that there were comparatively few email records that were responsive to Mr. Shoom’s records request. As I understand Ms. Cekrezi’s testimony, she is saying that while she and her site administrator will have to review thousands of emails, she expects to find few emails that relate to Mr. Shoom’s records request. Both statements may be true.
- [12] Ms. Cekrezi’s testimony was that the records request, as originally phrased by Mr. Shoom, was made on May 16, 2022 and was for:

1. Reports to security/concierge pertaining to cleanliness, security, common area repairs and water issues – date range 2021/05/17 – 2022/05/16
2. Service requests and concerns pertaining to cleanliness, security, common area repairs and water issues – date range 2021/05/17 to 2022/05/16

[13] Ms. Cekrezi responded with what she thought Mr. Shoom wanted. She produced an inspection report identifying any problem with security, cleaning or maintenance issues. Mr. Shoom wrote back the same day saying this was not what he was looking for. On June 1, 2022, Ms. Cekrezi wrote to Mr. Shoom explaining that his request was too general and asking for specific information about what he wanted. Her testimony was that she gave an example about the water records Mr. Shoom sought. She asked if Mr. Shoom meant records concerning leaks from drains, issues with domestic hot water tanks, the swimming pool water, the water meter reading or something else. Her testimony was that she did not receive a reply but there is an email from Mr. Shoom on the same day in response to her questions. While it may not have been detailed enough to answer her questions, the email was an attempt to clarify the records request.

[14] Mr. Shoom's response explained that he was not seeking "in-suite" reports, which Ms. Cekrezi understood to mean reports about issues within an individual unit, but that he wanted "written correspondence about building concerns" and that "it is not possible for me to be more specific". Her testimony was that she did her best with what she understood that request to mean. Rather than providing records, Ms. Cekrezi said, she provided a Word document with what she understood to cover what Mr. Shoom was looking for. The Word document "included selected resident requests or complaints that were forwarded in writing or by e-mail to management office or security desk". The content of the requests was copied and pasted into the Word document, with confidential information redacted. The Board's response to the records request, including this Word document, was provided to Mr. Shoom on June 13, 2022.

[15] During the hearing, Mr. Shoom submitted that what he received was "about 30 selective and edited communications" that were undated and with subject lines edited. YRSCC 1090 acknowledges that this Word document was not what Mr. Shoom was looking for. It appears that YRSCC 1090 was open to working with Mr. Shoom to clarify what he wanted even after the June 13<sup>th</sup> response. However, despite his dissatisfaction with the Word document he received, Mr. Shoom apparently made no further effort to clarify his records request until the mediation stage of these proceedings. His statement was that he could not further narrow his request and that his initial request was "clear, concise and restricted to specific

records”. The fact that the parties were able to materially clarify the records request during mediation belies this statement. Ms. Cekrezi testified that it was not until this case began that YRSCC 1090 started to get a clearer understanding of the records Mr. Shoom wanted and I accept that.

[16] YRSCC 1090 initially acknowledged that Mr. Shoom was entitled to the records he is seeking. However, YRSCC 1090 says it changed its position about Mr. Shoom’s entitlement to the records after considering the allegations that Mr. Shoom raised during the hearing. YRSCC 1090 argues that Mr. Shoom is not entitled to the records he seeks for four reasons. YRSCC 1090 submits that Mr. Shoom is not requesting the records for reasons solely related to his interest as an owner, “having regard to the purpose of the Act”, as required under paragraph 13.3(1)(a) of the Regulation. Rather, YRSCC 1090, submits, Mr. Shoom is on a fishing expedition “looking for any shred of evidence to support his alleged suspicions of impropriety or mismanagement”. It submits that this is an improper purpose. Secondly, YRSCC 1090 submits that the volume of the documents it would be required to review would be significant and that it is likely that the majority of those documents would be exempt from production either on the grounds of irrelevance of under the exemption provisions set out in subsection 55(4) of the Act. Thirdly, YRSCC 1090 also submits that the production of the records would be an undue burden, “both practically and economically, given the amount of review and redaction work necessary to produce such documents”. Finally, YRSCC 1090 submits that what Mr. Shoom is effectively requesting is “an amalgamation or an aggregation of data about the various kinds of complaints the Corporation receives”. YRSCC 1090 argues that responding to Mr. Shoom’s request would involve creating new records, which is not what the Act contemplates.

[17] YRSCC 1090 cited the Tribunal decision in the case of *Martynenko v Peel Standard Condominium Corporation No. 935*. In this case the Tribunal considered the term “fishing expedition” and said, at paragraph 30:

The term “fishing expedition” is used in law to describe a search or investigation, including demands for records or information, undertaken for the purpose of discovering facts that might be disparaging to the other party or form the basis for some legal claim against them, that the seeker merely hopes or imagines exist. Most cases where the term is used appropriately involve a person casting a wide net, as it were – such as requesting records that cover a broad period of time and/or wide range of topics – in the hopes of acquiring some fact or detail that could satisfy what is essentially an unfocussed vindictiveness or dislike for the other party.

[18] YRSCC 1090 also referred to the case of *Emerald PG Holdings Ltd. v. Toronto*

*Standard Corporation No. 2519*, 2022 ONCAT 89. In that case, the Applicant requested six years of emails covering a wide range of correspondence between the condominium corporation and various correspondents with the “explicit intent” of determining if the board of directors of the condominium corporation was conducting business outside of properly constituted board meetings. The Tribunal concluded, “I find this request is overly broad, lacks specificity, is focussed on finding imagined wrong-doing, and meets the general definition of a ‘fishing expedition’”.

[19] The term “fishing expedition” is relevant to records requests as a boundary on the otherwise very widely worded entitlement to records. A pure fishing expedition would be evidence that the records request was not solely related to the requestor’s interest as an owner, having regard to the purpose of the Act. Having said that, it is important to note that there may be elements of “fishing” in many records requests. This may stem from the information imbalance between the parties. Even the most transparent condominium corporations will have information that is not visible to unit owners. A requestor may not be able to be too specific about when the records were created or where they may be found.

[20] There may as well be an element of fishing which stems from the relationship between the two parties. The *Martynenko* case begins with the following:

It would be an unusual case where a condominium unit owner’s request for records under the *Condominium Act, 1998* (the “Act”) is not motivated by dissatisfaction with issues related to the governance or management of the condominium or some other ongoing dispute or antagonistic relationship with the condominium’s board or management.

[21] In the *Martynenko* case, the Tribunal found that while there were numerous records requests, each was “reasonably specific”. While some of the records requests were broadly framed and covered multiple years, the Tribunal found that “sometimes, genuine and legitimate concerns may actually cover a broad set of records, subject matters and/or spans of time”. The Tribunal concluded that the requests were not “unfocussed or unreasonably broad”. By contrast, in *Emerald PG Holdings Ltd.* a request for six years of broadly framed email exchanges was found to be overly broad and to lack specificity.

[22] In deciding whether one or more records requests, alone or together, constitute a fishing expedition, it may be a question of the degree to which a records request demonstrates a characteristic of fishing, rather than kind or kinds of characteristics that are found. Having one or more characteristics of a fishing expedition will not necessarily be determinative. It is the totality of the request, in the context of the

other facts in a particular case, which must be considered.

- [23] Considering Mr. Shoom's request, the time frame for the request is reasonable, the request is reasonably specific and the request directly relates to the areas of concern that Mr. Shoom has identified. He is concerned about important aspects of how his home is being managed, including issues of safety, security and cleanliness. Mr. Shoom is certainly looking for evidence of misconduct on the part of YRSCC 1090 and his allegations of misconduct expanded during the hearing. However, the nature of his records request has not changed; if anything, it has become more specific as a result of the mediation. His refusal to be more specific about his request prior to the mediation indicates that he was not interested in making the request easier for YRSCC 1090, even if cooperating with the condominium might have made his task easier as well. But this animus alone is not conclusive evidence of fishing. As noted in the *Martynenko* case, it is a common feature of records request cases before the Tribunal.
- [24] As evidence supporting its allegation that Mr. Shoom was fishing, YRSCC 1090 pointed to the fact that Mr. Shoom expanded his statement of the records he was interested in during the hearing. At one point, he expressed an interest in records relating to noise. Mr. Shoom also raised issues outside the scope of this hearing about the management of YRSCC 1090. However, that is not necessarily evidence that this records request is a fishing expedition. It is common for people who come to the Tribunal seeking records to want to have issues outside their original records request dealt with during the hearing. This hearing is to address the specific issues identified in paragraph 6 above and I will not be addressing Mr. Shoom's other concerns in this decision.
- [25] YRSCC 1090 argues that Mr. Shoom is not entitled to the records he is requesting because the number of documents it would be required to review would be significant and that it is likely that the majority of those documents would be exempt from production in any case. As will be discussed below, the number of documents that will need to be reviewed is the result of a combination of factors. The large number of documents involved is in part a function of the way in which YRSCC 1090 has chosen to organise some of its records. It is also in part the result of Mr. Shoom's refusal to work with YRSCC 1090 to find ways to minimize the number of records that need to be reviewed. The number of records requiring review is not a function of Mr. Shoom's records request which is not, on its face, particularly broad. It should be noted that Mr. Shoom has clarified that he is not seeking records relating to an individual unit owner's issues with their unit, which he understands he could not obtain, but to issues concerning the common elements of YRSCC 1090. In any event, the number of records is not, in itself, a

ground for an exemption from the obligation to produce them under the Act and the Regulation.

- [26] YRSCC 1090's third, related, argument is that the production of the records would be an undue burden. That argument too will be addressed below. There is nothing in Mr. Shoom's records request itself that can be seen as placing an undue burden on YRSCC 1090. Here again, the burden that may be placed on YRSCC 1090 is the result of choices made by YRSCC 1090 in how it organised its records and by Mr. Shoom not working cooperatively to reduce the labour involved.
- [27] Finally, YRSCC 1090 submits that Mr. Shoom is effectively requesting "an amalgamation or an aggregation of data about the various kinds of complaints the Corporation receives". YRSCC 1090 argues that responding to Mr. Shoom's request would involve creating new records, which is not what the Act contemplates. It is YRSCC 1090 itself which responded to Mr. Shoom's request initially by "creating new records" when it cut and pasted data into a Word document. I find nothing in Mr. Shoom's records request that would involve the creation of new records. Nor does his records request involve an "amalgamation of data". Mr. Shoom has stated that he is interested in actual records themselves.
- [28] I conclude that YRSCC 1090 has not demonstrated, on a balance of probabilities, that Mr. Shoom is on a fishing expedition in making his records request. He is entitled to the records he seeks, as this records request was clarified during the mediation.
- [29] YRSCC 1090 has argued that it will need to claim exemptions under the Act in the case of some records and it will need to redact protected information in other cases. YRSCC 1090 will be entitled to do both in accordance with the Act and the Regulation and Mr. Shoom says that he understands this.
- [30] Mr. Shoom originally requested the records for the period from May 17, 2021 to May 16, 2022. He is now requesting the same records for an extended period to the date of this order. That would be an addition of seven month's records for a total request of nineteen months. Mr. Shoom gives no reason for the extension request other than that this hearing has taken longer than usual. However, the length of the hearing was not exclusively the result of scheduling delays on the part of YRSCC 1090. Mr. Shoom brought a preliminary motion which took some time. The lack of availability of both parties prolonged the hearing. Both parties raised new matters in presenting their cases which required further submissions to address. I find that there is no compelling reason to allow Mr. Shoom, at this late date, to amend his records request to cover an extended time.



## **Issue 2. What fee, if any, may YRSCC 1090 charge to produce the records?**

- [31] Ms. Cekrezi testified that YRSCC 1090 originally charged Mr. Shoom \$80 to produce the Word document she thought contained what he was requesting and he paid that amount. Her testimony is that in preparing the Word document, she discovered that it was taking substantially longer than expected. Ms. Cekrezi found that it was necessary to go through each email that she had received to determine if that email contained the information she believed that Mr. Shoom was looking for. As noted above, YRSCC 1090 acknowledges that the Word document it provided was not what Mr. Shoom wanted. YRSCC 1090 is prepared to credit Mr. Shoom for the \$80 he has paid but it is proposing to significantly increase the estimated cost of providing him with the records it now understands that he is seeking.
- [32] Mr. Shoom says that YRSCC 1090 originally quoted him \$80 for the records he requested. He paid that amount but YRSCC 1090 did not provide the records, in his submission. Therefore, he says, YRSCC 1090 must now provide him with the records he seeks at no additional cost. In fact, Mr. Shoom argues that the \$80 cost is too high and it points to fees he has paid for requests under the Freedom of Information Act and for requests to the Condominium Authority of Ontario. However, not only might the information that Mr. Shoom was requesting differ in those cases, each request might be governed by different statutory and policy provisions. His request for records in this case is governed by the Act and the Regulation.
- [33] Subsection 13.3(8) of the Regulation governs the setting of fees for the production of records. It says that fees payable for a records request must be first, “a reasonable estimate of the amount required to reimburse the corporation for the actual labour and delivery costs that the corporation incurs”. Costs may include printing and photocopying charges, with certain limits, and the actual labour costs incurred by the condominium corporation. Secondly, the fee payable for the records must be reasonable.
- [34] Section 13.8(2) of the Regulation governs how a condominium corporation may adjust the fee quoted if the estimate is too low. However, that section assumes that the adjustment will occur as part of the formal response a condominium corporation makes to a records requester. In this case, YSRCC 1090 did not advise Mr. Shoom that they had incurred costs significantly greater than \$80 when it delivered the Word document that Ms. Cekrezi thought he wanted. It was only after Mr. Shoom brought this application that YSRCC 1090 re-calculated what it thought the cost of providing the records would be.

- [35] The first question, therefore, is whether YRSCC 1090 is entitled to increase the fee it proposes to charge Mr. Shoom for the records he has requested. I conclude that it can. Mr. Shoom has not received the records he requested. The result is that Mr. Shoom is in no worse position than any other requestor of records. YRSCC 1090 has provided an estimate based on its new understanding of the records Mr. Shoom seeks. If that estimate is in accordance with the Regulation, then YRSCC 1090 ought to be entitled to claim it. It will be open to Mr. Shoom to pay the new fee, less the amount he has already paid, and receive the records or decline to pay the fee and receive a refund of the \$80 he has paid.
- [36] The next question is whether the fee estimated by YRSCC 1090 accords with the provisions of Subsection 13.3(8) of the Regulation. The records come in different formats. The first set of records requested is the daily and event security logs relating to issues of cleanliness of the common areas, security and common area repairs and water issues for the period from May 17, 2021 to May 16, 2021. Ms. Cekrezi explained that daily security logs record all the activity that a security employee engages in during any given day. It may include patrolling the grounds, giving access to contractors, releasing keys to cleaners and other routine security activity. These daily security logs are kept on YRSCC 1090's online platform, which will be considered in more detail below.
- [37] While Ms. Cekrezi's testimony was confusing on this point, it appears that the event security logs are different from the daily security logs. The event security logs are part of reports written by security employees at the end of each employee's shift but they deal primarily with security matters. Until March, 2022, these were handwritten. Since then, the reports have been incorporated into the daily security logs and kept on YRSCC 1090's online platform, which is known as ICON Connect.
- [38] Ms. Cekrezi testified that to prepare the estimate of the cost of producing the requested records, she "made a test and timed myself doing each task". She then multiplied that time by the number of records involved.
- [39] For the daily security logs, Ms. Cekrezi said there were 1,095 reports made in the year for which Mr. Shoom requested these records. Her testimony was that each record would have to be downloaded from the ICON Connect platform, printed, redacted, scanned and saved to be e-mailed to Mr. Shoom. Her estimate was that this process would take three minutes per report. She estimated the labour cost at \$20 an hour and calculated: 1,095 daily security reports multiplied by 3 minutes each equaling 54.75 hours. 54.75 hours multiplied by the estimated \$20 per hour labour cost equals \$1,095, or \$1 per report. She is unaware of a way in which she

could redact information on electronic records without printing them first.

- [40] For the handwritten security logs, Ms. Cekrezi estimates that it will take her between one minute and ninety seconds to photocopy, redact and scan these reports, of which there are 546 for the year. Using the one-minute estimate, Ms. Cekrezi calculated 9.1 hours to do the work. At \$20 an hour labour cost, that amounts to \$182. Added to that are the photocopy fees of \$0.20 per page of \$109.20 for a total of \$291.20.
- [41] There are two considerations in determining if an estimated fee conforms with the requirements of the Regulation. First, the fee must be a reasonable estimate of the cost of producing the records. Second, the fee itself must be reasonable. I find that Ms. Cekrezi has used a reasonable approach to estimating the fee, by timing herself doing the various tasks involved in producing the record and then extrapolating that time across the number of records involved. The next question is whether the fee itself is reasonable. In previous Tribunal decisions, \$20 per hour for clerical work of the nature that Ms. Cekrezi describes has been found to be reasonable. The Regulation caps photocopying charges as \$0.20 per page. In this case the fees of \$1,095 for the daily logs and \$291.20 for the written security logs are high, relative to other records cases the Tribunal has considered. This is understandable because the number of records involved is also higher than usual. I find that these fees are reasonable and I will allow them.
- [42] The second heading of reports are the service requests made by unit owners through Condo Control or ICON Connect relating to issues of cleanliness or the common areas, security and common area repairs and water issues for the period from May 17, 2021 to May 16, 2022. Much time during the hearing was taken up with explanations about what these two data platforms are, what functions they provide and how YRSCC 1090 transitioned from one to the other. At some time during the period covered by Mr. Shoom's records request, YRSCC 1090 changed its property managers. Ms. Cekrezi testified that property management firms, such as Icon Property Management, the current property manager of YRSCC 1090, often use proprietary data platforms for various purposes. The previous property management company used Condo Control as their data platform. This system was discontinued on February 28, 2022 and the data platform of Icon Property Management, ICON Connect, was activated on March 1, 2022. Ms. Cekrezi's testimony was that the two systems have "practically" the same function. "Both systems facilitate the making of announcements, posting events, booking amenities, accessing the library, making and responding to service requests etc." The "library" referred to contains minutes of selected board of directors' meetings.

- [43] Ms. Cekrezi testified that Icon Property Management would still have access to data on the Condo Control system but would have to pay to re-activate the system and gain access to it. Her testimony was that during the transition, “all important information was transferred from Condo Control to ICON Connect, or stored otherwise (such as the service requests that were forwarded to my email).” She explained that some service requests, which were outstanding at the time of the transition, were forwarded to her email. She testified that the entire service request, including attachments, would have been sent to her email.
- [44] Mr. Shoom is concerned that data was lost during the transfer from the Condo Control system to ICON Connect. He believes that data from Condo Control that was downloaded to Ms. Cekrezi’s email would have come without attachments which would, he contends, render these emails “worthless”. Ms. Cekrezi testified that the transfer to her emails did include attachments and that no data was lost. It is not necessary to decide whether or not this is the case as the records themselves should clarify the matter.
- [45] YRSCC 1090 is not proposing to charge a separate fee for the production of records relating to Mr. Shoom’s request that are stored on the ICON Connect platform. Any fee is included in the fee for the production of emails, which will be discussed below. Ms. Cekrezi testified that she expects that very few records of service requests or other documents that Mr. Shoom is interested in will be on the ICON Connect system. Her testimony is that the residents of YRSCC 1090 tend to be older and prefer to make service requests by telephone or in person. Mr. Shoom has said that he is not interested in these discussions, only in written records.
- [46] The third heading of reports are the email correspondence and/or letters received from unit owners relating to issues of cleanliness of the common areas, security and common area repairs and water issues for the period from May 17, 2021 to May 16, 2022. Here again, Ms. Cekrezi testified that she expects to find few of these records in her email file because of the preference of unit owners to deal with these sorts of issues in person or over the phone. However, she also testified that in order to produce the records that Mr. Shoom has requested, she will need to go through all the emails she has received for the time requested by Mr. Shoom. As well, the site administrator will need to go through all the emails sent to her, despite the fact that Ms. Cekrezi expects there to be some overlap. She is unaware of any way to eliminate this overlap. This will be the second time that Ms. Cekrezi and the site administrator have had to comb through all their emails for the relevant period; they did the same in their first attempt to respond to Mr. Shoom’s request.

- [47] Ms. Cekrezi explained that the reason that each email will need to be reviewed again is that the emails are organised either by individual unit owners or stored in her e-mail in-basket. Ms. Cekrezi testified that if Mr. Shoom would provide her with keywords to use in her search, that would significantly reduce the time involved. She acknowledges that such a search might not result in the production of every relevant record since it is the author of the email who categorises the subject matter of it. Ms. Cekrezi submitted that Mr. Shoom would not only have to help in developing the keywords, he would also have to advise that he would accept the results of the keyword search. To put this in context, it is important to recall that YRSCC 1090 expects there to be comparatively few relevant e-mail records and that in Ms. Cekrezi's first review, she found only 30.
- [48] Ms. Cekrezi calculates that she receives about 30 emails a day or 10,950 in a year. Her site administrator receives roughly the same number of emails. Ms. Cekrezi estimates that she will need about two minutes on average per email to review the contents of the email and either move past it or select it, print, redact and scan the email. She calculates 10,950 emails multiplied by two minutes each to be 365 hours. At \$20 per hour, that would be a production fee of \$7,300. The fee for the site administrator would be reduced to \$7,000 to account for the overlap. This fee of \$14,300 would include the ICON Connect records and would include replies made by YRSCC 1090 to unit owner correspondence.
- [49] The first question concerning the emails is whether Ms. Cekrezi has made a reasonable estimate of the actual costs of YRSCC 1090 to produce the emails. I am concerned about one aspect of Ms. Cekrezi's evidence and that is her statement that she would have to review a full year of emails. Ms. Cekrezi testified that YRSCC 1090 has recently changed condominium management companies. She also testified that she works for the current condominium management company and had been in her current position since August 1, 2021. There is no evidence before me about the specific date of the change in management companies. My concern is that Ms. Cekrezi may be overstating the number of months of emails that she must review. However, there is insufficient evidence before me to reach that conclusion. It is possible that she inherited some emails from her predecessor or that there was someone from her company in her current role before she assumed it. On the evidence before me, I conclude that YRSCC 1090 has made a reasonable estimate of the actual costs of YRSCC 1090 in producing the email records.
- [50] As noted above, under section 13.3(8) of the Regulation, a proposed fee to produce records must not only be a reasonable estimate of the cost of producing the records but the fee itself must also be reasonable. Another way to consider this

is to ask whether it is reasonable that Mr. Shoom should pay \$14,300 for a small number of electronic records. I conclude it is not.

- [51] When ICON Property Management assumed its responsibilities, it had a range of choices as to how to organise and store its records. Ms. Cekrezi did not explain why it chose to transfer some service requests from the previous data management system to her email account rather than to ICON Connect, its own data platform. It could also have made choices about how to organise and categorise its emails knowing that it was prepared to allow unit owners to use the e-mail system in preference to ICON Connect to make service requests or to complain. It could have made choices as to how to assign key words to certain emails. It might even have transferred to the ICON Connect data platform the content of the emails that more properly belonged there knowing, as it did, that there were going to be few of these.
- [52] What YRSCC 1090 did was to store the emails either by unit owner or in an undifferentiated way in Ms. Cekrezi's e-mail in-basket. This method of organisation might be satisfactory if YRSCC 1090 wished to review, for example, all email correspondence it has had with an individual unit owner. However, in this case, Mr. Shoom is looking for a common subject of records across all unit owners. He wants records based on issues rather than on individual unit owners. It should be noted that this does not involve an amalgamation of data, as YRSCC 1090 submits. Mr. Shoom is interested in the raw emails themselves, or more specifically, in the actual service requests or complaints, which may be contained in attachments to the emails. The cost that YRSCC 1090 is asking Mr. Shoom to pay for access to these records is prohibitive, especially in view of the fact that YRSCC 1090 does not expect the search to yield many records. On its face, it is an unreasonable fee.
- [53] Subsection 13.2(2) of the Regulation sets out requirements that apply when condominium corporations choose to keep records electronically. Condominium corporations are required to enter or record these records in a "system of electronic data processing or by any other information storage device". The system or device must be "capable of reproducing any required information from the records in an accurate and intelligible form within a time that is reasonable and that complies with the requirements of section 55 of the Act and this Regulation". The "time that is reasonable" referred to in this subsection has obvious relevance to the calculation of a production fee under the Regulation.
- [54] YRSCC 1090 submits that while subsection 13.2(2) of the Regulation may be applicable to this matter "in the most literal and technical meaning of the word,

given that the majority of the records at issue are in an electronic format”, the subsection is not relevant to this case. It submits that the fee it has quoted is reasonable and is a function of Mr. Shoom’s request rather than the choices YRSCC 1090 has made in its record collection and storage.

[55] In fact, the fee quoted is the result of a number of factors. The fact that YRSCC 1090 is unable to produce a comparatively small number of records without physically reviewing thousands of emails is evidence that its email system does not comply with subsection 13.2(2) of the Regulation. However, Mr. Shoom could have chosen to work with YRSCC 1090 to reduce the cost to it of locating these records. He might have proposed key words to simplify the search. Ms. Cekrezi testified that she advised Mr. Shoom that there were comparatively few emails that were relevant to his search. It was open to him to conclude that he could get most of what he wanted at a minimal cost by working with YRSCC 1090 from the outset of his records request.

[56] The question is who should bear the financial burden of the production of these email records. Both parties bear some responsibility for the very large estimated fee. As noted above YRSCC 1090 made a series of choices about how to store and manage records of service requests and complaints by its unit owners. On the other hand, YRSCC 1090 made two attempts to meet Mr. Shoom’s records request for the original fee it estimated, \$80. It appears that YRSCC 1090 was open to working with Mr. Shoom even after these initial attempts. The shortcomings in the email system that were revealed by this records request might have been overcome in large part had Mr. Shoom worked with YRSCC 1090 to clarify his request and to develop search criteria. Under all the circumstances of this case, it seems fair that the financial burden should be shared between YRSCC 1090 and Mr. Shoom. Therefore, I will lower the fee payable by Mr. Shoom for the email records to \$7,150. This fee includes the estimated cost of producing service records from the ICON Connect data platform.

[57] YRSCC 1090 submitted that complying with Mr. Shoom’s records request would place an “undue burden” on it. In addition to the financial burden, I assume that YRSCC 1090 is referring to the burden on Ms. Cekrezi and the site administrator. This burden is a function of the same factors that have led to the high cost involved. It would be in both parties’ best interests now to cooperate to find ways to lessen the burden and the cost of producing the email records.

[58] Mr. Shoom cited five Tribunal cases to support his position on what is a reasonable fee. In three of the cases cited, the condominium corporation either failed to participate or participated in only a limited way. As a result, the Tribunal

had limited information to use to determine whether fees were fair. That is not the case here. One of the other two cases cited by Mr. Shoom dealt with a motion to join cases. The fifth case, *Shaheed Mohamed v York Condominium Corporation No. 414*, 2018 ONCAT 3 dealt with a materially different fact situation than the present matter.

**Issue No. 3 – Did YRSCC 1090 refuse, without a reasonable excuse, to allow Mr. Shoom to obtain records he is entitled to under the Act?**

[59] Under subsection 1.44(1) 6 of the Act, the Tribunal may, in a dispute about providing records, award a penalty if the Tribunal considers that a condominium has “without reasonable excuse refused to permit a person to examine or obtain copies...” of records to which that person is entitled. Mr. Shoom has requested that YRSCC 1090 be assessed a penalty under this provision.

[60] Mr. Shoom argues that YRSCC 1090 refused, without a reasonable excuse, to allow Mr. Shoom to obtain records he is entitled to under the Act. His arguments seem to centre on his suspicion that YRSCC 1090 has, intentionally or otherwise, lost records and that this is a factor in its inability to date to get him the records he seeks. In reviewing the evidence, I find that YRSCC 1090 made good faith efforts to understand Mr. Shoom’s records request and went to considerable trouble to attempt to respond to it. YRSCC 1090 incurred more cost than it had expected in creating the initial response but did not pass those costs on to Mr. Shoom. There is no persuasive evidence before me that YRSCC 1090 refused to allow Mr. Shoom to obtain the records he was requesting. It was not until this hearing began that YRSCC 1090 took the position that Mr. Shoom was not entitled to the records. That was a position YRSCC 1090 was within its right to adopt and is not a reason to conclude that it is denying access to the records. I find that YRSCC 1090 did not refuse to provide the records to Mr. Shoom.

[61] Mr. Shoom requested that YRSCC 1090 be assessed the highest penalty possible for refusing to provide records. Given my finding that YRSCC 1090 has not done this, no penalty would be appropriate.

**Issue No. 4 - What costs, if any, should either party pay under the Act?**

[62] YRSCC 1090 claimed its costs in this matter. Under Rule 48.2 of the Tribunal’s Rules of Practice, January, 2022, it is unusual for the Tribunal to order costs. In this case, YRSCC 1090 was not successful in its principal arguments and therefore, an order as to costs would not be appropriate.

[63] Under Rule 48.1, it is usual for the Applicant, if successful, to be awarded his or



her filing fees with the Tribunal. I will accordingly direct YRSCC 1090 to reimburse Mr. Shoom for his filing fees of \$200.

**C. ORDER**

[64] Under section 1.44 of the Act, the Tribunal Orders that:

1. Within 60 days of the date on which Mr. Shoom makes a payment under section 5 of this order, YRSCC 1090 will provide Mr. Shoom with access to the records he has requested, specifically records “relating to issues of cleanliness of the common areas, security and common area repairs and water issues” for the period from May 17, 2021 to May 16, 2022 and specifically for records in the following formats:
  - i. Daily and event security logs;
  - ii. Service requests made by unit owners through Condo Control or Icon Connect (data platforms operated by two separate property management companies); and
  - iii. Email correspondence and/or letters received from unit owners.
2. YRSCC 1090 may claim any applicable exemption from the requirement to provide records that is set out in the Act or the Regulation.
3. YRSCC 1090 may also redact information that is protected under the Act or the Regulation from any record it provides Mr. Shoom.
4. YRSCC 1090 may charge the following fees for the production of the records:
  - i. For the daily security logs set out in section 1 (i) of this order, the amount of \$1,095;
  - ii. For the event security logs set out in section 1(i) of this order, the amount of \$291.20; and
  - iii. For the service requests set out in section 1(ii) of this order and the email and letters set out in section 1(iii) of this order, the amount of \$7,150.
5. Mr. Shoom may either pay this amount and receive the records or pay the amount specified in any section set out above and receive those specific records. Mr. Shoom may also choose not to pay any amount and receive no records.

6. The total amount to be paid by Mr. Shoom will be reduced by the amount of \$80 for the money he has paid to date. If Mr. Shoom chooses to receive no records, YRSCC 1090 will refund the \$80 he has paid.
7. Within 30 days of the date of this order, YRSCC 1090 will reimburse Mr. Shoom the amount of \$200 on account of the filing fees he paid to bring this application to the Tribunal.

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Laurie Sanford  
Member, Condominium Authority Tribunal

Released on: December 21, 2022