



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER P-1606

Appeal P\_9800020

Mohawk College of Applied Arts and Technology



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

Mohawk College of Applied Arts and Technology (the College) received an 11-part request under the Freedom of Information and Protection of Privacy Act (the Act) for access to financial information relating to the costs of grievances and arbitrations filed against the College and the cost of certain apprenticeship programs offered by the College. The College issued a fee estimate for search time of \$1296 and requested payment of a deposit of \$648 prior to completing the search. The College indicated that access to the responsive records may be denied when the search is completed and the records reviewed. The requester appealed the amount of the search fee estimated by the College.

During mediation, the requester, now the appellant, made an application for a waiver of the fees which the College denied. The College then issued a supplementary decision indicating the exemptions which may apply to the records, in whole or in part.

The appellant narrowed the scope of his request to those records to which the College might deny access, namely Items 3, 4, 8, 9 and 11. The College issued a revised fee estimate of \$353.50 based on the estimated search for the reduced number of records, and requested payment of a deposit of \$176.25. The appellant continued to dispute the revised fee estimate.

This office provided a Notice of Inquiry to the appellant and the College. Representations were received from both parties.

## **DISCUSSION:**

### **FEE ESTIMATE**

The charging of fees is authorized by section 57(1) of the Act, which states:

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;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

Section 6 of the Regulation also deals with fees. It states, in part, as follows:

The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.
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.

In reviewing the College's fee estimate, my responsibility under section 57(5) is to ensure that the estimated amount is reasonable in the circumstances. The burden of establishing the reasonableness of the estimate rests with the College. To discharge this burden, the College must provide me with detailed information as to how the fee estimate has been calculated, and produce sufficient evidence to support its claim.

The College has provided a fee estimate of \$341 for the time expended to search for records responsive to Item 3 (monies paid out by the College as a result of labour arbitration awards) and Item 4 (monies paid out by the College as a result of settling grievances), calculated as follows:

Search for Item 3 - 30 minutes @\$55/hr	\$ 27.50
Search for Item 4 - 342 minutes @\$55/hr	<u>\$313.50</u>
<b>Total</b>	\$341.00

The College states that the search time expended to search for Items 8, 9 and 11 was minimal and for reasons of expediency, has been waived. Therefore, the actual fee estimate at issue is \$341. The searches were conducted by a law firm, retained by the College during the responsive period to handle legal labour relations including grievances and labour arbitrations.

With its representations, the College has provided sworn affidavits from its Acting Director of Human Resources and two articling students from the law firm who conducted the searches for the two items.

In his affidavit, the Acting Director states that he was responsible for overseeing the search and that he determined that the most efficient method was to ask the law firm to search its files for responsive records. He confirms that the law firm was retained by the College to handle legal labour relation matters including grievances and labour arbitrations.

With respect to the search for Item 3, the articling student states that during her articling period at the law firm, she was involved in legal research which included regular searches of the law firm's internal computer indexes and its library of arbitrator decisions. She states that she conducted a search of the law firm's internal computer index and legal library file for arbitrator decisions responsive to Item 3 and that the search required a total of 30 minutes. She states her belief that her services were billed to the College at a rate of \$55 per hour.

With respect to the search for Item 4, the other articling student also states that during his period of articling with the firm, he was involved in legal research including regular searches of the firm's internal computer indexes and its historical and current legal files. He states that he was responsible for conducting a sample search for records responsive to Item 4. His review of the firm's legal database indicated that there were 36 files which dealt with employee grievances within the relevant period. He states that he conducted a sample search of eight files to look for responsive records which took a total of 76 minutes or 9.5 minutes for each file. Based on this sample search, he estimated that the search of 36 files would require a total of 342 minutes. The articling student also states his belief that his time for this assignment was billed to the College at a rate of \$55 per hour.

The College submits that the fee estimate is based on the hourly rate charged by the law firm for the two searches conducted by its articling students and that it is reasonable. The College notes that it has already waived the cost of the search time for Items 8, 9 and 11.

I have carefully reviewed the representations of the parties. Regulation 6(6) permits the College to recoup costs, including computer costs, that it has incurred in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received. I am, therefore, prepared to accept the costs specified in the affidavits as costs related to section 57(1) of the Act. I find, therefore, that the fee estimate provided by the College is reasonable in the circumstances of this appeal.

I note that the College has waived its costs for the searches related to Items 8, 9 and 11. Consequently, I will order it to issue a final decision on access to Items 8, 9 and 11.

## **ORDER:**

1. I uphold the College's fee estimate.
2. I order the College to issue a decision on access to Items 8, 9 and 11 of the request by **September 24, 1998**.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the College to provide me with a copy of its decision letter to the appellant in accordance with Provision 2.

Original signed by: \_\_\_\_\_

Mumtaz Jiwan  
Adjudicator

\_\_\_\_\_ August 24, 1998