



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-2574**

**Appeals PA06-228-2 & PA06-257**

**Laurentian University**



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## NATURE OF THE APPEALS:

Laurentian University (the University) received three separate requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records from the same requester. In response to the three requests, the University issued three fee estimate decisions. The requester appealed all three of the fee estimate decisions. This order deals with two of the appeals.

### APPEAL NUMBER PA06-228-2

The University received a request, under the *Act*, for all records involving the renovations taking place at an identified facility, including specific information relating to the following:

- approval for renovations, budget allocation, committee minutes and all other relevant notes/correspondence involving the functioning of the facility;
- the orders to change the locks;
- the order to place security on night duty; and
- the budget approval and budget expenditure of the issues surrounding the facility and its employees (for the past 24 months).

After receiving the request, and following a time extension decision, the University contacted the requester and asked him to clarify certain parts of his request. In response, the requester provided clarification with respect to the first and fourth parts of his request.

The University then issued an interim access and fee estimate decision. The University identified that the estimated amount of fees for producing the records responsive to the request was \$2,655.00. The University also stated in its interim access decision that access may be denied to some records, in whole or in part, pursuant to the exemptions in sections 14, 19, 21, and 65(6) of the *Act*.

The fee estimate decision described in detail the nature of the records requested, and stated that the estimate was calculated based on obtaining a representative sample of the records from the following departments: Financial Services, Security and Parking, Physical Plant and Planning and the University Secretariat. The University estimated that there were about 1,000 pages of records to review, and included the following information about how the estimate was calculated:

<i>Service</i>	<i>Time/Unit</i>	<i>Fee</i>
Locate, retrieve, and produce responsive records @ \$30.00/hr. (Financial Services, Security and Parking, Physical Plant and Planning, and University Secretariat)	66.25 hours	\$1,988.00
Sever records for disclosure @ \$30.00/hr (approximately 50% of records will have severances – possibly 500 pages at 1-2 minutes per page depending on type of document)	15 hours	\$450.00
Prepare records for disclosure @ \$30.00/hr	54 minutes	\$27.00
Photocopying @ \$0.20/page (estimate 900 pages)	900 pages	\$180.00

Hand delivery (less expensive than postage)		\$10.00
<b>Total fee estimate</b>		<b>\$2,655.00</b>

The University also identified that, from its review of the representative sample, the following types of records are responsive to the request: budgets, general ledger reports, activity listings, committee minutes, committee notes, invoices, work orders and correspondence.

After receiving the fee estimate decision, the requester appealed the amount of the University's fee estimate, and also advised that his representative (hereafter referred to as the appellant) would handle the appeal.

In the course of the mediation of this appeal, the University provided the appellant with a more detailed fee estimate describing the areas of the University's record-holdings to be searched, the number of file cabinets and files to be searched in each area for each part of the request, the number of hours required to search each area for each part of the request, and the estimated number of responsive records in each area for each part of the request. This detailed information was provided to the appellant and, in so doing, the University also reduced the search time to 33.5 hours. As a result, the fee estimate was revised to \$1,672.00.

Also in the course of mediation, two teleconferences with the mediator, the University and the appellant were held to discuss the detailed fee estimate provided by the University. The first teleconference discussed the extent of the search for both paper records and electronic records (e-mails), and the second teleconference discussed the extent of severing required in preparing the records for disclosure. As a result of the second teleconference, the University reduced the time required for severing the records to 6.7 hours, and the fee estimate was further revised to \$1,422.00. This reduced amount was calculated as follows:

<i>Service</i>	<i>Time/Unit</i>	<i>Fee</i>
Locate, retrieve, and produce responsive records @ \$30.00/hr. (Financial Services, Security and Parking, Physical Plant and Planning, and University Secretariat)	33.5 hours	\$1,005.00
Sever records for disclosure @ \$30.00/hr (approximately 200 pages at 1-2 minutes per page depending on type of document)	6.7 hours	\$200.00
Prepare records for disclosure @ \$30.00/hr	54 minutes	\$27.00
Photocopying @ \$0.20/page (estimate 900 pages)	900 pages	\$180.00
Hand delivery (less expensive than postage)		\$10.00
<b>Total fee estimate</b>		<b>\$1,422.00</b>

Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process.

As identified above, in the course of this appeal, the University provided a detailed fee estimate decision, identifying how the fee estimate was calculated. The appellant indicated that she was not satisfied with the fee estimate, and that she wished to continue her appeal of the fee estimate. In the circumstances of this appeal, I decided to send a Notice of Inquiry, identifying the facts

and issues, to the appellant, initially. The appellant did not provide representations in response to the Notice of Inquiry. I then sent the Notice of Inquiry to the University. However, I invited the University to provide representations only on the issue of whether the portion of the fee which addressed the calculation for the preparation of the records is in accordance with previous orders.

The University provided representations in response to this issue.

**APPEAL NUMBER PA06-257**

The University also received a request under the *Act* for the following records:

All records involving any correspondence between [the University] Administrators and [a named research council] with regards to me specifically and my research (since an identified date).

All records involving any correspondence between [the University] Administrator and [the named research council] regarding [identified issues] at [the University] (since 1998).

Records should include but not be limited to: notes from phone conversations, notes to file, emails, letters.

In response to the request, and following a time extension, the University issued an interim access and fee estimate decision. The University identified that the estimated amount of fees for producing the records responsive to the request was \$6,253.00. The University also stated in its interim access decision that access may be denied to some records, in whole or in part, pursuant to the exemptions in sections 17, 19, 21, 65(6) and 65(8.1) of the *Act*.

The University identified that the fee estimate was calculated as follows:

Search – 122 hours @ \$30/hr	\$3,660.00
Sever – 70 hours @ \$30/hr (2,100 pages)	\$2,100.00
Prepare - 2.1 hours @ \$30/hr	\$ 63.00
Photocopying – 2,100 pages @ .20/page	\$ 420.00
Hand Delivery	\$ 10.00
<b>Total:</b>	<b>\$6,253.00</b>

The University also advised that the fee estimate was based on a representative sample of the records obtained from identified individuals, and that the sample showed that the responsive records consist of correspondence between administrators and the named research council. The University estimated that there are about 8,000 pages of records to review.

The appellant appealed the amount of the University's fee estimate.

During mediation the University provided the appellant with a detailed fee estimate indicating how it had arrived at the estimated amount of \$6,253.00. The estimate described the areas of the University's record-holdings to be searched, the number of file cabinets and files to be searched in each area for each part of the request, the number of hours required to search each area for each part of the request, and the estimated number of responsive records in each area for each part of the request.

Also during mediation, two teleconferences were held involving the mediator, the University and the appellant to discuss the fee estimate. The first teleconference was held to discuss the extent of the search for both paper records and electronic records (e-mails). The second teleconference was held to discuss the extent of severing required in preparing the records for disclosure. As a result, the appellant reduced the period of the search to 5 years for both parts of the request. The University advised that this would reduce the time required to search for and sever paper records, but would not affect the cost of the search for electronic records. Accordingly, the University issued a revised fee estimate in the amount of \$3,473.00. This amount was calculated as follows:

Search – 50 hours @ \$30/hr	\$1,500.00
Severing – 50 hrs @ \$30/hr (1,500 pages)	\$1,500.00
Prepare – 2.1 hours @ 30.00 per hour	\$ 63.00
Photocopying – 2,000 pages at .20 per page	\$ 400.00
Hand delivery	\$ 10.00
<b>Total:</b>	<b>\$3,473.00</b>

Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process.

As identified above, in the course of this appeal the University provided a detailed fee estimate decision, identifying how the fee estimate was calculated. The appellant indicated that she was not satisfied with the fee estimate, and that she wished to continue her appeal of the fee estimate. In the circumstances of this appeal, I decided to send a Notice of Inquiry, identifying the facts and issues in this appeal, to the appellant, initially. The appellant did not provide representations in response to the Notice of Inquiry. I then sent the Notice of Inquiry to the University. However, I invited the University to provide representations only on the issue of whether the portion of the fee which addressed the calculation for the preparation of the records is in accordance with previous orders.

The University provided representations in response to this issue.

## **DISCUSSION:**

### **FEE ESTIMATE**

#### **General principles**

Section 57(1) authorizes 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;
- (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.

More specific information regarding fees are found in section 6 of Regulation 460 made under the *Act*. That section reads:

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:

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.

Where the fee exceeds \$25, an institution must provide the requester with a fee estimate. Section 7 of Regulation 460 states that, where the fee is \$100 or more, the institution may require the requester to pay a deposit equal to 50% of the fee estimate before the institution takes any further steps to process the appeal.

A fee estimate of \$100 or more must 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.

[Orders P-81, MO-1699]

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699]. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I]. In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614]. This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out above.

## **Appeal PA06-228-2**

### ***The University's revised fee estimate decision***

As set out above, the University provided a revised fee estimate decision in this file. In its revised fee estimate decision, the University set out the four parts of the request as clarified by the appellant. It then provided a breakdown of the exact areas that will have to be searched for each part of the request, including the various buildings and floors on which some of the records are stored. The University also provided the following breakdown of the searches to be conducted:

*Number of file cabinets and paper files that will have to be searched in each area for each part of the request*

	Area	number of cabinets	number of files
Part 1	Physical Plant Department	2	61 paper files: [committee minutes & files relating to the request]
	Financial Services Department	20	200 files (50-75 invoices / file)
		50 Boxes (storage)	5,000 files (100 files per box)
	Vice-President Administration	3	5 four inch binders
	Administration vault	2	1 four inch binder
Part 2	Physical Plant Department	Electronic files	Work order system: [for facility] for 2004-2005 & 2005-2006 - must be reviewed for responsiveness (any orders to change the locks)
Part 3	Security and Parking Building	E-mail search	Key word search: all E-mails had to be reviewed for responsiveness [any orders re security to facility]
Part 4	see Part I	see Part 1	see Part 1

*Estimated number of hours of search in each area for each part of the request*

Part I & 4	Physical Plant Department	1.75 hours
	Vice-President Administration	1.5 hours
	Financial Services	25 hours to locate 243 invoices (took 1 hour to search and locate 10 invoices) (search of general ledgers indicates 243 invoices re: facility in time range requested) [revised].  2 hours to search accounting records (ledgers, budgets)
Part 2	Physical Plant Department	1.25 hours
Part 3	Security and Parking Department	2 hours



*Estimated number of responsive records in each area for each part of the request*

Part I & 4	Physical Plant Department	20 pages
	Financial Services Department University Secretariat Administration vault Vice-President Administration	748 pages
Part 2	Physical Plant Department	40 pages
Part 3	Security and Parking Department	50 pages

In addition, in its representations in response to the Notice of Inquiry, the University provided submissions in support of its position that the estimated preparation time is chargeable under the *Act*. I will review those representations in greater detail below.

**Appeal PA06-257**

In this appeal the University's revised fee estimate was based on the appellant's agreement that the date range for the requested records was reduced to 5 years with respect to all parts of the request. The revised fee estimate also stated:

As discussed, ... this change will have no effect on the time estimates relating to emails as those records only go back to August, 2005....

The University then identified that the reduced time period does affect the fee estimate for the paper files. It then identifies the modified requests (both Part 1 and Part 2), and then states:

***Areas that will have to be searched for each part of the request:***

Parts 1 & 2 Associate Vice-President Research  
Vice-President Academic (Francophone Affairs)  
Vice-President Academic (Anglophone Affairs)  
President  
Deans of Graduate Studies and Research  
Deans of Sciences

Number of file cabinets and paper files that will have to be searched in each area for each part of the request

	Area	Number of Cabinets	Approximate number of paper files
Parts 1 and 2	Vice-Presidents Academic	2	4 files/ 475 pages
	Vice-President Research	2	4 files/ 1,150 pages
	President	1	2 files/ 500 pages

***Estimated number of hours of search in each area for each part of the request***

*Paper files*

In order to locate records responsive to the request, we will have to review the contents of all files page by page because the contents of the files are not restricted to correspondence and documents relating to the requester and [the named council].

Based on a consultation with the Vice-President Academic (Francophone Affairs) and the Associate Vice-President Research, we estimate that we will have to review in excess of 2,000 pages to determine if the contents of the files are responsive to the request....

Relying on the sample representation ... it took an average of .75 minutes per page to do a quick review for responsiveness. We estimate that we will have to review at least 2,000 pages which will take approximately 25 hours.

*E-mails*

The following persons will have to conduct a number of key word searches:

- Vice-President Academic (Francophone Affairs) (including Staff Relations Office)
- Vice-President Academic (Anglophone Affairs)
- President
- Dean of Graduate Studies and Research
- Dean of Sciences

Based on a consultation with the Vice-President Academic (Francophone Affairs) it is estimated that the total number of pages of e-mails that will have to be reviewed for responsiveness will be in excess of 2,000. A quick review at .75 minute per page will require in excess of 25 hours to locate responsive records.

***Estimated number of responsive records in each area for each part of the request***

Based on a sample representation, it is estimated that 10% to 25% of paper records will be responsive (up to 500 pages). We estimate that 75% of e-mails will be responsive (1,500 pages). We estimate that 75% of records (1,500 pages) will require severances calculated at 2 minutes per page.

The University specified that the revised Fee Estimate included the following:

<b>Service</b>	<b>Time</b>	<b>Fee</b>
Locate, retrieve, and produce responsive records @ \$30.00/hr (Office of the President, all Vice-Presidents, Associate Vice-President Research, Director of Graduate Studies, Dean of Sciences and Engineering )	50 hours	\$1,500.00
Sever records for disclosure @ \$30.00/hr.(approximately 75 % of records will have severances - possibly 1,500 pages @ 2 minutes per page)	50 hours	\$1,500.00
Prepare records for disclosure @ \$30.00/hr	2.1 hours	\$63.00
Photocopying @ \$0.20/page (estimate 2,000 pages)	2,000 pages	\$400.0
Hand delivery (less expensive than postage)		\$10.00
<b>Total fee estimate</b>		<b>\$3,473.00</b>

**Analysis and findings (PA06-228-2 and PA06-257)**

Based on the information before me, I make the following findings regarding the fee estimates in the two appeal files addressed in this order.

***Search time***

The University's revised fee estimate decisions, which describe in detail the estimated search time required to locate the records responsive to the requests resulting in these two appeals, are clear and comprehensive. The fee estimates in both Appeal PA06-228-2 and PA06-257 describe in detail the searches required to locate the responsive records, and identify the various locations and files which must be searched. The University also indicates the estimated number of responsive files and pages to be searched. In calculating the search time for both of these appeals, the University relied on its review of a representative sample of the responsive records to estimate the total search time required.

In my view, the search time for both Appeal PA06-228-2 and PA06-257 has been carefully estimated and was calculated in accordance with the *Act*. Accordingly, I find that this aspect of the University's fee estimates is reasonable in the circumstances, and I uphold the University's fee estimates of \$1005.00 and \$1500.00 for the search time associated with responding to these two requests.

*Preparation time*

*i) Estimated cost to sever the records*

In its revised fee estimate decisions, the University clearly identified the estimated number of pages of records which it anticipates will need to be severed. The University calculated that there are approximately 200 pages that will need to be severed in appeal file PA06-228-2, and approximately 1,500 pages in appeal file PA06-257. The University has calculated that it will require two minutes to review each of these pages of responsive records, for estimated fees to sever the records of \$200 and \$1,500 respectively.

Previous orders have confirmed that preparation time in section 57(1)(b) includes time for severing a record [Order P-4]. They have also established that, on average, it takes two minutes per page to sever a record [Orders M-1169, PO-1721, PO-1834 and PO-1990], and I accept that approach. On my review of the University's revised fee estimates, I am satisfied that the estimated number of pages of records to be severed for both of the appeal files addressed in this order is reasonable. Accordingly, I uphold the University's estimated fees for the preparation times based on the estimated time to sever the records.

*ii) Other estimated costs to prepare the records*

The University has provided representations in support of its position that the additional estimated costs (in addition to the estimated time to sever the records) to prepare the records for disclosure ought to be upheld. It states:

Section 57(1) (b) requires the requester to pay the costs of "preparing the record for disclosure". More specific provisions regarding fees are found in section 6 of Regulation 460 made under the Act. Subsection 6.4 states in part that an institution can charge \$7.50 for each 15 minutes spent "preparing a record for disclosure, **including** severing a part of the record". It is clear from this wording that record preparation costs [are] not limited to the act of taping or blacking out exempt information but includes other costs related to the physical handling of records prior to disclosure. This is a reasonable interpretation considering the wording of these sections, which makes it clear that the legislature intended to adopt a user pay principle in the Act, and not shift the burden of the costs related to providing access to an institution.

In Order MO-1380 ..., one of the issues in dispute in the appeal was fees. Senior Adjudicator David Goodis examined section 45(1)(b) [the municipal equivalent of section 57(1)(b)] and summarized the approach the Office of the I.P.C. has taken to the issue of "preparation" time as follows: "Preparing the record for disclosure" under subsection 45(1)(b) has been construed by this office as including (although not necessarily limited to) severing exempt information from

records (see for example Order M-203)...” This approach was confirmed by Adjudicator Catherine Corban in Order PO-2464 dated April 10, 2006.

[The University] therefore submits that costs related to “preparation” are not limited to the time required to sever information from the records and that the Act authorizes the charging of a fee for other costs incurred in the preparation of the records for disclosure. [The University] estimates that it will take [the identified additional preparation time for each file] for a single employee to handle the records for disclosure which includes tasks such as retrieving records from bound files, noting the file to identify removed records to ensure that records are returned intact, removing staples and paperclips, removing tape from records and putting them back to the files, binders and boxes where they originated and bundling copies of records for disclosure. The estimate was calculated in consultation with the Administrative Assistant to the [Freedom of Information] Coordinator and the University Secretary who has substantial experience preparing records for Board and Committee meetings and mail outs. The estimate for preparation does not include any time involved in reviewing the records to determine if an exemption applies or the time it will take to actually photocopy a record for disclosure.

The University accordingly submits that the fee estimate of \$27.00 for preparation in Appeal PA06-228-2, and \$63.00 for preparation in Appeal PA06-257 should be upheld.

I have carefully reviewed the University’s representations in support of its position that the additional costs to prepare the records for disclosure ought to be upheld. Although I accept the University’s position that preparation time is not restricted to the time spent severing a record (see Order MO-1083), I do not uphold the University’s additional preparation costs of \$27.00 and \$63.00 in Appeal PA06-228-2 and PA06-257, respectively.

A number of the specific tasks the University argues ought to be included in the additional preparation costs relate more directly to re-filing and re-storing the University’s files after responsive records have been reviewed or copied. For example, the actions of “noting the file to identify removed records to ensure that records are returned intact” and “removing tape from records and putting them back to the files, binders and boxes where they originated” are actions taken to re-store files, and in my view section 57(1)(b) does not make provision for charging a fee for the time taken to re-store files to their original state. Furthermore, time spent “retrieving records from bound files” and “removing staples and paperclips” are, in my view, similar to the types of actions required in photocopying records, and in my view are not time spent “preparing a record for disclosure” for the purpose of section 57(1)(b) of the *Act* (see Order P-184). Finally, with respect to the time spent “bundling copies of records for disclosure”, previous orders have confirmed that time spent “packaging records for shipment” is not included in section 57(1)(b) (see Order P-4).

Accordingly, I will not allow the University to charge for the additional preparation time it has estimated, as the activities which the University identifies do not, in my view, fall within the ambit of the actions contemplated by the words “prepare a record for disclosure” in section 57(1)(b).

### ***Photocopying***

The University’s estimates of \$420.00 for photocopying 2100 pages in Appeal PA06-228-2, and \$400.00 for photocopying 2,000 pages in Appeal PA06-257, are calculated in accordance with item 1 of section 6 of Regulation 460 made under the *Act*. Allowable photocopy charges are based on the actual number of records copied for disclosure. The per-page charge of \$0.20 is correct, based on the estimate of the number of pages of records ultimately determined to be responsive. I, therefore, uphold the University’s estimated photocopy fees of \$420.00 and \$400.00 respectively. Should the actual number of the photocopies be different than this estimate, the University is permitted to recover fees in the amount of \$0.20 per actual page.

### ***Shipping Costs***

In both appeal PA06-228-2 and PA06-257, the University identified that its estimated shipping costs were \$10.00. It identified that these costs reflected the costs for hand-delivering the records to the appellant, and that the costs of hand-delivery were less expensive than postage for mailing the records.

In the circumstances, and in the absence of representations from the appellant on this issue, I uphold the shipping costs for both of the appeals.

### ***Summary***

In conclusion, I am satisfied that the University’s fee estimates for searching, photocopying and shipping the responsive records are appropriate. Accordingly, I uphold the University’s fee estimates for these charges in Appeals PA06-228-2 and PA06-257.

With respect to the University’s fee estimate for preparing the records for disclosure, I uphold the University’s estimate for the time required to sever the records. However, I do not uphold the additional preparation times estimated by the University.

### **ORDER:**

1. I uphold the University’s fee estimates for search time, time to sever records, photocopying costs, and shipping costs of the records responsive to the requests resulting in Appeals PA06-228-2 and PA06-257.

2. I do not uphold the University's fee estimates of \$27.00 and \$63.00 for the additional preparation costs of the records responsive to the requests resulting in Appeals PA06-228-2 and PA06-257, respectively.

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

Frank DeVries  
Adjudicator

\_\_\_\_\_ May 4, 2007