



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2584**

**Appeal PA06-229-2**

**Laurentian University**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **BACKGROUND:**

Laurentian University (the University) received three separate requests for records under the *Freedom of Information and Protection of Privacy Act* (the *Act*) 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. I addressed two of the appeals in Order PO-2574. This order addresses the issues raised in this appeal.

## **NATURE OF THE APPEAL:**

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

[University] Animal Care Committee Minutes and all related animal care correspondence (notes to file, telephone conversations/emails with the CCAC [Canadian Council on Animal Care] and the Ministry of Agriculture), emails regarding [the requester] with regards to [the requester's] research in the context of the animal care committee, specifically but not limited to emails between the chair, the veterinarian and the administration. All emails sent out by the chair to ACC members in regards to [the requester's] research or ... protocols.

- specifically, but not limited to the interim committee minutes ...
- specifically but not limited to animal care committee minutes from the new committee which was established in about June of 2005.
- letters, correspondence, notes to files, and emails exchanged with CCAC over the last 10 years.
- letters, correspondence, notes to file and emails exchanged with the Ministry of Agriculture over the last 3 years.

After a time extension, and following contact with the University, the requester provided clarification of the request.

In response to the request, the University issued a fee estimate and interim access decision indicating that access may be denied to some records pursuant to sections 13, 17, 19, 21 and sections 65(6) and (8.1) of the *Act*. The University's fee estimate for producing the responsive records provided a breakdown of how the fees were calculated. The University also advised the appellant that the fee estimate was based on a representative sample of the records obtained from the Vice President (Academic) and the Associate Vice President Research, and that the representative sample showed that the following types of records are responsive to the request: Minutes of the Animal Care Committee, correspondence with CCAC and Ministry of Agriculture and e-mails between the Chair, the veterinarian and the administration.

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

During mediation, 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. The University also advised the appellant that there are approximately 8,000 pages of paper records and 24,000 pages of e-mails responsive to the request. Accordingly, the University issued a revised fee estimate in the amount of \$40,180.00, which it advised was calculated as follows:

Search - 405 hours @ \$30/hr	\$12,150.00
Sever - 800 hours @ \$30/hr (75% of records or 24,000 pages)	\$24,000.00
Prepare - 14 hours @ \$30/hr	\$ 420.00
Photocopying - 8,500 pages @ .20 per page (50% of e-mails or 12,000 pages) (75% of paper records or 6,000 pages)	\$ 3,600.00
Hand Delivery	\$ 10.00
	<b>\$40,180.00</b>

Also during mediation, two teleconferences were held with the mediator, the University and the appellant to discuss the fee estimate issued by the University. In the first teleconference, the parties discussed the extent of the search for both paper records and electronic records (e-mails), and in the second they discussed the extent of severing required in preparing the records for disclosure. As a result of this process, the appellant reduced the period of search to 3 years for all 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 further revised fee estimate in the amount of \$29,930.00. The revised fee estimate was calculated as follows:

Search - 350 hours @ \$30.00/hr	\$10,500.00
Severing - 533 hours @ \$30.00/hr (75% of records or 16,000 pages )	\$16,000.00
Prepare - 14 hours @ 30.00 per hour	\$ 420.00
Photocopying - @ .20/page (50% of e-mails or 12,000 pages) (75% of paper records or 3,000 pages)	\$ 3,000.00
Hand delivery	\$ 10.00
	<b>\$29,930.00</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. The appellant indicated that she was not satisfied with the fee estimate, and that she wished to continue her appeal. 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, which provided me with representations and an attached affidavit. I decided that the University's representations raised issues which the appellant ought to be given an opportunity to reply to. Accordingly, I sent the appellant a copy of the relevant portions of the University's representations and the attached affidavit, and invited the appellant to provide reply representations. The appellant did not provide me with any additional information.

## **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.

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

As set out above, the University provided a revised fee estimate decision in which it set out the parts of the request as clarified and narrowed by the appellant. It then provided a breakdown of the exact areas within the University's record-holdings 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's fee estimate also reviewed each of the two parts of the appellant's request, as well as the request for responsive emails, and then provided the following breakdown of the searches to be conducted:



CCAC or the Ministry of Agriculture or the requester's research in the context of the Animal Care Committee.

In a sample representation we searched 325 pages contained in two files. It took an average of .75 minutes per page to do a quick review for responsiveness. We have not yet searched for records in the custody of the Deans of Sciences and Chair of Animal Care Committee. We estimate that we will have to review in excess of 4,000 pages which will take in excess of 50 hours to locate responsive records.

***E-mails***

When the request was received the Vice-President Academic (Francophone Affairs) and the Associate Vice-President Research were asked to do a search for e-mails using key words outlined in the request. The search resulted in a total of 3,171 e-mails dating back to August 25, 2005. A quick review of each e-mail is required to determine if they are responsive to the request.

According to a sample representation, 100 e-mails represent 425 pages. A quick review of 3,000 e-mails (12,000 pages) at .75 minute per page would take approximately 150 hours.

In addition to the Vice-President Academic and the Associate Vice-President Research, we will have to search e-mails for the President, the other Vice-President Academic, the Dean of Sciences, the Chair of the Animal Care Committee, the veterinarian and the Dean of Graduate Studies. In preparing the Fee Estimate, we conservatively estimated that the total number of e-mails for these persons combined will be at least equal to the total number of e-mails located for two people (3,000 e-mails). It would take at least 300 hours to review 6,000 e-mails or approximately 24,000 pages. We expect however that the total number of e-mails will exceed 6,000.

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

It is estimated that 50% to 75% of records will be responsive (21,000). Based on a sample representation 75% of records will require severances (approx. 16,000 pages) calculated at 2 minutes per page.

...

<b><i>Total estimated cost</i></b>	<b><i>Time/Unit</i></b>	<b><i>Fee</i></b>
Locate, retrieve, and produce responsive records @ \$30.00/hr. (Office of President, all Vice-Presidents, Associate Vice-President Research, Director of Graduate Studies, Dean of Sciences and Engineering)	350 hours	\$10,500.00
Sever records for disclosure @ \$30.00/hr.(approximately 75 % of records will have severances -possibly 16,000 pages @ 2 minutes per page)	533 hours	\$16,000.00

Prepare records for disclosure @ \$30.00/hr	14 hours	\$420.00
Photocopying @ \$0.20/page - estimate 50% of E-mails (12,000 pages) + 75% of paper records (3,000)	15,000 pages	\$3,000.00
Hand delivery will be less expensive than postage		\$10.00
<b>Total fee estimate</b>		<b>\$29,930.00</b>

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.

Furthermore, the University provided an affidavit in support of its position that the estimated fee is reasonable. The affidavit is sworn by a University Vice-President who is responsible for the University's administration and management of academic activities, as well as its research and staff relations. In the affidavit, the affiant identifies his familiarity with the request and the nature of the records requested, and states that, because of the large number of different types of records that are found in a variety of different locations, a representative sampling of the relevant records was undertaken. The affidavit refers to the details of the results of this representative sampling as set out in the detailed fee estimate. The affidavit then states:

The nature and extent of the search that is necessary to process "Part 2" of the request is what accounts in large measure for the cost of the fee estimate. The request is very broad and intended to be exhaustive in that the Requester has asked for every record including emails that contain information relating to his research [and], his research protocols .... The information requested is contained in various files and the files are located in various offices. As described in the Estimate, with respect to paper records, files in at least 13 offices will have to be searched. But for a few files located in the staff relations office, the files that need to be reviewed are not restricted to the Requester and his research. Files containing information relating to the Animal Care Committee, the Canadian Council on Animal Care, or the Ministry of Agriculture may contain records relating to the requester's research but they also contain research-related matters not relating to the requester's research. These files contain information about many faculty members and relate to various research projects at [the University]. This means that in order to locate responsive records, staff members will be required to manually search more than 10 filing cabinets to locate files and then review each page in each file for any information responsive to the request. We estimate that we will have to review in excess of 4,000 pages.

The affidavit also refers to the search for emails, and states:

To process the request eight administrators will be required to do a search for responsive emails. As described in the Estimate, [identified individuals] conducted a search using key words outlined in the request. The search resulted in a total of 3,171 emails. I therefore estimate that the total number of emails will



exceed 6,000 which represent approximately 24,000 pages. A quick review of the information for responsiveness is required because a key word search using for example the name of the Requester will generate records about matters which are not in relation to his research in the context of the animal care committee.

Finally, with respect to the nature of the records requested, the affiant states:

I am familiar with the type and content of the information and records requested. The requested records do not contain the requester's personal information within the meaning of the *Freedom of Information and Protection of Privacy Act*, in that the information requested is not of a personal nature or quality. All of the records requested are research-related: research proposed or conducted in the context of the Animal Care Facility, administrative and procedural research matters, protocols, standard operating procedures and guidelines of the Animal Care Committee and the Canadian Council on Animal Care, research funding applications and supporting documents, information relating to the requester's activities in his [professional capacity]...

As set out above, the relevant portions of the University's representations, as well as the affidavit in support of its position, was shared with the appellant, and the appellant was invited to provide representations. The appellant did not provide any submissions in this appeal.

### **Analysis and findings**

Based on the information before me, including the detailed revised fee estimate calculated by the University, as well as the University's representations and attached affidavit, I make the following findings regarding the fee estimate in this appeal.

### ***Search time***

The University's revised fee estimate, which describes in detail the estimated search time required to locate responsive records, is clear and comprehensive. The fee estimate, and the sworn affidavit provided by the University, 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, 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 has been carefully estimated and was calculated in accordance with the requirements of the *Act*. Accordingly, I find that this aspect of the University's fee estimate is reasonable in the circumstances, and I uphold the University's fee estimate of \$10,500.00 for the search time associated with responding to this request.

*Preparation time*

*i) Estimated cost to sever the records*

In its revised fee estimate decision, the University clearly identifies that 16,000 pages of records will require severing. It has calculated that it will require two minutes to review each of these pages of responsive records, for an estimated fee to sever the records of \$16,000.

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 estimate, and also of the affidavit evidence provided by the University, I am satisfied that the estimated number of pages of records to be severed is reasonable. Accordingly, I uphold the University's estimated fee for the preparation time 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 \$420.00 for preparation time should be upheld.

The University made similar representations in previous appeals. I addressed this issue in Order PO-2574, where I stated:

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 ....

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).

I adopt the approach I took to this issue in Order PO-2574, and apply it to the circumstances of this appeal. Accordingly, I will not allow the University to charge the estimated \$420.00 for the additional preparation time it has estimated, as the activities which the University identifies do not fall within the ambit of the actions contemplated by the words “prepare a record for disclosure” in section 57(1)(b).

### ***Photocopying***

The University estimates that photocopying the estimated 15,000 pages of records will cost \$3,000.00. This amount is calculated at the rate of \$0.20 per page, in accordance with item 1 of section 6 of Regulation 460 made under the *Act*. Therefore, I uphold the University’s estimated photocopy fees of \$3000.00. I note, however, that allowable photocopy charges are based on the actual number of records copied for disclosure. Should the actual number of the photocopies be different than the University’s estimate, the University is permitted to recover fees in the amount of \$0.20 per actual page.

### ***Shipping Costs***

In this appeal, the University estimates its shipping cost at \$10.00 and identifies that this cost reflects the cost for hand-delivering the records to the appellant. The University further states that the costs of hand-delivery are 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 cost estimated by the University.

### ***Summary***

In conclusion, I am satisfied that the University’s fee estimate for searching, photocopying and shipping the responsive records are appropriate, and I uphold the University’s fee estimates for these charges.

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 time 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 request resulting in this appeal.
2. I do not uphold the University's fee estimates of \$420.00 for the additional preparation costs of the records responsive to the request.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ May 30, 2007