



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

ORDER PO-2833

Appeal PA08-75

University of Ottawa



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NATURE OF THE APPEAL:

The University of Ottawa (the University) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

All records, including e-mails, held by members of the University of Ottawa Administrative committee, members of the Faculty of Science Executive, employees of the Marketing and Communications services and employees of the Protection services related to:

- a. Any of the four Faculty of Science Council meeting (sic) planned to occur in 2007.
- b. Any student action or any media coverage linked to the meetings in [bullet a].
- c. Any reaction of the University, its agents and employees to the events in [bullet b] including but not limited to trespassing charges against [three named individuals].

However, please exclude any correspondence which has already been sent or received by one of the following individuals: [four named students] and [one named professor].

The University sought to clarify the request and informed the requester that:

...the search and preparation time for all employees of [the Marketing and Communications Services and Protection Services] of the University to locate records would be quite extensive and the fees that the University would be entitled to recover from you, under section 57 of the *Act* for such a broad request would be significant. Can you please clarify the specific individuals and/or narrow the group of individuals from whom you are requesting the described information?

The requester responded that he would exclude any emails or letters sent or received by a named student already excluded in the original request.

The University issued a fee estimate decision in which they quoted the request with the clarification provided by the requester. The fee estimate total was \$5,671.40, broken down by Branch or Committee.

Administrative Committee

Search: 70 hours @ \$30 per hour = \$2,100.00
Preparation: 2.5 hours @ \$30 per hour = \$75.00
(approx. 15% of records will have severances – possibly 75 pages
@ 2 min/page = 2.5 hours)

Photocopying: 500 pages @ \$0.20 per page = \$100.00

Faculty of Science Executive (17 individuals)

Search: 90 hours @ \$30 per hour = \$2,700.00

Preparation: 2 hours @ \$30 per hour = \$60.00

(approx. 5% of records will have severances – possibly 60 pages
@ 2 min/page = 2 hours)

Photocopying: 1, 172 pages @ \$0.20 per page = \$234.40

Protection Services

Search: 8 hours @ \$30 per hour = \$240.00

Preparation: 1 hour @ \$30 per hour = \$30.00

(approx. 75% of records will have severances – possibly 30 pages
@ 2 min/page = 1 hour)

Photocopying: 40 pages @ \$0.20 per page = \$8.00

Marketing and Communication Services

Search: 4 hours @ \$30 per hour = \$120.00

Photocopying: 20 pages @ \$0.20 per page = \$4.00

The University indicated that the records would consist of e-mail correspondence, general internal correspondence, correspondence with legal counsel and law enforcement, incident reports, minutes of meetings, and meeting agendas. The University also indicated that partial access would be provided, with sections 14(2)(a) (law enforcement report), 19 (solicitor-client privilege) and section 21 (personal privacy) applying to some of the records. The University requested a deposit of \$2,835.70 to process the request.

The requester made a request for a fee waiver to the University, and the University subsequently issued a decision denying this request for fee waiver.

The requester, now the appellant, appealed the fee decision and the decision to deny the request for fee waiver.

During mediation, the appellant removed photocopying fees from the fee estimate from the scope of the appeal.

No other mediation was possible and the file was moved to adjudication stage of the appeals process. I initially sent this Notice of Inquiry to the University setting out the facts and issues on appeal. The University provided representations. I then sent a complete copy of the University's representations to the appellant. The appellant did not provide representations. A representative from this office did contact the appellant about his representations, but no representations were ever received.

DISCUSSION:

Fee Estimate

I will first determine whether the fee estimate of \$5,671.40 should be upheld.

An institution must advise the requester of the applicable fee where the fee is \$25 or less.

Where the fee exceeds \$25, an institution must provide the requester with a fee estimate [Section 57(3)].

Where the fee is \$100 or more, the fee estimate may 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 [Order 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 and 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 [Orders P-81 and 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 below.

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

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

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (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 provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 460. Those sections read:

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

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
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.

6.1 The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For developing a computer program or other method of producing the personal information requested from machine readable record, \$15 for each 15 minutes spent by any person.
4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the

personal information requested if those costs are specified in an invoice that the institution has received.

7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under Subsection (1) that is subsequently waived.

9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

In support of its fee the University submitted the following:

The University based its fee estimate on discussion with individuals familiar with the type and content of the records. These individuals were the Dean of the Faculty of Science, President of the University and Director of the Protection Services. The Dean of the Faculty of Science is one of 17 members of the Science Council Executive, while the President of the University is one of 6 members of the Administrative Committee who conducted the preliminary searches and considered that there was a significant amount of time involved to respond to this broad request. The University also had discussion with the Director of Protection Services and the Director of Marketing and Communication Services.

In regard to the search fee, the University states:

The University determined that the responsive records would not contain personal information related to the Appellant.

In order to locate all the responsive records, the individuals would have to conduct their searches through their emails folders. Due to the nature of the request, these searches would have to be conducted under distinct key words...This extends the time needed to search for responsive records.

Some of the documents are also kept in a hard copy file. In order to locate these records, the individuals will have to go through their filing cabinets.

The estimated time was approximately 70 hours for the Administrative Committee. The University evaluated that it would take approximately 5 hours to search through hard copy file and 6.6 hours to search their electronic folders by conducting distinct search with each key word. This totals 11.6 hours per individual. With respect to the Faculty of Science Executive, the University estimates that it would take approximately 5.3 hours per individual. The search

time for Protection Services was evaluated to take 8 hours and for the Marketing and Communication Services, it was evaluated to take 4 hours.

In support of the time required to conduct the search, the University also provided copies of the President of the University and Dean of Faculty of Science's estimates as to the time required to search for the responsive records and the possible number of responsive records.

In regard to the preparation time, the University states:

The University considers that 2 minutes per page are needed to sever responsive records (Orders MO-1169, PO-1721, PO-1834, PO-1990). In order to sever the responsive records, the University will have to read all the documents, to highlight the information that needs to be severed and to photocopy all these documents.

As stated above, the appellant did not make representations.

Finding and analysis

Search

As stated above, 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 and 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 the present appeal, in order to prepare the fee estimate, the University submits that it consulted individuals who are familiar with the type and content of the records including the Dean of the Faculty of Science, the President of the University and the Director of the Protection Services. Based on these discussions, the University submits that the combined search time for the appellant's request is 172 hours for the four committees. The University submits that it would take 11.6 hours of search time per individual in the Administrative Committee; 5.3 hours per individual at the Faculty of Science; 8 hours of search time for the Protection Services Committee and 4 hours of search for the Marketing and Communication Services Committee. This time is for searching through the hard copy files and electronic folders, done by key words.

Based on the University's representations, I find that I can only partially uphold the fee estimate for the search. The explanations of the President of the University and the Dean of the Faculty of Science as to the searches to be undertaken provide some explanation of the 70 and 90 hours of search time for which the University has claimed for two of the committees. I have no such explanation from the Protection Services Committee or the Marketing and Communication Services Committee and I find that I do not have adequate details of the search in those two committees to determine whether the fee estimate is reasonable in the circumstances. Further, I find that I am unable to determine an alternate fee estimate for these two committees based on the University's lack of representations. In summary, I do not uphold the search fee estimate for

the Protection Services and Marketing and Communication Services which amounts to 12 hours of search time and \$360 for the University's fee estimate.

In the future, I would encourage the University to provide detailed explanations of the searches to be undertaken in its fee and fee estimate decisions to requesters. In the present appeal, the appellant may have reformulated or narrowed his request if he had been made aware of the difficulties of the electronic searches and the length of time the searches would take.

Preparation

Based on my review of the University's representations, I find that the University's submission of 2 minutes per page to sever the records is reasonable and in accordance with the *Act*. I uphold the \$165 preparation fee of the University's fee estimate.

The appellant is not appealing the photocopying fee charged by the University and I will not be dealing with that issue in this order.

Fee Waiver

I will now determine whether the University's fee should be waived.

Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

57. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed by the regulations.

8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the *Act*:

1. Whether the person requesting access to the record is given access to it.

2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees [Order PO-2726].

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

The institution or this office may decide that only a portion of the fee should be waived [Order MO-1243].

Part 1: basis for fee waiver

Section 57(4)(b): financial hardship

The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship [Order P-1402].

For section 57(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393].

The appellant did not provide representations to this office in regard to the fee waiver. However, in his initial request to the University, the appellant states:

Considering the exorbitant costs associated with my request, it would be unreasonable for me to be expected to pay for the information requested. Such a payment would render me financially destitute. I am a student, who is already in need of financial assistance from the Ontario Student Assistance Program, and am also unable to work a full-time job due to my full course load at this university. The estimated fee associated with my requests exceeds the amount I pay on tuition fees, which already substantially indebted me. There are also no places in Ontario that I could borrow money from to cover said fees.

The University submits that the fee waiver should not be granted as the appellant does not meet any of the criteria set out in section 57(4) of the *Act*. In regard to the financial hardship criteria, the University submits:

The fact that the fee is large, does not necessarily mean that payment of the fee will cause hardship [P-1402]. The Appellant appears to allege that this charging of a fee constitutes a financial hardship for him due to his student status. Nevertheless, he has not provided the University with any proof of his income, expenses, assets and liabilities.

As stated above, the appellant did not provide representations to this office supporting his fee waiver request. Consequently, I have not been provided with evidence of the appellant's financial status or his claim of financial hardship should he pay the fee. As stated above, the appellant must provide some evidence regarding his financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393]. As I have not been provided with this evidence, I find that the appellant has not established this criteria for fee waiver and I find that section 57(4)(b) does not apply.

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

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

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

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

The focus of section 57(4)(c) is “public health or safety”. It is not sufficient that there be only a “public interest” in the records or that the public has a “right to know”. There must be some connection between the public interest and a public health and safety issue [Orders MO-1336, MO-2071, PO-2592 and PO-2726].

In support of his position that section 57(4)(c) applies, the appellant provided the following in his initial fee waiver request to the University:

Furthermore, my request will benefit the public in general. As a Senate representative, I am compelled to act toward the preservation of the academic integrity of the University of Ottawa. It is clear that there have been serious issues concerning the Faculty of Science Council. It is also clear that these issues are academic in nature. Seeing as the Senate is responsible for the sound management of all academic issues within the University of Ottawa, it is reasonable to assume that providing a Senator with relevant information would be beneficial to the public, and for this reason I should not be required to pay the requested fees.

My request will also benefit the public's safety. There were trespass notices issued, as well as arrests made at one or more of the meetings of the Faculty Council. There have been accusations of police brutality against some community members in attendance at said meetings. It is clear that these documents are relevant to public safety, and this is shown by the presence of Protection Services and the police at one or more of the meetings of Faculty Council.

On the public health or safety criteria, the University also does not accept the appellant's submissions in this regard. The University submits that the request is a matter of private interest and the appellant has not provided proof to demonstrate that his request was a matter of public health and safety.

As stated above, the appellant did not provide representations to this office. Based on the representations the appellant provided to the University, I find that the appellant has not established the criteria at section 57(4)(c) applies to his fee waiver request. While I find that the subject matter of the request is a public matter, I am not satisfied that the subject matter relates directly to a public health or safety issues nor would dissemination of the record yield a public benefit. The appellant has concerns about how Faculty of Science Council meetings are held and the violence that has occurred at these meetings. However, the appellant has provided me with little if no evidence that Faculty of Science Council meetings are a threat to public health and safety. Accordingly, I find the criteria at section 57(4)(c) of the *Act* does not apply in this appeal.

As I have found that the appellant has not established the basis for fee waiver in the criteria set out in section 57(4) of the *Act*, it is not necessary for me to consider whether it would be fair and equitable to grant a fee waiver in the circumstances.

ORDER:

1. I do not uphold the University's fee estimate of \$360.00 for search of the Protection Services Committee and Marketing and Communication Services.

2. I uphold the rest of the University's fee estimate of \$5311.40.
3. I uphold the University's decision to deny the appellant's request for fee waiver.

Original Signed By: _____ October 6, 2009
Stephanie Haly
Adjudicator