



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

# **ORDER PO-2912**

**Appeal PA09-296**

**Carleton University**



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## **NATURE OF THE APPEAL:**

Carleton University (the University) received a multi-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a student's organization for access to records from a number of University offices which relate to student government, elections and other student associations.

The University issued an interim decision and fee estimate in the amount of \$7252.00, stating:

The estimate was calculated based on the actual work done to respond to the request and an assessment of the similar work that still remains to be completed. In the matter of e-mail records to be searched by Carleton University's Computing and Communications Services, the estimate was based on similar searches conducted for other access requests and on the average monthly e-mail traffic for individuals.

The appellant appealed the University's fee estimate. After filing the appeal, the appellant requested that the University waive the fee. The University denied the appellant's request for fee waiver.

As well, the University noted that it had made a calculation error in its initial fee estimate. It has subsequently issued a corrected total fee estimate, in the amount of \$5051.00, to the appellant. The University noted that in its corrected fee estimate, only the total amount changed. The breakdown of the costs estimated for each office remains the same.

The appellant has included the denial of fee waiver as an issue in the appeal. She also confirmed that the time frame specified by the University in the decision letter, "1 January 2007 to present" is correct.

As further mediation was not possible, the file was referred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. I initially sent a Notice of Inquiry to the University setting out the facts and issues in the appeal. The University provided representations. I then sent a Notice of Inquiry to the appellant along with a complete copy of the University's representations. The appellant also provided representations, which were also shared with the University. The University then provided representations in reply.

## **DISCUSSION:**

### **FEE ESTIMATE**

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.
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 its representations, the University explains that given the broad nature of the appellant's original request, it suggested a narrowed request to reduce both the costs and time required to respond to the request. Thus, through discussions with the appellant, the request was narrowed prior to the appeal to include only the following information. This is the actual request that is the subject of this appeal.

Documents and emails, including but not limited to correspondence, sent from or received by the offices of the following:

[Named] President  
[Named] Vice-President Academic  
[Named] Vice-President (Finance and Administration)  
[Named] Vice-President (Research and Innovation)  
[Named] Board of Governors Chair  
[Named] Professor

[Named] Dean  
[Named] Associate Vice-President (Student Support Services)  
[Named] University Secretary

In this context, 'offices' should be taken to mean the desk of the person named as well as that of their immediate support staff (Executive/Administrative Assistants).

Containing the following terms:

"Canadian Federation of Students" and/or all associated acronyms (CFS, CFS-S, CFS-O)

"Online voting"

"Carleton Student Government" and/or "Carleton Academic Student Government"

And/or "New University Government"

"Conservative Party" and "elections"

"Carleton University Young Conservatives" and "elections"

"Conservative Party" and "Carleton University Student Association" and/or "CUSA"

"Conservative Party" and "Carleton University Graduate Students' Association" and/or "GSA"

"Liberal Party" and "elections"

"Carleton University Young Liberals" and "elections"

"Liberal Party" and "Carleton University Student Association" and/or "GSA"

"Liberal Party" and "Carleton University Graduate Students' Association" and/or "GSA"

"Carleton New Democratic Youth" and "elections"

NDP and "elections"

NDP and "Carleton University Student Association" and/or "CUSA"

NDP and "Carleton University Graduate Students' Association" and/or "GSA"

The period covered by the request is 1 January 2007 to present.

Following the appellant's request being narrowed, the University conducted a search for responsive records and advised the appellant that the preliminary investigation indicated that the fee estimate would be significantly in excess of \$100.00. The University indicates that it chose to provide its fee estimate based on the information provided by individuals who would be familiar with the type and content of the records involved rather than by representative sample. To that end, the University submits:

Once estimates of the extent of records to be searched were received, it was possible to estimate the time required for the search. Where office named by the Request did not reply with an estimate of time required to conduct a search for responsive records, there was a need for a standard to apply when estimating the time required to search for responsive records. In those cases search time was extrapolated from the Canadian Council of Archives time guidelines for the appraisal of archival materials; an activity which consists of a quick view of records and which is similar to that of searching through records to locate responsive items.

Time estimated for searching takes into account that records to be searched include paper based records as well as records in electronic form. Many items expected to be located in response to this request exist only in paper form. While searching based on key words can be fairly quick where electronic records are concerned, it is time consuming and tedious where paper records are involved.

The search for e-mail back-ups is necessitated by the fact that, unfortunately, schedules for records retention are rudimentary at best and staff delete e-mail as they perceive the need to free up e-mail storage. Hard copies may be saved only intermittently as each staff member perceives the need. The estimate of time required to search e-mail backups has been provided by Carleton Computing and Communications Services and is based on the time required for similar previous searches.

...

Based on these input assumptions, it was estimated that the search for responsive records would require a total of 72.7 hours. As per the FIPPA regulations, which stipulate fees of \$7.50 per fifteen minutes of search time for manually searching a record, it was estimated that the fee for a search for responsive records would be \$2181.00. These costs also include the time required by Carleton's Computing and Communications Services to run a report from the e-mail back ups for each Office named in the Request.

The other costs included in the University's fee estimate were preparation and photocopying fees. The University submits the following explanation of those fees:

Fees for the other costs associated with providing access, such as severing and photocopies, were calculated as stipulated by the Regulations. Based on an exceedingly low estimate of 4000 pages of responsive records, severing at one minute per page would amount to \$2000.00. Photocopying one set of responsive records for the Appellant was estimated at \$800.00. Thus fees for access are estimated to be \$4981.00 + \$70.00 for 2.3 hours work already completed for a total of \$5051.00.

In response, the appellant submits that the University has contradicted itself during the request process by stating that the majority of the records were electronic records that had to be searched manually or paper documents that had to be searched manually. The appellant submits that this contradiction indicates that the University's fee estimate is not to be upheld. Further the appellant submits that she is willing to look over the physical paper documents to reduce the photocopying fee. Finally, the appellant submits that any records that can be accessed by the general public through the University's website should be excluded from the search which would also serve to reduce the search portion of the fee estimate.

In response, the University submits that while the appellant is correct that most of its records created between 2007 and 2009 are created electronically, these same records are not filed and maintained in an electronic format. The University explains:

Financial constraints have prevented Carleton University from instituting an electronic records management environment that would facilitate an easy search for relevant working and project files. Most files have up to now been maintained in paper format and must be searched manually.

The University goes on to explain, in some detail, the method of searching through emails. It submits:

The estimate of time required to recover responsive emails is derived from a combination of the time required to recover emails from back-ups and the time required to query the emails recovered [from] the recovery exercise. The time required to recover email back-ups is from an estimate provided by Carleton's Computing and Communications Services (CCS) and is based on similar previous searches. While the search is conducted 'electronically', a human must identify the appropriate physical back-up tapes and the appropriate sectors on those tapes and load them into the computer for recovery...

Once the emails of the university offices named by the appellant have been identified, a human will use an electronic search tool to query each officer's emails for the key words specified by the Appellant...Each officer's email must be queried 17 separate times (not including all associated acronyms). A review of the extracted emails must then be conducted for appropriately responsive documents...

Finally, the University addresses the appellant's submission that documents that can be accessed through the University's web pages should be excluded from the University's search time and thus reduce the search part of the fee estimate. The University states definitively:

This assumption is erroneous. No items that are accessible through Carleton's web pages are included in the responsive items identified by the Office of the Clerk of Senate and it is not expected that the 2000 responsive items already identified by that office ...would be further reduced.

### ***Search Time***

As stated above, the purpose of a fee estimate is to provide the requester with sufficient information to make an informed decision on whether or not to pay the fee and pursue access to the requested records.

In the current appeal, the University's fee estimate was based on the advice of individuals who are familiar with the type and content of the records. Specifically, the University consulted with the Executive or Administrative Assistant responsible for records maintenance and in the case of the Senate Office, the Clerk of the Senate for search time estimates for manual paper searches. Where estimates were not received from the offices, the University used the search time from the Canadian Council of Archives time guidelines. Similarly, the estimate for search time of email backups was provided by the University's Computing and Communications Services.

I accept the University's submission that the search for responsive records would include both manual paper searches and electronic searches. I have some sympathy for the appellant's arguments that the University's electronic searches should be faster and less complicated; however, I accept the University's arguments that due to the inadequacies of its electronic record-keeping systems, and the extensive nature of the appellant's request, the University's electronic searches would take some time.

The *Act* does not specify that an institution is required to use the most cost effective method of search and preparation available to it, although previous orders of this office have commented on this issue (see Orders M-372 and M-555, for example). However, without clear evidence to the contrary, I must assume that the University is in the best position to know its own record holdings and the optimal method of searching through them. The appellant's representations do not indicate, in a meaningful manner, a faster or more efficient method for conducting the University's electronic searches.

The University estimates that the search for responsive records would take approximately 72.7 hours and Regulation 460 allows for a charge \$7.50 per fifteen minutes of search time. Based on the University's representations, I find that the search portion of its fee estimate is in accordance with the *Act* and Regulation and I uphold the University's fee estimate for search of \$2,181.00.

### ***Other costs***

The other costs set out in the University's fee estimate include time for severing the record and photocopying fees. The University's fee estimate for severing the records and photocopying was based on an estimate of 4000 pages of responsive records. The University, in its interim access decision, identified that personal information of other individuals would need to be severed from the records and allotted 1 minute per page for severing for an estimate of \$2000.00. Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances [Orders MO-1169, PO-1721, PO-1834, PO-1990]. I accept the University's fee estimate for preparation.



Further, the University calculated the photocopying fee for 4000 pages at .20 per page for an estimate of \$800.00, in accordance with Regulation 460. I uphold the University's fee estimate for photocopying. I note, however, that allowable photocopy charges are based on the actual number of records copied for disclosure. The appellant has offered to review the responsive records to reduce the photocopying charges. Should the actual number of photocopies be different than the University's fee estimate, the fee may be adjusted.

In summary, I uphold the University's fee estimate of \$5,051.00.

### **FEE WAIVER**

I will now consider whether all or part of the \$5,051.00 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].

In support of its denial of the fee waiver, the University argues that the appellant does not meet any of the criteria in section 57(4) and that it would not be fair and equitable to grant a fee waiver in the present appeal. The University submits that while its fee estimate does not reflect the true cost of responding to the appellant's request; the estimate does represent only a portion of the actual costs associated with responding to the request. Further, the University submits that the appellant has not made out the case for financial hardship in section 57(4)(b) and the appellant offers no clear and convincing evidence to support her assertion that the organization she represents cannot pay the estimated fee for access. Finally, the University submits that the appellant has not made the connection between the information requested and a public health or safety issue as set out in section 57(4)(c).

In support of her fee waiver request, the appellant submits that her organization would suffer financial hardship if it was required to pay the fee. The appellant states:

As a province-wide organization, the Federation has the responsibility to offer services and coordinate campaigns for our more than 300,000 members across the province. Of this amount, there is no amount allocated in the budget that is specific to Freedom of Information requests alone. The campaigns budget allows for close to \$10,000 in costs that are incurred by FIPPA requests. Half of this budget being paid out for one request is an unreasonable cost for our organization to bear, and we cannot pay this amount. The Federation, like Carleton University, is funded through student fees (+\$5,000 per student compared to \$6.66 per student) and as such, transferring the cost for this request from Carleton University's students' fees to the fees paid by Carleton University students and students across Ontario is unfair.

The request was launched to investigate the extent to which the administration at Carleton University is involved either directly or indirectly in the democratic decision-making processes of autonomous student organizations at Carleton. In consultation with the Graduate Student Association, we are investigating the existence of records that shed light on the extent to which any influences on elections have been documented...Despite the lack of available resources relative to university administrators, students have been able to obtain information from

administrators with relative ease since June 2005. It is our hope that Carleton University accepts that our resources are indeed limited and that we hope for a full fee waiver to be granted, or for the fee to be reduced in half for us to be able to access the requested records.

In response to the appellant's representations on the financial hardship it would suffer, the University submits that the user pay principle must apply. The University states:

The Appellant clearly understands the user pay principle as they have budgeted the significant sum of \$10,000 annually for access to information requests. This sum exceeds the entire annual budget of [the University's] Corporate Archives and FIPPA Office. The fact that this one request would consume a significant portion of the Appellant's budget for access requests is not evidence that they cannot pay the fees requested - rather the opposite - and is a situation for which the Appellant, in refusing to limit their request, must take responsibility.

The Appellant's request is designed in such a way as to yield a large number of responsive records. It is unlikely that many will be relevant to the stated goal of their investigation as outlined in their representations but the Appellant seems to be hoping that if they cast a wide net they will increase their odds of identifying relevant items. The decision to make such a wide ranging request and to resist limiting this request is a choice that the Appellant has made and one for which [the University] should not be held accountable.

The appellant relies on section 57(4)(b) of the *Act* as a basis for fee waiver.

Generally, a requester should provide details regarding his or her financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1141, P-1365, P-1393].

In the present appeal, I find that payment of the fee would not constitute financial hardship for the appellant as contemplated by section 57(4)(b) of the *Act*. The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship [Order P-1402].

I have taken into consideration all of the information before me with respect to the issue of whether the payment of the fee results in financial hardship to the appellant. While the appellant has provided me with a generalized discussion of her organization's financial situation, I find that I do not have adequate evidence of its expenses and other commitments that might help support a finding that financial hardship would actually result from the payment of the estimated fee.

I acknowledge that the fee in the present case is large and that the appellant's organization has limited financial resources; however, I have insufficient evidence to find that section 57(4)(b) is applicable in the circumstances as a basis for either a partial or full fee waiver.

As I have found that section 57(4)(b) does not apply, it is unnecessary for me to consider whether it is fair and equitable for the appellant to be granted a fee waiver.

**ORDER:**

1. I uphold the University's fee estimate of \$5,051.00.
2. I uphold the University's decision to not grant a fee waiver under section 57(4) of the *Act*.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

\_\_\_\_\_ August 31, 2010