

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3035

Appeal PA11-95

McMaster University

January 12, 2012

Summary: The sole issue in this appeal is the fee estimate charged by the university for access to records under the *Freedom of Information and Protection of Privacy Act*. The university's fee is upheld, in part. Fees for photocopying all of the records and for preparing one record are upheld. The fee for search time is significantly reduced.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 57(1)(a), 57(1)(b), 57(1)(c); *Regulation 460*, ss. 6.1, 6.3, 6.4.

OVERVIEW:

[1] This order disposes of the issues raised as a result of a request made to McMaster University (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of all expense receipts, including, but not limited to, boarding passes, submitted to the university for all domestic and international flights taken by a named individual for the period January 5, 2005 to December 31, 2010. The requester also asked the university to waive the fee.

[2] The university identified 81 responsive records, issued a fee estimate of \$1,115.00 to the requester, and denied the fee waiver. The requester subsequently filed an appeal with this office with respect to the fee estimate. During mediation, the appellant advised that he believed the university's fee estimate was excessive, and he wished to have more information about the breakdown of the fee and search activities.

[3] The university subsequently issued a revised fee estimate and access decision. The university reduced the fee to \$977.20, provided information about its search activities, and confirmed its decision to deny the appellant's request for a fee waiver.

[4] The appellant then advised the mediator that fee waiver was no longer at issue and the sole remaining issue was the university's fee estimate. It should be noted that the appellant did pay the fee and received the records. However, he advised that the fee estimate remains the sole issue in this appeal.

[5] The matter then moved to the adjudication stage of the process where an adjudicator conducts an inquiry under the *Act*. I sought, and received, representations from the university, which were shared with the appellant in accordance with Practice Direction 7 issued by this office. The appellant declined to provide representations.

[6] For the reasons that follow, I uphold the university's fee in part.

RECORDS:

[7] There are 81 pages of responsive records.

DISCUSSION:

Should the fee or fee estimate be upheld?

[8] 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.¹ 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.²

[9] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.³

[10] 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.

¹ Section 57(3) of the *Act*.

² Order MO-1699.

³ Orders P-81 and MO-1614.

[11] Section 57(1) requires an institution to charge fees for requests under the *Act*. In its representations, the university stated that it was relying on sections 57(1)(a), 57(1)(b) and 57(1)(c), which state:

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.

[12] More specific and relevant provisions regarding fees are found in section 6 of Regulation 460, which states, in part:

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.
- . . .
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.

Calculation of fee

[13] On my review of the evidence and the arguments of the university regarding the components of its fee estimate, I am prepared to uphold the university's fee estimate only in part. I make this finding based on the insufficiency of evidence provided to me by the university during this inquiry.

[14] With respect to search time under section 57(1)(a), the university states that an initial fee estimate was sent to the appellant for \$1,115.00 and that the revised fee estimate of \$977.20 was based on actual work done to collect the records.

[15] The university submits that the nature of the request required a significant amount of time to be spent searching for and retrieving responsive records. The records are filed chronologically and are "intermingled" with any and all other records processed on the same date. As a result, the request required a physical search of the files during the five year period. The search included a review of paper files, electronic files, file lists, offsite file lists and microfiche.

[16] The university states that a preliminary search was conducted, as follows:

Based on the organization of McMaster's financial records, it is not possible to simply identify all responsive records electronically and their exact location. Before physically searching for any records, a preliminary computer and microfiche search had to be performed. In particular, a computer search of the Financial Accounting System (FAS) was performed to determine all instances where a specified party was reimbursed by way of cheque. To perform this search, a month by month search for each month from January 1, 2005 to December 31, 2010 was conducted. For each month, a search of each individual account number for expenditures referenced as "expense reimbursements" had to be completed. Thereafter, a sub-search of the initial search results had to be completed to identify all expense reimbursements submitted by a specific individual. Moreover, FAS only maintains electronic data for 26 months and therefore, for prior years, McMaster employees were required to search microfiche.

[17] In the revised fee estimate and decision letter, the university advised the appellant that the following systems and locations were searched:

- Accounts payable archives;
- Financial accounting system database and archives;
- Payment request form database; and
- An offsite storage facility.

[18] The preliminary search was then used to generate a list of locations of potentially responsive records, but did not actually produce the responsive records. The preliminary search took 4.5 hours. Once the list was compiled through the preliminary search, a manual search was conducted to locate and identify the records, which involved searching through thousands of files. The searches were overseen by a senior manager in the university's accounts payable department. Those searches, the university submits, took 27.5 hours. The university also clarified that the preliminary search of 4.5 hours was mistakenly categorized in the first fee estimate as time spent

creating a computer program to perform a search, but was corrected in the revised fee estimate and decision letter.

[19] In addition, the university noted that the request was for expenses relating to an individual who was not a university employee, but is related to a former university employee. Because the non-employee's expenses formed part of the employee's expense submissions, the searches also included identifying which expenses, filed by the former employee, related to the non-employee.

[20] The university submits that the total search time was 32 hours at a rate of \$7.50 for each 15 minutes, totalling \$960.00.

[21] The appellant did not provide representations on the fee estimate.

[22] 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 revised fee estimate and decision letter sent to the appellant set out the fee based on the actual search time, preparation of one record, and photocopying for 81 pages of records.

[23] In determining whether to uphold a fee estimate, my responsibility under section 57(5) is to ensure that the estimated amount is reasonable. The burden of establishing the reasonableness of the fee estimate rests with the university. To discharge this burden, the university must provide me with detailed information as to how the fee estimate has been calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

[24] With respect to search time under section 57(1)(a) of the *Act*, I find the figure of 32 hours to search for responsive records to be excessive.

[25] The university has described a two-layered approach to identifying responsive records, including an initial "preliminary search" of the Financial Accounting System to determine all instances where a specified individual was reimbursed by cheque, and a second search to identify all expense reimbursements submitted by that individual. The university has claimed that the first step required 4.5 hours while the second step required 27.5 hours. I note that this total of 32 hours is claimed for locating relevant expense accounts submitted by an identified employee for reimbursement. While the university sets out the hours claimed, in my view, what has not been satisfactorily explained is the reason that such extensive efforts are required. In other words, I have been provided no explanation why the university's record holdings would not allow for a simple, less time consuming review of record holdings, based on the name of the employee and his expense claim filings, a class of records for which it is not inconceivable that a search might be required. The university's claim that 32 hours were required to produce responsive records can only lead to the conclusion that their

records management process is unwieldy and not conducive to easily focused searches for a well defined class of records.

[26] The request was for records from January 5, 2005 to December 31, 2010, which I consider of recent origin. In my view, it is reasonable to expect that university records from this time period should be kept in a consistent and easily searchable manner. If they are not, which I believe is the case in this appeal, I am of the view that the appellant should not bear the financial burden of the university's failure to implement proper record management practices. Consequently, I find that the search time is excessive and that the university has not provided adequate evidence to satisfy me that the search time was reasonable.

[27] The university also submits that, since the request related to the spouse of the identified employee rather than the employee himself, additional effort was required. In other words, the employee's expense records had to be reviewed to identify those that related to his spouse. I agree with the university that this would require additional effort on the part of university staff to identify responsive records since this was in effect a request for a subset of the employee's expense records. In the absence of any indication from the university as to how much search time is attributable to the fact that the request relates to the employee's spouse, I will allow four hours of search time for this function. At a rate of \$7.50 for each 15 minutes, this totals \$120.00.

[28] Section 57(1)(b) of the *Act* includes time for severing a record⁴ and the time used for a person to run reports from a computer system.⁵ Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.⁶ The university submits that the time spent preparing the records for disclosure was calculated in accordance with the IPC's generally accepted suggestion that it takes two minutes to sever one page of a responsive record. There was one record consisting of one page that would be partially severed pursuant to section 21(1)(f) of the *Act*. Accordingly, the portion of the fee estimate charged pursuant to section 57(1)(b) was calculated as two minutes of preparation time for the one page. The calculated rate is \$7.50 for each 15 minutes. Therefore, for two minutes of preparation time, the fee would be \$1.00. I find the university's estimate with respect to preparation time to be reasonable and in accordance with the fee provisions in the *Act* and Regulation 460. As a result, I uphold the university's estimate in this regard.

[29] Section 57(1)(c) includes the cost of photocopies, computer printouts and/or CD-ROMs and developing a computer program. The university located 81 pages of records. Section 6.1 of Regulation 460 permits an institution to charge 20 cents per page for

⁴ Order P-4.

⁵ Order M-1083.

⁶ Orders MO-1169, PO-1721, PO-1834, PO-1990.

photocopying. Applying the photocopying fee to 81 pages of records, the appropriate photocopying fee is \$16.20, which is the fee that was charged by the university. Therefore, I find that the university's estimate with respect to photocopying to be reasonable and in accordance with the fee provisions in the *Act* and Regulation 460, and I will uphold this portion of the fee.

[30] In conclusion, I uphold the university's fee in part. In particular, I uphold the cost of preparing one record and of photocopying all of the records. In addition, I uphold the university's search fee only to the extent that it relates to identifying records relating to the non-employee that were contained in the former employee's expense claim files.

ORDER:

1. I uphold the university's fee of \$17.20 for preparing one record and photocopying the records.
2. I reduce the search time claimed by the university to four hours for a total of \$120.00.

Original Signed by: _____
Brian Beamish
Assistant Commissioner

January 12, 2012