

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3387

Appeal PA12-352

Ministry of Training, Colleges and Universities

August 28, 2014

**Summary:** The sole issue in this appeal is the appropriateness of the fee estimate charged by the ministry for access to all partnership agreements that are currently in effect with the ministry, from 2000 to present. In this order, the ministry's fee estimate is upheld and the appeal is dismissed.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 57(1)(a) and (b)

**Orders and Investigation Reports Considered:** PO-3035

### BACKGROUND:

[1] The Ministry of Training, Colleges and Universities (the ministry) received five requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a single requester. The request that is the subject of this appeal reads as follows:

All partnership agreements. This is meant to include but is not limited to any agreement involving 2 or more institutions (from 2000-present). A copy of all current policies (active policies). A list of all policies currently being contemplated or developed.

[2] The ministry issued an interim decision with a fee estimate in the amount of \$8694.00, advising the requester that a deposit of \$4347.00 was required before it

would process the request. The ministry's fee estimate was calculated based on 216 hours of search time (at \$30.00/hour), 10320 pages of photocopying (at \$0.20/page) and 5 hours of records preparation time (at \$30.00/hour).

[3] The ministry also advised the requester that it expects that the mandatory exemption at section 12 (Cabinet records) and the discretionary exemptions in sections 13 (advice to government) and 18 (economic and other interests of Ontario) may apply to the responsive records.

[4] The requester (now the appellant) appealed the ministry's fee estimate, claiming that the estimated fee is excessive and should be reduced.

[5] During mediation, the parties participated in a teleconference with the mediator to discuss the ways in which the fee estimate could be reduced. The ministry provided the appellant with additional information on the nature of the search and the number of staff that would be involved. The ministry took the position that the appellant's request is very broad and recommended that she reduce the scope of her request.

[6] To assist the appellant with narrowing her request, the ministry issued a detailed version of its fee estimate, describing the search time and providing some explanatory notes on the preparation of the records. The ministry also provided the appellant with information describing its records retention schedules, relevant organizational charts, the program descriptions of the divisions involved in the search and other documentation.

[7] The appellant eliminated hard copy records from the ministry's off-site Records Centre from the scope of her request. The appellant also withdrew the second part of her request relating to policies.

[8] Upon receipt of the appellant's narrowed request, the ministry issued a revised fee estimate of \$1290.00, reducing the search time to 38 hours. In the letter, the ministry stated that the preparation fee remains unchanged and that it had not calculated the revised photocopying charges yet.

[9] After further discussions, the appellant narrowed her request to include only the following:

A copy of the partnership agreements that are currently in effect with the ministry, from 2000-present. Appellant is prepared to narrow the search to the ADM office and the offices where agreements are held.

[10] The appellant suggested that the requested information be provided to her on a CD to eliminate photocopying fees.

[11] In response to the narrowed request, the ministry issued a second revised fee estimate of \$690.00, reducing the search time to 18 hours. The ministry reiterated its previous preparation fee and advised that it can only provide records on CD that will be disclosed in full, as it currently cannot redact information electronically. The ministry noted that some photocopying fees will apply. The ministry's final fee estimate, which is at issue in this appeal, reads as follows:

**REVISED FEE ESTIMATE – \$690.00 from \$1290.00**

38 hours of search time reduced to 18 hours

Who is searching from Strategic Policy and Programs Division:

- Research and Planning Branch: 2 staff (2 hours)
- Programs Branch: 1 staff (6 hours)

Who is searching from Postsecondary Education Division (10 hours):

- Assistant Deputy Minister's Offices: 1 staff
- Postsecondary Finance and Information Management Branch: 7 staff
- Postsecondary Accountability Branch: 7 staff

5 hours of record preparation time – severing exempt information such as section 12 (Cabinet records), section 13 (advice to government) and section 18 (economic interests of Ontario) or non-responsive information

[12] As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by sending a Notice of Inquiry to the ministry, seeking its representations on whether the fee should be upheld. The ministry submitted representations. I then invited the appellant to make representations in response to the Notice of Inquiry and the ministry's arguments, which were shared in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction 7*. The appellant also submitted representations which were shared with the ministry, which submitted further representations by way of reply.

[13] In the discussion that follows, I uphold the ministry's fee estimate and dismiss the appeal.

**DISCUSSION:**

**Should the fee estimate be upheld?**

[14] 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 to the

responsive records.<sup>1</sup> The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.<sup>2</sup>

[15] 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.<sup>3</sup>

[16] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.<sup>4</sup>

[17] 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.

[18] 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.

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<sup>1</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

<sup>2</sup> Order MO-1520-I.

<sup>3</sup> Order MO-1699.

<sup>4</sup> Orders P-81 and MO-1614.

[19] More specific provisions regarding fees are found in sections 6, 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.

### ***Representations***

[20] In its representations, the ministry states that the request that is the subject of this appeal is one of five that the appellant made to the ministry at the same time. The

ministry states that it made a strong effort to assist the appellant in clarifying or narrowing all of her requests. The ministry states that when it received the appellant's requests, the FOI Coordinator advised her that they were very broad and would likely garner large fee estimates and that she should consider narrowing them. The FOI Coordinator also noted that since the requests pertain to other institutions under the *Act*, it might be preferable for the appellant to make her requests directly to those institutions. The appellant confirmed that she wished to proceed with her requests to the ministry.

[21] The ministry submits that the appellant's revised request for records from 2000 to present relating to partnership agreements currently in effect could potentially involve all universities and colleges in Ontario, and is very broad. The ministry states that two large divisions of the ministry have custody or control of records responsive to the appellant's request: the Postsecondary Education Division and the Strategic Policy and Programs Division. The ministry states that each division has multiple branches and units that would have responsive records. For example, the ministry states that the Postsecondary Finance and Information Management Branch (in the Postsecondary Education Division) establishes and administers the operating and capital funding framework for colleges and universities; administers transfer payments to postsecondary institutions; and administers and reports on finances related to student assistance programs.

[22] The ministry states that, during mediation, its FOI Unit staff and several senior managers with expertise in the records took part in a teleconference with the appellant and explained to her that various program areas have responsive records and that many staff in multiple program areas would need to undertake a search for responsive records. In order to assist the appellant in understanding the work of each applicable program area, the ministry sent the appellant a detailed fee calculation for her request and organization charts and program descriptions for the Postsecondary Education Division and the Strategic Policy and Programs Division.

[23] As discussed in the background, the appellant amended her request twice and removed the part of her request relating to policies with the ministry. The ministry's final fee estimate is for \$690.00. The ministry states that the appellant narrowed her request significantly by removing her request for all policies and, therefore, the second fee estimate was reduced to reflect the amendment.

[24] With regard to its final fee estimate of \$690.00, the ministry states that it sought the advice of senior managers in each of the relevant program areas in the Postsecondary Education Division and the Strategic Policy and Programs Division. The ministry takes the position that although the appellant removed the portion of her request relating to policies, her final request is still very broad. The ministry states that the appellant might have indicated what institutions she is most interested in, but she did not. The ministry states that it will have to search for responsive records relating to

all universities and colleges in Ontario since 2000. The ministry states that the search for records would be undertaken by two large divisions, the Postsecondary Education Division and the Strategic Policy and Programs Division. In the most recent estimate, the ministry states that 18 staff within these two divisions would need to undertake a search for responsive records. The ministry states that only a narrowing of the subject matter of the request will reduce the search fees.

[25] In her representations, the appellant takes the position that the fee estimate is far too high. While the appellant acknowledges that her original request was worded broadly, she states that she worked very closely with the mediator to narrow her request. The appellant submits that not only did she narrow her request significantly, but she removed areas that were claimed by the ministry to be the most costly in terms of search requires. However, the appellant submits that the subsequent reductions in the fee estimate are not commensurate with the type and extent of information that was removed from her request.

[26] In addition, the appellant submits that the ministry's representations do not demonstrate how it developed its fee formula. The appellant also suggests that the large fee may be caused by a varied and dispersed filing system. While the ministry suggested that the appellant file her requests with other institutions under the *Act* that may have a greater interest in the partnership agreements requested, the appellant submits that the most efficient route to access these agreements was through the ministry because the ministry should hold copies of all agreements, particularly since not all of the publicly funded institutions in Ontario are party to partnership agreements.

[27] The appellant states that she has narrowed her request significantly to include only copies of partnership agreements currently in effect. While the time frame remains from 2000 to present, the appellant submits that the ministry should not be required to search its archives or its off-site Records Centre as she limited her request to partnership agreements that are still in effect. As such, she fails to see how the search for responsive records could take 18 hours. The appellant submits that these are finite documents of a similar nature and that the filing process for these types of documents should be relatively straightforward and accessible. The appellant submits that she requested details with regard to the location of the documents and was told that they were stored in the Assistant Deputy Minister's office. Given this information, the appellant submits that it is unreasonable that it would take 18 ministry staff 18 hours to locate current partnership agreements. While the ministry maintains that two divisions will need to be searched, the appellant believes that the ministry should be able to narrow the request to the relevant division and the relevant office. The appellant submits that it is difficult to comprehend that agreements of a similar nature would be scattered across two divisions and five offices. The appellant submits that as these agreements are still in effect, they are important documents that one would assume are readily accessible and kept in electronic format.

[28] In support of her representations, the appellant refers to Order PO-3035, in which Assistant Commissioner Brian Beamish found as follows:

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.

[29] The appellant submits that the records requested ought to be easily accessible and that she should not bear the burden of cost if the ministry has filed the documents in such a way that a number of staff members are required to locate them. The appellant submits that the search time is unreasonable and should be significantly reduced.

[30] Furthermore, the appellant submits that the record preparation time has been overly inflated. The appellant submits that the documents requested are public documents with limited severance requirements. The appellant submits that since the records are public documents, she does not understand how the exemptions in section 12, 13 or 18 could apply to withhold any of the information.

[31] In reply, the ministry re-iterates that the request was not significantly narrowed by subject matter. The ministry states that it has amended the fee estimate significantly in response to the appellant's amendments. However, the ministry submits that the amendment of the ambit of the search does not result in a significant narrowing of the request. The ministry states that institutions that enter into partnership agreements are not required to report these agreements to the ministry and, therefore, there is no central repository of such agreements. Given this situation, the ministry states that it suggested that the appellant make her request for the partnership agreements with the institutions that are party to the agreements. The ministry states that some colleges, universities or private career colleges may voluntarily disclose their partnership agreements in the context of discussions or negotiations with the ministry on specific program issues. As a result, the ministry advises that the search for any partnership agreements that the ministry may have in its custody or control will engage staff in multiple program areas. For example, the ministry states that the Research and Planning Branch and Programs Branch in the Strategic Policy and Programs Division may have responsive records and the office of the Assistant Deputy Minister, the Postsecondary Finance and Information Management Branch and Postsecondary Accountability Branch may have responsive records in the Postsecondary Education Division. Further, within these branches, the ministry states that staff may be required to search within the following subject matters: program



policy, program design, credit transfer, research, finance, governance and accountability. The ministry states that it made senior managers from the two divisions available to the appellant to explain the organization of the ministry and the effect such a broad request will have on the time it will take to complete the search for responsive records. The ministry states that the time required to complete the search is not a result of inadequate records management practices. Rather, the ministry submits that the lengthy search time is caused by the breadth and generality of the requests.

[32] In addition, the ministry submits it has, in good faith, kept the figures for record preparation time low and excluded photocopying and CD costs from the amended fee estimate. Finally, the ministry states that if the actual searches take less time, it will reduce or waive the fee balance as appropriate.

### ***Findings***

[33] On my review of the evidence and arguments of the parties, I uphold the ministry's fee estimate.

[34] With respect to the search time under section 57(1)(a), I agree with the ministry that the appellant's request is very broad and that the range of the search is at the root of the large search fee. The appellant seeks access to copies of all current partnership agreements under the ministry's custody or control and does not specify which institutions she is most interested in.

[35] In its representations, the ministry indicates that it is not necessarily a party to the partnership agreements that are responsive to the request and states that the institutions that enter into partnership agreements are not required to report the agreements. As institutions are not required to report these partnership agreements to the ministry, the ministry does not have a central repository of such agreements. In the case where institutions choose to disclose their partnership agreements to the ministry, they do so in the context of discussions or negotiations with the ministry on specific program issues. As such, different branches of the ministry may have copies of these partnership agreements. While the appellant's final request indicates that she is "prepared to narrow the search to the [Assistant Deputy Minister's] office and the offices where agreements are held", she did not narrow the search to these offices, so, the ministry will be required to search all branches and divisions for records responsive to her request. I find that the appellant's request is still extremely broad and is not limited to a particular subject matter.

[36] In her representations, the appellant refers to Order PO-3035, in which Assistant Commissioner Beamish stated that records of recent origin should be kept in a consistent and easily searchable manner and that a requester generally should not bear the financial burden of an institution's failure to implement proper record management practices. While I agree with Assistant Commissioner Beamish's findings, I find that

they do not apply to the facts of this appeal. In Order PO-3035, the appellant sought access to copies of all expense receipts submitted to a university for all domestic and international flights taken by a named individual for a five year period. Unlike the request in that order, in this appeal, the appellant seeks records from all branches and divisions of the ministry that may have copies of current partnership agreements.

[37] Based on my review of its representations, I find that the ministry provided me with sufficient evidence to demonstrate the amount of time that staff from the different branches and divisions would be required to take to locate the responsive records. For these reasons, I uphold the estimated 18 hours of search time under section 57(1)(a), at \$30 per hour, for a total cost of \$540.00. I note that the ministry advised that the search time is only an estimate and if the actual search takes less time, the ministry will reduce the fee balance, as appropriate.

[38] With respect to the record preparation component of the fee which is governed by section 57(1)(b) of the *Act*, the ministry allocated five hours at a cost of \$30 per hour, with a total of \$150.00 in its fee estimate, as the time required for preparing the records for disclosure. The ministry indicates that this time is required to sever exempt information, such as information exempt under sections 12 (Cabinet records), 13 (advice to government) and 18 (economic interests of Ontario) of the *Act*, or non-responsive information. Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.<sup>5</sup> Using this formula, I find that the ministry's estimate of \$150.00 would cover the preparation of 150 pages of responsive records. In light of the appellant's broad request, I find that it is not unreasonable for the ministry to estimate that it will be required to prepare well over 150 pages of records for disclosure. Accordingly, I also uphold this part of the fee estimate. However, I note that if the actual preparation of records takes less time, the ministry should reduce the fee balance, as appropriate.

[39] In conclusion, I uphold the ministry's fee and dismiss the appeal.

**ORDER:**

I uphold the ministry's fee estimate and dismiss the appeal

Original Signed By: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ August 28, 2014

<sup>5</sup> Orders MO-1169, PO-1721, PO-1834 and PO-1990.