

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3376

Appeal PA12-349

Ministry of Training, Colleges and Universities

August 12, 2014

Summary: The sole issue in this appeal is the appropriateness of the fee estimate charged by the ministry for access to records relating to Laurentian University. 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, section 57.

Orders and Investigation Reports Considered: Order PO-3035.

OVERVIEW:

[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 one requester. The request that is the subject of this appeal reads as follows:

All records held by the Ministry pertaining to Laurentian University (from 2009 – present). This is meant to include but is not limited to, emails, letters, memos, notes to file etc.

[2] The ministry issued an interim decision with a fee estimate in the amount of \$8,810.00, advising that a deposit of \$4,405.00 was required before it would process the request. The ministry's fee estimate charged for 244 hours of search time (at

\$30.00/hour), 6700 pages of reproduction/photocopying (at \$0.20/page) and 5 hours of record preparation (at \$30.00/hour).

[3] The ministry also advised the requester that it expects that the mandatory exemption at section 17 (third party information) of the *Act* may apply to some of 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 discuss 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 the 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 then revised the time period of her request for emails to include only those created from 2012 to present, thereby eliminating any archived emails and hard copy records from the ministry's off-site Records Centre from the scope of her request.

[8] Upon receipt of the appellant's narrowed request, the ministry issued a revised fee estimate of \$3720.00, reducing the search time to 119 hours. In the letter, the ministry stated that the preparation fee remains unchanged.

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

Records held by the Ministry pertaining to Laurentian University (from 2011 – present). This is meant to include emails (for the last year only), letters, memos.

[10] In response to the narrowed request, the ministry issued a second revised fee estimate of \$2670.00, reducing the search time to 84 hours. The ministry reiterated its previous preparation fee, as it maintains that the request is still broadly worded. The ministry's final fee estimate, which is at issue in this appeal, reads as follows:

REVISED FEE ESTIMATE – \$2670.00 from \$3720.00

119 hours of search time reduced to 84 hours

Who is searching from the Strategic Policy and Programs Division:

- Research and Planning Branch: 16 staff (57 hours)
- Programs Branch: 2 staff (7 hours)

Who is searching from the Postsecondary Education Division (20 hours)

- Assistant Deputy Minister's Office: 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 17 (third party information) or non-responsive information

[11] 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 estimate should be upheld. The ministry submitted representations. I then invited the appellant to make representations in response to the issue raised in 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. I then sought representations from the ministry in response to those submitted by the appellant. The ministry submitted further representations by way of reply.

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

DISCUSSION:

Should the fee estimate be upheld?

[13] 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.¹ The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.²

[14] 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.³

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

[16] 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.

[17] 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.

¹ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

² Order MO-1520-I.

³ Order MO-1699.

⁴ Orders P-81 and MO-1614.

[18] 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

[19] 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 this request, the FOI Coordinator advised the appellant that her request was very broad and would likely garner a large fee estimate. The FOI Coordinator also noted that since the request pertained to another institution under the *Act*, it might be preferable for the appellant to make her request directly to Laurentian University. The appellant confirmed that she wished to proceed with her request to the ministry.

[20] The ministry states that the main issue regarding the appellant's original request is that it is for "all records" pertaining to Laurentian University. The ministry states that two large divisions of the ministry have custody or control over 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, because various program areas deal with Laurentian University in different capacities. For example, the ministry states that the Postsecondary Finance and Information Management Branch (in the Postsecondary Education Division) deals with Laurentian University in its role in establishing and administering the operating and capital funding framework for colleges and universities, administering transfer payments to postsecondary institutions; and administering and reporting on finances related to student assistance programs.

[21] 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 records relating to Laurentian University 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, organization charts and program descriptions for the Postsecondary Education Division and the Strategic Policy and Programs Division. As discussed in the background, the appellant amended her request twice and the ministry's final fee estimate is for \$2670.00.

[22] With regard to its final fee estimate, the ministry states that it sought the advice of senior managers in each of the program areas that would have custody or control over records responsive to the appellant's request. The ministry submits that compiling a representative sample of records would be unhelpful because the search would be undertaken in numerous program areas, each with different relationships with Laurentian University.

[23] The ministry takes the position that the appellant's request continues to be very broad. The ministry notes that this office has found that a request for "all" information relating to a particular subject is an example where there is a potential to frustrate the right to access provided for in the *Act* because a request for "all" information may not be sufficiently descriptive. 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, as well as various branches, which also have unique relationships with Laurentian University. At the most recent estimate, the ministry states that 33 staff within these two divisions would need to undertake searches for responsive records. The ministry states that only a narrowing of the subject matter of the request will reduce the search fees.

[24] In her representations, the appellant takes the position that the fee estimate is far too high. The appellant 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 requirements. 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 for the request.

[25] The appellant submits that the ministry's representations do not demonstrate how it developed its fee formula or how it is able to claim five minutes of reading time for each email. The appellant also submits that the large fee may be caused by a varied and dispersed filing system. 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.

[26] 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 concludes that the search time is unreasonable and should be significantly reduced, and that the record preparation time has been overly inflated.

[27] In reply, the ministry re-iterates that the request was not significantly narrowed by subject matter. The ministry states that, unless the request is narrowed by subject matter, a large number of staff will be required to search for the records, even though the time period or email search has been narrowed. The ministry states that, as the appellant has requested all "records held by the ministry pertaining to Laurentian University", a comprehensive search will need to be undertaken in all relevant program areas. The ministry states that it has made the 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.

[28] The ministry states that it did not include five minutes of reading time per email in the fee estimate at issue in this appeal. The ministry states it has, in good faith, kept the figures for record preparation time low and excluded photocopying and CD costs from the amended fee estimate. The ministry also notes that the search time for the request is only an estimate. Accordingly, if the actual searches take less time, the ministry states that the fee balance would be reduced or waived as appropriate.

Findings

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

[30] With respect to 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 the cause of the large search fee. 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 a requester generally should not bear the financial burden of the university's failure to implement proper record management practices. While I agree with Assistant Commissioner Beamish's findings, I find that they are not applicable to the facts of this appeal. In Order PO-3035, the request was for copies of all expense receipts submitted to the university for all domestic and international flights taken by a named individual for a five year period. In this appeal, the appellant is seeking all records under the ministry's custody or control relating to Laurentian University. Even though the appellant limited the scope of her request for certain records, such as emails, I find that her request is still extremely broad and is not limited to particular areas as was the case in the request that gave rise to Order PO-3035. Unlike the request in Order PO-3035, the appellant seeks records from all of the branches and divisions of the ministry that relate to Laurentian University.

[31] Based on my review of its representations, I find that the ministry has 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 84 hours of search time under section 57(1)(a) at \$30 per hour, for a total cost of \$2520.00. I note that the ministry has stated 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.

[32] With respect to section 57(1)(b), 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 for preparing the records for disclosure. The ministry indicates that the time is required to sever exempt information, such as information exempt under section 17 (third party information) 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.⁵ 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 approximately 150 pages of records for disclosure. Accordingly, I also uphold this part of the fee estimate.

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

ORDER:

I uphold the ministry's fee estimate.

Original Signed By:
Justine Wai
Adjudicator

August 12, 2014

⁵ Orders MO-1169, PO-1721, PO-1834 and PO-1990.