Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3709

Appeals PA15-475, PA15-476 and PA15-477

Ministry of Finance

March 21, 2017

Summary: The ministry received three separate requests under the *Act* from the same requester, all of which were for information relating to the Deposit Insurance Corporation of Ontario (DICO). The ministry issued decisions in response to each of the three requests, all of which were appealed for a number of reasons. In this order, the adjudicator finds that the ministry did not err in making its notification decisions under section 28 of the *Act*. He also upholds the ministry's fee estimate and interim access decisions in appeals PA15-475 and PA15-476, but finds that its fee estimate decision in PA15-477 was not adequate, and disallows the ministry's search and preparation time for that appeal. The adjudicator also upholds a portion of the ministry's actual fees in PA15-476, but denies the search fee in that appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 27(1) (extension of time), 28(1) (notice to affected person), 57(1) and section 6 of Regulation 460 (fees).

Orders and Investigation Reports Considered: Orders MO-1403, MO-2549, MO-3360, P-1637, PO-1694-I, and PO-2634.

OVERVIEW:

[1] The Ministry of Finance (the ministry) received three separate requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from the same requester, all of which were for information relating to the Deposit Insurance Corporation of Ontario (DICO). The ministry issued decisions in response to each of the three requests, and the requester (now the appellant) appealed all three of the decisions to this office.

[2] The details of the requests are as follows:

Request 1 (Appeal PA15-475)

[3] A request dated July 8, 2015 was submitted to the ministry for access to the following records:

> The DICO board and Human Resources committee meeting materials provided to [the ministry] Observer from January 1, 2010 through June 30, 2015 relating to the topic of Succession Planning of any of DICO staff (Succession Planning) and any notes taken by [the ministry] Observer at these meetings.
>
> For greater certainty, these records include: the Agenda for the [relevant] committee or board meeting, submissions by DICO management including any third party enclosures or attachments relating to Succession Planning and the subsequently approved Minutes of the … meetings.

Request 2 (Appeal PA15-476)

[4] A request dated July 8, 2015 was submitted to the ministry for access to the following information:

> The DICO board and Human Resources committee meeting materials provided to [the ministry] Observer from January 1, 2010 through June 30, 2015 relating to the topic of Executive Compensation including a Variable Pay Plan and Bill 8 which subsequently became the *Broader Public Sector Executive Compensation Act* and any notes taken by [the ministry] Observer at these meetings.
>
> For greater certainty, these records include: the Agenda for the [relevant] committee or board meeting, submissions by DICO management including any third party enclosures or attachments relating to the requested subject matters and the subsequently approved Minutes of the … meetings.

Request 3 (Appeal PA15-477)

[5] A request dated July 14, 2015 was submitted to the ministry for access to the following information:

> …all meeting materials, including meeting agendas, materials discussed, minutes of all such meetings and any notes taken by [the ministry] participants relating to the following matters for [certain select meetings] held between January 1, 2014 and June 30, 2015:
>
> DICO – Staffing Changes: any items concerning DICO's organization changes addressed at the subject meeting.

> DICO/[ministry] – Bill 8 / *Broader Public Sector Executive Compensation Act*: all matters discussed including materials provided/tabled at each meeting together with any notes taken by any of [the ministry] participants.
>
> [The ministry] – All agenda items attributed to [the ministry]: all matters discussed including materials provided/tabled at each meeting together with any notes taken by any of [the ministry] participants.

Decisions

[6] In response to the three requests, the ministry issued three separate fee estimate and interim access decisions, all dated July 30, 2015. In each of those decisions, which are identical, the ministry stated that a fee estimate of $775.00, representing 22.5 hours of search time and photocopy costs for 500 pages of records, applied to the records. Each of the decisions indicated that a deposit of $387.50 was required in order to proceed with the request. In each of the decisions the ministry also stated that a preliminary review of the records indicated that some of the records may be exempt from disclosure pursuant to sections 13, 14, 15, 17, 18, 19, 21 and 49 of the *Act*.

[7] The appellant appealed the ministry's three decisions. At the same time, the appellant paid the three requested deposits of $387.50 (totaling $1,162.50) so that the ministry could process the requests.

[8] The ministry then issued a notice of a time extension dated August 21, 2015 indicating that a 90-day extension was applied to each of the requests and that a decision for each request would be issued on November 24, 2015. In this letter, which dealt with all three of the appellant's requests, the ministry identified that it could reduce the time to process the requests if the appellant agreed to receiving the responses to the requests at different times. The appellant indicated that he was also appealing the ministry's time extension decisions.

Results of mediation and remaining issues

[9] During mediation, a number of issues were resolved in each of the files, as follows:

Request 1 (Appeal PA15-475)

[10] The appellant advised that he was appealing the amount of the fee estimate and the time extension. In October, the ministry issued a revised fee estimate, and also stated that some of the records may be exempt from disclosure under section 17 (third party information) of the *Act*, and that it was notifying the affected third party of the request, pursuant to section 28 of the *Act*.

[11] As a result of the ministry's revised fee estimate decision, the appellant no longer

appealed the fee estimate. However, the appellant continued to appeal the ministry's time extension decision, and also stated that he was appealing the ministry's decision to give notice to the third party under section 28 of the *Act*.

[12] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. On November 24, 2015 the ministry issued its final decision granting partial access to the responsive records, as well as a final fee.

[13] The appellant confirmed that he wished to continue his appeal. Accordingly, the issues remaining in this appeal are the ministry's time extension decision and its decision to give notice to the affected third party.

Request 2 (Appeal PA15-476)

[14] The appellant advised that he was appealing the amount of the fee estimate and the time extension. Also during mediation, the ministry advised that it was notifying the affected third party of the request, pursuant to section 28 of the *Act*. The appellant indicated that he was also appealing the ministry's decision to give notice to the third party under section 28 of the *Act*.

[15] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. The ministry subsequently issued a final access decision dated November 24, 2015 in which it granted partial access to the responsive records. It also issued a revised fee of $760 representing 25 hours of search and preparation time and the cost of a CD-ROM disk. The appellant did not appeal the ministry's decision to grant partial access to the records.

[16] Accordingly, the issues remaining in this appeal are the ministry's fee decision, its time extension decision and its decision to give notice to the affected third party.

Request 3 (Appeal PA15-477)

[17] During mediation, the appellant advised that he was appealing the amount of the fee estimate and the time extension. The ministry subsequently issued a final access decision, dated November 24, 2015, in which it granted partial access to the responsive records, and issued a revised fee decision of $43.40, representing 80 minutes of search and preparation time and photocopy costs for 17 pages of records.

[18] The appellant continued to appeal the time extension decision and the fee decision.

Adjudication of the three appeals

[19] Because of the connections between these three files and the similarity of the issues raised in them, the three appeals were dealt with together. I sent a Notice of Inquiry to the ministry, initially, inviting the ministry to address a number of the issues raised in these appeals. The ministry provided representations in response. I then sent a Notice of Inquiry, along with a complete copy of the ministry's representations, to the

appellant. I invited the appellant to address all of the issues, and to address the issue he raised regarding whether the ministry's decision to notify an affected party was appropriate. The appellant provided representations in response.

[20] In this order, I find that the ministry did not err in making its notification decisions under section 28 of the *Act*. I also uphold the ministry's fee estimate and interim access decisions in appeals PA15-475 and PA15-476, but find that its fee estimate decision in PA15-477 was not adequate, and I disallow the ministry's search and preparation time for that appeal. I also uphold a part of the ministry's actual fees.

ISSUES:

A. Did the ministry adhere to the notice requirements set out in section 28(1) of the *Act*?

B. Were the ministry's interim access and fee estimate decisions adequate?

C. Were the actual fees charged in PA15-476 and PA15-477 calculated in accordance with the requirements of the *Act*?

DISCUSSION:

Preliminary matter – Time extension decisions

[21] The parties have provided representations on whether the time extension decisions were made in accordance with the requirements of the *Act*. Although the time extension issue is effectively moot because the ministry has already issued its final access decisions, I have decided to comment on some of the positions taken by the parties.

[22] The appellant takes issue with the ministry's time extension decisions. Time extensions are governed by section 27(1) of the *Act* which states:

> A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,
>
> > (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
> >
> > (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

[23] Factors which might be considered in determining reasonableness include:

- the number of records requested;
- the number of records the institution must search through to locate the requested record(s);
- whether meeting the time limit would unreasonably interfere with the operations of the institution;
- whether consultations outside the institution were necessary to comply with the request and if so, whether such consultations could not reasonably be completed within the time limit.

[24] A number of orders, beginning with Order 28, have found that where the institution is responding to a number of separate requests by the same individual, which collectively require a search through a large number of records or necessitate consultation, section 27 is not properly triggered.

[25] The ministry submits that "the time extension was reasonable given the volume of documents that had to be reviewed; the [appellant's] rejection of the Ministry's proposal to streamline the requests and the fact that meeting the time limit would unreasonably interfere with the operation of the institution."

[26] The ministry also submits that "it seems that [the appellant] does not understand the work that is involved in responding to a FIPPA request", and notes the appellant's statement that "the search and production of the documents in electronic form would likely take less than one hour." The ministry then submits that responding to an access request "requires the FOI office to coordinate with the appropriate program areas, locate a person with knowledge of the file then locate the documents and conduct the review to determine if any of the mandatory exemptions apply." The ministry submits that the appellant "did not appreciate the extent of resources and time necessary to properly respond to the request."

[27] The ministry provides some details of its search results, stating that "an initial review of the records indicated that over 1500 documents may be located" and that "well over 10 binders of documents need to be reviewed". The ministry submits that "it would be unreasonable to expect the Ministry to review these documents within the time frame as suggested by the [appellant]."

[28] Finally, the ministry notes that its August 21 letter "suggested a staged process whereby the [appellant] would receive the documents to each request separately, … the first group of documents by September 25, 2015, the second by October 25, 2015 and the third by November 24, 2015." The ministry states that "the [appellant] rejected this approach", and it submits "this approach was reasonable and would have resulted in the [appellant] receiving documents well before the 90 day time extension period expired." The ministry therefore submits that the time extension was appropriate and should be upheld by the IPC.

[29] The appellant submits that the time extensions were not reasonable. He refers to a number of reasons in support of his position:

- he disputes the ministry's position regarding whether and how they can access various responsive records;
- he submits that the ministry did not review representative samples of the records in calculating the time extension;
- although he acknowledges that the ministry is "technically correct" to state that "staff must search the large volume of records contained in approximately 30 binders", he submits that the manner in which the information in the binders was indexed would result in a quicker search; and
- he provides information in support of his concerns regarding whether a particular branch of the ministry acted in good faith.

Analysis

[30] I note that the time extension issue is effectively moot because the ministry has already issued its final access decisions. However, I have decided to comment on some of the positions taken by the parties.

[31] To begin, I note that the ministry has not provided evidence in support of its position that meeting the time limit would unreasonably interfere with the operations of the institution. In Order MO-1403, Adjudicator Hale made the following comments in relation to the equivalent of section 27(1) found in section 20(1) of the *Municipal Freedom of Information and Protection of Privacy Act*:

> … for the purposes of section 20(1), it is not sufficient for the City to simply establish that a large number of records are involved, or that the search will be time-consuming. In addition, it must establish that this "would unreasonably interfere with" its operations. Though the deponent of the affidavit explains that she operates under "considerable time constraints" which "impact on [her] ability to review the significant number of documents related to the disclosure request…" this in itself is not, in my view, sufficient to satisfy this requirement.
>
> I therefore find that the City has not provided me with sufficiently detailed evidence to support its argument that meeting the 30-day time limit provided in section 19 of the Act would unreasonably interfere with its operations. Accordingly, I do not uphold the City's decision to seek a time extension under section 20(1) for an additional 90 days beyond the time frame provided by section 19.

[32] Similarly, in this appeal, the ministry has not provided me with sufficiently detailed evidence to support its position that meeting the 30-day time limit would

unreasonably interfere with its operations. Although the ministry refers to the time it would take to conduct the search, it does not identify how this would unreasonably interfere with ministry's operations. Simply identifying the estimated search time is insufficient to establish a basis for a time extension.

[33] In addition, as noted above, previous orders beginning with Order 28 have found that where the institution is responding to a number of separate requests by the same individual, which collectively require a search through a large number of records or necessitate consultation, section 27(1) is *not* properly triggered. In issuing a time extension of 90 days for all three files, the ministry has improperly triggered the time extension provisions in circumstances where it is responding to three separate requests by the appellant, which collectively require a search through a large number of records or necessitate consultation.

[34] In the circumstances, I find that the ministry inappropriately applied the time extension in section 27(1) in these appeals.

[35] Lastly, I note that the ministry's time extension decisions were not included in its interim access and fee estimate decisions; rather, they were issued following the receipt of the deposit from the appellant. The ministry has relied on Orders 81 and M-555 in support of its processing of the time extension decisions in this way. I note, however, the following from Order PO-2634, in which Senior Adjudicator John Higgins stated:

> … The length of time it will take to receive an access decision (and any records that are being released) could well be a factor in a requester's decision about paying a requested deposit and continuing to pursue access. For this reason, I have decided that institutions should be encouraged to identify that they will require a section 27 time extension, and the reasons for taking that position, as early as possible in the request process, and in the event of an interim access decision, this could be communicated in the interim decision letter. Since it is not certain when the deposit would be paid and the clock re-activated, it will not be possible to name a date by which the access decision would be given; rather, the estimate must be given by number of days, as the Ministry eventually did in this case.
>
> On the other hand, since institutions have the entire 30-day response period to claim a time extension, and the clock is stopped by issuing the interim decision, I am not in a position to insist that the time extension be claimed in the interim access decision, but in my view this would be a good practice to adopt because it assists the requester in making an informed decision about whether to pay the deposit. Addressing the time extension issue in the interim access decision also appears to be the most practical approach for the institution, given that in formulating the fee estimate that accompanies the interim access decision, the institution would also have occasion to consider how much time it will likely require to process the request. In reaching this conclusion, I also note that time

> extensions may be appealed to this office regardless of when they are claimed by an institution.
>
> This approach will apply to future interim access decisions, and in that context, will provide more flexibility regarding the timing of a section 27 time extension claim than the approach taken in Orders 81 and M-555.

[36] In a later decision, Adjudicator Higgins affirmed this approach and stated:

> … I revisited this issue in Order PO-2634 and [found that] informing requesters of a proposed time extension in the interim access decision would be helpful since it provides more information about how long it would take to process a request, permitting them to make a more informed decision about whether to pay the requested deposit.[1]

[37] Two subsequent decisions of this office also approved this new approach.[2] The ministry's reliance on Orders 81 and M-555 in support of the manner in which it issued the time extension decisions did not consider the approach referenced in these more recent orders.

Issue A: Did the ministry adhere to the notice requirements set out in section 28(1) of the *Act*?

[38] The appellant takes the position that, in responding to his access requests, the ministry should not have notified DICO as an affected party under section 28 of the *Act*. He states that because he removed the names of DICO employees from the scope of his request, there was no need to notify DICO under section 28. Although the appellant acknowledges that DICO is a separate legal entity, he takes the position that it is "controlled by the Province through [the ministry]", and refers to the relationship between DICO and the ministry in some detail.[3] Based on this background, the appellant appears to take the position that DICO's interests could not have been engaged such that they ought to have been notified under section 28 of the *Act*.

[39] Section 28(1) sets out an institution's obligation under the *Act* to provide notice of an access request, in the following circumstances:

> Before a head grants a request for access to a record,
>
> > (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or

[1] MO-2549. See also Orders MO-2595 and MO-2784.
[2] See Orders MO-2595 and MO-2784.
[3] The appellant refers to DICO's status pursuant to the *Credit Unions and Caisses Populaires Act*, as well as a memorandum of understanding entered into between DICO and the ministry.

> (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21 (1) (f),
>
> the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

[40] This office has affirmed that the responsibility to fulfill the notification requirements in section 28 rests with institutions, and not this office.[4] In the normal course this office does not play a role in reviewing that decision. When this office has been required to review this decision, it has stated:

> If a head concludes that a record **might** contain section 17(1)-type information, and that this information **might** have been supplied in confidence, in my view, it is not appropriate for an institution to decide that notice is unnecessary based on an assessment that the potential for harm from disclosure does not meet the threshold established by section 28(1)(a). The potential for harm is a determination that must be made in the individual circumstances of a particular request and, in my view, the notification requirements of section 28 were designed to allow affected persons an opportunity to provide input on this issue before a decision is made regarding disclosure.[5]

[41] In reviewing the appellant's position that DICO ought not to have been notified, I note that the issue of DICO's status as an affected party was addressed to some extent in Order P-1637, where the adjudicator had to determine whether DICO's economic or other interests could be engaged through section 17(1) of the *Act*. After reviewing DICO's status and the applicable sections of Part XIV of the *Credit Unions and Caisses Populaires Act, 1994*, the adjudicator stated:

> … I find that DICO has a commercial nature apart from the Ministry's institutional interests … and I will consider whether section 17 applies to them.

[42] In light of Order P-1637 and my review of the circumstances of this appeal, I find that the ministry did not err in making its notification decisions pursuant to section 28 of the *Act*.

Issue B: Were the ministry's interim access and fee estimate decisions adequate?

[43] The purpose of the interim access decision, fee estimate and deposit process is to provide the requester with sufficient information to make an informed decision as to whether or not to pay the fee and pursue access, while protecting the institution from

[4] Orders PO-1694-I and PO-3545.
[5] PO-1694-I at page 6, emphasis in original.

expending undue time and resources on processing a request that may ultimately be abandoned.[6]

[44] Where the fee is $100 or more, the institution may choose to do all the work necessary to respond to the request at the outset. If so, it must issue a final access decision. Alternatively, the institution may choose not to do all of the work necessary to respond to the request, initially. In this case, it must issue an interim access decision, together with a fee estimate.[7]

[45] Also, where the fee is $100 or more, the institution may require the requester to pay a deposit equal to 50% of the estimate before the institution takes any further steps to respond to the request (see section 7 of Regulation 460).

[46] The issue for me to determine is whether the ministry's interim decisions comply with the requirements of the *Act* and this office for interim access decisions and fee estimates.

[47] As noted above, in response to the three requests, the ministry issued three interim access decisions on the same day. Each of the decisions stated that a fee estimate of $775.00, representing 22.5 hours of search time and photocopy costs for 500 pages of records, applied to the records. They each indicated that a deposit of $387.50 was required in order to proceed with the request. The ministry also stated that a preliminary review of the records indicated that some of the records may be exempt from disclosure pursuant to sections 13, 14, 15, 17, 18, 19, 21 and 49 of the *Act*.

Representations

[48] The parties provided lengthy representations on the issue of whether the fee estimate decisions were adequate.

[49] The ministry states that the purposes of interim access decisions, fee estimates and deposit processes is to provide requesters with sufficient information to make an informed decision as to whether or not to pay the fee and pursue access, while protecting institutions from expending time and resources on a process that may ultimately be abandoned. It submits that its interim access decisions and fee estimates contain all of the required information. It states that, in processing the requests and issuing the interim access decisions and fees estimates, its FOI office "sought the advice of the Senior Manager of the Financial Institutions Policy Branch, which is under the Financial Services Policy Division" and that this person is "completely familiar with the type and content of the responsive records." The ministry also states that its August 21, 2015 letter "identifies the employees at the Financial Institutions Policy Branch who would have knowledge of the records and details the types of records that exist." Further, the ministry states that "the FOI office met and had a number of

[6] Orders MO-1699 and PO-2634.
[7] Order MO-1699.

meetings/discussions with the individuals with knowledge of this matter prior to issuing the interim decision[s]." Finally, the ministry points to the passage in its letter dated August 21, 2015 which states:

> There are approximately 4-5 board meetings a year, resulting in at most, 10 binders a year. Staff must search the large volume of records contained in approximately 30 binders to identify records responsive to your request.

[50] The ministry further submits that "there is no doubt that the [appellant] had the appropriate information … to make a decision regarding whether to continue with the request[s]". The ministry therefore asks the IPC to "find the interim decisions are adequate." The ministry also submits that, in the alternative, should this office find that the decisions are not adequate, "the appropriate remedy is a refund of 50% of the fees actually paid by the [appellant]."

[51] The appellant submits that the ministry's interim access decisions were not adequate. In particular, he notes that the three interim access decisions incorporate "identical fee estimates". He also refers to his subsequent efforts to clarify and narrow the requests, and states that "none of his actions … caused [the ministry] to refine their search strategies or criteria thus enabling him to reduce production times or costs." The appellant also takes the position that the original estimates were not warranted, and that various records produced in the files fell "outside of the search parameters" he identified. The appellant then focuses specifically on appeal PA15-477, noting that it resulted in a total of 65 pages of records being produced at a cost of $43.40. He states that there were no grounds for the ministry's initial fee estimate, that it was "not credible", and he questions the ministry's statement that a representative sample of the records was retrieved and reviewed.

Analysis

[52] The ministry's interim access and fee estimate decisions for all three requests were identical. The ministry subsequently issued final access and fee decisions for each request. For the two final fee decisions that were appealed by the appellant, the final fee for appeal PA15-476 was $760.00, and the final fee for PA15-477 was $43.40.

[53] I note that two of the requests (PA15-475 and PA15-476) are for similar types of records. Both cover the same period of time, and require a review of the same batch of records (minutes of particular meetings). In my view it is reasonable that a fee estimate for two similar requests would be similar or identical. I note that, if after receiving the fee estimate the appellant had decided to proceed with only one of his requests, the fee for the other would not be required. In the circumstances, I am satisfied that the interim access and fee estimate decisions for PA15-475 and PA15-476 were adequate.

[54] The request resulting in the third appeal (appeal PA15-477) is different from the other two requests. It covers a narrower timeframe, and different and more varied types of records (not just meeting minutes). Although the ministry asserts that it

consulted with staff to determine the fee estimate, I appreciate the appellant's concerns regarding the work done to calculate this fee estimate, and note that the estimate is identical to the other two estimates (which are for different types of records) and that the actual fee for records requested in PA15-477 was ultimately $43.40. Based on the fact that the request resulting in appeal PA15-477 is very different from and more focused than the other two requests, that the interim access decision and fee estimate for PA15-477 is identical to the other two decisions and estimates, and that the actual fee charged for responsive records is significantly less than the fee estimate for this request, I find that the fee estimate for PA15-477 was not adequate.

[55] Where the interim decision is found to be inadequate, this office may order the institution to:

- issue a revised interim access decision,
- undertake additional work for the purpose of issuing a revised interim access decision,
- issue a final access decision,
- disallow some or all of the fee.[8]

[56] In Order MO-3360, Adjudicator Higgins recently reviewed circumstances where a fee estimate was based on an inadequate representative sample, and found that the interim access decision was unreasonable and inadequate. He stated:

> I find that the poor quality of the representative samples relied on in this appeal, which were not arrived at in a reasonable manner, and which are clearly in error based on the number of duplicates they contain, as well as the other deficiencies noted above, means that the decision itself is unreasonable and inadequate, and the resulting fee estimates can therefore not be upheld. …

[57] In deciding what remedy should apply in that appeal, Adjudicator Higgins decided that the institution could not charge for search time or preparation time, but could only charge the requester for the photocopying costs.

[58] In the circumstances of appeal PA15-477, I have decided to similarly disallow the ministry to charge the search and preparation fee, and to only charge the photocopying costs. Accordingly, the ministry is only to charge the appellant $3.40 for this appeal.

[8] Order MO-1614.

Issue C: Were the actual fees charged in PA15-476 and PA15-477 calculated in accordance with the requirements of the *Act*?

PA15-476

[59] In its final decision letter dated November 24, 2015, the ministry identifies its fees in appeal PA15-476 as follows:

Description	Cost …	Quantity	Estimate
Search Time	$30.00/hr	22 hrs. 30 min.	$675
Preparation for Disclosure	$30.00/hr	2 hrs. 30 min.	$75
CD-ROM disk	$10	1	$10
TOTAL			$760

[60] In its representations on its fees, the ministry refers to the same information it referred to in its fee estimate decision in support of its fees. The ministry provides little additional information in its representations, notwithstanding that it has now issued a final access decision. The ministry's representations on the final fee read:

> In its final decision letter, the Ministry set out the actual fees charged and these fees included Search Time, Preparation for Disclosure, photocopying and 2 CD-ROMs. These fees are permitted and in fact required by FIPPA to be charged to a requester. The Ministry at no time charged for items outside of the scope of FIPPA.

Analysis and findings

Search Time

[61] The ministry's initial fee estimate stated that it estimated a search time of 22.5 hours. In its final fee it confirms that the final fee for search time is 22.5 hours, and that it is charging the allowable rate of $30/hour. However, even though the ministry has now completed the search, it has not provided any additional details about the searches that were conducted.

[62] The Notice of Inquiry asked the ministry to provide representations in support of its final fee including how the requested records are kept and maintained, what actions were necessary to locate the requested records; and what was the actual amount of time involved in each action. Other than the information referenced in its fee estimate, the ministry has not answered these specific questions. It has provided no additional details to substantiate the search time, has not indicated the record-holdings (electronic or paper) that were searched nor who conducted the searches. It has only provided the information set out in the paragraph above.

[63] In my view, the ministry has not provided sufficient evidence to support its search time of 22.5 hours. In the circumstances, and in the absence of detailed representations in support of its actual search fee, I will not allow the ministry to charge for search time in appeal PA15-476.

Preparation time and CD Rom costs

[64] With respect to the ministry's fee for preparation time, the ministry confirms that it charged $30/hour, as allowed by the *Act*. In its final access the decision, the ministry confirmed that it was providing the appellant with access to certain records and portions of records. Previous orders have confirmed that preparation time in section 57(1)(b) includes time for severing a record. These cases have established that, on average, it takes two minutes per page to sever a record with multiple severances, and I accept that approach. In the circumstances, I am satisfied that the indicated fee for preparation is reasonable. I uphold the ministry's preparation time of 2.5 hours for a total of $75.

[65] I also uphold the ministry's charge of $10 for the CD ROM.

[66] In summary, I uphold the ministry's fee decision in PA15-476 in part, and allow a fee of $85 in this appeal.

PA15-477

[67] In its final decision letter dated November 24, 2015, the ministry identifies its fees in appeal PA15-477 as follows:

Description	Cost …	Quantity	Estimate
Search Time	$30.00/hr	50 min.	$25.00
Reproduction / Photocopying	$0.20/page	17 pages	$3.40
Preparation for Disclosure	$30.00/hr	30 min.	$15.00
TOTAL			$43.40

[68] Although the ministry identifies the final fees chargeable under the *Act*, the ministry has not actually provided me with information confirming the amount of time spent searching and preparing the record for disclosure, as required. However, I determined above that the ministry's fee estimate decision for PA15-477 was inadequate, and that the ministry is not able to charge for search time or preparation time. It can only charge for photocopying costs. The photocopying costs were calculated in accordance with the provisions of the *Act*, and I uphold the ministry's photocopying costs of $3.40.

ORDER:

1. I find that the ministry did not err in making its notification decisions under section 28 of the *Act*.

2. I find that the ministry's fee estimate and interim access decisions for appeals PA15-475 and PA15-476 were adequate, but find that its fee estimate decision in PA15-477 was not adequate, and disallow the ministry's search and preparation time for this appeal.

3. I do not uphold the ministry's search time for appeal PA15-476, but uphold its preparation time and other costs for a total of $85. I also uphold the ministry's photocopy costs in PA15-477 for a total of $3.40.

4. To the extent that the appellant has paid a deposit greater than the amount of fees allowable as set out above, I order ministry to provide the appellant with the appropriate refund.

Original Signed By: March 21, 2017

Frank DeVries
Senior Adjudicator