

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3855

Appeals PA16-408, PA16-409, PA16-410 and PA16-411

Ministry of Transportation

June 13, 2018

Summary: This order addresses an individual's appeal of the fee estimates provided by the Ministry of Transportation in response to four requests submitted under the *Act* for records related to the Highway 427 expansion project. In this order, the adjudicator upholds all four fee estimates and dismisses the appeals.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 57(1)(a), 57(1)(b); Ontario Regulation 460, sections 6, 6.2, 6.3 and 6.4.

Orders and Investigation Reports Considered: Orders MO-2530, PO-3152 and PO-3621.

OVERVIEW:

[1] This order addresses four fee estimate appeals resulting from requests submitted to the Ministry of Transportation (the ministry or MTO) under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for various records related to the expansion of Highway 427.

[2] Following clarification, the four requests were confirmed to be seeking the following information:

Appeal PA16-408 ("408")

All documentation, personal handwritten notes, emails, correspondence, meeting notes, letters regarding anything to do with all lands located between Langstaff Rd and Rutherford Road in Vaughan along the 427 extension corridor. Including but not limited to:

- Discussions, handwritten notes or emails with any landowners
- Terms of Reference for external consultants, retainer letters and correspondences with Appraisers, Planners, expert consultants, TRCA, City of Vaughan, Region of York or landowners
- Appraisal reports
- Purchase and Sale Agreements
- Planning Justification Reports
- Internal reporting documents

Appeal PA16-409 ("409")

All documentation, personal handwritten notes, emails, correspondence, meeting notes, letters regarding anything to do with all lands located between Langstaff Rd and Highway 7 in Vaughan along the 427 extension corridor. (Excluding the file for Part of Lot 9 Concession 9, City of Vaughan).¹

Including but not limited to: ... [same bullet points as in 408]

Appeal PA16-410 ("410")

All documentation, personal handwritten notes, emails, correspondence, meeting notes, letters regarding anything to do with all lands located between Major Mackenzie Road and Rutherford Road in Vaughan along the 427 extension corridor.

Including but not limited to: ... [same bullet points as in 408]

Appeal PA16-411 ("411")

All documentation, emails, correspondence, etc. relating to the Hwy 427 extension project as a whole, from January 1, 2007 to May 5, 2016. Including but not limited to:

¹ This exclusion related to lands specified in a separate, now abandoned, request.

- 427 Extension Environmental Assessment process documents
- discussion notes and communication with Toronto Regional Conservation Authority ("TRCA"), City of Vaughan, Region of York
- Terms of Reference
- Planning justification reports
- Internal reporting documents

[3] MTO issued interim decisions with fee estimates in each of the four requests. The ministry advised the requester that fulfilling the requests would necessitate "an extensive search for responsive records in the Central Region Property Office of the ministry's Provincial Highways Management Division." Additionally, in the interim decisions for 408, 409 and 410, the ministry advised the requester that the "number of estimated pages represents records from 30 [30, 27, respectively] property files in the identified section of the Highway 427 extension project." The four fee estimates provided were based on search and photocopying charges for 18,000, 18,000, 16,200 and 82,635 pages, respectively.

[4] The ministry advised that once each fee was paid, a time extension to process each appeal might be required. The ministry also advised that partial access would be granted with some information withheld under sections 17(1) (third party information), 18 (economic and other interests), 19 (solicitor-client privilege) and 21(1) (personal privacy). Viewing the fee estimates to be excessive, the requester (now the appellant) appealed all four interim decisions to this office.

[5] A mediator was appointed to explore resolution of the four appeals together. During mediation, MTO agreed to review the fee estimates based on providing the responsive records in electronic format on USB keys, instead of paper. The new fee estimates issued by MTO accounted for scanning the records to USB keys, which reduced the photocopying fees. At the same time, estimates for preparation time, which had been omitted previously, were added. The revised fee estimates for the four requests were \$7,645 (408), \$7,645 (409), \$6,895 (410) and \$8,150 (411), respectively.² The details of these fee estimates are not set out in this decision, since they are not the fee estimates that are before me for review. As I explain later in the overview, MTO issued second revised fee estimates during the adjudication stage of the appeals, and those are the fee estimates at issue in this order.

[6] The appellant was not satisfied with the revised fee estimates and continued to

² In each revised fee estimate, the ministry noted: "As records have not been collected, some numbers included in these calculations are estimates and are subject to change. (i.e. total number of pages, time required to sever records, number of USBs required)."

view them as excessive. The appellant also objected to the inclusion of preparation charges in the ministry's revised fee estimates because these charges were not included in the initial fee estimates. As it was not possible to achieve a mediated resolution of the four appeals, they were moved to the adjudication stage for an inquiry.

[7] I began a joint inquiry into the four appeals by sending a Notice of Inquiry to the ministry initially, seeking representations in support of the four fee estimates. In response to the Joint Notice of Inquiry, the ministry issued a second set of revised fee estimates and sent them to the appellant. MTO also provided submissions in support of the second revised fee estimates to me, which I provided to the appellant. The appellant submitted representations in response, which I shared with MTO, who provided brief reply representations.

[8] In this order, I uphold the second set of revised fee estimates produced by the MTO in Appeals PA16-408, PA16-409, PA16-410 and PA16-411, and I dismiss the appeals.

DISCUSSION:

Are the ministry's fee estimates reasonable?

[9] Section 57(1) requires an institution to charge fees for requests under the *Act*. The parts of the section that are relevant in these appeals 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;

[10] More specific provisions detailing the fees for access to general records are found in sections 6, 7 and 9 of Regulation 460 to the *Act*. The relevant sections state:

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.

[11] Where the fee for access to a record exceeds \$25, an institution must provide the requester with a fee estimate, as occurred here.³ Where the fee is \$100 or more, the fee estimate may be based on either the actual work done by the institution to respond to the request, or a review of a representative sample of the records, and/or the advice of an individual who is familiar with the type and content of the records.⁴

[12] 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.⁵ The fee estimate also helps requesters to decide whether to narrow the scope of a request in order to reduce the fees.⁶

[13] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.⁷

Second set of revised fee estimates

[14] Before setting out the representations provided, below, the second revised fee estimates provided to the appellant in May 2017 are outlined for reference.

PA16-408

- Search time fee removed
- Record Preparation time:

Scanning to convert records into an electronic format (based on 1,500 pages scanned per hour):

18,000 pages / 1,500 = 12 hours x \$30/hour = \$360

Approximately 75% of the records will need to be redacted:

18,000 pages x 75% = 13,500 pages

13,500 pages x 1 minute (severing time/page) = 13,500 minutes

³ See section 57(3) of the *Act*.

⁴ Order MO-1699.

⁵ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁶ Order MO-1520-I.

⁷ Orders P-81 and MO-1614.

13,500 minutes / 60 minutes = 225 hours

225 hours x \$30/hour = \$6,750

- USB for electronic records = \$10

Total – \$360 + \$6,750 + \$10 = \$7,120

PA16-409

- Search time fee removed

- Record Preparation time:

Scanning to convert records into an electronic format (based on 1,500 pages scanned per hour):

18,000 pages / 1,500 = 12 hours x \$30/hour = \$360

Approximately 75% of the records will need to be redacted:

18,000 pages x 75% = 13,500 pages

13,500 pages x 1 minute (severing time/page) = 13,500 minutes

13,500 minutes / 60 minutes = 225 hours

225 hours x \$30/hour = \$6,750

- USB for electronic records = \$10

Total – \$360 + \$6,750 + \$10 = \$7,120

PA16-410

- Search time fee removed

- Record Preparation time:

Scanning to convert records into an electronic format (based on 1,500 pages scanned per hour):

16,200 pages / 1,500 = 11 hours x \$30/hour = \$330

Approximately 75% of the records will need to be redacted:

16,200 pages x 75% = 12,150 pages

12,150 pages x 1 minute (severing time/page) = 12,150 minutes

12,150 minutes / 60 minutes = 202.5 hours

202.5 hours x \$30/hour = \$6,075

- USB for electronic records = \$10

Total – \$330 + \$6,750 + \$10 = \$6,415

PA16-411

- Estimated Search time: 5 hours @\$30.00/hr = \$150

- Record Preparation time:

Scanning to convert records into an electronic format (based on 1,500 pages scanned per hour):

13,785 pages/1,500 = 9 hours x \$30/hour = \$270

Approximately 30% of the records will need to be redacted:

64,385 pages x 30% = 19,315

19,315 pages x 30 seconds (severing time/page) = 579,450 seconds

579,450 seconds / 60 seconds = 9,657 minutes

9,657 minutes / 60 minutes = 161 hours

161 hours x \$30/hour = \$4,830

- 5 USB for electronic records = \$50

Total – \$150 + \$270 + \$4,830 + \$50 = \$5,300

[15] As with the initial and first revised fee estimates, the second revised fee estimates all contained the following note:

As records have not been collected, some numbers included in these calculations are estimates and are subject to change. (i.e. total number of pages, time required to sever records, number of USBs required).

Representations

[16] For the requests in 408, 409 and 410, the ministry submits that three staff

members retrieved the files of the 87 property owners⁸ from storage and conducted a search of all emails and electronic files by using key words.

[17] The ministry explains that it used the following methodology to prepare the page estimates for 408, 409 and 410: it took nine of the hard copy property owner files, which it considered a representative sample, and categorized them as small, medium and large, depending on size. The small files contained an average of 280 pages, the medium files averaged 600 pages and the large files averaged 920 pages. Next, the staff determined that about 25 files are small-sized, 37 files are medium, and 25 files are large and, additionally, that all records in each file are responsive to these requests. The total of 52,200 pages was calculated by applying the averages of the sample file counts to each file estimated to fall into the small, medium and large-sized categories.

[18] MTO submits that it calculated the preparation time for these three fee estimates based on the need to scan and sever the records.

[19] First, property records are kept in hard copy format and since the appellant indicated his interest in receiving these in electronic format, they would have to be scanned. Observing that the IPC has upheld as reasonable estimates of scanning time of 100 pages per hour (Order MO-2530) and 1,200 pages per hour (PO-3152), MTO submits that it is using a figure of 1,500 pages per hour.

[20] Second, for estimating the preparation time to be accorded to severance, the ministry determined that 75% of the pages would require redaction, explaining that it based this figure on a prior access request by the same appellant for his own property file. To account for the fact that the appellant's prior request sought property records containing his own personal information, the MTO estimated how many pages in the appellant's file would have been redacted for personal information had someone other than the appellant requested his file. Having done this, the ministry applied the resulting 75% figure to 408, 409 and 410. Next, the ministry calculated the time spent on severance by multiplying the number of pages requiring severance by one minute per page. MTO submits that this latter figure is a conservative estimate since the IPC has recognized two minutes per page as an appropriate standard for pages requiring redaction.⁹

[21] For the request in 411, the ministry submits that six staff from its Environmental, Major Projects and Planning and Design offices for the Central Region office of its Provincial Highways Management Division were involved in preparing the fee estimate. The ministry notes that the time period for 411 spans nine years and four months. MTO submits that the revised search time estimate of five hours is based on the time taken by those six employees to locate 13 boxes of responsive records stored in two locations, individual staff hard copy files, and key word searches of their email accounts.

⁸ This figure is based on the sum of 30, 30 and 27 responsive property owners' files.

⁹ MTO refers to Orders MO-2908 and PO-3334.

[22] The ministry submits that the revised hard copy page estimate of 13,785 pages for 411 is based on locating 10 boxes containing an average of 650 pages (total 6500 pages) in the Major Projects Office. Also in that same office, staff identified the 427 Transportation Corridor Environmental Assessment Study (350 pages plus 13 appendices averaging 250 pages each for an estimated total 3600 pages) and the 427 Transportation Corridor Preliminary Design Study (approximately 85 pages plus eight appendices averaging 75 pages each for a total of 685 pages). Finally, the ministry states that in the Environmental Office, staff located three boxes containing an average of 1,000 pages of records for a total of 3,000 pages.

[23] MTO also provided a breakdown of the page estimate for electronic records. In the Major Projects Office, staff identified 10 CDs, each containing an estimated 3,000 pages of records, plus 50 electronic folders each containing an estimated 300 pages for a total of 45,000 pages. MTO estimates that in the Environmental Office, there would be 400 responsive emails, plus attachments containing an average of three and a half pages for a total of 1,400 pages. In the Planning and Design Office, the ministry estimates that there would be 1,400 responsive emails plus attachments estimated to contain an average of three pages for a total of 4,200 pages.

[24] Regarding preparation time for 411, the ministry refers back to its explanation of the charge for scanning the records in 408, 409 and 410, which is a rate of 1,500 pages per hour. Finally, for the portion of the preparation fee in 411 accorded to severance, the ministry states that it based this on a figure of 30% of the records requiring redaction at 30 seconds per page, which is two pages per minute. The ministry submits that the severance rate for 411 differs from the one used for property records in 408, 409 and 410 based on the assumption that the general project records will not contain the same amount of exempt information as would files associated with property owners and compensation.

[25] In response, the appellant refers to the original fee estimates provided to him for the four access requests, noting that most of the fees were for photocopying charges, but those charges were reduced because the MTO agreed to put the documents on USBs. The appellant is concerned, however, because although the MTO eliminated photocopying fees in the revised fee estimates, it added charges for severing the records and this "eliminated the savings. In fact, the fee estimate went up." The appellant expresses the view that this particular revision represents "a deliberate attempt by MTO to maintain a prohibitively high fee for access as opposed to actually recovering costs under the Act, as such severing costs ... were never originally contemplated."

[26] The appellant provided documents related to the fee estimate he received in another access request he submitted for the same Highway 427 extension project, but "scoped to just one property as opposed to the entire landholdings in the extension." The appellant argues that his other request represents "a very accurate sample size for the whole 427 extension" and submits that while there were severances required in the

other request, they were minimal and did not amount to more than 5-10% of the records. For this reason, the appellant submits that the MTO's (second) revised fee estimates for severance are unjustified and should be reduced to 5-10% of the pages for these four fee estimates, as "accepted by MTO already [in his other request]."

[27] In reply, the ministry rejects the appellant's argument that a 5-10% figure for severance of records relating to his own property files serves as a valid precedent for the fee estimates now at issue. The ministry outlines again the methodology for arriving at the 75% estimate of records in 408, 409 and 410 requiring severance and argues that it is appropriate because the property owners' files could be expected to contain similar amounts of severable personal information of individuals other than the appellant.

[28] MTO also rejects the appellant's comparison between the fees for the access request for his property and the general records requested for 411. Specifically, the ministry notes that the request in 411 is for virtually every record having to do with the Highway 427 expansion project over nearly a decade. The ministry submits that the wide range of records that are responsive will "yield a wide range of exemptions requiring or allowing severances." The ministry lists the types of records it considered in arriving at 30% as the proportion of records requiring severance:

- Personal information in correspondence related to the environmental and public consultation process. In particular, as part of the Public Information Centre procedure, direct correspondence from and to members of the public;
- Legal opinions/positions related to dealings with the public, municipalities and other government agencies;
- Third party commercial and personal information in records relating to consultant acquisition and procurement;
- Personal information in internal or external emails where property owners and other stakeholders may be mentioned by name, along with residential addresses, emails addresses or phone numbers;
- Advice and recommendations regarding the project provided to senior management; and/or
- Cabinet records relating to a waiver of hearings of necessity (under section 6(3) of the *Expropriations Act*) sought for the Highway 427 expropriation process.

Analysis and findings

[29] In reviewing the MTO's fee estimates, my responsibility is to ensure that the estimated amounts are reasonable in the circumstances and that they have been calculated in accordance with the *Act* and Regulation 460. The burden of establishing

the reasonableness of the estimates rests with the MTO.¹⁰ To meet this burden, the ministry was required to provide an adequate explanation of how the fee estimates were calculated, as well as sufficiently detailed evidence to support the estimates. I may uphold the fee estimate or vary it.

[30] Based on my review of the evidence in the four appeals before me, I am satisfied that the ministry's (second revised) fee estimates are reasonable and were calculated in accordance with the *Act*, for the following reasons.

[31] In reviewing the fee estimates before me, I could not fail to acknowledge the broad scope of the requests. Each request contains the words "all documentation," and I note, as the ministry did, that the request in 411 contemplates responsive records "relating to the Hwy 427 extension project as a whole" that span more than a nine-year period. The breadth of a request is a significant factor in determining the amount of the fee charged for processing it. Past orders have affirmed that where a request is broad and involves records that are likely to be dispersed through an institution, high search and preparation fees may apply.¹¹ Further, as I stated above, the purpose of a fee estimate is to give a requester sufficient information to make an informed decision about whether to pay the fee and pursue access,¹² or whether to narrow the scope of a request in order to reduce the fees.¹³ For each of these four requests, the ministry issued three separate fee estimates and, although the calculations were refined and the numbers changed somewhat, the fees remain sizeable. However, there is little in the materials to suggest that the appellant sought to narrow the scope of the requests during the appeals process upon consideration of the fee estimates in order to reduce the fees in this manner.

[32] Section 57(1) of *FIPPA* and Regulation 460 establish a mandatory "user-pay" fee scheme under which the ministry is required to charge specific amounts for certain actions carried out in processing a request. The user-pay principle is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so.¹⁴

[33] Turning to my review of the four fee estimates, I begin by accepting the ministry's approach of selecting nine of the 87 property owner files to create a representative sample of the file sizes that might be encountered in locating responsive records for 408, 409 and 410. I am also satisfied by the ministry's description of how it arrived at the estimate of the number of pages that would be responsive to the request in 411. Therefore, I find the ministry's estimates of 18,000, 18,000, 16,200 and 64,385

¹⁰ Order 86.

¹¹ Orders PO-3375, PO-3379, PO-3592 and MO-3446.

¹² Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

¹³ Order MO-1520-I.

¹⁴ The matter of what is "fair and equitable" is addressed through fee waiver under section 57(4), but that issue is not before me.

pages for 408, 409, 410 and 411 to be reasonable and supported by the scope and context of the requests.

[34] Under section 57(1)(a) of the *Act* and section 6.3 of the Regulation, the ministry may charge a fee of \$7.50 for each 15 minutes for searching records. Effectively, this means an hourly rate of \$30.00. Although the ministry could levy a fee for the search component of each of these four requests, its revised estimates for 408, 409 and 410 eliminated the search fees. I have considered this fee concession as part of my decision as to whether the ministry's overall fees for each request are reasonable. Regarding 411, I am satisfied that the five hours of search time estimated for "six employees to locate 13 boxes of responsive records stored in two locations, individual staff hard copy files, and key words searches of their email accounts" represents a reasonable estimate of the time required. Consequently, I uphold the ministry's \$150 fee for the search component of 411.

[35] The fees that can be charged by the ministry for preparing the records for disclosure fall under section 57(1)(b) of *FIPPA* and section 6.4 of the Regulation. The rate for this activity is also \$30.00 per hour. I considered the ministry's evidence about the appropriate percentage of the preparation time to be accorded to severing the responsive records for 408, 409 and 410. I have also considered the appellant's concerns about that approach. On balance, I accept that the ministry appropriately relied on its past experience with the appellant's own property file as a guide in arriving at the 75% figure for estimating the proportion and number of pages in 408, 409 and 410 that would require severance. Although the appellant disputes that figure, his position that redacting 5-10% of the records is "reasonable" is not supported by any evidence. I agree with the ministry that the responsive property owners' files in 408, 409 and 410 could be expected to contain a similar proportion of their personal information as the appellant's own file did. Therefore, I accept the calculated figures for pages requiring severance that result from the application of 75% to the page estimates for those requests.

[36] Additionally, in calculating the time to be spent severing the records for 408, 409 and 410, the ministry used one minute per page, rather than the two minutes per page that past orders have held to be reasonable.¹⁵ Therefore, while estimates for severance levied at two minutes per page may have been presumptively reasonable, I will uphold the ministry's fee estimate of one minute per page for 408, 409 or 410, resulting in preparation fees of \$6,750, \$6,750 and \$6,075. In the circumstances, the severance component of the preparation fee estimate for requests 408, 409 and 410 represents a further fee concession by the ministry.

[37] With regard to this same component of the fee estimate for 411, I also accept that the ministry's estimate of 30% of the responsive records requiring severance is

¹⁵ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

reasonable. I will also uphold the conservative rate of two pages per minute, based on the ministry's explanation of its different approach to severing the general records for 411, as compared to the responsive property owners' files in 408, 409 and 410. I agree with the ministry that the responsive records in 411 could reasonably be expected to contain information that may be withheld under numerous exemptions, including mandatory ones. Further, I accept that the severances for general project records in 411 would not be as numerous as in the other files that contain property owners' personal information, including details of the compensation for expropriation. I uphold the ministry's fee estimate of \$4,830 for severance of responsive records in 411 at a rate of two pages per minute, which also represents a fee concession and savings, given the rate typically upheld by this office as reasonable.

[38] Having upheld the ministry's severance estimates, I also reject the appellant's claim that the MTO's inclusion of fees for severance in the second revised fee estimates is evidence of MTO intentionally seeking to limit access, rather than recover reasonable costs. A line item for severance may not have appeared in the initial and first revised fee estimates, but the ministry put the appellant on notice that partial access would be granted with some information withheld under a number of exemptions. Pursuant to section 57(1)(b) of the *Act*, and in accordance with the user-pay principle, the ministry was entitled to charge fees for this activity. Having found the fee estimates themselves to be reasonable in this respect, the appellant's claim provides no basis for interfering with them.

[39] I must also review the preparation component of the ministry's four fee estimates associated with scanning records to convert them to electronic format for disclosure on a CD or USB. Beginning with Order MO-2530, this office has considered and established the method of accounting for this activity under section 6 of Regulation 460. In that decision, Adjudicator Laurel Cropley observed that although the Regulation does not specifically refer to scanning paper records in order to provide the information on CD (or USB), because the activity is a necessary component of producing paper records in electronic format, scanning can be considered to be an activity that falls under section 6.4 of Regulation 460 as a charge "for preparing a record for disclosure." This approach, which was adopted and refined by Adjudicator Catherine Corban in Orders PO-3152 and PO-3621 has the effect of minimizing costs to an appellant since scanning paper records permits them to be produced electronically and on a CD or USB for \$10 under 6.2 of the Regulation, rather than charging the photocopying fee of 20 cents per page in accordance with section 6.1. Importantly, more recent orders have established a higher rate of scanning per hour as reasonable. Whereas in Order MO-2530, the adjudicator accepted 100 pages per hour as an acceptable rate to charge, in Order PO-3152, Adjudicator Corban concluded that a more appropriate estimate of time required to prepare and scan paper records for disclosure on CD was 1,200 pages per hour.¹⁶ In the fee estimates for 408, 409 and 410, the ministry has used a figure of

¹⁶ See also Orders MO-3340, MO-3502.

1,500 pages per hour. Based on recent past orders of this office, such as Order PO-3152, I accept that it would be reasonable for the ministry to charge the appellant \$30.00 for each hour required to scan paper records to prepare them for disclosure on USB at the rate of 1,200 pages per hour. Given the rate concession on this point by the ministry, I will uphold the ministry's use of 1,500 pages scanned per hour to calculate the time associated with this aspect of preparing the records.

[40] Here, I note that this method of calculating the scanning component of preparation time is predicated on the responsive records being in paper format, since there is no need to scan electronic records because they can simply be copied directly to USBs for disclosure. The ministry indicated in its representations on 408, 409 and 410 that its staff "conducted a search of all emails and electronic files by using key words." Neither the fee estimate decisions for 408, 409 and 410 nor the ministry's representations refer to any of the records being in electronic format. On the basis of the ministry's evidence that the fee estimate for scanning is based on all responsive records being in paper format, I will uphold the scanning portion of the ministry's fee estimates for 408, 409 and 410 in the amounts of \$360, \$360 and \$320, respectively. However, if any records identified upon completion of the requests are in electronic format, the ministry's final fee for this activity must be adjusted to account for the relative proportions of paper and electronic formatted records.

[41] The ministry's fee estimate for 411 contemplates 50,600 of the estimated total of 64,385 pages as electronic format records and 13,785 pages in paper format. Based on the discussion above, I find the ministry's estimate of \$270 to scan the 13,785 pages of paper records into electronic format for copying to a USB to be reasonable.

[42] Finally, the ministry's fee estimates include a charge of \$10 for each of the USBs for 408, 409, 410 and 411, which is in keeping with section 6.2 of the Regulation. I am satisfied that charging a fee of \$80 for eight USBs for the four requests is reasonable and fair, and I will uphold it.

[43] In sum, the evidence provided supports the ministry's page estimates for the four requests. I am also satisfied that the ministry used the proper hourly rates set out in Regulation 460 for calculating the search fees for 411. I am also satisfied that the preparation fees for 408, 409, 410 and 411 are reasonable. This part of the fees includes the estimated cost of scanning the paper records to USBs, as well the severance of exempt information prior to disclosure. The MTO has eliminated search fees for 408, 409 and 410 and has also claimed more conservative estimates for the scanning of paper records and for its severance activity, all of which results in cost savings for the appellant. In light of these conclusions, I find that the four revised fee estimates at issue in this decision are reasonable, and I uphold them.

ORDER:

I uphold the ministry's second revised fee estimates from May 2017, and I dismiss Appeals PA16-408, PA16-409, PA16-410 and PA16-411.

Original Signed by: _____
Daphne Loukidelis
Adjudicator

_____ June 13, 2018