Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-3648-I

Appeals MA16-642 and MA16-644

Ottawa-Carleton District School Board

August 15, 2018

Summary: This interim order addresses the issues relating to parts 4 and 6 of a six-part request for records relating to bullying or racism at a specified school. The board issued a fee estimate decision for part 6, and denied the appellant's request for a fee waiver for it. In this interim order, the adjudicator upholds the board's fee estimate for the records located for part 6. She orders the board to waive 50% of the fee. She also orders the board to search for any printed emails that predate July 2014.

With respect to part 4 of the request, the adjudicator finds that the board's decision letter for it was adequate.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17 and 45(4)(c).

Orders and Investigation Reports Considered: Orders M-583, MO-3507, PO-3373 and MO-3477.

Cases Considered: *Nova Scotia (Workers' Compensation Board) v. Martin*, [2003] 2 S.C.R. 504; Workplace Safety and Insurance Appeals Tribunal *Decision No. 409/071*, 2007 ONWSIAT 1663 (CanLII).

BACKGROUND:

[1] A media requester submitted a six-part request to the Ottawa-Carleton District

School Board (the board), pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester specified that each part be treated as a separate request.

[2] This interim order deals with parts 4 and 6 of the request, which are for the following records:

> The last available drafts or copies of any memorandums, briefing notes or reports prepared, received or reviewed by [named employee #1] or [named employee #2] that were generated between May 24, 2016 and the date that the Ottawa-Carleton District School Board begins processing this request that relate to, that mention, or that discuss the issue of bullying or racism within one of the school board's schools or that relate to, that mention, or that discuss the issue of bullying or racism by the school board.
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> Last available draft or copies of any memorandums, briefing notes, reports or personal notes prepared, received or reviewed by [named employee #1], [named employee #2] or [named employee #3] that were generated between Sept. 1, 2012 and the date that the Ottawa-Carleton District School Board begins processing this request that relate to, that mention, or that discuss former [named school] student [named student].

[3] In addition, he requested a fee waiver stating: "Please also waive any search or additional administrative fees required to retrieve these records as they may relate to public safety issues and are matters that are in the public interest to be disclosed…" He also provided a consent form signed by the mother of a former student.

[4] The board issued a decision for part 4, stating the following:

> Records responding to this request have been collected as part of the search results for your other requests. (MFOI# 16-0012, #16-0013, #16-0014, #16-0016 and #16-0017.) As such, this request will be deemed as having no records responsive to the request.

[5] Following a 30-day time extension, the board issued a fee estimate for part 6 in the amount of $527.10 and requested a deposit of $263.55 to complete the request. The board estimated that the degree of disclosure for this request is approximately 5%. It also identified a number of exemptions that it will likely apply to deny access to some of the responsive records.

[6] The requester, now the appellant, appealed the board's decisions to this office.

[7] During mediation, the appellant questioned the adequacy of the board's decision for part 4 of the request while the board took the position that its decision met the requirements of the *Act*.

[8] As no further mediation was possible, the appeal was moved to the adjudication stage, where an adjudicator conducts an inquiry under the *Act*. The parties were invited to submit representations, which were shared in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*.

[9] In this interim order, I uphold the board's fee estimate for the records located for part 6. I order the board to waive 50% of the fee. I also order the board to search for any printed emails that predate July 2014.

[10] With respect to part 4 of the request, I find that the board's decision letter for it was adequate.

ISSUES:

A. Should the fee estimate be upheld for part 6 of the request?

B. Should the fee be waived for part 6 of the request?

C. Did the board conduct a reasonable search for records with respect to part 6?

D. Did the board's decision on part 4 of the request comply with the requirements of section 22(1)(b) of the *Act*?

DISCUSSION:

A: Should the fee estimate be upheld for part 6 of the request?

[11] Where the fee exceeds $25, an institution must provide the requester with a fee estimate [Section 45(3)].

[12] 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.[1]

[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.[2]

[14] The fee estimate also assists requesters in deciding whether to narrow the scope

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[1] Order MO-1699.
[2] Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

of a request in order to reduce the fees.[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 823, as set out below.

[17] Section 45(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.

[18] More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 823. Those sections read:

> 6. The following are the fees that shall be charged for the purposes of subsection 45(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.
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> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.

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[3] Order MO-1520-I.
[4] Orders P-81 and MO-1614.

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.

[19] The board's fee estimate for part 6 of the request is broken down as follows:

Search

1.33 hours (80 minutes)

80 @ 0.5 (7.5 ÷ 15 = $0.50 per minute)

Total search cost: $40.00

Photocopying

203 records @ 2 pages per record – 406 pages

406 pages @ $0.20 per page

Total photocopying cost: $81.20

Preparation

406 @ 2 minutes per page – 812 minutes

812 @ 0.5 (7.5 ÷ 15 = $0.50 per minute)	
Total preparation cost:	$406.00
Total cost:	**$527.20**

[20] In its representations, the board submits that its fee estimate is reasonable. It took the following actions to locate the requested records. Six senior managers were advised of all six of the requests and asked to undertake a search for responsive records and provide them to the MFOIPPA coordinator. Records were searched electronically; the Corporate Records department undertook a high level electronic record scan. For email records, the MFOIPPA coordinator made a request for access to the email records of all employees who were considered to have records responsive to the request.

[21] In addition, the board states that its fee estimate for all six parts of the appellant's request was based upon actual work done to search the records electronically. The board used the results of its search to estimate the number of records responsive to each part of the request. The board also states that it looked at a representative sample of the records selected from the index to determine the records responsive to the request and the nature of the exemptions. It further submits that the search time was based solely on searching for electronic records and it was estimated that 120 records per hour had been searched electronically.

[22] In his representations, the appellant submits that the fee estimate is unreasonable. He submits that charging "exorbitant" fees to access records is an attack on his right of free speech. The appellant also submits that an educational institution or organization should be promoting the free exchange of information, ideas and debates, and should not be creating barriers to access to information. He further submits that a requester should not be required to pay for search and preparation fees related to inadequate electronic systems and databases.

[23] In its reply representations, the board submits that its proposed fees are reasonable and appropriate. It submits that the fees have been calculated in accordance with the provisions of the *Act* and the applicable regulations. The board also submits that the appellant's request is broad and he has refused to make any reasonable effort to limit the scope of the request.

[24] In his sur-reply representations, the appellant responds that it has been impossible for him to narrow his search because the board has been secretive about the information it is withholding from the public about this file. He states the following:

> [Board] officials have refused to give media interviews and answer questions about their actions. This excessive secrecy and a lack of

> accountability has forced [him] to seek answers to questions by filing formal freedom of information requests. So if the [board] wishes to narrow the scope of requests, a more democratic and responsible course of action would be for it to be more transparent and proactively disclose information without having to be forced to do so or complaining about it.

[25] In addition, he submits that requesters should not be held responsible for inadequacies in the record-keeping or capacity to search for records by public institutions. The appellant states that public institutions have a responsibility to be prepared to respond to a request for access to information.

Analysis and findings

[26] In determining whether to uphold a fee estimate, my responsibility under section 45(3) of the *Act* is to ensure that the estimated amount is reasonable. The burden of establishing the reasonableness of the fee estimate rests with the board. To discharge this burden, the board must provide me with detailed information as to how the fee estimate has been calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

[27] I note that, during the inquiry, the appellant confirmed that he wishes to receive the records on a CD-ROM. As such, the photocopying cost ($81.20) is replaced with the cost of a CD-ROM ($10.00).[5]

[28] For the reasons that follow, I find the board's fee estimate for the searches it has conducted to date to be reasonable. I note that the search fee is based on the actual search time for electronic and paper records. I also note that the board estimates that the degree of disclosure for the request is approximately 5%. The board is relying on a number of exemptions, such as sections 10(1) (third party information), 14 (personal privacy), 7(1) (advice or recommendations), 9(1) (relations with governments), and 12 (solicitor-client privilege). In the circumstances, I am satisfied that the board's estimated time to sever these records is reasonable. Accordingly, on the basis of the board's search and the identified preparation fees, I uphold the board's fee estimate for the electronic search.

[29] I also note that the appellant argues that requesters should not be held responsible because of inadequacies in the record keeping or capacity to search for records by public institutions. In Order M-583, former Commissioner Tom Wright found that institutions are not obliged to maintain records so as to accommodate the various ways in which an access request could be framed. In any event, the search time stipulated by the board does not indicate to me any inadequacies in this regard. For the

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[5] I also note that the appellant asks, in his representations, for me to comment whether the two attached emails would fall under the scope of his request. As the issues in this appeal are fee estimate and fee waiver, I decline to make any comment on that issue.

above reasons, I uphold the board's fee estimate for the electronic search it has conducted.

B: Should the fee estimate for part 6 of the request be waived?

[30] Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

> 45. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,
>
> > (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
> >
> > (b) whether the payment will cause a financial hardship for the person requesting the record;
> >
> > (c) whether dissemination of the record will benefit public health or safety; and
> >
> > (d) any other matter prescribed by the regulations.
>
> 8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> > 1. Whether the person requesting access to the record is given access to it.
> >
> > 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

[31] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters pay the prescribed fees associated with processing a request, unless it is fair and equitable that they not do so. The fees referred to in section 45(1) and outlined in section 8 of Regulation 823 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees.[6]

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[6] Order PO-2726.

[32] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision.[7]

[33] The institution or this office may decide that only a portion of the fee should be waived.[8]

Fair and equitable

[34] For a fee waiver to be granted under section 45(4), the test is whether any waiver would be "fair and equitable" in the circumstances.[9] Factors that must be considered in deciding whether it would be fair and equitable to waive the fees are listed in sections 45(4)(a) to (d). Here, the appellant raises section 45(4)(c).

[35] The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 45(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
    a. disclosing a public health or safety concern, or
    b. contributing meaningfully to the development of understanding of an important public health or safety issue
- the probability that the requester will disseminate the contents of the record[10]

[36] The focus of section 45(4)(c) is "public health or safety". It is not sufficient that there be only a "public interest" in the records or that the public has a "right to know". There must be some connection between the public interest and a public health and safety issue.[11]

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[7] Orders M-914, P-474, P-1393 and PO-1953-F.
[8] Order MO-1243.
[9] See *Mann* v. *Ontario (Ministry of Environment)*, 2017 ONSC 1056.
[10] Orders P-2, P-474, PO-1953-F and PO-1962.
[11] Orders MO-1336, MO-2071, PO-2592 and PO-2726.

Other relevant factors

[37] For a fee waiver to be granted under section 45(4), it must be "fair and equitable" in the circumstances. In addition to the factors that must be considered under section 45(4), other relevant factors must be considered when deciding whether or not a fee waiver is "fair and equitable." These may include:

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;
- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether the requester has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.[12]

Parties' representations

[38] In its representations, the board submits that it would not be fair and equitable to waive the fee. It submits that the actual cost of processing, collecting and copying the record is higher than the fee estimate. The board also submits that the appellant has provided no information that would assist it in determining if the payment of the fee would cause financial hardship.[13]

[39] In addition, the board submits that the appellant has provided no information that would allow it to determine if the dissemination of the records would benefit public health or safety. It points out that the request relates to records regarding allegations of bullying involving an individual student. These allegations are a matter of public record as a result of court proceedings and multiple media articles. As such, the board submits that public health and safety will not be affected or improved by the release of these records.

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[12] Orders M-166, M-408 and PO-1953-F.

[13] Financial hardship is listed in section 45(4)(c) as one of the factors that must be considered in determining whether a fee waiver would be fair and equitable. However, the appellant has not argued this factor.

[40] In his representations, the appellant submits that the board should waive the fee to encourage free speech about the issue of bullying. He submits that the responsive records would encourage an open debate and discussion of the issue of bullying, and, therefore, they could provide lessons and critical knowledge for any public or private school in Ontario, Canada and the rest of the world. The appellant also submits that the information surrounding this case has serious implications for public safety due to the following:

> They relate specifically to the capacity of educational institutions to deliver on their mandate to provide healthy and safe environments and to demonstrate leadership and to provide guidance and education for the youngest members of our society.

[41] In addition, he submits that there is evidence that the board has been obstructive and secretive with respect to its policies in addressing bullying. The appellant refers to information referenced in the court proceedings in support of his position.

[42] In its reply representations, the board submits that the appellant has provided no evidence or reasonable submissions as to why he or his employer cannot pay the applicable fees and should, therefore, be entitled to a waiver of those fees.

[43] In his sur-reply representations, the appellant submits that it is well known that media outlets across Canada are suffering and on the verge of bankruptcy. He also submits:

> [The newspaper for which the appellant works] has also publicly disclosed that it is not a profitable media outlet. As stated in [his] previous submission, these records are related to matters of public safety and in the public interest.

Analysis and findings

[44] Having reviewed the representations of the parties and the factors identified as relevant to determine whether 45(4)(c) applies, I find that the dissemination of the requested records will benefit public safety within the meaning of that provision.

[45] I note that the appellant submits that there is a public interest in the subject matter of the requested records as they concern bullying or racism in a public school. The appellant also submits that the subject matter of the records relates directly to a public safety issue. I further note the board makes no submissions with respect to these two factors.

[46] I find there is a public interest in the subject matter of the requested records, and the records relate directly to a public safety issue. Although the records are about specific incidents with respect to a specific student, the broader topics of bullying and

racism in schools and school yards are of interest to the general public, especially to parents and educators.

[47] What is contentious between the parties is whether the dissemination of the records would yield a public benefit by disclosing a safety concern, or by contributing meaningfully to the development of understanding of an important safety issue.

[48] While the appellant argues that the dissemination of the records would yield a public benefit, the board disagrees and argues that they would not yield a public benefit for two reasons. One, the allegations are a matter of public record due to court proceedings and multiple media articles. Two, the appellant has not provided any information to determine if the dissemination of these records would benefit public safety.

[49] Although the allegations and some details of the incidents are in the public realm, the specific details on how these matters were addressed by the board are not. As such, I find that the dissemination of the records would yield a public benefit. It would provide the public with more details on what occurred. I have also considered the finding of the Small Claims Court to be of significance.

[50] While I have found that dissemination of the requested records would benefit public safety, I will now consider whether other relevant factors apply in order to determine if it would be fair and equitable to waive the fee in the circumstances.

[51] There are a number of other relevant factors to consider. One factor is whether the request involves a large number of records. In this case, the board has found 203 responsive records, which is a large number of records. Another factor to consider is whether waiver of the fee would shift an unreasonable burden of the cost of processing the request from the appellant to the board. I am mindful of the legislature's intention to include a user-pay principle in the *Act.* 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. The fees referred to in section 45(1) are mandatory unless the appellant can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it.[14]

[52] After considering the representations of the parties, and given my finding concerning public safety, I find that the evidence supports a finding that it is fair and equitable to waive 50% of the fees. In my view, this respects the user-pay principle contained in the *Act*, while making the records more accessible to the appellant, without shifting an unreasonable burden to the board.

[53] Accordingly, I order the board to waive 50% of the fee in this appeal, which

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[14] Order PO-2726.

would result in a fee estimate of $228.10.

[54] As a final matter, in his representations and sur-reply representations, the appellant raises a number of constitutional claims under the *Charter of Rights and Freedoms* (*Charter*), including that charging "exorbitant" fees for access to records is an attack on freedom of speech and contravenes section 2(b) of the *Charter*. I have not addressed this argument as at the time it was made the appellant did not have the proper factual foundation.[15] As a result of my finding in this order and in Orders MO-3569 (dealing with part 1), MO-3627 (dealing with part 2), MO-3632 (dealing with part 3), and MO-3636 (dealing with part 5) the board's fees have been reduced significantly.

[55] Furthermore, the appellant has not met the procedural requirements of raising a *Charter* issue in this office. If he wishes to pursue his *Charter* claim, he must comply with section 12 of this office's *Code of Procedure*, and serve notice to the Attorney Generals of Canada and Ontario.

C: Did the board conduct a reasonable search for records with respect to request part 6?

[56] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[16] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the board's decision. If I am not satisfied, I may order further searches.

[57] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[17] To be responsive, a record must be "reasonably related" to the request.[18]

[58] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[19]

[59] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[20]

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[15] *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54 (CanLII); Workplace Safety and Insurance Appeals Tribunal Decision No. 409/071, 2007 ONWSIAT 1663 (CanLII).
[16] Orders P-85, P-221 and PO-1954-I.
[17] Orders P-624 and PO-2559.
[18] Order PO-2554.
[19] Orders M-909, PO-2469 and PO-2592.
[20] Order MO-2185.

[60] In its representations, the board states that it was not able to conduct an electronic search for email records for the period of September 1, 2012 and July 14, 2014. It explains that in 2014, it switched its email system and the back-up tapes of the old email system were retained for 2 years. It points out that those back-up tapes have been destroyed and therefore it cannot conduct an electronic search for email records that were created prior to July 2014.

[61] In his representations, the appellant expresses concerns about whether the board had the back-up tapes for the old email system destroyed prior to or after receiving his access request. He notes that, in her affidavit, the FOIC did not state the exact date when the back-up tapes were destroyed.

[62] In its reply representations, the board reiterates that it switched email systems and the back-up tapes of the old email system were retained for 2 years as per its retention schedule. It points out that those back-up tapes have been destroyed and therefore it cannot conduct an electronic search for email records that were created prior to July 14, 2014. However, the board acknowledges that it has the ability to search for email records prior to July 14, 2014 if the emails were printed and filed, besides the ability to search for paper and electronic records for all types of records other than email.

[63] In his sur-reply representations, the appellant points out that the board has failed, in its reply representations, to specify the exact date it deleted the email records and whether this deletion occurred before or after it received his access request. He also submits that if the board has paper records that are responsive to his request, the board should be required to provide access to those records.

[64] Based on my review of the parties' representations and evidence, it does not appear that the board conducted a search for printed email records for the period prior to July 14, 2014. In its reply representations, the board states: "[It] has the ability to search for email records from that period which were printed and filed." As such, I find that the board has not searched for these printed email records. Accordingly, I order the board to search for any printed emails records predating July 14, 2014.

[65] Finally, the appellant raises concerns about when the board destroyed the back-up tapes for the old email system. The board advised this office that the back-up tapes for the old email system for the period of September 1, 2012 and July 14, 2014 were overwritten between August 2, 2016 and August 9, 2016 by a third party contractor. I understand that that the appellant's request was processed on August 8, 2016, after the board's employees returned from the two-week shutdown.[21] Beyond noting the appellant's concern and the board's response, I make no comment on the timing of the destruction of the back-up tapes.

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[21] It appears that the appellant's request was received during the board's two-week shutdown. I note that his request was mailed on the first day of the two-week shutdown.

D: Did the board's decision on part 4 of the request comply with the requirements of section 22(1)(b) of the *Act*?

[66] The appellant asserts that the board's decision for part 4 was inadequate. As stated earlier, the board's decision states that it was treating this part of the request as having no responsive records due to any potentially responsive records already being included in parts 1, 2, 3, 5 and 6 of the request.

[67] Section 22(1)(b) sets out the requirements for the contents of a decision to deny access to a record, which provides as follows:

> Notice of refusal to give access to a record or a part thereof under section 26 shall set out,
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> (b) where there is such a record,
>
> (i) the specific provision of this *Act* under which access is refused,
>
> (ii) the reason the provision applies to the record,
>
> (iii) the name and position of the person responsible for making the decision, and
>
> (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

[68] In Order PO-2913, former Adjudicator Laurel Cropley explained the purpose and requirements of a proper decision letter:

> In my view, the purpose of the inclusion of the above information in a notice of refusal is to put the requester in a position to make a reasonably informed decision on whether to seek a review of the head's decision (Orders 158, P-235 and P-324). In this case, I agree with the appellant that the decision letter of the Police should have provided him with reasons for the denial of access. A restatement of the language of the legislation is not sufficient to satisfy the requirement in section 29(1)(b)(ii) of the [*Freedom of Information and Protection of Privacy*] *Act*.[22] It does not provide an explanation of why the exemptions claimed by the Police apply to the record. Section 29(1)(b)(i) already requires that the notice contain the provision of the *Act* under which access is refused.

[69] In this case, I find that the board's decision letter was adequate for the purposes

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[22] The provincial equivalent to section 22(1)(b) of the *Act*.

described in Order PO-2913. As stated above, the board deemed that there were no records responsive to part 4 of the appellant's request due to the board's search of responsive records for the other parts of the request. Accordingly, I find that the board's decision letter provided a reason for its decision that there were no responsive records for part 4, and put the appellant in a position to make a reasonably informed decision on whether to appeal the board's decision. In summary, I find the board's decision letter was adequate.

ORDER:

1. I uphold the board's fee estimate for the records it located for part 6 of the request.

2. I order the board to waive 50% of the fee, which results in a fee estimate of $228.10.

3. I order the board to conduct a further search for printed email records predating July 14, 2014.

4. I order the board to provide me with an affidavit or affidavits sworn by individuals who have direct knowledge of the further search, which are to include the following information:

    - The name(s) and position(s) of the individual(s) who conducted the search

    - The steps taken in conducting the search

    - The results of the search

5. I order the board to provide me with the affidavit(s) by **September 17, 2018.**

6. If the board locate records as a result of the search, I order the board to provide the appellant with an access decision in accordance with the requirements of the *Act*, treating the date of this interim order as the date of the request.

7. I find that the decision letter for part 4 was adequate.

8. I remain seized of this appeal in order to deal with any outstanding issues arising from provisions 3, 4 and 5 of this order.

Original Signed by: August 15, 2018

Lan An
Adjudicator