

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3727

Appeal MA16-637

Kingston Economic Development Corporation

January 30, 2019

Summary: The Kingston Economic Development Corporation received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for financial information about KEDCO from 2010 to 2015. KEDCO issued an interim decision and fee estimate. The appellant appealed the fee estimate and sought a fee waiver. KEDCO then sought an 11 month extension to comply with the request and denied the appellant's request for a fee waiver.

In this order, the adjudicator reduces the fee estimate, upholds KEDCO's decision not to grant a fee waiver and permits KEDCO to claim a five month time extension to issue a final access and fee decision. The adjudicator also upholds KEDCO's decision to refuse to process certain parts of the request upon payment of a partial fee by the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, as amended, sections 20(1), 45(1) and 45(4).

Orders Considered: Orders MO-3523 and MO-3614-I.

OVERVIEW:

[1] The Kingston Economic Development Corporation (KEDCO) received a broad access request under the *Municipal Freedom of Information and Protection of Privacy*

Act (MFIPPA or the Act) for financial information about KEDCO from 2010 to 2015.¹

[2] On October 4, 2016, KEDCO issued an interim access decision and fee estimate in the amount of \$42,063 stating that the exemptions in sections 7(1) (advice or recommendations), 9 (relations with other governments), 10(1) (third party information), 11 (economic or other interests), 12 (solicitor-client privilege) and 14(1) (personal privacy) of the *Act* likely apply to the responsive records. KEDCO added that some information may also be withheld as non-responsive to the request.

[3] The requester, now the appellant, appealed all aspects of KEDCO's decision to this office and a mediator was appointed to explore resolution. The issue of fee waiver was added when KEDCO subsequently responded to the appellant's request for one (after a delay), denying it.

[4] A teleconference was held during mediation of the appeal, where the appellant narrowed his request to six of the original 13 items, clarifying the six items as follows (using the original numbering):

¹ The requester sought access to the following information:

1. Detailed records in support of expenditures listed in the audited financial statements of KEDCO, for the years 2010 to 2015;
2. Information pertaining to vendors retained by KEDCO in the years 2010 to 2015, including the name of the vendor, the service provided and the amount spent, along with all supporting documentation;
3. Information pertaining to consultants (including third-party professionals) retained by KEDCO in the years 2010 to 2015, including the name of the consultant, the service provided and amount spent along with all supporting documentation;
4. Information pertaining to the process used to select both vendors and consultants, in the years 2010 to 2015, along with all supporting documentation;
5. Business expense amounts claimed by employee job title, for the years 2010 to 2015, along with all supporting documentation;
6. Action plans for business travel of KEDCO employees outside of Kingston for the years 2010-2015;
7. Amounts paid directly by the City in support of KEDCO activities or employee-related costs, for the years 2010 to 2015;
8. Records pertaining to the procurement and hiring of a KEDCO Review Committee consultant, including the terms of any contract;
9. All corporate credit card statements for the years 2010 to 2015.
10. Any by-law or resolution pertaining to the creation of KEDCO;
11. Information pertaining to compensation paid to, or expense reimbursement for, members of City Council acting as Directors of KEDCO, for the years 2010 to 2015;
12. The monthly reports of financial transactions that were reviewed by KEDCO's Finance and Audit Committee, for the years 2010 to 2015; and
13. Records pertaining to the eligibility of KEDCO employees to participate in OMERS, including all agreements, contracts and correspondence among KEDCO, OMERS and the City of Kingston with respect to this issue.

1. A print-out of the general ledger (all transactions) for the years 2010 to 2015, without detailed/supporting documentation;
2. & 3. A list of all third-party contractors that provided services to KEDCO for the years 2010 to 2015, identifying the name of the contractor, the nature of the service provided, and payment amount, without supporting documentation;
5. A list of reimbursements for business expenses claimed by KEDCO employees for the years 2010 to 2015, including dates and amounts, without supporting documentation;
9. All corporate credit card statements for the years 2010 to 2015; and
12. A copy of the reports presented to KEDCO's Finance Committee for the years 2010 to 2015.

[5] KEDCO then issued a revised interim decision on March 22, 2017 that set out the six items and provided a revised fee estimate in the amount of \$17,581.60 consisting of \$2,580 for part 1, \$9,366 for parts 2 and 3, \$273.80 for part 5, \$3,542 for part 9 and \$1,775 for part 12.

[6] The appellant responded by sending in payment for \$3,061.00, which represented a 50% deposit for the records responsive to parts 1 and 9, on a "without prejudice" basis.

[7] KEDCO responded to the appellant, advising that KEDCO was declining this approach, including the offer of a 50% deposit for fulfilling parts 1 and 9 of the request.

[8] A mediated resolution of KEDCO's fee estimate, fee waiver and time extension decisions was not possible and the appellant indicated that he wished to proceed to adjudication on both the decision dated October 4, 2016 and the revised decision dated March 22, 2017. The appeal was transferred to the adjudication stage for an inquiry.

[9] The adjudicator formerly assigned to this appeal decided to first address the issue of whether KEDCO is an "institution," or part of an institution, within the meaning of the *Municipal Freedom of Information and Protection of Privacy Act*. Based on the submissions received, she was satisfied that the evidence provided demonstrated that KEDCO qualifies as an "institution" in its own right under the *Act*. The inquiry into the issues then continued on this basis.²

[10] Representations were then sought and exchanged between the parties on the

² There was no written interim decision issued with this finding.

fee estimate, fee waiver and time extension issues, in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[11] During adjudication, the file was transferred to me to complete the inquiry. Also during adjudication, after conducting a further review of representative samples of the requested records, KEDCO issued a revised fee estimate with respect to the original 13-part request. This revised fee estimate is dated January 18, 2018 and is in the amount of \$49,727.

[12] As this is the most recent and most comprehensive fee estimate, this is the fee estimate that is the subject of this order. As well, the specifics of the January 18, 2018 fee estimate in the amount of \$49,727 are addressed comprehensively in both parties' representations, while the narrowed fee estimate is not. The appellant was advised by an Adjudication Review Officer from this office that the January 18, 2018 fee estimate, was the fee estimate I would be addressing in this order. In response, the appellant indicated that the January 18, 2018 fee estimate was effectively addressed in its representations.

[13] In this order, I find that a fee estimate of \$14,681.10 is reasonable and I reduce the January 18, 2018 fee estimate to this amount. I find that the basis for a fee waiver is not established. I grant KEDCO a time extension of five months from the time of payment of the 50% deposit of the \$14,681.10 fee estimate to issue a final access and fee decision on all of the records responsive to the request. Finally, I uphold KEDCO's decision to refuse to process certain parts of the request upon payment of a partial fee by the appellant.

ISSUES:

- A. Should KEDCO's January 18, 2018 fee estimate in respect of the original request be upheld?
- B. Should the fee be waived?
- C. Should the appellant be provided with disclosure of certain responsive records specified by the appellant if it pays a 50% deposit toward the fee estimate for them?
- D. Should KEDCO be permitted to claim a time extension of an additional 11 months from receipt of the requested fee estimate deposit to respond to the request?

DISCUSSION:

Issue A: Should KEDCO's January 18, 2018 fee estimate in respect of the original request be upheld?

[14] Where a fee exceeds \$25, an institution must provide the requester with a fee estimate.³

[15] Where the fee is \$100 or more, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.⁴

[16] 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

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

[18] 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

[19] 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.

[20] 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;

³ Section 45(3).

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.

(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.

[21] More specific provisions regarding fees for access to general records held by an institution 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.

4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.

6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under subsection (1) that is subsequently waived.

9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

[22] The fee estimate dated January 18, 2018 of \$49,727 is at issue in this appeal and reads as follows:

... This letter is further to my fee estimate letters dated October 4, 2016 and March 22, 2017. As the issues of our fee estimate and notice of time extension are now at the appeals stage, we have had the opportunity to conduct a further review of representative samples of the requested records and have a more accurate fee estimate. ...This letter describes that decision.

...We have identified the records being requested as follows [repeats 13 part request]⁸ ...:

Fee Estimate Based on Representative Sample

KEDCO has conducted a preliminary search for the records responsive to your request and identified six categories of records that would be responsive to the appellant's⁹ request. These six categories of records do not encompass all records that may be responsive to the appellant's request but they do provide a more firm foundation upon which KEDCO could estimate the fee and time that would be required to respond to the appellant's request.

Within each of these six categories of records, a representative sample of records was reviewed in order to estimate the volume of records involved. The herein fee estimate is based on these representative samples.

The six categories of records and the corresponding fees involved are as follows:

1. Visa Statements for all corporate credit cards issued from 2010 - 2015:
 - Volume of Records: 720 records; 3 pages per record = 2,160 pages
 - Bank Fee: \$2,000
 - Preparation: 37 hours @ \$30/hour = \$1,110
 - Photocopying: 2,160 pages @ \$0.20/page = \$432
 - Total = \$3,542

2. Finance Committee Reports from 2010 to 2015
 - Volume of Records: 265 pages per year = 1,600 pages
 - Search: 2.5 hours @ \$30/hour = \$75
 - Preparation: 53 hours @\$30/hour = \$1,590
 - Photocopying: 1600 pages @ \$0.20/page = \$320
 - Total= \$1,985

⁸ Set out above at footnote 1.

⁹ The name of the appellant has been replaced with the words "the appellant" in this order.

3. General Ledger Reports from 2010 to 2015

- Volume of Records: 200 pages per year = 1,200 pages
- Search: 1 hour @\$30/hour = \$30
- Preparation: 40 hours @ \$30/hour = \$1,200
- Photocopying: 1,200 pages @ \$0.20/page = \$240
- Total = \$1,470

4. Reimbursement Records from 2010 to 2015

- Volume of Records: 21,000 pages
- Search: 7 hours @ \$30/hour = \$210
- Preparation: 700 hours @ \$30/hour = \$21,000
- copying: 21,000 pages @ \$0.20/page = \$4,200
- Total = \$25,410

5. Vendor Invoices from 2010 to 2015

- Volume of Records: 8,000 pages
- Search: 7 hours @\$30/hour = \$210
- Preparation: 267 hours @ \$30/hour = \$8,010
- Photocopying: 8,000 pages @ \$0.20/page = \$1,600
- Total = \$9,820

6. Journal Entries from 2010 to 2015

- Volume of Records: 6,000 pages
- Search: 10 hours @\$30/hour = \$300
- Preparation: 200 hours @ \$30/hour = \$6,000
- Photocopying: 6,000 pages @ \$0.20/page = \$1,200
- Total = \$7,500

SUMMATIVE TOTAL of Fee Estimate: \$49,727

50% Deposit = \$24,863.50

Interim Access Decision

As KEDCO has not yet completed its search or reviewed all of the records in detail, no final decision has been made regarding access. It is likely that a thorough review of each record will be required since we suspect that the requested records may contain information that is exempt from disclosure under sections 7, 9, 10, 11, 12 and 14 of MFIPPA. Other exemptions may apply as well, but we cannot confirm until after a review has been conducted...

[23] KEDCO states that, in responding to the request, its CEO¹⁰ consulted with the

¹⁰ Chief Executive Officer. The CEO provided an affidavit in support of KEDCO's representations.

City of Kingston's Corporate Records and Information Officer and Manager of Accounting who advised her that there would likely be 60,000 pages of records responsive to the appellant's request. The CEO also reviewed a representative sample of the six categories of records noted above in order to determine the volume of records that may be involved and the actions that would likely be required in order to locate and prepare the records for disclosure.

[24] Based on those representative samples, KEDCO states that its fee estimate considered the costs associated with searching for the records, preparing the records for disclosure, photocopying the records, and in the case of records maintained by the bank, a bank fee associated with accessing the records.

[25] KEDCO states that it identified six categories of records that would be responsive. It states, however, given that the appellant is maintaining its broad request (by appealing both the initial decision letter and the second decision letter), it would be misleading to suggest that these six categories of records completely respond to the appellant's initial request. It submits that it will have to charge a fee over and above its estimate for these six categories in order to take into account the likelihood that responsive records over and above the records identified in the six categories exist.

Search Fee Estimate - Section 45(1) (a)

[26] Concerning the search fee, KEDCO states that the search actions that will be necessary include contacting its bank, cross-referencing records received from the bank with its own employee records, searching its own database including its QuickBooks files, searching employee files, and locating paper records in KEDCO's storage facilities.

[27] KEDCO states that the search time is relatively modest for those records that are stored digitally, either at the bank or on KEDCO's or KEDCO employees' databases; however, the search time will be significantly greater for paper records stored either at KEDCO's facilities or at the external storage facility used by KEDCO.

[28] For these paper records, KEDCO states that countless other records stored with the requested records will need to be reviewed in a cursory manner in order to determine which records are responsive to the request.

[29] KEDCO submits that it converted the time estimate for search functions to a fee estimate by charging \$7.50 for each 15 minutes spent by any person manually searching a record, pursuant to section 6 of Regulation 823.

[30] The appellant states that there are significant inconsistencies in KEDCO's evidence. For example, in the initial October 2016 estimate, KEDCO predicts 550 hours will be spent searching for records, whereas in its representations it estimates only 27.5 hours will be spent on the same searches.

[31] KEDCO did not reply to the appellant's specific search fee representations.

[32] As noted above, KEDCO has categorized the records into six categories for its fee estimate. I will consider the search fees allotted for each category.

Category 1 records

[33] I will begin by reviewing the Category 1 records, the visa statements.

[34] Instead of a search fee, KEDCO intends to charge a \$2,000 bank fee for retrieving the corporate credit card statements, which it estimates consist of 720 records totaling 2,160 pages.

[35] KEDCO states that this \$2,000 bank fee will be required to be paid in order to access the monthly credit card statements for all KEDCO employees who had a corporate credit card between 2010 and 2015.

[36] The appellant states that KEDCO's choice to pay the bank to retrieve these records is no less costly than retrieving the paper copies from storage. It states that at the established search fee rate of \$30 per hour, KEDCO would be able to spend 67 hours searching for credit card statements before it reaches the \$2,000 of costs incurred through the bank's fees.

[37] The appellant submits that the cost to retrieve the requested credit cards statements from storage would be less than the \$2,000 cost of retrieving them from the bank. It points out that there are only 2,160 pages of credit card statements and the fee charged by KEDCO for retrieving similar records (reimbursement records) is \$210, being 7 hours of search time for 21,000 pages of records.

[38] The appellant's position is that KEDCO overestimated the time it will take to retrieve the paper credit card statements from storage and, instead, opted for a far more costly approach to retrieving those records.

[39] I agree with the appellant that it would be less costly to obtain the credit card statements from off-site storage than to ask the bank to provide them, and my search fee estimate finding for this category of records is based on that conclusion.

[40] KEDCO's CEO describes how the credit card statements are stored:

From January 2010 to June 2014, the hard copies were stored in individual files by employee name. These individual files are now stored by a third-party vendor at an off-site location. In order to retrieve the records stored in this first manner, KEDCO personnel would need to have all of the boxes for this time period delivered to me and the contents would need to be reviewed. From July 2014 to December 2015, these records were combined with other records in batches and sent to a third-party vendor at an off-site location. In the second storage method, the visa statements were not separated by employee or separated in any way

from other records. In order to retrieve the records stored in this second manner, KEDCO personnel would again need to have all of the boxes for this time period delivered to me and the contents would need to be reviewed, but here the review would be even more time-consuming given the intermingling of records.

[41] This is virtually the same description of how the records in Category 4, the estimated 21,000 pages of reimbursement records, and Category 5, the estimated 8,000 pages of vendor invoices, are kept and maintained and the actions that are necessary to locate them.

[42] For the Categories 4 and 5 records, KEDCO has estimated a search fee of \$210 for each of these categories, comprising seven hours of search time per category at the search fee of \$30 per hour allowed by section 6.3 of Regulation 823.¹¹

[43] For Category 1, the credit card statements, KEDCO has estimated that there will be 2,160 pages of records. I find that seven hours of search time at \$30 per hour for a total of \$210 is reasonable for the Category 1 records. Therefore, I disallow the \$2,000 bank fee for retrieving the credit card statements and, instead, permit KEDCO to charge a \$210 search fee for the Category 1 records.

Category 2 to 6 records

[44] The corresponding search fees claimed by KEDCO for these categories are as follows:

2. Finance Committee Reports from 2010 to 2015
 - Volume of Records: 265 pages per year = 1,600 pages
 - Search: 2.5 hours @ \$30/hour = \$75
 - Total= \$75
3. General Ledger Reports from 2010 to 2015
 - Volume of Records: 200 pages per year = 1,200 pages
 - Search: 1 hour @\$30/hour = \$30
 - Total = \$30
4. Reimbursement Records from 2010 to 2015
 - Volume of Records: 21,000 pages
 - Search: 7 hours @ \$30/hour = \$210
 - Total = \$210
5. Vendor Invoices from 2010 to 2015

¹¹ Section 6 of Regulation 823 is set out above.

- Volume of Records: 8,000 pages
- Search: 7 hours @\$30/hour = \$210
- Total = \$210

6. Journal Entries from 2010 to 2015

- Volume of Records: 6,000 pages
- Search: 10 hours @\$30/hour = \$300
- Total = \$300

[45] The total search fee for these five of the six categories is \$825, which equals 27.5 hours at the allowable search fee of \$30 per hour (\$7.50 per 15 minutes).

[46] The appellant has not specifically disputed this search fee time estimate.

[47] Based on my review of KEDCO's detailed representations, I find that the search fee estimate for the five categories listed above, which encompass 37,800 pages of five broad categories of records spanning a six year period is reasonable in the circumstances. Therefore, I am upholding the search fee estimate for records in Categories 2 to 6 of \$825.

Conclusion re: search fee estimate

[48] I have reduced the search fee estimate for Category 1 records to \$210 and will allow the amount of \$825 for Category 2 to 6 records, for a total allowable estimated search fee of \$1,035.

Preparation for disclosure - Section 45(1)(b)

[49] Section 45(1)(b) includes time for

- severing a record¹²
- a person running reports from a computer system¹³

[50] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.¹⁴

[51] Section 45(1)(b) does not include time for:

¹² Order P-4.

¹³ Order M-1083.

¹⁴ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

- deciding whether or not to claim an exemption¹⁵
- identifying records requiring severing¹⁶
- identifying and preparing records requiring third party notice¹⁷
- removing paper clips, tape and staples and packaging records for shipment¹⁸
- transporting records to the mailroom or arranging for courier service¹⁹
- assembling information and proofing data²⁰
- photocopying²¹
- preparing an index of records or a decision letter²²
- re-filing and re-storing records to their original state after they have been reviewed and copied²³
- preparing a record for disclosure that contains the requester's personal information.²⁴

[52] The six categories of records and the corresponding preparation fees involved are as follows:

1. Visa Statements for all corporate credit cards issued from 2010 - 2015:
 - Volume of Records: 720 records; 3 pages per record = 2,160 pages
 - Preparation: 37 hours @ \$30/hour = \$1,110
2. Finance Committee Reports from 2010 to 2015
 - Volume of Records: 265 pages per year = 1,600 pages
 - Preparation: 53 hours @\$30/hour = \$1,590
3. General Ledger Reports from 2010 to 2015

¹⁵ Orders P-4, M-376 and P-1536.

¹⁶ Order MO-1380.

¹⁷ Order MO-1380.

¹⁸ Order PO-2574.

¹⁹ Order P-4.

²⁰ Order M-1083.

²¹ Orders P-184 and P-890.

²² Orders P-741 and P-1536.

²³ Order PO-2574.

²⁴ Regulation 823, section 6.1.

- Volume of Records: 200 pages per year = 1,200 pages
 - Preparation: 40 hours @ \$30/hour = \$1,200
4. Reimbursement Records from 2010 to 2015
- Volume of Records: 21,000 pages
 - Preparation: 700 hours @ \$30/hour = \$21,000
5. Vendor Invoices from 2010 to 2015
- Volume of Records: 8,000 pages
 - Preparation: 267 hours @ \$30/hour = \$8,010
6. Journal Entries from 2010 to 2015
- Volume of Records: 6,000 pages
 - Preparation: 200 hours @ \$30/hour = \$6,000

[53] The total preparation time fee estimate for the six categories of records charged by KEDCO is \$38,910 to sever 39,960 pages of records.

[54] KEDCO states that the preparation actions that will be necessary include running reports from a computer system and severing any records that ought to be severed. It states that while time may be required to review records in order to determine whether an exemption should be claimed, to determine whether to sever a record, or to contact third parties regarding personal information that may be disclosed, such time has not been included in the fee estimate.

[55] KEDCO states that the preparation fee estimate of \$38,910 reflects that it will take between 1 and 2 minutes per page to perform the preparation actions on each record and in accordance with section 6 of Regulation 823, which charges \$7.50 for each 15 minutes spent by any person preparing the record for disclosure.

[56] KEDCO has estimated that virtually every page of the records will require multiple severances. However, it has not provided a representative sample of each category to demonstrate that almost every page of the records would require multiple severances.

[57] The appellant points out that in the initial October 2016 estimate, 400 hours are allocated to prepare the documents for disclosure, yet in KEDCO's representations it estimates the preparation time to be 1297 hours. It states that as KEDCO has estimated two minutes²⁵ for the preparation of every page of every document relevant to the request, this time far exceeds what is reasonable in the circumstances and is allowable under the *Act*.

²⁵ Except for the credit card statements, where KEDCO has estimated one minute per page.

[58] The appellant submits that KEDCO should only be allowed to estimate two minutes per page for the few pages that require several severances. The appellant submits that it is highly unlikely that the documents requested will require any degree of severance as the documents are all financial records of KEDCO. It states that information about suppliers' rates and the identity of individuals who contracted with an institution subject to *MFIPPA* are not protected and do not fall within any of the exemptions from disclosure.

[59] Although KEDCO provided reply representations, it did not reply to the appellant's representations on the preparation fee estimate.

Category 1 - Credit Card Statements

[60] KEDCO estimates that there will be 720 responsive credit card statements equaling 2,160 pages and that it would take one allowable minute per record to prepare all 720 records, for a total of 36 hours. KEDCO claimed a total preparation fee of \$1,110 for 37 hours at the allowable rate of \$30 per hour. KEDCO had added an additional hour of preparation time to review these records after they arrive from the bank and cross-reference them with lists of former employees who had access to corporate credit cards to determine which records are missing. Since I determined above that KEDCO should conduct its own searches for the credit card statements, rather than obtaining them from the bank, I will disallow the claim of one additional hour of preparation time and will now consider the remaining 36 hours claimed by KEDCO.

[61] The appellant points out that as no representative sample was taken of the credit card statements to demonstrate the quantity of severances required, it is not possible to evaluate, let alone justify KEDCO's claim that at least half of the documents will be severed. It submits that the credit card statements are unlikely to contain information requiring substantial severances and that any severances that do need to occur can be accomplished quickly and efficiently as these documents are all in electronic form and are all in the same format with similar content.

[62] Since KEDCO did not provide a representative sample, and considering that the credit card statements are corporate, not personal credit cards, I agree with the appellant that KEDCO's claim that every page of the corporate credit card statements will require multiple severance of personal information is not reasonable. As it is not clear to me what, if any, personal information may be contained in corporate credit card statements, I am disallowing the entire preparation fee estimate for Category 1 records.

Category 2 - Finance Committee Reports

[63] KEDCO states that the preparation of finance committee reports for disclosure would require running the reports from KEDCO's computer system and severing any information that ought to be severed.

[64] KEDCO provided evidence that the names of, and costs associated with, third-

party vendors who provide services to it are included in the reports if the services exceed a certain monetary threshold, which is currently \$1,000. It states that other details are also included, such as all deposits made and cheques issued as well as information pertaining to pricing.

[65] KEDCO estimates the preparation time for these actions to be 2 minutes per page or a total of 53 hours at \$30 per hour for the amount of \$1,590.

[66] The appellant has concerns with KEDCO's claim that virtually each of the 1600 pages in the finance committee reports require multiple severances. It states that it is implausible that third-party vendor information will be found on every page of the reports. It points out that no representative sample was taken of these records and no estimate was given as to the percentage of pages requiring severance. The appellant suggests that 20%, not 100%, is a more appropriate estimate and in line with similar decisions involving broad requests for the financial documents of municipalities.²⁶

[67] I have taken into account the representations of both parties, including the cases referred to by the appellant. I have not been provided with a representative sample of the finance committee reports; however, I agree with KEDCO that they could reasonably be expected to contain third party information that may require severance under section 10(1).²⁷

[68] In the circumstances of this appeal, I find that a reasonable estimate of the percentage of pages of the finance committee reports requiring multiple severances is 50%. I have determined this percentage on the basis that the Category 2 records contain all deposits made and cheques issued by KEDCO as well as information pertaining to third party vendor pricing. I have estimated that approximately 50% of the pages may require multiple severances.

²⁶ The appellant provides as an example Order MO-1895, where a municipality received a request to produce documents related to its expenditures, specific projects, expenses, etc. The municipality estimated 10% of the pages would require severance. The appellant also refers to Order MO-1545, where a municipality was requested to produce the invoices between itself and a named engineering firm. The municipality performed a representative sample and found that 37% of the pages required severance on the basis of the third party and personal information.

²⁷ Section 10(1) of *MFIPPA* reads:

- (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
 - (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
 - (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
 - (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[69] Therefore, I uphold a preparation fee estimate to sever one-half of the 1600 pages of these reports, resulting in a fee estimate of \$800 for preparing these reports for disclosure.

Category 3 - General Ledger Reports

[70] KEDCO states that the preparation fee estimate for the general ledger reports, estimated to consist of 1,200 pages, is justified because these reports contain "third-party personal information."

[71] The appellant adopted its representations made for Category 2 records and specifically disputes that each page of the general ledger reports would require multiple severances for a total of 40 hours of preparation time.

[72] As with the records addressed above, no representative sample of the general ledger records was provided by KEDCO. Accordingly, without more information as to what these records are about and why they would contain "third-party personal information," I find that I have insufficient evidence to support a finding that each page of these reports would require multiple severances.

[73] I accept the appellant's submission that a reasonable estimate of the pages requiring severing is 20%. Therefore, I uphold a preparation fee estimate for the category 3 records for 20% of 1,200 pages, or \$240.

Category 4 - Reimbursement Records

[74] KEDCO states that these records contain employee names, receipts and other records of expenses incurred, in addition to records of reimbursement.

[75] The CEO of KEDCO states that she generally submits about 25 receipts per month for reimbursement (or 300 per year).

[76] Based on this representative sample, the CEO calculated that between 2010 and 2015 KEDCO employed on average 10 to 12 employees, and accounting for turnover of these employees, estimated that there would be a total of 21,000 pages of records responsive to this request.

[77] KEDCO states that there may be "third-party personal information" contained within these records.

[78] The appellant challenges KEDCO's evidence that there will be 21,000 pages of reimbursement records, as the estimate is based on an atypical KEDCO employee, the CEO, whose position would incur a large number of expenses that would require reimbursement. It also disputes KEDCO's claim that 10 to 12 employees would have submitted reimbursement records as KEDCO's evidence was that 10 employees had corporate credit cards and, therefore, they would not be seeking reimbursement for personal expenses.

[79] Again, the appellant submits that KEDCO's claim that every page of the 21,000 pages of reimbursement records would require severing, thereby requiring 700 hours of preparation time at a cost of \$21,000, is unreasonable.

[80] The appellant also submits that as the only preparation to be done to the reimbursement records is to review the documents for potential severances, KEDCO has included disallowable preparation time. Therefore, the appellant submits that the entire \$21,000 preparation fee for these records should be disallowed.

[81] I agree with the appellant that the estimate of 21,000 pages of reimbursement records is unreasonable. KEDCO did not provide a representative sample of the reimbursement records. The only direct evidence I have about the reimbursement records is that of the CEO, who has been acting in that capacity since 2015. I agree with the appellant that the CEO of KEDCO is not a typical employee and that it would be reasonable to expect that her personal expenses would have been higher than the other KEDCO employees.

[82] KEDCO did not provide an explanation as to why other KEDCO employees, other than the CEO, would need reimbursement of expenses. Nor has KEDCO provided evidence as to why so many employees would have such a large number of personal expenses requiring reimbursement when its own evidence is that between 2010 and 2015 KEDCO employed on average 10 to 12 employees. This number is approximately the same number of employees that held corporate credit cards. Employees with corporate credit cards would typically not require reimbursement of personal expenses, because as stated above for Category 1 records their expenses would be charged to their corporate credit cards.

[83] Given that KEDCO's CEO has submitted approximately 1,800 receipts or 1,800 pages over the six year period spanning the request, I will allow a preparation fee of 50% of these pages as reasonable in the amount of \$900.

Category 5 - Vendor Invoices

[84] KEDCO estimates that there are 8,000 pages of vendor invoices, with a preparation fee of \$8,010. It states that the actions required to prepare these records for disclosure would involve a review and severing, if necessary.

[85] The appellant submits that KEDCO's preparation time for "review and severing, if necessary" cannot be considered in the time estimate as time counted for severing documents is only for documents actually severed, not for all documents reviewed for potential severing.

[86] KEDCO has not provided me with evidence, including a representative sample of records, as to why it would be necessary to sever any information from the vendor invoices. Previous orders of this office have found vendor invoices not exempt under section 10(1) of *MFIPPA*, if they are reflective of a contractual arrangement between

the vendor and the institution.²⁸

[87] Accordingly, I am disallowing the entire preparation fee estimate for the Category 5 records.

Category 6 - Journal Entries

[88] KEDCO estimates that there are over 1,000 pages of journal entries for each of the six years requested. It states that these journal entries include payroll entries, credit card expenses, bank deposits, bank charges, administrative charges, year-end accruals, etcetera, and that these would likely contain "third-party personal information"

[89] KEDCO states that, as with the general ledger reports, the preparation of these journal entries would require running the reports from QuickBooks and the financial records system and then severing any records that ought to be severed. It estimates the preparation time to be two minutes per page or a total of 200 hours.

[90] The appellant states that although KEDCO suggests that its 6000 pages of journal entries should result in a shorter preparation time than general ledger reports, it still calculated the full preparation time for severing every single journal entry.

[91] KEDCO has not provided a representative sample of these records. Based on my review of its representations on the five types of journal entries, it appears to me that only the payroll entries would contain "third-party personal information." As such, I find that a reasonable estimate of the proportion of the 6,000 pages of entries requiring severance is 20 per cent, or 1,200 pages. Accordingly, I will allow KEDCO to charge a preparation fee of \$1,200 for the Category 6 records.

Conclusion re: preparation time fee estimate

I have upheld the following amounts:

Category 1 - Credit Card Statements	\$0
Category 2 - Finance Committee Reports	\$800
Category 3 - General Ledger Reports	\$240
Category 4 - Reimbursement Records	\$900
Category 5 - Vendor Invoices	\$0

²⁸ Or the equivalent provision, section 17(1), in the *Freedom of Information and Protection of Privacy Act* (the provincial *Act*). See Order PO-3845 and the orders referred to therein regarding invoices.

Category 6 - Journal Entries	\$1,200
<u>Total allowable preparation fee estimate</u>	<u>\$3,140</u>

Computer and other costs incurred in locating, retrieving, processing and copying a record – Section 45(1)(c)

[92] Section 45(1)(c) includes the cost of

- photocopies
- computer printouts and/or CD-ROMs
- developing a computer program

[93] Section 45(1)(c) does not include the cost of

- a computer to compile and print information²⁹

[94] KEDCO states that it has not charged for the time that will be required to photocopy all records responsive to this request. Rather, KEDCO submits that its photocopying fee estimate is based on charging 20 cents per page for all of the estimated 39,960 pages of records for the six categories of records, or \$7,992.

[95] The appellant disputes the estimated photocopying fees because of its view that most of the records are already in an electronic form. The appellant indicates that it is amenable to having the records transferred electronically onto a CD.

Analysis/findings re: costs incurred in locating, retrieving, processing and copying a record under section 45(1)(c)

[96] In Order MO-3523, relying on the findings in Orders MO-2530 and MO-3133-F, I found that the scanning of records to put them on a CD and provide them to a requester electronically is only necessary for records in paper format or for those that need to be photocopied to be severed, not those already in electronic format.³⁰ KEDCO has not provided evidence that records already in electronic format that do not require severing cannot be directly transferred to a CD without the necessity of printing and copying them first.

[97] In arriving at the allowable photocopy fee to process this request, I have taken into consideration Order MO-3523 and:

²⁹ Order M-1083.

³⁰ An institution shall charge a fee of \$10 for each CD, pursuant to section 6.2 of Regulation 823.

- my findings regarding the preparation fee estimate, namely the percentage of records in each category of records that I have allowed a preparation fee for,
- that the responsive paper records are intermingled with non- responsive records and the responsive portions may need to be copied before scanning onto a CD, and
- that the digital records that require severing may need to be copied before severing.

[98] I have estimated the photocopy fee as follows:

Category 1 - Credit Card Statements	2,160 pages of paper records at \$0.20 per page equals <u>\$432</u>
Category 2 - Finance Committee Reports	800 pages of digital records require severing at \$0.20 per page equals <u>\$160</u>
Category 3 - General Ledger Reports	240 pages of digital records require severing at \$0.20 per page equals <u>\$48</u>
Category 4 - Reimbursement Records	70% ³¹ of 21,000 pages are paper records at \$0.20 per page equals <u>\$2,940</u>
Category 5 - Vendor Invoices	70% of 8,000 pages are paper records at \$0.20 per page equals <u>\$1,120</u>
Category 6 - Journal Entries	1,200 pages of digital records require severing at \$0.20 per page equals <u>\$240</u>
<u>Total of estimated photocopy costs for photocopying 24,700 pages of records</u>	<u>\$4,940</u>

[99] I am also adding to the fee estimate an amount under section 45(1)(c) for time to scan the estimated 24,700 pages of records onto a CD in the amount of \$572.40.

[100] As stated above, in Order MO-3523, I found that the scanning of records to put them on a CD and provide them to a requester electronically is necessary for records in paper format or for those that need to be photocopied to be severed.

[101] In that order, the Regional Municipality of York (the region) had estimated that it would take approximately 6 hours to scan 7,750 pages of records to a CD. At a cost of

³¹ KEDCO has estimated that 70% of the records in both Category 4 and Category 5 will be in paper format.

\$30 per hour to scan the records, this was estimated by the region to be \$180. The region had not indicated what percentage of the records may be in electronic format and, therefore, would not need to be scanned before placing on a CD.

[102] I relied on the findings in Final Order MO-3133-F, where the adjudicator considered the issue of scanning of records on to a CD. He stated:

Other orders of this office have addressed a submission that photocopying is required before scanning to a CD-ROM.³² There is no evidence before me that all the records are stored electronically. There [is] a large volume of responsive records. In Order MO-2530, Adjudicator Laurel Cropley wrote:

Section 6.2 of Regulation 823 indicates that the cost for providing records on CD-ROM is \$10 for each CD-ROM. I interpret this section as referring to making CDs of machine readable records. The regulation does not specifically refer to scanning paper records in order to provide the information on CD. In my view, this activity is a necessary component of producing the paper records in the format requested by the appellant [see Order PO2424 for a discussion of producing a record in a version other than as a paper record]. As I noted above, section 6.4 of the regulation provides that an institution may charge \$7.50 for each 15 minutes spent by any person "for preparing a record for disclosure." The Town has applied this fee structure in estimating the costs associated with producing the information on CDs. I am satisfied generally in the approach taken by the Town.

... I find Adjudicator Cropley's reasoning equally applicable with respect to a fee for photocopying under section 6.1 of the regulation for the purposes of scanning. I am satisfied that, as explained by the board, scanning photocopies of severed records is necessary whether to provide them in paper form to the appellant or in order to provide the information on a CD-ROM.³³ Accordingly, in all the circumstances, the board's photocopying fee estimate of \$1190.00 is allowed.

[103] In Order MO-3523, I found that the region was allowed to charge a fee to scan the responsive records that were not in electronic format already. As the region had indicated that about 60% of the 7,775 pages of records (being 4,665 pages) will require

³² Orders MO-2530, MO-2577, MO-2595 and MO-2908.

³³ It should also be noted that for records provided on CD-ROMs, there may be an additional charge of \$10 for each CD-ROM.

severing, I reduced the region's fee estimate for scanning to 60% of its claimed \$180 or \$108.

[104] In this appeal, I have found that 24,700 pages of records will be in paper format, either originally or by reason of having to be copied to allow the pages to be severed. This is approximately 5.3 times the number of pages that were estimated to require scanning onto a CD in Order MO-3523. In that order, I allowed the region to charge \$108 to scan 4,665 pages.

[105] Taking into account my findings in Order MO-3523 and that the number of pages that will require scanning in this appeal, I will allow KEDCO to charge a fee to scan the 24,700 pages of records onto a CD of 5.3 times that allowed in Order MO-3532, being the amount of \$572.40. Therefore, I am adding this amount to the fee estimate under section 45(1)(c) to take into account the time that KEDCO will spend to scan the 24,700 pages of records onto a CD.

[106] Another item that KEDCO has raised in its representations is the issue as to whether it will be able to access all of the requested record in Category 3, the general ledger reports, and Category 6, the journal entries. In its representations, KEDCO states that from January 2010 to June 2014, the general ledger reports were stored in QuickBooks (a type of accounting software). It further states that the journal entries are stored using the same method as general ledger reports.

[107] KEDCO states that it no longer uses QuickBooks and does not have a software licence to use QuickBooks and no one is trained on QuickBooks. It would, therefore, need to contact the City of Kingston³⁴ to confirm whether they have the ability to access QuickBooks and the expertise to search the QuickBooks data.

[108] I do not accept KEDCO's argument that it will not be able to provide the appellant with access to some of the requested records as it no longer has a licence to use QuickBooks.

[109] In the Notice of Inquiry, concerning section 45(1)(c) KEDCO was asked:

Are there any other costs the institution would incur or has incurred in locating, retrieving, processing and copying the records? If so, please explain.

[110] KEDCO did not respond as to the cost of accessing records using the QuickBooks

³⁴ According to KEDCO's representations, KEDCO is a separate corporation from the City of Kingston. However, it is connected to the City of Kingston through its mission and activities, funding, and governance as it is the City of Kingston's sales and marketing arm.

software. According to the QuickBooks website,³⁵ the average cost for purchasing this software is approximately \$20 per month, if purchased for less than six months. As noted below, I have allowed a five month time extension to process this request after payment of the fee estimate deposit.

[111] Taking into account that the records that need to be accessed using QuickBooks are from 2010 to 2014, I will add the amount of \$100 to the fee estimate to allow for the purchase of the software. If KEDCO is able to access the QuickBooks software through the City of Kingston, then this fee estimate amount can be removed from the final fee decision.

Conclusion re: costs incurred in locating, retrieving, processing and copying a record under section 45(1)(c)

[112] Therefore, I have allowed KEDCO to charge under section 45(1)(c) the amounts of \$4,940 for photocopies, \$572.40 for scanning records onto a CD and \$100 for software costs for a total of \$5,612.40.

Conclusion re: fee

[113] I have allowed a search fee estimate of \$1,035, a preparation fee estimate of \$3,140 and a photocopy and scanning fee estimate of \$5,612.40, for a total fee estimate of \$9,787.40. This is the total fee estimate amount allowed for KEDCO to search for, prepare, photocopy and scan the 39,960 pages of records listed in its January 18, 2018 interim access and fee estimate decision.

[114] However, I accept KEDCO's evidence that the expected number of responsive records is 60,000 pages rather than the 39,960 pages identified so far. To take into account the estimated 60,000 pages, I am increasing the fee estimate by 50% (\$4,893.70) to obtain what I conclude is a reasonable fee estimate for the entire expected 60,000 pages of records. Accordingly, I will allow KEDCO to charge a fee estimate of \$14,681.10 to locate, prepare and copy all of the responsive records onto CDs.

Issue B: Should the fee be waived?

[115] 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:

³⁵ <https://quickbooks.intuit.com/ca/pricing/>

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.

[116] 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.³⁶ As well, the institution or this office may decide that only a portion of the fee should be waived.³⁷

[117] KEDCO states that the appellant's fee waiver request letter did not provide a basis for the granting of a fee waiver, as it did not provide details regarding its financial situation and did not explain whether in its opinion the subject matter of the records is a matter of public interest.

[118] KEDCO states that it would take approximately 1,400 hours to search, review and prepare nearly 60,000 pages of responsive records, which are stored and maintained in a variety of manners. KEDCO also states that it has provided some

³⁶ Orders M-914, P-474, P-1393 and PO-1953-F.

³⁷ Order MO-1243.

records free of charge and has attempted to clarify the request to reduce the volume of records responsive to this request to a more manageable and reasonable number.

[119] In addition, KEDCO states that much of the information that the appellant is seeking is contained in KEDCO's publicly available audited financial statements.

[120] The appellant states that it requested a fee waiver from KEDCO on the basis that the request was in furtherance of legitimate political discourse and it was in the public interest. It does not seek to rely on the health and safety provision, but submits that an institution and the IPC have a residual discretion to waive fees where it is just to do so. It submits that in considering such a request, the conduct of the parties and the purpose of the request are relevant factors.

For almost two years, KEDCO has resisted a legitimate MFIPPA request. Through repeated unexplained delay, an inflated fee estimate, and procedural impropriety, KEDCO has shirked its statutory obligations and put [the appellant] through an unnecessary and expensive administrative saga. Awarding a complete, or partial, fee waiver is a fair and equitable way to account for this injustice.

[121] In reply, KEDCO repeats its initial representations and also states that the time and costs to fully respond to the appellant's broad request will impose a significant burden on KEDCO, an organization with only nine employees. It states that this financial burden will have to be paid out of KEDCO's operating budget.

Analysis/findings re: fee waiver

[122] As stated above, I have reduced the fee estimate in this appeal to \$14,681.10.

[123] Based on my review of the parties' representations, I agree with KEDCO that a fee waiver to reduce this fee further is not warranted in this appeal.

[124] 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.³⁸

[125] 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.³⁹ Factors that must be

³⁸ Order PO-2726.

³⁹ See *Mann v. Ontario (Ministry of Environment)*, 2017 ONSC 1056.

considered in deciding whether it would be fair and equitable to waive the fees are set out above in section 45(4).

[126] The appellant has made a very broad request for financial documents about KEDCO covering a six year period.

[127] In my view, none of the factors listed in section 45(4) apply, nor have they even been raised by the appellant.

[128] Any other relevant factors must also be considered when deciding whether or not a fee waiver is "fair and equitable". Relevant factors 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.⁴⁰

[129] I have considered the fee estimate reduction provided for by this order, along with the other relevant factors outlined above. In particular, I have considered the manner in which KEDCO has responded to the request as raised by the appellant. The appellant suggests that there has been an unexplained delay in the processing of the request and that KEDCO has shirked its administrative responsibilities. I do not agree with the appellant that either of these assertions can be established in the circumstances of this appeal, based on my review of the parties' representations.

[130] In deciding not to grant a fee waiver, I have also specifically considered that KEDCO worked with the appellant to clarify its request, that KEDCO provided the appellant with some records free of charge and that the request involves a large number of records.

⁴⁰ Orders M-166, M-408 and PO-1953-F.

[131] In conclusion, I find that a fee waiver is not fair and equitable in the circumstances of this appeal. In making this finding, I have considered the user-pay principle, the reduced fee estimate, the large number of records involved, the breadth of the request and the factors listed above. As such, I am denying the appellant's request for a fee waiver.

Issue C. Should the appellant be provided with disclosure of certain responsive records specified by the appellant if it pays a 50% deposit toward the fee estimate for them?

[132] The appellant states that during the mediation of this appeal, it accepted the revised fee estimate for two of the nine items then identified in the revised decision of March 22, 2017, which were the general ledger and the credit card statements. The fee estimate for those items was \$6,122.00.⁴¹ The appellant then provided KEDCO with 50% of this amount (\$3,061) and asked that KEDCO provide the responsive records for these two items to it. KEDCO responded during mediation and refused to provide the records responsive to the two items, since its position was that the appellant had to proceed with all of the records covered by the revised fee estimate.

[133] The access decision and fee estimate at issue in this appeal is dated January 18, 2018 in the amount of \$49,727. It covers all of the items at issue in the appellant's request because, by appealing the October 4, 2016 decision, the appellant has appealed KEDCO's fee estimate on the entire request. The appellant also provided representations on the fee estimate for its entire request.

[134] Therefore, the fee estimate for the narrowed request of \$17,581.60 of March 22, 2017 is not at issue as not all of the items in the appellant's request are covered by this fee estimate. Therefore, the offer of payment by the appellant at mediation of a portion of the amount of the March 22, 2017 fee estimate is not at issue in this appeal.

[135] Nevertheless, for the sake of completeness, I will consider whether in the circumstances the appellant should be allowed to obtain partial disclosure on payment of a portion of the fee estimate.

[136] The appellant states that:

There is nothing in the legislation that states that a party must accept all or none of a revised estimate or even an original request. The entire purpose of mediation in this context is to limit the request and the purpose of a fee estimate is to give the requester an opportunity to consider what if any of the original request they are willing to pay for.

⁴¹ In its representations, the appellant mistakenly calculated this figure to be \$7,122.

[137] In reply, KEDCO submits that this partial resolution would require KEDCO to perform some of the search and preparation functions at the mediation stage and repeat those processes, potentially for records that were stored or maintained in a similar fashion, later at the adjudication stage. It states:

Indeed, we are now at the adjudication stage and as [the appellant] has appealed both the Initial Decision Letter and the Second Decision Letter, we are still at a stage where [the appellant] is maintaining its initial broad and generalized requests. KEDCO must, again, attempt to clarify [the appellant's] request and offer suggestions as to records in KEDCO's custody and control that may be responsive to [the appellant's] generalized requests.

[The appellant's] partial resolution, proposed during the mediation process, was not consistent with the goals of mediation, to reach a resolution or to narrow the issues in dispute. KEDCO rejected this proposal on the basis that it was inefficient and did not bring the parties any closer to a resolution or clarity on [the appellant's] requests.

[138] In Interim Order MO-3614-I, the appellant alleged that the City of Cambridge agreed at mediation to disclose all the records to her in return for a reduced fee of \$600.00 and her "stopping" all other Freedom of Information requests and "closing" all appeal files.

[139] In response to that argument, the city stated that it never agreed at any time to disclose the records in question to the appellant, through any process including mediation and that this was why it was in the appeal process through the IPC.

[140] In Interim Order MO-3614-I, Adjudicator Steven Faughnan was satisfied that there was no agreement to full disclosure of the withheld information upon payment of a reduced fee of \$600.00. He found that the lack of an agreement between the city and the appellant was confirmed in the Mediator's Report. Adjudicator Faughnan determined that access to the undisclosed information at issue in this appeal remained at issue at the close of mediation. As a result, he found that while a number of issues were resolved at mediation, access to the information at issue in that appeal was not. He noted as a practical matter, that had the mediation resolved the appeal the mediator would have closed the appeal file and it would not have moved to the adjudication stage.

[141] I agree with the approach taken by Adjudicator Faughnan in Interim Order MO-3614-I. In this appeal, I find that the issue of the fee for access to certain records from two of the six categories of records was not resolved at mediation. The mediator's

report lists the entire fee estimate as an issue in this appeal moving to adjudication. Section 41(1)⁴² of *MFIPPA* provides for an inquiry where no settlement has been reached, which is what has happened here. Had there been agreement between KEDCO and the appellant with respect to the proposal that partial access would be granted to the identified records upon payment of the requisite fee deposit, it would be open for me to find that KEDCO must disclose those records, subject to any exemptions. However, KEDCO's decision to decline to partially process the request, for the reasons it provided to the appellant, is evidence that there was no such agreement. Moreover, I accept that retrieving the records in a piecemeal fashion would likely involve duplication of effort and I agree with KEDCO that it is not reasonable to ask it to incur the costs of responding to these portions of the request when the appellant still seeks access to the remaining portions of the request.

[142] Therefore, I accept KEDCO's position that there was no settlement at mediation providing for access to two of the six categories of records set out above upon payment of the 50% fee deposit. In the circumstances, therefore, I uphold KEDCO's decision not to provide the appellant with access to those particular records, absent a payment of 50% of the deposit for the entire fee estimate.

Issue D: Should KEDCO be permitted to claim a time extension of an additional 11 months from receipt of the requested fee estimate deposit to respond to the request?

[143] KEDCO is seeking an additional 11 month time extension to respond to the request upon receipt of the 50% deposit.

[144] Time extensions are governed by section 20(1) of the *Act*, which states:

A head may extend the time limit set out in section 19 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

⁴² Section 41(1) of *MFIPPA* reads:

- The Commissioner may conduct an inquiry to review the head's decision if,
- (a) the Commissioner has not authorized a mediator to conduct an investigation under section 40; or
 - (b) the Commissioner has authorized a mediator to conduct an investigation under section 40 but no settlement has been effected.

(b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

[145] KEDCO states that due to the broad nature of the appellant's request and the six year time period for which the appellant is seeking records, it estimates that there are over 60,000 pages of records responsive to the appellant's request.

[146] KEDCO points out that in the request, the appellant used broad descriptions of the records it is seeking. It states that the records that are responsive to this request are stored either digitally or in paper form and that some digital records are maintained and stored by third-party contractors (i.e. banking records). KEDCO adds that its paper records are stored in boxes onsite and at its off-site storage facility, as well as by third party contractors.

[147] KEDCO states that it will need to search through a large number of irrelevant records since the records requested by the appellant are not all stored together. KEDCO provided examples of the searches it will need to undertake to respond to just one part of the multi-part request.

[148] KEDCO estimates that at least 1,400 hours will be required to locate and prepare the records for disclosure and that this represents nine months of full-time work based on a 35-hour work-week. KEDCO also submits that given the enormity of the task, and the significant number of hours required to respond to it, KEDCO will also be required to hire someone solely for this purpose. This individual will need to be trained on KEDCO's practices in order to understand the records that may have been created over the six- year time period in question, as well as being trained on KEDCO's storage practices.

[149] KEDCO states that this hiring and training time has not been included in the time estimate needed to locate and prepare the records for disclosure. Nor does this time estimate include time that may be required to contact third parties whose personal information may be included in such records. It reiterates that the time estimate is based on the six categories of records set out in its interim access and decision letter and does not encompass all the records that may be responsive to this request.

[150] In response, the appellant provided detailed representations as to how long the process has taken so far and suggests that where information is sought to further political debate, delay is as effective a tactic as a refusal or denial of access on the part of an institution.

Analysis/Findings

[151] The issue in this appeal is whether the time extension is reasonable in the circumstances of the request, in the context of the provisions of section 20(1) of the *Act*.

[152] Factors which may be considered in determining reasonableness include:

Section 20(1)(a):

- 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;

Section 20(1)(b):

- 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.

[153] It is clear from the breadth of the appellant's request and the parties' representations that all of the factors listed above for decisions under section 20(1) are present in this appeal, namely:

- there are a large number of responsive records covering a six year period,
- the manner in which the records are stored would require KEDCO to search through a large number of other records to locate the requested records,
- meeting the 30 day time limit would unreasonably interfere with the operations of the KEDCO, and
- consultations outside KEDCO may be necessary to comply with the request after the records are located and reviewed as third parties may need to be notified under section 21(1) of *MFIPPA*.⁴³

[154] Based on my consideration of the circumstances of this appeal, I have decided to allow KEDCO to claim a time extension to comply with the request. However, I do not agree with KEDCO that an 11 month time extension is warranted. In the circumstances of this appeal, I find that a five month extension following the payment of the deposit

⁴³ Section 21(1) provides that: A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

(a) that the head has reason to believe might contain information referred to in subsection 10 (1) that affects the interest of a person other than the person requesting information; or

(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 14 (1) (f).

for the fee estimate is reasonable.

[155] I have reduced the time extension to five months from the requested 11 months to process the appellant's request, based on the following:

- From my review of KEDCO's representations, it appears to me that many of the records in each category are stored offsite in boxes and are intermingled with records from other categories of records. However, KEDCO may be able to search for records from more than one category at a time;
- I have found that not every page of every record would require multiple severances as was set out in the KEDCO's preparation fee estimate. As not every page requires severing, the time needed to prepare the records is reduced; and,
- I have also found that not every page of every record would require photocopying as was set out in the KEDCO's photocopy fee estimate. As not every page requires photocopying, the time needed to copy the records is reduced.

[156] Nevertheless, taking into account the wording of the request and the large number of expected responsive records (60,000), I have found that a time extension is warranted and am granting KEDCO a five month time extension to process this request from the time of the payment of the 50% fee estimate deposit.

ORDER:

1. I order a reduction of KEDCO's fee estimate to \$14,681.10.
2. I uphold KEDCO's decision to deny the appellant a fee waiver
3. I grant KEDCO a five month time extension from receipt of payment of the 50% deposit of the \$14,681.10 fee estimate to issue a final access and fee decision on all of the records responsive to the request.

Original Signed by: _____
Diane Smith
Adjudicator

_____ January 30, 2019