

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4007

Appeal PA17-45

Algoma University

November 20, 2019

**Summary:** The university received an access request under the *Freedom of Information and Protection of Privacy Act* for all email communications pertaining to the appellant for a specified time period. The university issued an interim access decision with a fee estimate of \$270. During mediation, the university reduced the fee estimate to \$150. In this order, the adjudicator upholds the university's revised fee estimate of \$100.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 10(1) and 57(1).

**Orders Considered:** Order PO-3537.

### BACKGROUND:

[1] Algoma University (the university) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

All email communication pertaining to [name of the requester] between June 1, 2013 and December 1, 2016.

[2] In response, the university provided an interim access decision with a fee estimate of \$270.

[3] The requester, now the appellant, appealed the decision to this office.

[4] During mediation, the university advised that upon further review a more accurate estimate for preparation time for the fee estimate would be 2 hours, reducing the fee to \$150 as follows:

Search time:	3 hours @ \$30/hour
Preparation time:	2 hours @ \$30/hour
Total:	\$150.00

[5] There would also be a fee of \$0.20 per page for photocopying.

[6] Further, the appellant raised an additional issue. He advised the mediator that after he was no longer employed at the university, the university left his corporate email account open and did not deactivate it. The appellant's position is that the university does not have custody or control of any emails that were sent to his former corporate email account. I will refer to these emails as the unsolicited emails as they are different from the emails that are responsive to his request. The appellant argues that since the university does not have custody or control over these unsolicited emails, it does not have jurisdiction to charge any fees for them.

[7] As further mediation was not possible, this appeal was moved to the next stage, where an adjudicator conducts a written inquiry under the *Act*.

[8] During the inquiry, I sought and received representations from the appellant and the university. Pursuant to section 7 of this office's *Code of Procedure and Practice Direction Number 7*, copies of the parties' representations were shared with the other party.

[9] In its reply representations, the university stated that it believes its fee estimate of \$150 is accurate but given the duration of this process, it was willing to further reduce the fee estimate to \$100.

[10] The university also provided to the appellant a copy of the unsolicited emails free of charge. As such, the issue of whether the university has jurisdiction to charge any fees for the unsolicited emails is moot. Accordingly, I have removed it from the appeal.

[11] As a final note, it is clear the appellant is very upset that the university did not deactivate his former corporate email account once his employment ended. It is also clear the appellant feels that the university breached his privacy by keeping his former corporate email account opened for such a lengthy period of time after his employment ended. However, the appellant has made a privacy complaint (PC16-16) to this office, which was addressed and resolved in September 2017. As such, any privacy breach complaints about his former corporate email account will not be addressed in this appeal.

[12] In this order, I uphold the university's decision on its further revised fee estimate

of \$100.

## **DISCUSSION:**

[13] The sole issue in this appeal is whether the university's fee estimate should be upheld.

[14] 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.<sup>1</sup> The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.<sup>2</sup> In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.<sup>3</sup>

[15] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

[16] Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

[17] More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 460. Those sections read:

6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:

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<sup>1</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

<sup>2</sup> Order MO-1520-I.

<sup>3</sup> Orders P-81 and MO-1614.

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.

6.1 The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD- ROM.
3. 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.
4. 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.

[18] In its representations, the university explains that it interpreted the appellant's

request for communications “pertaining to” him as only including email communications that directly referred to the appellant, as opposed to a broad search referencing the appellant both directly and indirectly. As such, its search indicated that there were approximately 100 email threads that could possibly pertain to the appellant. It states that the fee estimate for these emails is accurate and should be upheld.

[19] In his representations, the appellant submits that the fee estimate is not accurate. He submits that the search for emails is done electronically and, therefore, there should be no manual search done to locate these records. As such, he submits only the minimum of 15 minutes and \$7.50 can be assigned to the email extraction, handling, and exporting portion.

[20] With respect to email review and redaction, the appellant states that 100 email threads were identified of which some would be duplicates. He submits that two minutes per page (for multiple severances) at 100 pages (possible duplicates) only works out to be 3.34 (or 3.5) hours or \$105.

[21] Finally, the appellant submits that he does not want paper copies of the emails as his request was for electronic copies of the emails. As such, the university can charge \$10 for a CD ROM or USB memory stick.

[22] In response, the university reiterates that it believes its fee estimate of \$150 is accurate. However, it states that given the duration of this appeal process, it is willing to further reduce the fee to \$100.

[23] The university then confirmed that one email out of the 100 emails contains the appellant’s personal information. Fees for one’s own personal information are assessed under section 6.1 of Regulation 460, rather than section 6. This information was then provided to the appellant for his review and comment. Although the appellant provided a response, his response did not address this issue.

### **Analysis and findings**

[24] In determining whether to uphold a fee estimate, my responsibility under section 57(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 university. To discharge this burden, the university 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.

[25] Although the university did not provide me with any submissions on the breakdown of its fee estimate, during mediation it provided such breakdown to the

mediator.<sup>4</sup> Subsequently, the mediator shared this breakdown with the appellant.<sup>5</sup> This breakdown was also contained in the Mediator's Report, which was provided to the university and the appellant.

[26] The university explains that the fee estimate is based on a sampling of 30 email threads with the average printed page count being 2.5. As such, it states the overall estimated page count for review is 250 pages (2.5 x 100 email threads). The university also explains that there are approximately 16 email accounts that are involved.

[27] The university states that it has already spent 3 hours at \$30/hour to search for the records. It explains that this included having its System Administrator write a script to search and extract the emails. The university also explains that the extracted emails were then placed in a secure repository for the FOIC to review. It states that the FOIC spent time removing duplicate emails and threads so that their search estimate was based on a more accurate figure. The university also states, after this exercise, they were left with a repository of approximately 100 email threads, however, it is possible that more of these threads may be duplicates, and others may not ultimately pertain to the request.

[28] In addition, the university states that it initially provided an estimate of 6 hours at \$30/hour to prepare the records based on the initial repository of 100 email threads. It explains that many of these email threads are known to include details that will need to be severed and its fee estimate included the estimated time it would take to determine whether the record needed to be severed,<sup>6</sup> and the subsequent severing.

[29] The university states that the new preparation time estimate of 2 hours is based upon a sampling of 30 email threads and a finding that approximately 25% will need severing to some degree, which is  $250 \text{ pages} \times 0.25 \times 2 \text{ minute/page} = 125 \text{ minutes}$ .

[30] In light of this, it revised its fee estimate to the following:

Search time	3 hours @ \$30/hour
Preparation time	2 hours @ \$30/hour
Total:	\$150

[31] As noted above, the university further reduced the above fee estimate to \$100.

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<sup>4</sup> Email sent on March 28, 2017 to the mediator from the FOIC.

<sup>5</sup> Email sent on April 11, 2017 to the appellant from the mediator.

<sup>6</sup> Orders M-376, P-4 and P-1536 state that institutions are not allowed to charge for the estimated time or time to determine whether the record need to be severed. In any event, it does not appear that the university included the estimate time in its calculation for its revised fee estimate.

It did not provide a new breakdown for this amount.

[32] For the reasons that follow, I find the university's fee estimate to be reasonable. I note that the search fee is based on the actual search time for electronic records. In this case, the appellant's request is for all email communications pertaining to himself for a specified time period.

[33] As noted above, the university recently confirmed that one email out of the 100 emails contains the personal information of the appellant. In the circumstances, this appears to be quite reasonable since the appellant ceased to be employed by the university after March 2012. Section 6.1 of the Regulation 460 does not allow an institution to charge a requester fees for search and preparation for access to their personal information. However, as the appellant's personal information is contained in only one email, I have not asked the university to revise its fee estimate as the responsive records contain very little of his personal information. I especially found it was not necessary since the university has further reduced its fee estimate to \$100.

[34] As the appellant's request is for electronic communications, the university needed to only search for responsive records in its electronic record holdings. As noted above, responsive records are found in 16 email accounts. In the circumstances, I am satisfied that the university's estimated preparation time to sever these records is reasonable. I note that it is less than the appellant's estimate, which was 3.5 hours. Accordingly, on the basis of the university's search and the identified preparation fees, I uphold the university's fee estimate of \$100 as reasonable, plus the charge of \$10 for the cost of a CD ROM or USB memory stick.<sup>7</sup>

[35] As a final note, for clarification purposes, these 100 email threads are not from the appellant's former corporate email account.

## **ORDER:**

I uphold the university's fee estimate of \$100, plus \$10 for a CD ROM or USB memory stick.

Original signed by: \_\_\_\_\_

Lan An  
Adjudicator

November 20, 2019  
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<sup>7</sup> I note that the appellant states he does not want photocopies of the records.