

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3939

Appeal MA19-00588

Kingston Economic Development Corporation

July 28, 2020

Summary: The Kingston Economic Development Corporation (KEDCO) received a broad access request under the *Municipal Freedom of Information and Protection of Privacy Act* for financial information about KEDCO from 2010 to 2015. The appellant appealed KEDCO's fee estimate. The adjudicator issued Order MO-3727 in which she reduced KEDCO's fee estimate amount and denied the appellant a fee waiver. After the appellant paid the deposit for the fee estimate allowed in Order MO-3727, KEDCO conducted the search for records and issued a final access and fee decision. The appellant appealed the fee decision and also challenged the reasonableness of the search conducted.

In this order, the adjudicator orders KEDCO to conduct a search for records detailing approvals for reimbursements made to KEDCO staff and third party vendors for expenses not submitted to KEDCO's Finance Committee. She upholds the remainder of KEDCO's search as reasonable.

The adjudicator also reduces KEDCO's search fee and orders KEDCO to refund the appellant the difference between the fee upheld in this order and the amount already paid by the appellant to KEDCO.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 45(1).

Orders Considered: Order MO-3727.

OVERVIEW:

[1] The Kingston Economic Development Corporation (KEDCO)¹ 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 2015.²

[2] KEDCO issued an interim access decision and fee estimate in the amount of \$42,063. The requester, now the appellant, appealed KEDCO's decision to this office and Appeal MA16-637 was opened. During the mediation stage of Appeal MA16-637, the appellant raised the issue of fee waiver and narrowed the scope of its request to six of the original 13 items, clarifying the six items as follows (using the original numbering):

1. A print-out of the General Ledger (all transactions) for the years 2010 to 2015, without detailed/supporting documentation;

¹ KEDCO is a corporation incorporated by the City of Kingston for the sole purpose of promoting economic activity in the greater Kingston area.

² In the 13-part request initially submitted, 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.

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;
3. 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;
4. 9. All corporate credit card statements for the years 2010 to 2015; and
5. 12. A copy of the reports presented to KEDCO's Finance Committee for the years 2010 to 2015.

[3] KEDCO then issued a revised interim decision that set out the six items and provided a revised fee estimate in the amount of \$17,581.60.

[4] A mediated resolution was not possible and an inquiry was conducted into Appeal MA16-637. During the inquiry, KEDCO issued a revised fee estimate of \$49,727 with respect to the original 13-part request.

[5] As the revised fee estimate was the most recent and most comprehensive fee estimate, this was the fee estimate I reviewed in Order MO-3727. In that order, I found that a fee estimate of \$14,681.10 was reasonable for the six items requested and I reduced the fee estimate to this amount. I also found that the basis for a fee waiver was not established. I granted 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 upheld KEDCO's decision to refuse to process certain parts of the request upon payment of a partial fee by the appellant.

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[6] Following the issuance of Order MO-3727, the appellant submitted a deposit of \$7,340.55 to KEDCO, representing 50% of the allowable fee estimate of \$14,681.10.

[7] KEDCO then issued a final access decision granting full access to the records responsive to the request. In its decision, it charged the appellant \$9,090 as a search fee and \$1,579.60 as a photocopy fee, bringing its total fee to \$10,699.60.³ In addition, KEDCO waived the outstanding fee balance, as it did not charge the appellant for any amounts over the \$7,340.55 it had already paid to KEDCO.

[8] The appellant then appealed KEDCO's final fee and this appeal, Appeal MA19-

³ KEDCO added these to total \$10,836.20, which is an adding error - see page 15 of this order.

00588, was opened to address it.

[9] During the mediation of this appeal, the appellant advised the mediator that it believes further records responsive to its request exist at KEDCO. Accordingly, reasonable search was added to the issues for inquiry.

[10] As a mediated resolution was not possible, this appeal proceeded to the adjudication stage for an inquiry. Representations were sought from and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[11] In this order, I order KEDCO to conduct a search for records detailing approvals for reimbursements made to KEDCO staff and third party vendors for expenses not submitted to KEDCO's Finance Committee. This search is to include a search for any documents that contain approvals of expenses on KEDCO corporate credit cards. I uphold the remainder of KEDCO's search as reasonable.

[12] I also reduce KEDCO's fee to \$7,033.60 and order KEDCO to refund \$306.95 to the appellant, as the appellant has already paid KEDCO \$7,340.55.

ISSUES:

A. Did KEDCO conduct a reasonable search for records?

B. Should the fee be upheld?

DISCUSSION:

Issue A: Did KEDCO conduct a reasonable search for records?

Representations

[13] KEDCO states that it cannot identify specifically what search efforts the appellant alleges were insufficient.

[14] KEDCO states that it has, however, made a reasonable effort to identify, locate and produce all of the responsive records. It provided extensive details of its search efforts in the affidavit of its Chief Executive Officer. It states that it hired a contractor to perform the search and this individual was assisted by two summer students, several members of KEDCO's staff and several members of the City of Kingston's staff.

[15] KEDCO states that the following records were prepared for disclosure:

- a. Monthly credit card statements for all corporate credit cards issued to KEDCO employees from 2010 to 2015;

b. Finance Committee reports and associated documents, including:

- Proposals for expenses;
- Budget review documents;
- Requests for funds from reserves or special requests for expenditures;
- Draft audited reports;
- Vendor lists;
- Cheque register (point-in-time General Ledger reports);
- Annual budgets; and,
- Proposals from third parties for various services.

[16] In addition to the foregoing, KEDCO states that it assembled all the information pertaining to employee reimbursements and third-party vendor expenses that was included in the General Ledger in two spreadsheets summarizing this information for the appellant. These spreadsheets consisted of 21 pages (for staff reimbursements) and 667 pages (for third party vendor expenses).

[17] The appellant states that it is a not-for-profit corporation created by concerned members of the Kingston community to lobby for political transparency and accountability in municipal politics. It states that in response to increasing concerns about the effectiveness and accountability of KEDCO voiced by members of the Kingston community, the City of Kingston (the city) initiated a review of KEDCO's operations and effectiveness. It states that the Review Committee was selected entirely by city council and included an external consultant chosen by the city.

[18] The appellant states that it voiced concerns about the operations of KEDCO, the exclusion of a financial accountability analysis from the Review Committee mandate and the composition and selection of the Review Committee itself. After months of attempting to obtain transparency and unanswered requests for information, the appellant made its first formal access request of KEDCO for disclosure of information so that it could subject KEDCO's financial information to public scrutiny. This request and the resulting IPC appeal ultimately led to the issuance of Order MO-3727.

[19] The appellant submits that KEDCO did not conduct a proper search for records as contemplated by Order MO-3727. It states that from the beginning, it requested not only the actual expense items but the back-up documentation supporting the expenses, which has not been produced.

[20] As an example, the appellant states that although the credit card statements that it received following Order MO-3727 reveal some obviously inappropriate spending, it is

not possible to evaluate the legitimacy of any of these expenses, without receipts and supporting documentation.

[21] The appellant submits that in KEDCO's representations in the prior appeal, KEDCO confirmed it understood the scope of the request to include all supporting documentation.

[22] The appellant states that KEDCO has produced lists of expenses but has not produced any receipts or supporting documents with respect to those expenses. It states that KEDCO has produced only three categories of documents:

- a. the General Ledger;
- b. credit card statements;
- c. Finance Committee reports.

[23] The appellant states that the additional spreadsheets provided were simply prepared from the General Ledger, which does not comply with the request or the fee estimate given by KEDCO.

[24] In reply, KEDCO states that it did provide supporting documentation. It lists the following examples:

- Monthly credit card statements for all corporate credit cards issued to KEDCO employees from 2010 to 2015;
- General Ledger Reports from 2010 to 2015, which includes vendor invoice information, staff reimbursement records, records of payments to directors, records of consultant fees, and records of travel expenditures;
- All Finance Committee reports from 2010 to 2015 including the associated documents as follows:
 - Proposals for expenses;
 - Budget review documents;
 - Requests for funds from reserves or special requests for expenditures;
 - Draft audited reports;
 - Vendor lists;
 - Cheque register (point-in-time general ledger reports);
 - Annual budgets;

- Proposals from third parties for various services.

[25] In addition, KEDCO states that it provided supporting documentation for staff expenditures, vendors'/consultants' expenses and the process used to select vendors/consultants. KEDCO states that the appellant has received all supporting documentation that passed through the Finance Committee for approval of these expenditures. It submits that there are no further records that can offer the "explanation or justification" that the appellant states it is seeking.

[26] KEDCO states that it has made concerted efforts to understand what the appellant was seeking with its broad descriptor of "supporting documentation"; a term it says has not been defined by the appellant with any particularity. KEDCO states that it turned its mind to what supporting documents may exist that are responsive to the request and used this as a basis for making a fee estimate.

[27] KEDCO's position is that the credit card receipts and the associated approval documentation are not within the scope of the request as determined in Order MO-3727. Therefore, KEDCO did not identify and locate this information in response to the order.

[28] Upon performing the search after Order MO-3727, KEDCO states that it discovered that there was more supporting documentation contained within the Finance Committee reports than it originally believed.

[29] KEDCO states that the documentation that passed through the Finance Committee, together with the monthly credit card statements and the General Ledger provided the information that the appellant was seeking about employee expenses and vendor/consultant invoices. KEDCO gave specific examples of this documentation to demonstrate how much supporting documentation was, in fact, provided to the appellant.

[30] KEDCO submits that the appellant is not actually seeking more supporting documentation but is seeking an explanation or justification for certain expenses.

[31] In sur-reply, the appellant states that KEDCO has produced General Ledger statements and credit card statements that reveal thousands of expenses over the five-year period covered by the information request. It states that of the more than several million dollars spent by KEDCO each year, only a handful of items are debated at the Finance Committee meetings with backup documentation provided.

[32] The appellant states that KEDCO has provided the requested backup documentation for only a handful of the thousands of expenses incurred. The appellant submits that there should exist other records showing the detail of the expenses reflected in the General Ledger, the justification for the expenses, or the approval of the expenses, because KEDCO is a governmental organization and it must have controls in place with respect to approving expenditures.

[33] The appellant specifically refers to the thousands of dollars of credit card expenses that would need to have been approved based on submitted receipts for expenses.

Analysis/Findings

[34] 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 17.⁴ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[35] 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.⁵ To be responsive, a record must be "reasonably related" to the request.⁶

[36] 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.⁷

[37] 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.⁸

[38] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁹

[39] In Order MO-3727, I noted that six categories of records were at issue, as follows (with the estimated record and page count provided by KEDCO):

1. Visa Statements for all corporate credit cards issued from 2010 - 2015:
 - Volume of Records: 720 records; 3 pages per record = 2,160 pages
2. Finance Committee Reports from 2010 to 2015

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

⁹ Order MO-2246.

- Volume of Records: 265 pages per year = 1,600 pages
3. General Ledger Reports from 2010 to 2015
 - Volume of Records: 200 pages per year = 1,200 pages
 4. Reimbursement Records from 2010 to 2015
 - Volume of Records: 21,000 pages
 5. Vendor Invoices from 2010 to 2015
 - Volume of Records: 8,000 pages
 6. Journal Entries from 2010 to 2015
 - Volume of Records: 6,000 pages

[40] In Order MO-3727, I reduced the fee estimate and provided KEDCO a time extension to issue a final access and fee decision on all the records responsive to the request. In response, KEDCO issued the following final access and fee decision letter to the appellant:

The Kingston Economic Development Corporation has now completed its search and preparation process for records responsive to your client's request. A third-party contractor was hired to provide support to staff in our efforts to locate and prepare documents. The City of Kingston Financial Services Department and Clerks Office also provided support for the retrieval of the documents. The following categories of records were identified:

1. Visa Statements for all corporate credit cards issued from 2010 to 2015;
2. Finance Committee Reports and associated documents (i.e. proposals, requests for funds, budget reviews, audited report drafts, vendor lists, cheque register, annual budgets, strategic plan, bids for purchases etc.) from 2010 to 2015 and
3. General Ledger Reports from 2010 to 2015. Much of the information requested by your client was contained within the General Ledger Reports. In particular, the General Ledger Report includes:
4. Vendor Invoice information
5. Staff Reimbursement records

Furthermore, the information originally contemplated as being within journal entries was found to be contained in the General Ledger Reports.

In the interests of transparency, we have pulled the information pertaining to employee reimbursements as well as third party vendor expenses from the General Ledger Reports and created two summary spreadsheets summarizing this information. The summary spreadsheets are 21 pages (for staff reimbursements) and 667 pages (for third party vendor expenses). From our perspective, summarizing the information in this manner increases the transparency of this process and specifically addresses the information requests of your client.

Approximately 30,800 pages/records were reviewed in order to locate and prepare the records responsive to your request. A total of 7,898 pages (including the summary documents prepared) were identified as being responsive to your request...

[41] The appellant claims, in particular, that it did not receive credit card receipts or the documentation approving the expense in these receipts. KEDCO did produce the credit card statements.

[42] Concerning the credit card receipts, I note that any expenses incurred on KEDCO corporate credit cards from 2010 to 2015 would be itemized on the already disclosed KEDCO credit card statements. As well, I agree that the appellant did not specifically seek credit card receipts in its request as revised during mediation. Therefore, I find that credit card receipts are outside the scope of the request.

[43] In Order MO-3727, I found that employees with corporate credit cards would not require reimbursement of expenses they placed on the corporate credit cards.

[44] With respect to the non-credit card expenses, in Order MO-3727, one of the categories of records I reviewed was Reimbursement Records from 2010 to 2015 (Category 4), which KEDCO had estimated as containing 21,000 pages of records. KEDCO stated in its representations in support of Order MO-3727 that the Category 4 - Reimbursement Records contain employee names, receipts and other records of expenses incurred, in addition to records of reimbursement.

[45] I find that KEDCO has not conducted a reasonable search to try to identify or locate the reimbursement records that do not relate to the credit card expenses incurred by its staff on the corporate credit cards. Nor has KEDCO satisfied me that it has searched for records that would demonstrate approval of the credit card expenses on corporate credit cards. As well, KEDCO has not shown that it searched for records of approval of expenses listed in the General Ledger but not passed through the Finance Committee.

[46] In making this finding, I have considered KEDCO's submission that the

documentation that passed through the Finance Committee, together with the monthly credit card statements and the General Ledger, provided the information the appellant is seeking about employee expenses and vendor/consultant invoices. However, I accept the appellant's submission that only a handful of these items are debated at the Finance Committee meetings with backup documentation provided.

[47] Therefore, I will order KEDCO to conduct a search for records detailing approvals for reimbursements made to KEDCO staff and third party vendors for expenses not submitted to KEDCO's Finance Committee, including approvals of expenses on KEDCO corporate credit cards. I uphold the remainder of KEDCO's search as reasonable for the six categories of records that were at issue in Order MO-3727, as noted above.

Issue B: Should the fee be upheld?

[48] 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.

[49] 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.

[50] 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.
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.

Representations

[51] KEDCO states that after Order MO-3727 set a \$14,681.10 fee estimate, the appellant paid the required 50% deposit of \$7,340.55, in order for the search to be conducted and the records prepared for disclosure.

[52] KEDCO hired a contractor to perform the search functions who was assisted by two summer students, several members of KEDCO's staff and several members of the City of Kingston's staff. This contractor reviewed approximately 31,000 pages/records to locate the records responsive to the appellant's request and spent in excess of the 303 hours referenced in the letter to the appellant disclosing the records.

[53] After completing the search for, and preparation of, information, KEDCO determined that its final fee came to \$10,836.20.¹⁰ KEDCO then decided to waive the remaining fee (\$3,495.65) as a gesture of goodwill. As a result, the appellant was only

¹⁰ As explained below, this was an adding error, since the search and photocopying fees in fact add to \$10,699.60.

charged \$7,340.55 for the disclosure of all the documents received to date.

[54] KEDCO states that originally, its contractor reviewed the records for the purposes of severing records and did, in fact, sever records. However, upon reviewing all the severances, the KEDCO Board of Directors decided to disclose all aspects of the records responsive to the appellant's request even where information could have been severed pursuant to the *MFIPPA*.

[55] KEDCO states that despite the fact that a significant amount of time was spent on severances and removing the severances, the fee did not include a fee for preparation time.

[56] KEDCO states that it charged \$1,579.60 for photocopying costs for the 7,898 pages that were ultimately disclosed.

[57] KEDCO states that its cost in responding to the request far exceeded the final fee of \$10,836.20.

[58] In response to KEDCO's submissions about fee, the appellant states that KEDCO did not produce the documents that formed the basis of the fee estimate nor conduct the searches it indicated were necessary. Instead, it submits that KEDCO produced a limited set of documents, totalling less than 8,000 pages.

[59] The appellant points out that the fee charged in the final access decision did not correspond to the estimate it gave originally, or to the fee allowed by the IPC in Order MO-3727.

[60] The appellant states that despite reviewing and producing significantly fewer documents, KEDCO's search fee is unjustified and has increased by almost ten times. It states that the documents that have been produced are effectively just lists and copies of credit card statements, and then summary tables created from the general ledger.

[61] In reply, KEDCO states that the search process that KEDCO undertook differed significantly from what was originally anticipated and reflected in KEDCO's representations from 2017 and the subsequent order, Order MO-3727.

[62] KEDCO states that the seven hour search fee estimate time in Order MO-3727 for the credit card statements did not take onto account the unanticipated difficulty that KEDCO had in first identifying which of the 80 employees had access to a corporate credit card during the six year time period from 2010 to 2015. As such, this initial stage of the search was extremely time consuming, requiring a review of other KEDCO documents in order to find references to which employees had corporate credit cards.

[63] Ultimately, KEDCO determined that manually searching for the corporate credit card statements in this manner provided no guarantee that it was locating all of the credit card statements responsive to the request. KEDCO, therefore, ordered the

statements from the bank at a cost of \$1,700. This bank fee was not charged to the appellant as KEDCO absorbed this cost. The bank statements revealed that there were 34 employees with corporate credit cards during the six-year period at issue, many more than was estimated at the outset.

[64] KEDCO states that its earlier estimate of the amount of time it would take to search for the Finance Committee Reports grossly underestimated the amount of time actually required. It states:

[The CEO had] advised that she believed the Finance Committee Reports from 2010 to 2015 to be stored digitally on the KEDCO computer system based on her review of the 2016 Finance Committee Reports. She therefore estimated it would take a mere 3 hours to locate the Finance Committee Reports from 2010 to 2015.

[H]owever, the search for the Finance Committee Reports turned out to be the most time-consuming part of the search process. [T]he reports for 2010 to 2015 were not all stored in complete packages on KEDCO's computer servers. Many of the associated documents referenced in Committee meeting agendas and minutes were stored as hard copies in KEDCO's archived records in an off-site storage facility...

[65] KEDCO states that searching for these associated documents involved identifying boxes (out of hundreds of boxes held in KEDCO's archives) that may contain one of the reports that was referenced in the Finance Committee meeting minutes or agendas. KEDCO states that its personnel then had to search through these individual boxes to locate the specific record that was referenced in those meeting minutes and agenda.

[66] When this process of searching for the complete Finance Committee Reports was completed, KEDCO states that it realized that there were more documents included with these Finance Committee reports than earlier anticipated. The documents included proposals, reports, vendor lists, budgets, and requests for funds. Upon reviewing the variety of documentation and information included with these Finance Committee Reports, KEDCO states that it realized that the supporting documentation requested by the appellant was contained therein.

[67] KEDCO states that the variation in the fee between the fee estimate and the final fee reflects the fact that the actual search unfolded in a manner that was not anticipated from the outset and that different types of documents were found in the search process that appropriately responded to the appellant's request for "supporting documentation".

[68] In sur-reply, the appellant states that the fee estimate was based on the estimated production of over 60,000 records and that KEDCO has produced only 8,000 pages, and that the documentation produced is merely the list of expenses without any supporting documentation.

[69] The appellant submits that KEDCO, after having its fee estimate reduced in Order MO-3727, unilaterally decided to go with the option of printing out the general ledger, rather than providing the receipts, invoices, and other documents that had been used to support the estimate reviewed in Order MO-3727.

Analysis/Findings

[70] As set out above, following Order MO-3727, KEDCO calculated the final fee, which it claimed equalled \$10,836.20, as follows:

1. Search costs to locate records @ \$7.50/15 minutes or \$30/hour:
 - 303 hours - \$9,090
2. Photocopying costs at \$0.20/page for 7,898 pages
 - \$1,579.60

[71] Although KEDCO calculated the final fee of \$10,836.20. I calculate the fee to be \$10,669.60, not \$10,836.20, based on adding the search and photocopying fees set out. KEDCO did not charge the appellant its preparation fee of \$180 (representing 6 hours of preparation time), as it ultimately did not sever any records.

[72] KEDCO also incurred a fee of \$1,700 to retrieve the credit card statements from its bank; however, it did not charge the appellant for this amount to retrieve the credit card statements. Therefore, the actual total fee was \$9,090 for the search, \$1,700¹¹ to retrieve the credit card statements from the bank, and photocopying (\$1579.60) was \$12,369.60.

[73] The appellant has paid \$7,340.55 representing 50% of the fee estimate in Order MO-3727. KEDCO has accepted this amount as full payment of the fee.

[74] I agree with the appellant that the fee listed in the final access decision did not correspond with the fee estimate it gave originally, or the fee estimate (based on 39,360 pages of records) of \$14,681.10 in Order MO-3727. Although an institution is entitled to charge a requester for the actual fee in processing the request, this office may take into account the fee estimate in determining whether a final fee is reasonable.¹² In this order, I am reviewing KEDCO's fee and determining whether it complies with the fee provisions in the *Act* and Regulation 823. The amount of the fee

¹¹ The \$1,700 appears to be a chargeable fee by section 6.6 of the Regulation 823, which allows institutions to recover 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.

¹² Order MO-3360.

estimate is one relevant consideration, as I discuss below.

[75] The fee in the final decision letter (based on 30,800 pages of records being reviewed and 7,898 pages (including the summary documents prepared) being identified as responsive, was as follows:

- a. Search costs - 303 hours - \$9,090.00
- b. Preparation time - 6 hours - \$180.00
- c. Photocopying - 7,898 pages - \$1,579.60

[76] The fee estimate of \$14,681.10¹³ in Order MO-3727 (based on 39,960 pages of responsive records), was as follows:

- a. Search costs - 51.75 hours - \$1,552.50
- b. Preparation time - 157 hours - \$4,710
- c. Photocopying - 42,093 pages - \$8,418.60¹⁴

[77] After the actual search was performed, KEDCO calculated the final fee of \$10,836.20. I calculate the fee to be \$10,669.60, not \$10,836.20, based on adding the search and photocopying fees set out above, as KEDCO ultimately did not sever any records. According to KEDCO, the actual cost to KEDCO far exceeded this amount. KEDCO waived the amounts owing by the appellant after the appellant paid the \$7,340.55 deposit for the fee estimate set out in Order MO-3727.

[78] In Order MO-3727, I allowed a search fee estimate for the six categories of records of \$1,552.50, which equals 51.75 hours at the allowable search fee of \$30 per hour (\$7.50 per 15 minutes) set out in the regulations above. There is a large discrepancy between the search fee estimate of \$1,552.50 approved by me in Order MO-3727 and the search fee claimed by KEDCO after it conducted the search, \$9,090 representing 303 hours of search time at the allowed search fee of \$30 per hour.

[79] KEDCO did not provide a breakdown of how the \$9,090 search fee, comprising 303 hours of search time, was spent, despite the following statement appearing in the Notice of Inquiry it received in the prior appeal (resulting in Order MO-3727) and in the Notice of Inquiry I sent in response to this appeal of its final fee decision:

¹³ In Order MO-3727, I increased the allowable fee by 50% to \$14,681.10 to account for the expected 60,000 pages of records.

¹⁴ I also allowed KEDCO a scanning fee of \$572.40 if it was necessary for it to scan paper records onto a CD. In its final decision letter, no records were scanned by KEDCO onto a CD.

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

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

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.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.¹⁶

[80] KEDCO was specifically asked in both Notices of Inquiry:

What actions are necessary to locate the requested records? **What is the estimated or actual amount of time involved in each action?** [Emphasis added by me].

[81] In its final fee decision letter following Order MO-3727, KEDCO put the records into the following three categories:

1. VISA Statements for all corporate credit cards issued from 2010 to 2015;
2. Finance Committee Reports and associated documents (i.e. proposals, requests for funds, budget reviews, audited report drafts, vendor lists, cheque register, annual budgets, strategic plan, bids for purchases etc.) from 2010 to 2015; and
3. General Ledger Reports from 2010 to 2015, which include,
 - a. Vendor Invoice information
 - b. Staff Reimbursement records
 - c. Journal entries.

[82] The information pertaining to staff reimbursements and third party vendor expenses was compiled by KEDCO into two summary spreadsheets. The summary

¹⁵ Order MO-1699.

¹⁶ Orders P-81 and MO-1614.

spreadsheets are 21 pages (for staff reimbursements) and 667 pages (for third party vendor expenses).

[83] Approximately 30,800 pages/records were located and a total of 7,898 pages (including the summary documents prepared) were disclosed to the appellant.

[84] As KEDCO has not broken down how it spent the 303 hours of search time, I cannot ascertain how much time was spent searching for each category of record. Nor can I compare this time to the search fee estimate time per category allowed in Order MO-3727.

[85] Nor can I ascertain what search time KEDCO charged the appellant for locating the credit card statements, which it ultimately obtained from the bank at a cost of \$1,700.

[86] In its representations, KEDCO indicated the following about the credit card statements:

The bank charged a \$1,700 fee for retrieving [the credit card statements]. We did not include this \$1,700 fee in the fee charged to [the appellant]. Rather, we included only the time spent by [the third party contractor, the summer student], and other KEDCO employees manually searching for the credit card statements.

[87] KEDCO did not charge the actual \$1,700 cost to it to retrieve the statements from the bank; instead, it appears to have charged the search time expended by it to locate credit card statements before it asked the bank to retrieve the credit card statements for it.

[88] KEDCO did indicate that most of the total search time was spent manually searching off-site boxes for Finance Committee reports and the associated documents. KEDCO's earlier estimate that it would take less than three hours to locate these was based on its erroneous belief that all of the 2010 to 2015 Finance Committee reports would be stored electronically, as the more recent Finance Committee reports had been.

[89] I understand and accept that the following actions undertaken by KEDCO to search for responsive records generated over a six-year period (2010 to 2015) were labour intensive:

- Reviewing the agenda and minutes from each Finance Committee meeting in order to create a list of the reports referenced therein and then searching through KEDCO's archived financial records to locate the associated documents.

- Reading each individual document in order to determine whether the document was the same as the one referenced in the minutes or agenda of a particular Finance Committee meeting.
- Locating the General Ledger Reports that were stored in two different databases and formats and reviewing the reports to ensure no gaps in dates.

[90] I accept that the General Ledger reports are approximately 200 pages each and list every single financial transaction involving KEDCO resources for a given year, including all accounts payable and receivable, all employee reimbursements, vendor expenses, or any other expense paid out of KEDCO's budget would be listed in the General Ledger and coded to a specific expense category.

[91] KEDCO organized the employee and vendor expenses in the General Ledger to create a 21 page summary spreadsheet for employee expenses and a 667 page summary spreadsheet for vendor expenses.

[92] However, I also cannot ascertain how much search time, if any, from the 303 hours was allocated to preparing the spreadsheets. By creating summary spreadsheets, KEDCO created new records, which are records that the appellant did not seek to access to in its request.

[93] Out of the \$7,340.55 total fee paid by the appellant to KEDCO, \$1,579.60 was paid for 7,898 photocopies. KEDCO charged the appellant 20 cents a page for each photocopy, which is the allowable amount for photocopies under section 6.1 of Regulation 823. I will uphold the photocopy fee of \$1,579.60 as reasonable.

[94] The remainder of the \$7,340.55 fee, which equals \$5,760.95, is the search fee effectively charged to the appellant by KEDCO, after it decided to waive the remainder of the fee. This amount represents approximately 192 hours of search time at the allowable fee of \$30 per hour.

[95] I have considered that most of the total search time was spent manually searching off-site boxes for Finance Committee reports and the associated documents.

[96] I find that KEDCO had ample opportunity to determine the location of these reports prior to issuing its three fee estimate decisions related to Appeal MA16-637 and Order MO-3727, including in the representations made to this office before Order MO-3727 was issued.

[97] As KEDCO was advised in the Notice of Inquiry sent to it prior to Order MO-3727:

- 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.¹⁷
- The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.¹⁸

[98] KEDCO's earlier estimate that it would take less than three hours to locate these was based on its erroneous belief that all the 2010 to 2015 Finance Committee reports would be stored electronically, as the more recent Finance Committee reports had been. Instead, it appears that the majority of the 303 hours charged for search time was for searching these reports.

[99] Considering the lack of detailed information as to how much time of the 303 hours actual search time was spent by KEDCO to locate each category of record, I find that the search time charged by KEDCO is not reasonable. In making this finding, I have considered my findings in Order MO-3727, the breadth of the request, including the number and types of items requested for a six-year period, as well as the parties' representations in their entirety. As well, I have considered that KEDCO reviewed 30,800 pages of records and disclosed 7,898 pages to the appellant.

[100] In the circumstances of this appeal, considering the appellant's request, KEDCO's fee estimates, Order MO-3727, KEDCO's final fee decision and the parties' representations, I find that a search fee representing sixty percent of the 303 hours claimed, namely, 181.8 hours is reasonable. At the search fee of \$30 per hour set by section 6.3 of Regulation 823, I will allow a search fee of \$5,454.

[101] In making this finding, I have considered that KEDCO undertook an extensive search for records in response to a broad request. 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.

[102] 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.¹⁹ I found that a fee waiver was not justified in Order MO-3727 and the issue of fee waiver was not raised by the appellant regarding the final fee that is the subject of this order.

[103] Therefore, the fee that I am upholding in this order is \$1,579.60 for photocopies

¹⁷ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

¹⁸ Order MO-1520-I.

¹⁹ Order PO-2726.

and \$5,454 for search for a total of \$7,033.60. No other fees are at issue in this order as no preparation fee or other fees or costs were charged to the appellant.

[104] Accordingly, as the appellant paid a fee of \$7,340.55 and I have allowed KEDCO to charge a \$7,033.60, I will order KEDCO to refund the difference of \$306.95 to the appellant.

[105] Finally, I note that the appellant has suggested that, in its view, KEDCO has not complied with Order MO-3727. I find that overall KEDCO did comply with Order MO-3727, and that any inconsistencies between my findings in Order MO-3727 and KEDCO's actual search and fee are addressed in this order.

ORDER:

1. I order KEDCO to conduct a search, without recourse to charging fees, for records detailing approvals for reimbursements made to KEDCO staff and third party vendors for expenses not submitted to KEDCO's Finance Committee. This search is to include a search for any documents that contain approvals of expenses on KEDCO corporate credit cards, treating the date of this order as the date of the request.
2. I uphold the remainder of KEDCO's search for records in response to the appellant's request as set out in Order MO-3727 as reasonable.
3. I reduce KEDCO's fee to \$7,033.60 and order KEDCO to refund the amount of \$306.95 to the appellant by **August 25, 2020**.
4. The timelines noted in provision numbers 1 and 3 may be extended if KEDCO is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such requests.

Original Signed by: _____
Diane Smith
Adjudicator

July 28, 2020 _____