

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4267

Appeal MA21-00488

Ausable Bayfield Conservation Authority

October 28, 2022

Summary: The appellant submitted a request for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ausable Bayfield Conservation Authority (the authority), for various records relating to shoreline protection. The authority issued a fee estimate of \$65,562. In this order, the adjudicator upholds the authority's fee estimate, in part, and reduces it to \$47,170.30.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 , as amended, section 45(1), Regulation 823, section 6.

BACKGROUND:

[1] This order addresses an appeal of a fee estimate issued by the Ausable Bayfield Conservation Authority (the ABCA or the authority) in response to a request submitted under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant's request was for the following:

All communications, correspondence, documentary records electronic or otherwise that contemplate, discuss and/or otherwise treat subject matter of (1) Shoreline protection, hardening, armouring, development and/or similar thereto, (2) Managed retreat, natural loss, erosion natural or otherwise, shoreline/slope failure, originating internally from ABCA staff or external, third party authors in the period of Jan 1, 2016 -Dec 31, 2017 and Jan 1, 2019 to Jun 15, 2021

[2] The appellant filed an appeal with the Information and Privacy Commissioner of Ontario (the IPC) on the basis that he did not receive a decision on his request.

[3] At the outset of mediation, the ABCA advised the mediator that it had written to the appellant before the start of the appeal and provided a copy of their letter, dated July 7, 2021. In this letter, the ABCA invited the appellant to narrow the request, given that it anticipated a large number of responsive records relating to the original request.¹

[4] Also during mediation, the parties participated in a teleconference to discuss the ABCA's July 7th letter. Subsequent to the teleconference, the request was narrowed as follows:

All communications, correspondence, documentary records electronic or otherwise that reference or include the subject matters of:

1. Shoreline protection, hardening, armouring, development, or similar thereto;
2. Managed retreat, natural loss, erosion natural or otherwise, shoreline/slope failure

The above being confined to applications, policies, or similar for lands that feature in whole or in part, lakefront on Lake Huron or riverfront of the Ausable River where the river is located in the Municipality of Lambton Shores for the period Jan 1 2016 - Dec 31, 2017 and Jan 1 2019 to June 15, 2021.

I am seeking the applications, policies, or similar for lands that are lakefront on Lake Huron within the Municipality of Lambton Shores AND applications, policies, or similar for lands that are riverfront where the Ausable River is located with the Municipality of Lambton Shores.

[5] Based on this narrowed request, the ABCA issued an interim access decision and a fee estimate of \$65,562, in addition to a TBD charge for large format printing because some files include large-scale prints which will need to be sent out to a third party for reproduction. The fee estimate was broken down as follows:

Search and preparation time	approx. 1,957.5 hrs	@ \$7.50 per quarter hour (total \$58,725)
Photocopying	approx. 34,185 pages	@ \$0.20 per page (total \$6,837)

¹ This file was initially opened as a deemed refusal appeal. Following a review of the ABCA's July 7, 2021 letter, the file was removed from the deemed refusal stream and restreamed as a regular mediation file.

Large format printing	TBD	@ cost recovery
Total	\$65,562 plus large format printing	

[6] The ABCA requested a deposit of 50% of the fee, or \$32,781 before initiating work on processing the request.

[7] In its fee estimate and interim access decision, the ABCA also stated that:

The above noted fee is to provide photocopies of the requested records only. If you prefer digital copies please contact the ABCA and we will revise our quote accordingly. Please be aware that it is this authority's experience that providing redacted digital copies is more labour intensive to prepare and redact and the estimate will be increased accordingly.

It is noted that your request is very broad in nature and spans a period of 4 years. While a reasonable effort has been made to provide this estimate, you should be aware that these fees are estimates only and subject to update as work progresses on your request.

You should also expect that the ABCA will refer to the personal privacy provisions and exemption provisions of Act when making decisions on what information will be released. Given the breadth and volume of your request we are unable to estimate how many, or what percentage of the requested records will be released.

Your request includes applications and it was assumed that you are referring only to applications made under the *Conservation Authorities Act*². As a result, applications made to other entities for which the ABCA has a provincially delegated responsibility to provide comment (i.e. subdivisions, site plan review etc.) have not been included. Please advise if your intent is to receive such records and we will update this fee estimate.

[8] As the parties did not reach a mediated resolution, the appellant's fee appeal was moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[9] The adjudicator originally assigned to this appeal decided to conduct an inquiry and sought and received representations from the ABCA and the appellant. Both parties submitted initial and reply representations, which were shared in accordance with Practice Direction Number 7 from the *Code of Procedure*.

[10] The file was then assigned to me to continue the adjudication of the appeal. I

² RSO 1990, c C.27.

have reviewed the parties' initial and reply representations, including any documents submitted in support of their positions, and concluded that I do not need further representations before rendering a decision.

[11] For the reasons that follow, I uphold the authority's fee estimate in part. I order the authority to reduce its fee estimate to \$47,170.30.

DISCUSSION:

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

[13] Institutions are required to charge fees for requests for information under the *Act*. Section 45 governs fees charged by institutions to process requests.

Fee estimates and deposits

[14] Under section 45(3), an institution must provide a fee estimate where the fee is more than \$25. The purpose of the fee estimate is to give the requester enough information to make an informed decision on whether or not to pay the fee and pursue access.³ The fee estimate also helps requesters decide whether to narrow the scope of a request to reduce the fee.⁴

[15] The institution can require the requester to pay the fee before giving them access to the record.⁵ If the estimate is \$100 or more, the institution may require the person to pay a deposit of 50 per cent of the estimate before it takes steps to process the request.⁶

[16] Where the fee is \$100 or more, the fee estimate can 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.⁷

[17] In each case, a fee estimate must include a detailed breakdown of the fee and statement as to how the fee was calculated.⁸

[18] The IPC can review an institution's fee and can decide whether it complies with

³ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁴ Order MO-1520-I.

⁵ Regulation 823, section 9.

⁶ Regulation 823, section 7(1).

⁷ Order MO-1699.

⁸ Orders P-81 and MO-1614.

the *Act* and regulations.

What items can the institution charge for?

[19] Section 45(1) sets out the items for which an institution is required to charge a fee:

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.

[20] More specific fee provisions relevant to this appeal are found in section 6 of Regulation 823:

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.

Representations

[21] I have reviewed all of the parties' representations and attachments, and below I summarize the portions of their representations relevant to the issue of fee estimate, which is the only issue before me.

The ABCA's initial representations

[22] The ABCA submits that the IPC should dismiss the appellant's fee estimate appeal and find that a substantial time extension is reasonable in the circumstances, due to the request's effect on its ability to carry out its legislative responsibilities.

[23] The ABCA submits that its fee estimate was produced in accordance with section 45(1) of the *Act* and Regulation 823, and is based on the advice of an individual who is familiar with the type and contents of the records.⁹

[24] The ABCA submits that the appellant did not specify whether he sought access to records from certain authority departments, and that based on mediation, its understanding is the appellant does not seek records from all the departments that may keep responsive records. Therefore, the ABCA submits that it asked three staff members from its Planning and Regulations Department for their input on the following aspects of the fee estimate, which I have summarized below:

- Staff members generally keep handwritten notes documenting meeting discussions, telephone messages and conversations. A manual search of these will be required.
- Incoming and outgoing emails are kept and archived by individual staff members. Automated and manual refining searches will be required. The staff members in question each receive between 17,500 and 25,000 e-mails per year.
- Staff with expertise in Planning and Regulatory services estimated the time to search and prepare responsive records from within the ABCA's databases, including permits, inquiries, etc.

[25] The ABCA submits an internal memo and a spreadsheet along with its representations.¹⁰

[26] In its internal memo and spreadsheet, the ABCA provides the following estimates and assumptions to explain how it arrived at its fee estimate:

⁹ The ABCA cites orders MO-1699 and MO-4127.

¹⁰ The ABCA's internal memo and spreadsheet are attached to its initial representations as Schedule C and D. I refer to them as the internal memo or memo, and the spreadsheet, for ease of reference.

- Notebooks: 20 pages per notebook, and one to two notebooks per year for each staff member based on historical output. The ABCA assumes it will take one hour to review and redact each notebook.
- Permit files: 20 pages per permit file, and 80 permit files per year based on the number of work permits issued in Lambton Shores in 2020.¹¹ The ABCA assumes it will take two hours to retrieve, review and redact each file.
- Emails: one page per email. The ABCA explains that it estimated 10% of each staff member's total annual incoming emails¹² would deal with matters relating to Lambton Shores, and that 75% of those emails would be responsive to the request. The ABCA assumes that following a computer search, it will take an average of two minutes per email to review and redact personal information.
- Records related to policy matters: 2000 photocopies. The ABCA explained that the 90 hours attributed to policy records "includes time for additional staff - i.e.: GM, IT etc." It also notes that these records include "SMP update, revised shoreline protection policy," to "use estimate from Naish" and to "consider 2000 photocopies to account for public comment, etc." The ABCA notes that it relied on previous quotes provided to an individual who had made similar requests in the context of three other appeals.

[27] The ABCA submits it has provided the appellant cost relief in the following ways:

- combining search and preparation time into two minutes per page in total¹³
- accounting for one responsive page per email in the fee estimate, though most emails are expected to be significantly longer than one page
- including only incoming emails in the estimate while omitting outgoing emails, which the ABCA states would "form a significant number of responsive records"

[28] In its spreadsheet, the ABCA provides a breakdown of the number of records at issue in each category, for each year in the time period in the request, and for each of the three staff members consulted. It includes a combined estimated number of hours to search for and prepare the records, as well as an estimated number of pages to be photocopied. Below is a summary of the information provided in the spreadsheet and internal memo, on which it based its fee estimate.

¹¹ The ABCA and appellant refer to "permit files," "client files" or "applications" in their representations. For consistency, I refer to permit files throughout the order.

¹² The number of total annual incoming emails is based on the number of emails received in 2020 for two the staff members. For the plan officer, this number is based on the prorated number of emails received to date in 2021.

¹³ As I will explain below, the ABCA combined search and preparation time into two minutes per page for emails but not for the other types of records at issue. The IPC generally allows 2 minutes per page for preparation alone, where a page requires multiple severances.

Estimated number of records	Pages to be photocopied (at a rate of \$0.20/page)	Hours of search and preparation time (at a rate of \$7.50/15 minutes)
28 notebooks	560 pages *Estimating 20 pages per notebook	28 hours *Estimating 1 hour combined search and preparation per notebook
400 permit files	8000 pages	800 hours
	*Estimating 20 pages per file	*Estimating 2 hours combined search and preparation per file
31,500 emails *Representing 10% of total incoming emails	23,625 pages *Estimating one page per email *Estimating 75% of emails as responsive	1,039.5 hours *Estimating two minutes combined search and preparation per email
90 records related to policy matters, including SMP update	2,000 pages	90 hours
Total	34,185 pages	1,957.5 hours
Total estimated fee	\$6,837.00	\$58,725.00

[29] The ABCA notes that in its July 7, 2021 letter to the appellant, it raised concerns about the breadth of the request and the number of potentially responsive records, and offered to help the appellant refine his request in order to reduce the fee estimate. In this letter, the ABCA noted that the terms “erosion” and “development,” both used in the request, would yield “thousands of responses.” It is the ABCA’s position that the appellant “continued to advance an extremely wide request.”

[30] The ABCA submits that due to his previous experience with respect to conservation authorities, the appellant should have known that certain terms would yield numerous responsive records, as these words also appear in the *Conservation*

Authorities Act and Ontario Regulation 147/06, which are both relevant to its work.¹⁴

[31] The ABCA submits that it is a very busy and small agency with limited staff resources. It maintains that to fulfill the request would fetter its ability to perform its other legislated duties.

[32] The ABCA notes that following the teleconference and the narrowing of the request, it issued an interim fee estimate to the appellant without providing an estimated date for the production of the records. The ABCA indicates that it warned the appellant to expect a significant time extension request once the deposit is paid. The ABCA states that following the interim fee estimate, the appellant asked for the matter to be moved to adjudication. It submits that it was ready to continue mediating the fee, but was not given the opportunity.

Appellant's initial representations

[33] The appellant position is that the ABCA's fee estimate is excessive and unreasonable, and that the IPC should order it to issue a new fee estimate. He cites the purposes of the *Act* set out in section 1, including providing access to information in accordance with the principle that information should be available to the public.

[34] The appellant submits that the ABCA's fee estimate was not based on actual work done to respond to the request, a review of a representative sample of the records, or the advice of an individual who is familiar with the type and content of the records.¹⁵ He notes that it is up to the ABCA to establish the reasonableness of its fee estimate, by providing detailed information as to how it was calculated and sufficient evidence to support its claim.¹⁶

[35] The appellant disagrees with the ABCA's position regarding its willingness to mediate, and notes he made multiple attempts to refine the request in an effort to reduce the fee estimate. He notes that his initial request encompassed the ABCA's entire watershed, which includes 12 municipalities and their respective shorelines and watercourses. He submits that following the teleconference that took place during mediation, he narrowed the request to the Municipality of Lambton Shores, and more specifically to lands "in whole or in part, lakefront on Lake Huron or riverfront of the Ausable River within the Municipality of Lambton Shores." The appellant further submits that his narrowed request was limited to "applications, policies (that would already exist or were applicable) or similar records (such as public statements or representations before other public bodies) on a very specific geographic range within the Municipality."

¹⁴ The ABCA refers to Section 28 of the *Conservation Authorities Act* and Ontario Regulation 147/06, the regulation specific to the ABCA (*Ausable Bayfield Conservation Authority: Regulation of Development, Interference With Wetlands and Alterations to Shorelines and Watercourses*, O Reg 147/06).

¹⁵ The appellant cites order MO-1479.

¹⁶ The appellant cites orders MO-3636 and PO-3191.

[36] The appellant adds that further narrowing was discussed with the mediator, but not conveyed to the ABCA.

[37] The appellant takes issue with the number of emails attributed to each of the three staff members identified in the ABCA's spreadsheet, arguing that the total emails received by each individual in a given year is not plausible:

The quantum of emails enumerated in Schedule D are broad estimates. To underscore how problematic this 'estimate' is one can consider that the Manager of Planning and Regulation receives twenty-one thousand (21,000) emails per annum. Note this is described as 'estimated.' Taken without dispute this amounts to eighty-one (81) emails received daily in a five day work week.

The "Plan Officer" sees an estimated total of ninety-four (94) emails during a two-hundred and sixty day (260) year of five (5) day work weeks. If each email is afforded an average of three minutes of read-time and reply composition this amounts to two hundred and eighty-two minutes (282) or four point seven (4.7) hours daily required to address and reply to a volume of that quantum. That would represent over half of each working day the "Plan Officer," would be focused exclusively on email correspondence alone.

[38] The appellant also submits that the ABCA's estimation that 10% of each staff member's total annual incoming emails would deal with matters relating to Lambton Shores is inconsistent with the information provided in its internal memo. In particular, he notes that the ABCA states that "Lambton Shores is the ABCA's most populated member municipality," that the "term 'development' triggers all applications and most of the e-mails" and that the "term 'erosion' also triggers the majority of applications and many e-mails." He also notes the ABCA's assumption that he does not seek files associated with planning approval, and their inclusion of planning emails nonetheless "since planning and regulations co-mingle." The appellant submits that, in light of these excerpts from the ABCA's memo, the number of responsive emails as a proportion of total emails received by these staff should be higher.

[39] The appellant submits that the ABCA's methodology, set out in its internal memo and spreadsheet, is vague and imprecise. He asserts that the ABCA provided little to no evidence of its document management and information retention practices, aside from sparse notes in its internal memo. He takes issue with the ABCA's methodology in completing its fee estimate, arguing that it has not provided sufficient evidence to justify the estimate. He submits that a review of a representative sample of records would have yielded more accurate calculations and helped to further limit the search for records.

[40] The appellant further submits that the ABCA did not specify whether its

estimated annual number of permit files is responsive to the geographic range specified in his narrowed request. He notes that the ABCA estimated 80 permit files per year, based on the number of applications received for Lambton Shores in 2020. He states that "without greater search filtering, our firm cannot determine if all eighty (80) correspond to our search relevance only along the Lake Huron shoreline or Ausable River banks within the Municipality of Lambton Shores," or whether some should be excluded.

The parties' replies

[41] In response to the appellant's concern that it did not indicate the number of permit files responsive to the narrowed geographic range along the lake or river, the ABCA concedes that it "does not distinguish between some of the issues cited" by the appellant in his representations. It submits that this is because the appellant did not specify whether he was interested in properties within a certain setback distance from the lake or river, even though this was raised during the teleconference.

[42] In response to the appellant's submission that his further narrowing was not communicated to the ABCA, the ABCA submits that it quoted the appellant's revised request in its fee estimate and did not receive any indication that it was incorrect.

[43] The ABCA submits that the number of each type of record at issue in this appeal, as outlined in its representations, is "an accurate accounting of the volume of the existing workload and its strain on ABCA staff resources."

[44] The appellant submits brief sur-reply representations that reiterate his position.

Analysis and Findings

[45] For the following reasons, I uphold the authority's fee estimate in part and order a reduction in the fee estimate to \$47,170.30.

Preliminary matters

[46] The authority asks that I find that a substantial time extension is reasonable in the circumstances. The matter of a time extension is not before me in this appeal. As mentioned above, the only issue before me is the reasonableness of the authority's fee estimate.

[47] The appellant takes issue with the manner in which the authority generated its fee estimate, arguing that locating a representative sample of records would have resulted in a more precise estimate. While it may be that a certain methodology might yield a more precise fee estimate in a given set of circumstances, it is for an institution to determine how to generate its estimate as it is most familiar with its own records and record holdings. In this case, it was open to the ABCA to base its estimate on the advice of an individual familiar with the type and content of the records, which is one of the

options set out in Order MO-1699.

[48] I note the authority's willingness to continue mediating, and the appellant's efforts to narrow his request. However, representations on these points are not relevant in determining the reasonableness of the authority's fee estimate. They may be relevant in the context of a fee waiver appeal, but that is not the issue before me.

[49] The appellant submits that he discussed additional parameters to narrow the request with the mediator and concludes these were not communicated to the authority. I have nothing before me to establish that the request quoted in the authority's fee estimate was further narrowed. The appellant had opportunities to further refine his request and could have raised this earlier on the appeal process. In this order, I will be addressing the request as it appears in the authority's fee estimate and the mediator's report.

The estimated number of records at issue and the photocopying fee

[50] In estimating the number of pages at issue in this request, the authority allocated 20 pages per notebook and 20 pages per permit file. It estimated each email to be one page long. It also estimated 2000 pages relating to policy matters. Based on my review of the request and the authority's representations, I find these estimates reasonable. I will now assess whether the ABCA's estimates of the numbers of notebooks, permit files, and emails is reasonable.

Emails

[51] As mentioned above, the authority estimates that 10% of each staff member's total annual incoming emails would deal with matters relating generally to Lambton Shores, and that 75% of those emails would be responsive to the request. The appellant argues that the staff members' total incoming emails cited by the authority are "broad estimates." According to the appellant, reading and replying to this volume of emails would amount to more than half a day's work, which he argues is not plausible.

[52] Based on my review of the authority's representations, the authority based its calculations on the number of emails received by two of the three staff in 2020, and a prorated number of emails received by a third staff in 2021. I note that the column in the spreadsheet containing these numbers is entitled "Estimated # of emails per year." Meanwhile, in its representations, the ABCA presents the number of emails in questions without qualifying them as estimates: "[i]t is important to note that the number of incoming e-mails received by ABCA staff is significant. Three staff involved in responding to this request, for example, each receive between 17,500 and 25,000 e-mails per year." Whether these figures represent an estimate or the actual number of emails received annually, I accept them for the purposes of this fee estimate. The ABCA is not required to base its estimate on the actual number of emails received by its staff

members and the appellant has not provided clear evidence demonstrating that these numbers are excessive.

[53] The appellant submits that the authority's estimate that 10% of incoming emails relate to Lambton Shores is too low. He argues that 10% is inconsistent with a number of points made in the authority's representations, which are summarized above. I have reviewed the appellant's representations on this point, and conclude that they do not provide a basis to doubt the authority's estimate. In my view, the authority is in the best position to determine the proportion of emails it receives that relate to Lambton Shores. As the appellant notes in his own representations, Lambton Shores is one of twelve municipalities in the authority's watershed. This is consistent with the authority's determination that 10% of incoming emails relate to Lambton Shores.

[54] However, as I explain below, I have decided to prorate the estimated number of emails relating to the portion of 2021 for which emails were requested.

Permit files and Notebooks

[55] The appellant submits that the authority did not specify the number of permit files responsive to the narrowed geographic range along the lake or river. As mentioned above, the authority concedes that it did not distinguish between some of the issues cited by the appellant in his representations, and says this is because the appellant did not identify a setback distance to signal his interest in properties within a certain number of meters from the lake or river (although this was raised in a teleconference). I appreciate the appellant's concern that the authority's estimate includes all permit files for Lambton Shores, whether they are waterfront or not. I also note that the authority acknowledged the appellant's concern. As the authority estimates that 75% of emails relating to Lambton Shores would be responsive to the request, I find it reasonable to similarly reduce the number of permit files relating to Lambton Shores.

[56] Accordingly, for each of the five years in the request period, I reduce the number of permit files by 25%, from 80 to 60 per year, in keeping with the authority's estimation in relation to the proportion of emails that would be responsive. This amounts to a reduction of 20 permit files per year, 100 permit files overall, and 2,000 pages from the total number of photocopies. Therefore, the reduction is as follows:

Permit files: 100×20 (pages/file) = (a reduction of) **2,000 pages**

[57] The evidence before me is not clear with respect to the substance of the notebooks. Given the small proportion of pages in the notebooks compared to the other types of records at issue, and given that the appellant did not raise this in his representations, I will not apply a similar reduction to the notebooks.

Prorating the 2021 estimates for notebooks, permit files and emails

[58] In my view, it is also reasonable to reduce the number of notebooks, permit files and emails the authority estimates for the year 2021, in a manner proportional to the time period specified in the request. The appellant requested records for the entire year for the years 2016, 2017, 2019 and 2020, but only up until June 15 for the year 2021. In its spreadsheet, the ABCA breaks down the number of records at issue and resulting number of photocopies by year. The totals for 2021 are the same or similar to those for the other years. For example, the ABCA estimates 5 notebooks, 80 permit files and 4725 emails for both 2020 and 2021.

[59] Based on the foregoing, I conclude that the ABCA has not reduced the number of notebooks, permit files and emails for 2021 proportionally to the time period the appellant requests for that year. The period from January 1 to June 15 comprises 166 days, which represents 45% of the year. Therefore, I have adjusted the number of records and photocopies for the year 2021 to account for a 55% reduction as follows. I have not reduced the number of policy records at issue as these would not be expected to be produced an annual basis, but rather as a lump sum.

Notebooks:	$5^{17} \times 0.55 = 2.75$	2.75×20 (pages/notebook) = 55 pages
Permit files:	$60^{18} \times 0.55 = 33$	33×20 (pages/permit file) = 660 pages
Emails:	$4725^{19} \times 0.55 = 2598.75$	2598.75×1 (page/email) = 2,599 pages ²⁰
Total:		(a reduction of) 3,314 pages

[60] In light of the above, I reduce the authority's total photocopy page count by 5,314 pages, from 34,185 pages to 28,871 pages, and the corresponding photocopying fee from \$6,837 to \$5,774.20.

Search and preparation time

[61] The authority accounts for 1957.5 hours of search and preparation time, charged at a rate of \$30 per hour (i.e., \$7.50 for every fifteen minutes), totaling \$58 725. The authority submits that its fee estimate is a reflection of the appellant's broad request. The appellant submits that the fee estimate is excessive, that the authority's methodology lacks preciseness and that it provided little to no evidence of its document management and information retention practices.

¹⁷ As noted above, the ABCA estimates 5 notebooks for the year 2021.

¹⁸ I base my calculations on 60 permit files per year, instead of the 80 estimated by the ABCA, in accordance with my finding above that 75% of the permit files would be expected to be responsive.

¹⁹ As noted above, the ABCA estimates 4725 responsive emails for the year 2021.

²⁰ I have rounded this number to the nearest integer.

[62] The authority combined its search and preparation time in its estimate instead of providing a separate breakdown for each component. Previous IPC orders have addressed combined search and preparation time in the context of fee estimates, and determined the reasonableness of the combined fee estimate by reviewing the evidence in respect of the separate fees.²¹ I agree with this approach and adopt it in this appeal.

[63] The ABCA confirms its intention to redact the records at issue, though it does not specify the proportion of access it intends to grant. In its representations, the ABCA indicates that it plans to redact personal information from the emails. In its fee estimate, the ABCA indicates that this applies more broadly. It states that it "will refer to the personal privacy provisions and exemption provisions of Act when making decisions on what information will be released," suggesting that it intends to claim additional exemptions aside from personal privacy.

[64] Based on my review of the parties' representations, I find it reasonable that the different types of records at issue would contain personal information of individuals communicating with the authority on issues related to the subject matters outlined in the appellant's request. The ABCA refers to staff members' handwritten notes of meetings, telephone messages and conversations, which I presume form the content of the notebooks. I find it reasonable to expect that staff from the Planning and Regulations Department (a manager, plan officer and regulations officer) document contact with members of the public, in meetings or by phone, and that personal information would need to be redacted from their notebooks. I find the same would apply to emails. The permit files relate to work permit applications made under the *Conservation Authorities Act*. As these relate to properties, it is likely that they contain the personal information of property owners. Lastly, the ABCA submits that policy related records include "SMP update, revised shoreline protection policy" and that its page estimate accounts for public comment. In my view, this suggests that these records would contain the personal information of members of the public who submitted comments to the authority in relation to policy matters, like shoreline protection.

[65] The IPC has generally accepted that it takes two minutes to sever a page that requires multiple severances.²² Based on the nature of the records at issue, I find it reasonable that they would contain more than one severance per page on average. Accordingly, I allow two minutes per page to prepare the records for disclosure.

[66] According to section 6 of Regulation 823, institutions may charge \$7.50 for every 15 minutes (or \$30 an hour) spent searching for the records, as well as preparing the records. The latter can include time spent severing a record²³ and running reports from a computer system.²⁴ The authority has applied the permitted rate of \$30 an hour,

²¹ See for example Orders PO-1962, MO-3492 and MO-4248.

²² Orders MO-1169, PO-1721, PO-1834 and PO-1990.

²³ Order P-4.

²⁴ Order M-1083.

however, as explained below, I find that in some instances, it has not provided sufficient information to substantiate the time it claims in its estimate.

Notebooks

[67] The authority claims one hour of search and preparation time to “review and redact” each notebook. As noted above, it estimates each notebook will be 20 pages long. Applying the generally allowable rate of two minutes per page for severing, this amounts to 40 minutes of preparation time per notebook (20 pages × 2 min/page), leaving 20 minutes of search time per notebook.

[68] The authority submits that manual searches of handwritten meeting notes and telephone records will be required. I find it is reasonable to estimate it would take 20 minutes to search each notebook for responsiveness. Accordingly, I find it reasonable to allocate one hour per notebook for both search and preparation time. I allow 25.25 hours of total search and preparation time for notebooks. The following calculation is in accordance with the allowable hourly rate under Regulation 823, and accounts for the reduction of notebooks in 2021, in accordance with my finding above:

28 notebooks – 2.75 = 25.25 notebooks

25.25 notebooks × 1 hour search and preparation time per notebook =
25.25 hours

25.25 hours × \$30/hour = \$765

Permit files

[69] The authority claims two hours of search and preparation time “to retrieve, review, [and] redact” each permit file. As noted above, it estimates each permit file will be 20 pages long. Applying the same rate of two minutes per page, this amounts to 40 minutes of preparation time per permit file (20 pages × 2 min/page), leaving 80 minutes of search time.

[70] To support this 80 minutes of search time per permit file, the authority submits that staff with subject expertise in its Planning and Regulatory services will need to search for permit files in its databases. It appears that staff will have to search multiple databases. The authority notes that manual searches of handwritten records and emails will be required, but it did not note the same about permit files. I deduce from this that only electronic searches will be required.

[71] I find that 80 minutes of search time per permit file is long given the authority provided no additional details about the actions necessary to locate responsive permit files. Further information would have been helpful, for instance about the steps involved in searching the databases or any technology limitations. Without further evidence, I cannot conclude that two hours of combined search and preparation time per permit file

is reasonable.

[72] As a result, I will allow the authority to charge 30 minutes of search time, plus the 40 minutes of preparation time I noted above, for a total of 70 minutes search and preparation time per permit file. I allow 311.5 hours of total search and preparation time for permit files which I have calculated below, accounting for the reductions in permit files determined above:

400 permit files - 133²⁵ = 267 permit files

(267 permit files × 70 min search and prep time per file) /60 min = 311.5 hours

311.5 hours × \$30/hour = \$9,345

Emails

[73] It appears that the ABCA's search and preparation time estimate for its emails is based on its estimation that 10% of its staff members' total incoming emails are potentially responsive to the request. It also estimated that of that 10%, 75% would in fact be responsive to the request.

[74] Based on my review of the ABCA's spreadsheet, it appears that it multiplied 31,500 emails, representing 10% of the staff members' total annual emails, by 0.033 hours, representing two minutes (2 minutes / 60 minutes) rounded to the nearest thousandth, to arrive at 1039.5 hours of combined search and preparation time. I find it reasonable to allocate two minutes of combined search and preparation time per email, though I arrive at my conclusion in a different manner.

[75] In its representations, the ABCA indicates its intention to sever personal information from emails. It also indicates that following an automated search, manual refining searches of emails will be required, which I understand to be for the purpose of determining responsiveness. As noted above, I have found the generally accepted rate of two minutes per page for severing reasonable in the circumstances. This rate is only applicable to responsive records, which the ABCA estimates is 75% of 10% of annual incoming emails.

[76] In addition, past IPC orders have allowed one minute per email to search responsive emails,²⁶ which in my view is applicable to the 10% of annual incoming emails.

[77] Accordingly, I find it reasonable for the ABCA to have allocated a total of two

²⁵ As noted above, the total number of permit files was reduced by 100 (in accordance with my finding that 75% of the permit files would be expected to be responsive) and further reduced by 33 (in accordance with the prorating for the year 2021),

²⁶ See orders MO-3014 and PO-4170.

minutes per email for both search and preparation time, based on the total 10% of emails. I agree with the ABCA that this number represents a lower number than if it had charged the full allowable fee for each of search and preparation.

[78] I have calculated the fee as follows, accounting for the reduction of emails for 2021 determined above:

$$1039.5 \text{ hours} - 86.63 \text{ hours}^{27} = 952.87 \text{ hours}$$

$$952.87 \text{ hours} \times \$30/\text{hour} = \$28,586.10$$

Records related to policy matters

[79] The ABCA claims 90 hours of search and preparation time for 2000 pages (photocopies) of records related to policy matters. Applying the same rate of two minutes per page for preparation, this amounts to 66.66 hours of preparation, leaving 23.33 hours of search time.

[80] With regard to the search time, the ABCA submits that its estimate "includes time for additional staff - i.e.: GM, IT etc." I accept that 23.33 hours is a reasonable amount of time to allocate for a search involving multiple people and departments, for 2000 pages of policy-related records over a four-and-half year period. Accordingly, I uphold the ABCA's estimated 90 hours of combined search and preparation time.

Large format printing

[81] In its fee estimate, the ABCA notes that some files will require large format printing of plans or drawings, which it must contract to a third party on a cost recovery basis. In its list of estimated fees, the ABCA notes that large format printing is to be determined. Under section 6.6 of Regulation 823, an institution may charge for fees it incurs in locating, retrieving, processing and copying a record if those costs are specified in an invoice that the institution has received. In this appeal, the ABCA has not provided an invoice, nor an estimate of the costs that might be reflected in an invoice. As the amount for the large format printing is not before me, I make no finding on it in this order.

[82] Taking into account my findings which I have tallied below, I reduce the authority's fee estimate to \$47,170.30. Should the authority complete its search in less time, should less pages require redaction or should fewer records be responsive, the authority should reduce its final fee as appropriate.

Search and preparation time

²⁷ As noted above, the prorated number of emails for 2021 is 2599 emails. This amounts to a reduction of 86.63 hours (2599 emails × 2 min of search and preparation time per page / 60 min = 86.63 hours).

Notebooks	\$765
Permit files	\$9,345
Emails	\$28,586.10
Records related to policy matters	\$2700
Photocopying	\$5,774.20
Total	\$47,170.30

ORDER:

I uphold the authority's fee estimate in part and reduce it to \$47,170.30.

Original Signed by: _____
Hannah Wizman-Cartier
Adjudicator

October 28, 2022 _____