

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-4557

Appeal PA23-00100

Lakeridge Health

September 30, 2024

**Summary:** The appellant asked the hospital for seven years of patient satisfaction survey results and other data. The hospital granted the appellant complete access to most of the requested records. For the written patient comments in the records, the hospital estimated a fee of \$967.50 to redact personal health information from the records before releasing them to the appellant. The appellant asked the hospital to reduce or waive the fee. The hospital reduced the fee by 50% to \$483.75, but the appellant remained dissatisfied with the fee estimate.

In this order, the adjudicator does not uphold the hospital's fee estimate. She orders the hospital to reduce its fee to \$150.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSO 199, c F.31, sections 57(1)(a) and (b).

### OVERVIEW:

[1] The appellant, a non-profit public interest researcher, submitted a request to Lakeridge Health (the hospital) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

... copies of all results from Patient Satisfaction Surveys prepared for your institution by the National Research Corporation/NRC Health (NRC).

I request the NRC data in scorecard format, which includes scores for individual years, scores for all years combined, benchmarks and sample size. Please include results for all questions, key drivers and/or dimensions.

Along with survey data, I also request written patient comments. Please include the following headers: Comment ID, Comment, Type, Valence, Fiscal year, Experience Date, Posted Date, Unit, Code, Comment Question.

Timeframe: Jan. 1, 2016 to the date processing begins on this request.

If your institution does not use NRC to conduct patient experience surveys, please provide results from whichever patient experience survey is used.

I also request copies of all raw standard data from the Ontario Perception of Care Tool for Mental Health and Addictions survey, including the written patient comments found therein...

[2] The hospital issued an access decision granting the appellant complete access to many of the requested records. For the written patient comments in the records, the hospital provided a fee estimate of \$967.50 because it had to redact personal health information before it could release these records to the appellant. The appellant subsequently requested a fee waiver under sections 57(4)(a) through (c) of the *Act*. In response, the hospital denied a full fee waiver but offered a 50% reduction to \$483.75.

[3] The appellant was dissatisfied with the hospital's decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC). The IPC attempted to mediate the appeal. During mediation, the hospital confirmed its position and reduced fee of \$483.75. The appellant confirmed that he seeks a full fee waiver based on sections 57(4)(a) and (c), and he challenges the fee amount as well.

[4] As a mediated resolution was not achieved, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. Another IPC adjudicator conducted an inquiry, receiving representations from the hospital and the appellant. The appeal was then transferred to me to complete the inquiry.

[5] In this order, I do not uphold the hospital's fee estimate and I order the hospital to reduce its fee to \$150.

## **DISCUSSION:**

### **Should the IPC uphold or waive the hospital's fee?**

[6] Institutions are required to charge fees for requests for information under the *Act*. Section 57 governs fees charged by institutions to process requests. Under section 57(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 to pay the fee and pursue access.<sup>1</sup> The fee estimate also helps requesters decide whether to narrow the scope of a request to reduce the fee.<sup>2</sup>

[7] 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.<sup>3</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>4</sup> The IPC can review an institution's fee and can decide whether it complies with the *Act* and regulations.

[8] Section 57(1) sets out the items for which an institution is required to charge a fee. The parts of section 57(1) that are relevant in this appeal read:

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[.]

### **The parties' representations**

[9] In its fee estimate, the hospital lists a fee of \$900 to "search" and a fee of \$67.50 to "prepare" the records. The hospital states it calculated its fee by identifying the 46,834 lines of free text comments in the records at issue that it must review. The hospital explains that it must review these comments to determine if there is any personal health information it must redact prior to releasing the records. It calculates that there are 900 pages of records to be reviewed, if it allocates 52 lines of free text comments per page, and it asserts that each page will require two minutes to review ( $46,864 / 52 = 900 \times 2 = 1,800$  minutes). The hospital's fee estimate lists \$900 of search time, at a rate of \$7.50 per 15 minutes for the 1,800 minutes required (1800 /

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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> Order MO-1699.

<sup>4</sup> Orders P-81 and MO-1614.

15 = 120 × \$7.50 = \$900).

[10] The fee estimate also includes \$67.50 in preparation costs based on \$7.50 per 15 minutes at 145 minutes. The hospital does not explain what these preparation costs are in its fee estimate. However, in its reply representations, it states that these fees represent the preparation of the records previously released to the appellant.

[11] The appellant's position is that the hospital should waive its fee entirely or reduce it to a maximum of \$150. The appellant submits that the hospital has not complied with the requirements of the *Act* to provide a detailed breakdown and explanation of its fees. Regarding the hospital's claim that all 46,834 lines of free text must be reviewed for possible redaction, the appellant argues that the hospital has provided no evidence to support its claim. The appellant asserts that there is insufficient evidence from the hospital to assess the basis of the fee.

### **Analysis and finding**

[12] Having reviewed and considered the hospital's fee estimate and the representations from both parties, I agree with the appellant that the hospital's fee estimate is insufficiently detailed. The hospital claims a fee for preparation time without explaining the basis for it and it asserts that each page of the records will require redaction without further detail.

[13] Additionally, the fee estimate incorrectly claims search time for the hospital's review of the records for redaction. Search time permitted under section 57(1)(a) represents the costs of every hour of manual search required to locate a record. The hospital's claim of 1800 minutes to review the records and identify the personal health information that needs to be redacted should properly be made under section 57(1)(b), which addresses the costs of preparing a record for disclosure.

[14] Although the hospital mischaracterizes its claim of 1800 minutes as search under section 57(1)(a), I accept that the hospital will require some time to prepare the 900 pages of records for disclosure. The hospital is required to charge fees for its work preparing the records for disclosure and it should be able to charge some portion of these mischaracterized fees under section 57(1)(b).

[15] Previous IPC orders have found that under section 57(1)(b) and the regulation, time spent preparing a record for disclosure includes time spent redacting a record.<sup>5</sup>The IPC has generally accepted that it takes two minutes to sever a page that requires multiple severances.<sup>6</sup> The hospital's representations do not indicate how many pages contain personal health information that requires redaction, or what percentage of the 900 pages may require multiple redactions per page.

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<sup>5</sup> Order P-4.

<sup>6</sup> Orders MO-1169, PO-1721, PO-1834 and PO-1990.

[16] Also, while the hospital has provided a breakdown of the calculation of the preparation fee of \$67.50 and claimed it is for work already done, it does not explain the specific work this fee represents. I find that this part of the fee does not comply with the *Act* and regulations because the basis for charging it is not clear. I do not uphold the \$67.50 fee the hospital claims for preparation.

[17] There is no dispute that the hospital will have to redact some personal health information from some portion of the 900 pages of records at issue. The appellant has offered to pay a fee of \$150, in recognition of the fact that the records will require some redaction. A fee of \$150 would cover preparation time for 300 pages of records requiring multiple redactions on each page; roughly a third of the records ( $300 / 15 = 20 \times \$7.50 = \$150$ ).

[18] The fee provisions of the *Act* establish a "user-pay" principle in that they are mandatory unless the requester can show that they should be waived.<sup>7</sup> Keeping the user-pay principle of the *Act* in mind, and considering the circumstances of this appeal outlined above, I find it is fair and equitable to reduce the fee to the \$150 that the appellant has offered. The \$150 is, admittedly, an amount that the appellant can pay without financial hardship. The reduced fee accounts for the preparation time the hospital will require for 300 pages of records requiring multiple redactions each. Considering the nature of the records, I am satisfied that a third of the pages would contain personal health information that would require redactions.

[19] By reducing the fee almost 70% to \$150, I have, in effect, granted the appellant's fee waiver request in large part. Also, having considered the appellant's representations on its request for a fee waiver, I am not persuaded that a complete fee waiver is fair or equitable in the circumstances. As a result, I decline to consider the appellant's request for a fee waiver in further detail in this order.

[20] Finally, I note that in his representations, the appellant attempts to raise an issue for the first time regarding additional responsive records that the hospital may have. This new issue is not within the scope of this appeal, and it is not properly before me. Accordingly, I do not address it in this order.

**ORDER:**

I do not uphold the hospital's fee estimate of \$483.75 and I reduce it to \$150.

Original Signed By: \_\_\_\_\_  
Stella Ball  
Adjudicator

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September 30, 2024

<sup>7</sup> Order PO-2726.