

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-4695-I

Appeal PA24-00709

Ministry of the Solicitor General

July 31, 2025

Summary: A public interest group asked the Ministry of the Solicitor General for records about an investigation into the removal of animals from a marine-themed amusement park. The ministry issued an interim access decision which included a fee estimate. The public interest group appealed the ministry's fee estimate. The decision-maker finds that the ministry's interim access decision is inadequate, and it has not established the reasonableness of its fee estimate. In this order, the decision-maker does not uphold the ministry's fee estimate and interim access decision and orders the ministry to issue a revised fee estimate and interim access decision to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 57; sections 6 and 7 of Regulation 460.

BACKGROUND:

[1] On August 20, 2024, the appellant asked the Ministry of the Solicitor General (the respondent) for access under the Freedom of Information and Protection of Privacy Act (the Act) to records about an investigation into the removal of animals from a marine-themed amusement park and a copy of an order issued under the Provincial Animal Welfare Services Act, 2019.¹

[2] In response, the ministry issued an interim access decision, which included a fee

¹ S.O. 2019, c. 13.

estimate in the amount of \$40,680.00 and noted that it anticipates granting partial access to the requested information. It indicated that its preliminary review of the requested information indicated that part of the requested records will likely be exempt from disclosure in accordance with sections 13(1), 21(1), and 21(2)(f) of the Act. The ministry advised that a deposit of 50 percent of the fee estimate was required before it would continue processing the request. The ministry did not claim an extension of time in the interim access decision.

[3] The appellant contacted the ministry to discuss narrowing the scope of its request to reduce fees but did not receive a response.

[4] The appellant then appealed the ministry's fee estimate to the Information and Privacy Commissioner of Ontario (the IPC) File PA24-00709 was opened.

[5] As attempts to resolve this matter informally were not successful, I decided to conduct an expedited inquiry on the issues of the reasonableness of the ministry's fee estimate. I issued a Notice of Expedited Inquiry and requested representations from the ministry, which I did not receive. I determined that I did not require representations from the appellant.

[6] In this order, I find that the ministry has not established the reasonableness of its fee estimate and that its interim access decision is inadequate. I order the ministry to issue a revised fee estimate and interim access decision to the appellant.

DISCUSSION:

Should the ministry's fee estimate be upheld? Is the ministry's interim access decision adequate?

Interim access decision

[7] When an institution receives a request for information and the fee is \$100 or more, it may choose to do all the work necessary to respond to the request at the outset. If so, it must issue a final access decision. Alternatively, the institution may choose not to do all the work necessary to respond to the request, initially. In this case, it must issue an interim access decision, together with a fee estimate.²

[8] Also, where the fee is \$100 or more, the institution may require the requester to pay a deposit equal to 50% of the estimate before the institution takes any further steps to respond to the request.³

[9] An interim access decision must be accompanied by a fee estimate and, at a

² Order MO-1699

³ Section 7 of Regulation 460.

minimum, must contain the following elements:

- a description of the records;
- an indication of what exemptions or other provisions the institution might rely on to refuse access;
- an estimate of the extent to which access is likely to be granted;
- name and position of the institution's decision-maker;
- a statement that the requester may appeal the interim access decision; and
- a statement that the requester may ask the institution to waive all or part of the fee.⁴

[10] The purpose of the fee estimate, interim access decision and deposit process is to provide the requester with sufficient information to make an informed decision as to whether to pay the fee and pursue access to the records, while protecting the institution from expending undue time and resources on processing a request that may ultimately be abandoned.⁵

[11] The interim access decision process also assists requesters to decide whether to narrow the scope of a request to reduce the fees.⁶

[12] As noted in IPC Order 81, it is the responsibility of the head of the institution to take whatever steps are necessary to ensure that a fee estimate accompanying an interim access decision is based on a reasonable understanding of the costs involved in providing access to the responsive records. Previous IPC orders are clear that an interim access decision should be based on a review of a representative sample of the requested records and/or the advice of an individual who is familiar with the type and content of the records.⁷

[13] The IPC may review an institution's interim access decision to determine whether it contains the necessary elements referred to above. It will not determine whether the exemptions or other provisions the institution cites apply to the records until the institution issues a final access decision. If an interim access decision does not meet the minimum standards set out above, several remedies are available, for example, a decision-maker may order that the institution:

- issue a revised interim access decision;

⁴ Orders 81, MO-1479, MO-1614 and PO-2634. See IPC guide [Fees, Fee estimates and Fee waivers](#).

⁵ Orders MO-1699 and PO-2634.

⁶ Order MO-1520-I.

⁷ Orders 81, MO-1479, MO-1614 and PO-2634.

- undertake additional work for the purpose of issuing a revised interim access decision;
- issue a final access decision;⁸ or
- issue an order disallowing some or all the fees in the estimate accompanying the interim access decision.⁹

Fee estimate

[14] Institutions are required to charge fees for requests for information, which is governed by section 57 the Act. Section 57(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.

[15] More specific fee provisions are found in section 6 of Regulation 460, which applies to general access requests, like the one in this appeal.

[16] Section 57(3) states that an institution must provide a fee estimate where the fee is more than \$25. It must include:

- a detailed breakdown of the fee estimate; and
- a detailed statement as to how the fee estimate was calculated.¹⁰

[17] The IPC can review an institution's fee estimate and decide whether it complies with the Act and regulations.

⁸ Orders MO-1614 and MO-2023.

⁹ Orders MO-1614 and MO-2023.

¹⁰ Orders P-81 and MO-1614.

The ministry's representations

[18] The ministry's interim access decision indicates that the fee estimate was calculated with the assistance of experienced ministry staff who are familiar with the requested information. It explains that the fee estimate is comprised of 906 hours of search time and 450 hours of preparation time.

[19] After multiple attempts to connect with the ministry to informally resolve this appeal, the ministry advised that:

- the fee estimate was established by a preliminary search for records and represented approximately 20 full workdays to search for records, with a subsequent five months to prepare the records for release; and
- a final fee had not been established because a deposit was not received.

[20] While the ministry advised that it would provide additional guidance from its program area on narrowing the scope of the request to reduce fees, I did not hear back from the ministry.

[21] The ministry did not submit any representations during my inquiry.

Analysis and findings

[22] For the reasons below I find the ministry has not established the reasonableness of its fee estimate and that its interim access decision is inadequate.

Interim access decision

[23] Based on the ministry's interim access decision, it has calculated its fee estimate with the assistance of experienced ministry staff who are familiar with the requested information. It is also requiring the appellant to pay a deposit equal to 50% of the fee estimate before the ministry takes any further steps to respond to the request.

[24] The ministry's interim access decision is accompanied by a fee estimate and contains the following required elements:

- An indication of what exemptions it might rely on to refuse access - the ministry states that exemptions under sections 13(1), 21(1), and 21(2)(f) of the *Act* are likely to be relied on;
- the name and position of the ministry's decision-maker, the ministry states that the individual signing the interim access decision is the decision-maker; and
- a statement that the requester may appeal the interim access decision; and

- a statement that the requester may ask the institution to waive all or part of the fee – the ministry advises that the appellant can request a waiver of the fee.

[25] However, the following elements are missing from the ministry's access decision:

- a description of the records; and
- an estimate of the extent to which access is likely to be granted.

[26] While the ministry submits that it calculated the fee estimate with the assistance of experienced ministry staff who are familiar with the requested information, that simple assertion is wholly inadequate given the number of hours it claims would be necessary to search for and prepare the records and the period of time in months it claims would be necessary to accomplish these tasks. In addition, the ministry's interim access decision does not provide a description of the records responsive to the request. It has not identified the nature of the records, for example, emails, reports, briefing notes, etc., nor has it provided an estimate on the number of records or the number of pages of records that may be responsive to the request.

[27] Also, while the ministry's interim access decision indicates that part of the requested records will likely be exempt from disclosure in accordance with several sections of the Act, it has not provided an estimate of the extent to which access is likely to be granted.

[28] As noted above, this is the type of information that must be included in an interim access decision to permit an appellant to make an informed decision as to whether to pay the fee and pursue access to the records or narrow the scope of the request to reduce the fees.

[29] Without this additional information, the appellant is unable to assess how to proceed with the request.

[30] In addition, the appellant has expressed an interest in working with the ministry to narrow the scope of the request to reduce the fee estimate. The IPC has also attempted to work with the ministry to obtain further clarity on how the fee estimate could be reduced and how it was clarified.

[31] Accordingly, I find that the ministry's interim access decision is inadequate because it does not contain the necessary elements. I will order the ministry to revise its interim access decision.

Fee estimate

[32] I accept that the ministry is entitled to charge fees for access to records under section 57(1) of the Act and the regulations. I further accept that there may be a significant amount of time and effort that is necessary to search for and prepare

responsive records and the ministry provided the appellant with a fee estimate, as required by section 57(3) of the Act.

[33] However, I am unable to assess how the ministry calculated its fee estimate and whether it is reasonable given the limited information provided to me by the ministry. The ministry has not provided me with information about the estimated number of records/pages of records, or the types of records responsive to this request - I have no information about the potential volume or nature of responsive records, or the extent of potential severances required. Moreover, while the appellant has expressed interest in working with the ministry to reduce the fee estimate by narrowing the scope of its request, the ministry has not engaged with the appellant, or the IPC, to do this.

[34] I note the ministry's statement that the fee estimate represents 20 full workdays to search for records and five months to prepare the records, appears inconsistent with its fee estimate of 906 hours of search time and 450 hours of preparation time.

[35] Given the amount of the fee estimate and without a more detailed explanation for it, I am unable to determine whether the ministry's fee estimate is reasonable, is calculated accurately, or complies with the Act and regulations. The burden of establishing the reasonableness of the estimate rests with the ministry.¹¹ To meet this burden, the ministry is required to provide an adequate explanation of how the fee estimates were calculated and provide sufficiently detailed evidence to support the estimates. The ministry has not done so. As a result, I have insufficient evidence to uphold the ministry's fee estimate.

[36] In these circumstances, I find that it is necessary for the ministry to base its fee estimate on a representative sample of the records containing the type of information set out above and to break down the time necessary to perform its search and preparation functions by the specific tasks involved.

[37] Accordingly, I do not uphold the ministry's fee estimate. I will order the ministry to provide me with its revised fee estimate and interim access decision accompanied by representations on the reasonableness of the revised fee estimate.

ORDER:

1. I order the ministry to revise its interim access decision and fee estimate based on a representative sample of the records by **August 15, 2025**, and to provide a detailed statement of how the revised fee estimate was calculated, including the following elements:

¹¹ Order 86.

- a. a description of the records, including an estimate of the number of pages/records;
 - b. an estimate of the breakdown of the time for each specific task and
 - c. an estimate of the extent to which access is likely to be granted to the records.
2. I also order the ministry to provide me with representations and/or an affidavit by **August 15, 2025**, on the reasonableness of its revised fee estimate, outlining the following:
 - a. An explanation for how it determined the basis for the revised fee estimate and interim access decision, including:
 - i. how it ensured that any consultations with employees included discussions about all the types of responsive records:
 - b. An explanation for how it created a detailed breakdown of each element of the estimated fee (such as search time, preparation time, computer costs, etc.) including:
 - i. description of the records responsive to the request;
 - ii. the location of the records and how many and which staff would be engaged to search and prepare records;
 - iii. whether any records contain the personal information of the requester and therefore, are not included in the search and preparation fee;
 - iv. whether the requester is likely to be given access to the requested records, in whole or in part;
 - v. which exemptions may apply [in the absence of any cited exemptions, it is reasonable for a requester to infer that the records will be released in their entirety upon payment of the required fee]; and
 - vi. the degree of disclosure (for example, 10, 50, or 95 per cent of total records and/or the estimated number of pages or parts of pages to which access will be granted) and the degree of severing for parts of records (such as, low, moderate, or extensive) if practical.

For more specific guidance, the ministry is encouraged to consult the IPC's guide [*Fees, Fee estimates and Fee waivers*](#).

3. If a satisfactory revised interim access decision and fee estimate with representations and/or an affidavit in accordance with the foregoing are not

provided by **August 15, 2025**, I will issue a final order, requiring the ministry to issue a final access decision without a fee deposit.

Original Signed by: _____

July 31, 2025 _____

Alline Haddad

Case Lead