



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-2829**

**Appeal PA08-76**

**University of Ottawa**



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## **NATURE OF THE APPEAL:**

The University of Ottawa (the University) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for the following records:

All records by the Administration Committee and the Protection Services related to a student forum and demonstration organized by “Our Campus” on [a specified date].

The University issued a fee estimate in the amount of \$908, broken down as follows:

### **Administration Committee**

12 hours search time @ \$30/hour	\$360
½ hour of record preparation time @ \$30/hour	\$15
Photocopying costs for 180 pages @ \$.20/page	\$36

### **Protection Services**

15 hours search time @ \$30/hour	\$450
½ hour of preparation time at \$30/hour	\$15
Photocopying costs for 160 pages @ \$.20/page	\$32

The University also noted that the exemptions at section 14(2) (law enforcement report) and 19 (solicitor-client privilege) may apply to a portion of some of the responsive records. The University requested a deposit in the amount of \$454 to be paid by the requester before the request would be processed.

The requester submitted a request for a waiver of the fee. The University denied his request for a fee waiver.

The requester, now the appellant, appealed the fee estimate and the denial of his fee waiver request.

During mediation, the appellant removed the costs related to photocopying the records from the scope of his appeal. Further mediation was not possible and the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry.

I began my inquiry by sending a Notice of Inquiry to the University setting out the facts and issues on appeal. The University provided representations. I then sent a Notice of Inquiry to the appellant along with a complete copy of the University’s representations. The appellant provided representations in response. I then sent the University a copy of the appellant’s representations and invited them to make representations in reply. The University submitted further representations.

## **DISCUSSION:**

### **Fees**

I will first determine whether the fee estimate of \$908 should be upheld.

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

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

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

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

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

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

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

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

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under subsection (1) that is subsequently waived.

9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

In support of its search fee, the University provided the following representations.

The University based its fee estimate on discussions with individuals familiar with the type and content of the records. These individuals were the President of the University and the Director of Protection Services. The University then considered that there were a significant amount of time involved to respond to this broad request.

Based on our discussion with the individuals, the University determined that the responsive records would not contain personal information related to the appellant.

In order to locate all the responsive records, the individuals would have to conduct their searches through their Outlook folders. The search would have to be conducted under key words such as "Our Campus".

Some of the documents are also kept in a hard copy file. In order to locate these records, the individuals would have to go through their filing cabinets.

The estimate time was approximately 12 hours for the Administrative Committee. The University evaluated that it would take approximately 1 hour to search through hard copy files and 1 hour to search electronic folders. This totals 2 hours per individual. The search time for Protection Services was evaluated to be approximately 15 hours, which is 1 hour per individual. This also takes into consideration the time these individuals will require to review the potentially responsive records to ensure they respond to the request.

In regard to the preparation time, the University states:

The University considers that 2 minutes per page are needed to sever responsive records (Orders MO-1169, PO-1721, PO-1834, PO-1990). In order to sever the responsive records, the University will have to read all the documents to highlight the information that needs to be severed and to photocopy these documents.

In order to locate these documents, the institution will have to ask their employees to conduct the search themselves during their working hours, instead of performing their normal duties. Therefore, there are important indirect costs related to this request, considering the number of individuals targeted in such a broad request.

The appellant does not take issue with the fee estimate.

### **Finding and analysis**

Based on my review of the appellant's request, and the representations of the parties, I find that the records do not contain the personal information of the appellant.

#### *Search*

As stated above, the University's fee estimate includes 27 hours of search time combined for searching the Administrative Committee and Protection Services departments for information responsive to the appellant's request. Based on the University's submissions and the fact that quite a number of individuals are subject to the appellant's request, I am satisfied that the 27

hours of search time to locate the records is reasonable in the circumstances of this appeal. Accordingly, I uphold the \$810 of search time in the University's fee.

### *Preparation*

The University's combined preparation time is 1 hour. "Preparing the record for disclosure" under subsection 45(1)(b) has been construed by this office as including (although not necessarily limited to) severing exempt information from records (see, for example, Order M-203). I accept the University's submission that it requires two minutes to sever the responsive records. I note that the University states that it will need its preparation time to "read all documents to highlight information that needs to be severed and to photocopy these documents." I would remind the University that time spent photocopying is not validly included as part of the time preparing a record for disclosure under section 6, paragraph 4 of Ontario Regulation 460. That time is already accounted for in paragraph 1 of section 6 (Orders M-549, M-562). That being said, I find that the University's estimate of 1 hour preparation time in order to sever the records is not unreasonable and I uphold the University's fee of \$30 for preparation time.

### *Photocopying*

The University's fee includes \$68 for photocopying which is 304 pages of records at \$.20 per page. The University has charged the rate prescribed by the Regulation for photocopying and I uphold the University's fee for photocopying charges.

Accordingly, I uphold the University's total fee estimate of \$908 for the appellant's request.

### **Fee Waiver**

I will now determine whether the \$908.00 fee estimate by the University should be waived.

Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

57. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and

(d) any other matter prescribed by the regulations.

8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 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 or the *Act* requires the institution to waive the fees [Order PO-2726].

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

The institution or this office may decide that only a portion of the fee should be waived [Order MO-1243].

### **Part 1: basis for fee waiver**

#### ***Section 57(4)(b): financial hardship***

The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship [Order P-1402].

For section 57(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393].

The appellant submits the following in support of his fee waiver request:

The fee would cause me severe financial hardship if paid. I am in an immense amount of debt, and this is evident upon consideration of my credit card and my loans obtained from the Ontario Student Assistance Program (OSAP), a program that offers loans to students who are proven to be in financial need. Currently, I

am in \$10,878.89 debt, with another loan coming in for the 2008-2009 academic year for tuition fees. On top of this, I have no assets aside from a few inexpensive personal items. This is evident from the status of my only bank account. Furthermore, from the amount that I earn, it is not reasonable to expect me to be able to pay the fees associated with my request without undue financial hardship; during the fall and winter semesters, students are compelled to reduce their full-time workload to a part-time one.

In support of his submission of financial hardship the appellant submitted a copy of his bank statement for a specified period. In support of his earlier fee waiver request to the University, the appellant also provided a number of documents including his credit card statement, the OSAP funding he had received for two academic years and the payment slip for moneys earned by the appellant.

The University submits that it does not dispute the fact that the appellant is a student and that the payment of fees could potentially represent a financial hardship for him. However, the University states:

The University, in exercising its discretion in determining whether the fees should be waived, must consider all the above factors. It is not enough for a requester to show that the payment of fees will cause financial hardship; he or she must also prove that the dissemination of the record will benefit public health and safety. The University is of the view, as it elaborated in its [earlier] submissions that the matter of the record requested by the appellant is not a matter of public interest and does not relate directly to a public health and safety issue. Furthermore, the dissemination of the record would not yield a public benefit.

### **Analysis and finding**

The University admits that the payment of the fee could cause financial hardship to the appellant; however, it submits that the appellant must also establish the public health or safety criteria before it can exercise its discretion to grant the fee waiver. The University is mistaken in this regard. The appellant need only establish one of the criteria under section 57(4) or section 8 of Regulation 460 before a determination is made as to whether it would be fair and equitable in the circumstances to grant the fee waiver.

Based on my review of the appellant's submissions and the documents submitted as evidence of his financial status, that payment of the fee could cause financial hardship to the appellant and I find that appellant has established that the criteria for fee waiver exists in section 57(4)(b) of the *Act*.

### ***Section 57(4)(c): public health or safety***

The appellant also submits that the public health or safety criteria in section 57(4)(c) also applies to his request for fee waiver.

The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
  - (a) disclosing a public health or safety concern, or
  - (b) contributing meaningfully to the development of understanding of an important public health or safety issue
- the probability that the requester will disseminate the contents of the record

[Orders P-2, P-474, PO-1953-F, PO-1962]

The focus of section 57(4)(c) is “public health or safety.” It is not sufficient that there be only a “public interest” in the records or that the public has a “right to know.” There must be some connection between the public interest and a public health and safety issue [Orders MO-1336, MO-2071, PO-2592 and PO-2726].

The appellant states:

The records...if made available can be used by student groups to hold events free of intervention from persons with opposing interests. That a member of the Protection Services may have been present, not in uniform, and at both the meeting and its subsequent demonstration is information that is of benefit to students. There is reason to believe that Protection services is not acting in the interests of public health and safety, and for this reason I am asking for a waiver of all fees associated with my request, since it is in the interests of public health and safety.

As stated above, the University submits that the subject matter of the record is not a matter of public interest and does not directly relate to a public health and safety issue.

### **Analysis and finding**

Based on my review of the parties representations, I find that the appellant has not established the basis for fee waiver found at section 57(4)(c). In the present appeal, while I accept that the subject matter of the appellant’s request, the ability of students to hold events free of intervention, may be of some public interest, I am not satisfied that the subject matter relates

directly to a public health or safety issue. In fact, based on the appellant's representations, I find that the appellant raises a public interest argument in disclosure of the records, rather than a public health or safety issue. Accordingly, I find that the criteria listed at section 57(4)(c) does not apply in this appeal.

As I have found that the criteria in section 57(4)(b) applies, I will now proceed to consider whether it is fair and equitable to grant a fee waiver in the circumstances of this appeal.

## **Part 2: fair and equitable**

For a fee waiver to be granted under section 57(4), it must be "fair and equitable" in the circumstances. Relevant factors in deciding whether or not a fee waiver is "fair and equitable" may include:

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;
- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether the requester has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

[Orders M-166, M-408 and PO-1953-F]

The appellant submits that it would be fair and equitable to grant the fee waiver in the circumstances because:

...the institution did not work constructively with me to narrow and/or clarify the request, nor to provide any records free of charge. The University refused to grant access to any of the documents I requested, and only responded through a fee estimate and denial of fee waiver. During our correspondence, there was not one time where the University asked what I was looking for more specifically, nor offered documents that were readily accessible – inexpensive – yet within the scope of my request. Furthermore, the University has not offered ways to narrow the scope of my request whilst gaining access to the documents intended, nor wishing to engage in such a valuable dialogue. Finally, the University has not attempted to compromise on the issues, despite my attempt to lessen costs by reproducing the records electronically rather than using other means such as photocopying.

The University submits that it would not be fair and equitable in the circumstances to grant the fee waiver. It states:

The University is a not for profit bilingual institution with limited resources that has an important education mandate and responsibility to provide its students with the knowledge and tools to compete in a global economy. Its limited resources, whether financial, human resources, time, infrastructure, etc. must be used in accordance with its mandate as an educational institution. Considering the time needed to process this request and during their work hours, the University cannot support a fee waiver. The University is of the view that it should direct its resources to achieving its primary engagements toward its students, staff and community.

In response to the appellant's submissions, the University adds:

The Appellant should be asked to clarify and reduce the scope of his request, considering that there are a significant number of employees covered by the request, namely 6 members of the Administrative Committee and 15 employees at Protection Services.

It should be noted that the Appellant, being aware of his financial situation and realizing the significant cost related to his request, did not attempt to work constructively with the University to narrow the scope of his request and offer a compromise solution that would have reduced the cost of processing his request.

### **Finding and analysis**

In my determination of whether it would be fair and equitable to grant a fee waiver in the circumstances, I will examine the factors listed above, considering the parties' representations.

In responding to the appellant's request, the University issued an interim decision which included a fee estimate and request for deposit. The University did not contact the appellant prior to sending him this interim decision. Furthermore, the University's decision letter does not provide any details as to the search to be undertaken including the number of individuals who would have to search their records and emails. In my view, this factor weighs in favour of fee waiver.

I find that the University made limited attempts to work constructively with the appellant to narrow and/or clarify his request. I note that the University's decision letter to the appellant, which included its fee estimate and request for deposit, included the sentence:

If you would like to discuss revising your request with a view to reducing the estimated fee, or if you have any questions, please don't hesitate to contact [the] Associate Legal Counsel.

Besides this attempt, I am unable to find evidence of any further actions by the University to narrow the appellant's request. In my view, this factor weighs in favour of fee waiver.

I further find that the appellant also made little if no attempts to work constructively with the University to narrow or clarify his request. After receiving the University's interim decision, it appears that the appellant simply made his fee waiver request, without taking up the University's offer to revise his request in order to reduce the fee. I do note, however, that during mediation, the appellant did remove the costs of photocopying from the scope of his appeal. While the appellant's actions to narrow the scope of his request weigh against fee waiver, I find that his offer during mediation weighs in favour of fee waiver.

Finally, I considered whether granting the fee waiver would shift an unreasonable burden of the cost from the appellant to the University. The University submits that a fee waiver would shift an unreasonable burden of the cost from the appellant to the University based on the University's other obligations as an educational institution. I somewhat agree. The appellant's request is broad and involves two groups with the University. The appellant did not narrow the scope of his request in order to reduce the fee. I am mindful that I have found that the appellant would suffer financial hardship having to pay the full fee. As a result, I find that granting a fee waiver for the entire fee would shift an unreasonable burden of the cost from the appellant to the University.

From my review of the factors above, I find that on the balance, the factors for fee waiver outweigh those against. Nevertheless, I find that granting a full fee waiver would shift an unreasonable burden of the cost from the appellant to the University. Thus, while it would not be fair and equitable to waive the entire fee, I find that it would be fair and equitable if the University were to waive 50% of the fee.

Accordingly, I find that it would be fair and equitable in the circumstances to grant a 50% fee waiver to the appellant in this appeal.

**ORDER:**

1. I uphold the University's fee.
2. I order the University to grant a 50% fee waiver to the appellant.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

\_\_\_\_\_ September 23, 2009