

INTERPRETATION BULLETIN

Fees and fee waivers

This interpretation bulletin outlines the fees that an institution may charge a requester, as set out in **section 57** of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and **section 45** of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). This document also explains what an institution must consider when calculating its fees, how those fees are communicated to the requester, and the factors to consider when deciding whether to grant a fee waiver where it is “fair and equitable” to do so.

Sections 57 FIPPA and 45 MFIPPA provide as follows:

(1) 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.

(2) (repealed)



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

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

(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 in the regulations.

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee.

(6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations.

FEE AMOUNTS

Sections 6 and 6.1 of Regulation 460 FIPPA and Regulation 823 MFIPPA set out the specific amounts that an institution can charge as fees. Section 6 applies to general access requests, while section 6.1 applies to requests for one's own personal information:

6. The following are the fees that shall be charged for the purposes of subsection 57(1) FIPPA (or subsection 45(1) MFIPPA) 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) FIPPA (or subsection 45(1) MFIPPA) 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 personal information if those costs are specified in an invoice that the institution has received.

FEE ESTIMATES AND DEPOSITS

Under section 57(3) FIPPA and 45(3) MFIPPA, 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 their right of access.¹ The fee estimate also helps requesters decide whether to narrow the scope of a request to reduce the fee.²

The institution can require the requester to pay the fee before giving them access to the record³. 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.⁴

1 Orders [P-81](#), [MO-1367](#), [MO-1479](#), [MO-1614](#) and [MO-1699](#).

2 Order [MO-1520-I](#).

3 Regulation 460 FIPPA, section 9; Regulation 823 MFIPPA, section 9.

4 Regulation 460 FIPPA, section 7(1); Regulation 823 MFIPPA, section 7(1).

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.⁵

In all cases, the institution must include:

- a detailed breakdown of the fee; and
- a detailed statement as to how the fee was calculated.⁶

The IPC can review an institution's fee and decide whether it complies with the Acts and regulations.

WHAT ITEMS CAN THE INSTITUTION CHARGE FOR?

Manual search time

Under sections 57(1)(a) FIPPA and 45(1)(a) MFIPPA and their respective regulations, search time for manually searching a record can only be charged for general requests, not requests for the requester's own personal information.⁷

What will be considered reasonable search time will turn on factors such as the volume of records to be searched, the span of time the search entails, and the steps to be taken to locate the records.⁸

Electronic searches that involve running reports by selecting fields of data from a larger database of information to generate a record do not constitute a "manual" search within the meaning of sections 57(1)(a) FIPPA and 45(1)(a) MFIPPA.⁹ Similarly, activities relating to information which has already been located cannot be properly included as "search" activities for the purposes of calculating a fee estimate under these sections.¹⁰

Preparation time

Under sections 57(1)(b) FIPPA and 45(1)(b) MFIPPA and their respective regulations, time spent preparing a record for disclosure can only be charged for general requests, not requests for the requester's own personal information.¹¹

5 Order **MO-1699**.

6 Orders **P-81** and **MO-1614**.

7 Regulation 460 FIPPA, sections 6 and 6.1; Regulation 823 MFIPPA, sections 6 and 6.1.

8 Order **MO-4286**.

9 Order **M-1083**.

10 Order **M-1083**.

11 Regulation 460 FIPPA, sections 6 and 6.1; Regulation 823 MFIPPA, sections 6 and 6.1.

In general, it is preferable for the institution to provide detail of its estimated preparation time; however, even in the absence of an in-depth breakdown, the IPC has upheld fee estimates where the circumstances permit an assessment of their reasonableness.¹²

Preparing the record for disclosure under these provisions should be read narrowly and only includes the amount of time spent by a person on activities required to generate the record — not the time spent by a computer to compile the data and print the information or for the use of material and/or equipment involved in the process of generating the record.¹³

In the case of general requests for access to information, an institution can charge for time spent by a person to:

- sever (redact) a record, including records in audio or visual format,¹⁴ and
- run reports from a computer system.¹⁵

The IPC has generally accepted that it takes two minutes to sever a page that requires multiple severances.¹⁶

An institution can also charge for the time spent on scanning paper records onto electronic media if the appellant has requested that paper records be provided electronically.¹⁷

Under sections 57(1)(b) FIPPA and 45(1)(b) MFIPPA, an institution **cannot** charge for preparation time spent on:

- deciding whether or not to claim an exemption;¹⁸
- identifying records requiring severing;¹⁹
- identifying and preparing records requiring third party notice;²⁰
- transporting records to the mailroom or arranging for courier service;²¹
- assembling information and proofing data;²²
- “retrieving records from bound files”, “removing staples and paperclips” and photocopying records, since the maximum of these photocopying-related charges are already provided for in the regulations which includes “the cost of an individual “feeding the machine””;²³

12 Orders [PO-1962](#), [MO-3492](#) and [MO-4286](#).

13 Order [M-1083](#).

14 Order [P-4](#).

15 Order [M-1083](#).

16 Orders [MO-1169](#), [PO-1721](#), [PO-1834](#) and [PO-1990](#).

17 Order [MO-2530](#).

18 Orders [P-4](#), [M-376](#) and [P-1536](#).

19 Order [MO-1380](#).

20 Order [MO-1380](#).

21 Order [P-4](#).

22 Order [M-1083](#).

23 Orders [P-184](#), [P-890](#) and Order [M-1083](#).

- preparing an index of records or a decision letter;²⁴
- “bundling copies of records for disclosure” or “packaging records for shipment”;²⁵
- re-filing and restoring records to their original state after they have been reviewed and copied.²⁶

Computer and other costs

Under sections 57(1)(c) FIPPA and 45(1)(c) MFIPPA, an institution shall charge fees for computer and other costs incurred in locating, retrieving, processing and copying a record. This applies to both general requests for access to information as well as requests for a requester’s own personal information. The IPC has interpreted such computer costs to include:

- photocopies and computer printouts as per the regulations;²⁷
- records provided on CD-ROMs;²⁸ and
- developing a computer program.²⁹

Shipping costs

Sections 57(1)(d) FIPPA and 45(1)(d) MFIPPA provide for the inclusion of shipping costs in the institution’s fee.

The IPC has found that section 57(1)(d)/45(1)(d) **does not include** the cost of correspondence to notify affected parties or to discharge other general responsibilities under the *Acts*.³⁰

Other costs

Sections 57(1)(e) FIPPA and 45(1)(e) MFIPPA are intended to cover general administrative costs similar in nature to those listed in paragraphs (a) through (d) when responding to a request.³¹

Sections 57(1)(e) FIPPA and 45(1)(e) MFIPPA **do not** allow an institution to charge for:

- time for responding to the requester;³²
- time for responding to the IPC during the course of an appeal;³³
- legal costs associated with the request;³⁴

24 Orders [P-741](#) and [P-1536](#).

25 Orders [P-4](#) and [PO-2574](#).

26 Order [PO-2574](#).

27 Section 57(1)(c)/45(1)(c) and Regulation 460/823, sections 6(1) and 6.1(1).

28 Section 57(1)(c)/45(1)(c) and Regulation 460/823, sections 6(2) and 6.1(2).

29 Section 57(1)(c)/45(1)(c) and Regulation 460/823, sections 6(5) and (6), and sections 6.1(3) and (4).

30 Order [MO-2274](#).

31 Order [MO-1380](#).

32 Order [MO-1380](#).

33 Order [MO-1380](#).

34 Order [MO-1380](#).

- comparing records in a request with those in another request for consistency;³⁵
- GST;³⁶
- consultant costs, even if invoiced, that would not be recoverable had the request been processed by the institution's own staff;³⁷ or
- coordinating a search for records.³⁸

FEE WAIVERS

The fee provisions in the *Acts* establish a “user-pay” principle. The fees referred to in sections 57(1) FIPPA and 45(1) MFIPPA are mandatory unless the requester can show that they should be waived.³⁹

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request. If the institution either denies this request, or chooses to waive only a portion of the fee, the IPC may review the institution's decision, and can uphold or modify the institution's decision.⁴⁰

FACTORS TO CONSIDER WHEN DECIDING TO WAIVE A FEE

The *Acts* require an institution to waive fees, in whole or in part, if it is “fair and equitable” to do so in the circumstances. Sections 57(4) FIPPA and 45(4) MFIPPA set out the factors that the head of an institution must consider in deciding whether it is fair and equitable to waive a fee:

- 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);
- whether the payment will cause a financial hardship for the person requesting the record;
- whether dissemination of the record will benefit public health or safety; and
- any other matter prescribed by the regulations.

(a) Actual cost in comparison to the fee

Where the actual cost to the institution in processing the request is higher than the fee charged to the requester as per sections 57(4) FIPPA and 45(4) MFIPPA, this may be a factor weighing against waiving the fee.⁴¹

35 Order [MO-1532](#).

36 Order [MO-2274](#).

37 Order [P-1536](#).

38 Order [PO-1943](#).

39 Order [PO-2726](#).

40 Section 57(5)/45(5), Orders [M-914](#), [MO-1243](#), [P-474](#), [P-1393](#) and [PO-1953-F](#).

41 Order [PO-3755](#). See also Order [PO-2514](#).

(b) Financial hardship

For sections 57(4)(b) FIPPA and 45(4)(b) MFIPPA to apply, the requester must provide evidence regarding their financial situation, including information about income, expenses, assets and liabilities.⁴² If financial hardship is established, this is a factor that weighs in favour of a fee waiver; however, failure to provide sufficient evidence of financial hardship will count against the requester.⁴³

The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship.⁴⁴

(c) Public health or safety

The focus of section 57(4)(c)/45(4)(c) is “public health or safety.” It is not enough to show that there is a “public interest” in the records — the public interest must relate to gaining information about a public health and safety issue.⁴⁵

The following factors may be relevant in determining whether distribution of a record will benefit public health or safety:

- 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 distribution of the record once disclosed would yield a public benefit
 - (a) by disclosing a public health or safety concern; or
 - (b) by contributing meaningfully to the development of understanding of an important public health or safety issue, and
- the probability that the requester will share the contents of the record with others.⁴⁶

(d) Other prescribed matters

The other prescribed matters to be considered when deciding whether it is fair and equitable to waive a fee are set out in section 8 of Regulation 460 FIPPA and Regulation 823 MFIPPA. These additional factors are:

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.

⁴² Orders [M-914](#), [P-591](#), [P-700](#), [P-1142](#), [P-1365](#) and [P-1393](#).

⁴³ Order [MO-4286](#).

⁴⁴ Order [P-1402](#).

⁴⁵ Orders [MO-1336](#), [MO-2071](#), [PO-2592](#) and [PO-2726](#).

⁴⁶ Orders [P-2](#), [P-474](#), [PO-1953-F](#), [PO-1962](#) and [MO-4286](#).

REVIEW OF FEE WAIVER DECISIONS

In reviewing fee waiver decisions, the IPC will consider other relevant factors when determining whether it would be fair and equitable for the institution to waive the fee. Relevant factors may include:

1. the manner in which the institution responded to the request,
2. whether the institution worked constructively with the requester to narrow and/or clarify the request,
3. whether the requester worked constructively with the institution to narrow the scope of the request,
4. whether the request involves a large number of records,
5. whether the requester has offered a compromise that would reduce costs,
6. whether the institution provided any records to the requester free of charge, and
7. whether the waiver of the fee would shift an unreasonable burden of the cost from the requester to the institution.⁴⁷

For additional information, please see the [*Fees, Fee Estimates and Fee Waivers guide*](#).

47 Orders [M-166](#), [M-408](#) and [PO-1953-F](#).