

Fees, Fee Estimates and Fee Waivers



Information and Privacy
Commissioner of Ontario

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

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INTRODUCTION

The *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* [the acts] establish a system under which individuals seeking access to government records are required to bear some of the administrative costs involved in handling their requests, with certain limited exceptions.

The purpose of this guide is to assist government institutions under *FIPPA* and *MFIPPA* in determining the what, when, and how of claiming and calculating fees. It is not a detailed procedural guide but a supplement to existing resources such as the office of the Information and Privacy Commissioner of Ontario (IPC) Orders and Practices. Additional reference material can be found in the *Freedom of Information and Protection of Privacy Manual* published by the Ontario Ministry of Government and Consumer Services.

This guide was first published in 2003. Since then, a number of important orders and court decisions¹ have been issued. This guide has been updated to reflect these changes. Where sections of the acts are cited in this document, the provincial section number will be listed first, followed by the municipal section number [for example, sections 57/45].

FEES

Sections 57/45 of the acts authorize institutions to charge fees for responding to access requests. More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulations 460/823.

A person who makes a request for access to records must pay a \$5 application fee. The institution may also charge fees for:

- manually searching for a record
- preparing the record for disclosure
- computer and other costs incurred in locating, retrieving, processing and copying a record
- shipping costs
- photocopies and computer printouts
- records provided on CD-ROMs
- other costs incurred in responding to a request, as may be set by regulation

¹ Where particular findings have been made in orders, references are provided.

Institutions may not charge a fee for manually searching or preparing a record for disclosure containing the requester's own personal information. See Appendix A for the full text of sections 57/45 of the acts and sections 6, 6.1, 7 and 9 of Regulations 460/823.

FACTORS TO CONSIDER WHEN CALCULATING FEES

Institutions should consider the following when calculating fees:

SEARCH TIME

Institutions can charge \$7.50 for every 15 minutes spent manually searching for records. However, as stated above, an institution may not charge a fee for manually searching records containing the requester's own personal information.

When calculating search time, institutions should determine:

- the actions necessary to locate the requested records, taking into consideration how the records are stored and maintained
- the actual amount of time needed in each step of locating the requested records

Good record and information management policies and practices can help ensure an efficient search.

Generally, institutions are not obliged to maintain records to accommodate the various ways in which an access request could be framed [Order M-583]; however, institutions may be denied full recovery of their search costs if, on appeal, the IPC finds that the institution did not have proper information management practices [Order PO-3206].

In Order PO-3190, the IPC reduced the search fee from \$1,307 to \$120 because it found that the institution failed to maintain the responsive records in a consistent and easily searchable manner.

PREPARATION TIME

Institutions can charge \$7.50 for every 15 minutes spent preparing records for disclosure. However, as stated above, an institution may not charge a fee for preparing records containing the requester's own personal information.

Preparation for disclosure includes the amount of time spent:

- severing a record [Order P-4], including records in audio-video format [Order MO-1492]

An institution may not charge a fee for manually searching for records containing the requester's own personal information.

Good record and information management policies and practices can help ensure an efficient search.

- o generally, the permitted preparation time for severing records is two minutes per page for pages that require multiple severances [Orders MO-1169, PO-1721, PO-1834, PO-1990]
- o in certain circumstances, the permitted preparation time may be less [Order M-163] or more [Order M-745] than two minutes per page
- running reports from a computer system [Order M-1083]

In some circumstances, institutions may charge for scanning paper records.

In some circumstances, institutions can charge for the time spent:

- scanning paper records [Order MO-2530]
- extracting and restoring information from a backup database [Orders MO-3079, MO-3363]
- compiling information contained in other records into a new record [Order M-203]

In Order MO-3017, the IPC allowed the institution to charge for time spent creating a new record of responsive information compiled from other records. In this case, if the institution had provided the requester with all the severed documents, the preparation time would have been longer and would likely have resulted in a greater fee.

Preparation for disclosure does **not** include time spent:

- deciding whether to claim an exemption [Orders M-376, P-4, P-1536]
- identifying records that require severing [Order MO-1380]
- identifying and preparing records that require third party notice [Order MO-1380]
- removing paper clips, tape and staples and packaging records for shipment [Order PO-2574]
- transporting records to the mailroom or arranging for courier service [Order P-4]
- assembling information and proofreading data [Order M-1083]
- photocopying [Orders P-184, P-890]
- preparing an index of records or a decision letter [Orders P-741, P-1536]

PHOTOCOPIES AND COMPUTER PRINTOUTS

In calculating photocopy and computer printout costs, the institution may charge a fee for:

- photocopying and printing at a rate of 20 cents per page

COMPUTER COSTS

In calculating computer costs, the institution may charge a fee for:

- the cost of developing a computer program to produce a record, at a rate of \$15 for every 15 minutes of work
- providing records on CD-ROMs, at \$10 for each CD-ROM
- other costs for which the institution has been invoiced, including computer costs, and locating, retrieving, processing, and copying the records

SHIPPING COSTS

An institution is only entitled to recover the shipping costs for sending records to a requester. Costs for shipping records from a storage facility to the institution's office or other similar costs may be recoverable under "other costs."

OTHER COSTS

The IPC has found that:

- "other costs" refers to general administrative costs similar in nature to those listed in paragraphs (a) through (d) of sections 57/45, but not specifically mentioned [Order MO-1380].

In Order MO-1421, an institution was authorized to charge for the costs of having a third party retrieve boxes containing responsive records from a record storage facility and shipping them to the institution's office, as well as the costs of shipping them back to the storage facility

Other costs do **not** include:

- time spent responding to the requester [Order MO-1380]
- time spent responding to the IPC during the course of an appeal [Order MO-1380]
- legal costs associated with the request [Order MO-1380]
- costs, even if invoiced, that would not have been incurred had the request been processed by the institution's staff [Order P-1536]

- time spent coordinating a search [Order PO-1943]
- comparing records in a request with those of another request for consistency [Order MO-1532]
- paying employees overtime to process a request [Order P-890]
- the cost of sending registered mail [Order MO-2274]
- refiling and restoring records to their original state after being reviewed and copied [Order PO-2584]
- tax on non-invoiced costs [Order MO-2913]

WHAT SHOULD AN INSTITUTION DO ONCE IT HAS DETERMINED THE APPROPRIATE FEE?

Institutions must inform the requester about the details of the fee to complete the request. In some circumstances, institutions may be required to issue an estimate of the fee before completing the work necessary to respond to the request.

FEE ESTIMATES

FEE ESTIMATE

A fee estimate is a detailed statement of the charges to prepare records for disclosure. A fee estimate is required when the requester will be charged \$25 or more.

When the fee is over \$25 and under \$100, the fee estimate is based on the actual work done by the institution to respond to the request [Order M-555].

When the fee is \$100 or more, the fee estimate may be based on a review of a representative sample of the records and/or the advice of knowledgeable institution staff that are familiar with the type and content of the records.

All fee estimates must include a detailed statement of how the fee estimate was calculated.

DEPOSIT

If the fee estimate is \$100 or more, the requester may be required to pay a deposit equal to 50 per cent of the estimate before any further steps are taken to respond to the request.

INTERIM ACCESS DECISION

An interim access decision is made by an institution when it has not completed all of the work necessary to respond to the request. An interim decision is based on a review of a representative sample of the records and/

In all cases, fee estimates must include a detailed statement of how the fee estimate was calculated.

or the advice of knowledgeable institution staff who are familiar with the type and content of the records.

An interim access decision must be accompanied by a fee estimate and must contain the following elements:

- an indication of what exemptions or other provisions the institution might rely on to refuse access
- a description of the records
- an estimate of the extent to which access is likely to be granted and the name and position of the institution's decision maker
- a statement indicating the requester may ask the institution to waive all or part of the fee [Order P-81]
- as a best practice, if the institution requires more time to respond to a request, it should issue a time extension as part of the interim access decision [Order PO-2634]

FINAL ACCESS DECISION

A final access decision is made after an institution has completed all of the work necessary to respond to the request. The access decision must state whether the institution is giving the requester access to the records.

If access is refused, the decision must contain the following elements:

- the specific exemptions or other provisions the institution is basing its decision on
- a description of the records
- the reasons the exemptions or other provisions apply
- details of the institution's exercise of discretion
- the name and position of the institution's decision maker
- a statement indicating the decision may be appealed
- a statement, accompanied by a fee estimate, that indicates the requester may ask the institution to waive all or part of the fee

The amount of the fee determines whether the institution must provide a fee estimate, request a deposit, issue an interim access decision, or issue a final access decision.

WHERE THE FEE IS \$25 OR LESS

The institution must complete all work necessary to respond to the request and must issue a final access decision. In the decision, the institution must

An interim access decision must be accompanied by a fee estimate.

As a best practice, if the institution requires more time to respond to a request, it should issue a time extension as part of the interim access decision.

advise the requester of the applicable fee and include a detailed breakdown of the fee. The institution may not require the requester to pay a deposit.

WHERE THE FEE IS OVER \$25 AND UNDER \$100

The institution must complete all work necessary to respond to the request and issue a final access decision. The institution must also include a fee estimate, based on the actual work done, in its final access decision [Order M-555]. The institution cannot require the requester to pay a deposit.

WHERE THE FEE IS \$100 OR MORE

The institution may choose not to do all the work necessary to respond to the request. In this case, it must issue an interim access decision which includes a fee estimate [Order MO-1699]. The fee estimate is based on a review of a representative sample of the records and/or the advice of knowledgeable institution staff that are familiar with the type and content of the records. The institution may require the requester to pay a deposit equal to 50 per cent of the estimate before taking any further steps to respond to the request [see section 7 of Regulations 460/823].

It is important that institutions take the necessary steps to ensure that, as much as possible, the fee estimate aligns with the final fee. An institution may be prohibited from charging further fees which were not included in its fee estimate if, on appeal, the IPC finds that the institution did not take steps necessary to ensure that the fee estimate was based on a reasonable understanding of the costs involved in providing access [Orders M-81, MO-1699].

However, if the institution chooses to do all of the work necessary to respond to the request at the outset, a final access decision must be issued. This decision must advise the requester of the applicable fee estimate and include a detailed breakdown of the fee estimate based on the actual work done.

In either case, it is helpful to discuss the options with the requester before proceeding, to increase the likelihood that both parties' needs are met.

The chart below outlines when the institution must provide a fee estimate, request a deposit, issue an interim access decision, or issue a final access decision.

Institutions should take the necessary steps to ensure that, as much as possible, the fee estimate aligns with the final fee.

Fee Range	Must the institution complete all work necessary to respond to the request?	Must the institution issue a fee estimate?	May the institution require a deposit?	Must the institution issue a final access decision?	May the institution issue an interim access decision?
\$25 or less	Yes	No	No	Yes	No
Over \$25 and Under \$100	Yes	Yes	No	Yes	No
\$100 or more	No, not initially, but it must do so once it receives a deposit	Yes	Yes	The institution must issue either an interim access decision or a final access decision with its fee estimate	

An institution is not required to release records to a requester until the fee has been paid [section 9 of Regulations 460\823]. Additionally, section 7(2) of the Regulations requires institutions to refund any amount paid by the requester that is subsequently waived.

FEE ESTIMATES AND INTERIM ACCESS DECISIONS

The fee estimate provides the requester with a reasonable understanding of the costs involved in providing access. This information is meant to help the requester make an informed decision as to whether or not to pay the fee and pursue access [Order MO-1699]. It can also assist the requester in deciding whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I]

The interim access decision provides the requester with an indication as to whether access to the record will likely be given once the fees are paid.

Taken together, the purpose of the fee estimate and interim access decision is to give the requester sufficient information to make an informed decision regarding whether to proceed with the request, and whether to accept or appeal the fee estimate. Providing this information to the requester also protects the institution from spending time and resources on fully processing a request that may ultimately be abandoned [Orders MO-1699, MO-2071].

HOW TO PROVIDE A REASONABLE FEE ESTIMATE AND INTERIM ACCESS DECISION

The first step to properly determine the basis for the fee estimate and interim decision is to get a representative sample, and/or consult with employees familiar with the type and content of the records. To do this, the institution must ensure:

Fee estimates and interim access decisions give the requester sufficient information to make an informed decision regarding whether to proceed with the request and whether to accept or appeal the fee estimate.

- the sample contains all the types of responsive records
- any consultations with employees include discussions about all the types of responsive records

The next step is to create a detailed breakdown of each element of the estimated fee [such as, search time, preparation time, computer costs, etc.], including:

- a description of the records responsive to the request
- the location of the records [for example, legal department files, enforcement branch files, etc.]
- whether any records contain the personal information of the requester and therefore are not included in the search fee
- whether the requester is likely to be given access to the requested records, in whole or in part
- 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]
- 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

See **Appendix B** for a sample fee estimate and interim access decision calculation form and **Appendix C** for a sample fee estimate and interim access decision letter.

TIMELINES AND APPEALS

HOW DOES AN INTERIM ACCESS DECISION AFFECT TIMELINES?

An institution is required to respond within 30 days of receiving an access request. If an institution issues an interim access decision, the 30-day period stops until the requester pays the required deposit or the institution waives the fee. When the fee is paid or waived, the 30-day period is reactivated. For example, if the institution sends a fee estimate to the requester on day 14 and requests a deposit, the clock stops until the deposit is paid. Day 15 would be deemed to be the day after the institution receives the required deposit [Order P-81] and the clock resumes.

As a best practice, if the institution intends to issue a time extension decision, it should do so at the same time an interim access decision and fee estimate is issued. The length of time it will take to receive an access decision may affect the requester's decision about paying the deposit and continuing to pursue access [Order PO-2634].

Fee/Type of Decision	Timeline	Effect on Timeline
Fee is under \$25 Final Access Decision	30 days in total unless a time extension is applied	No effect/Clock does not stop
Fee is between \$25 and \$100 Final Access Decision with a Fee Estimate	30 days in total unless a time extension is applied	No effect/Clock does not stop
Fee is \$100 or more Interim Access Decision and a Fee Estimate	30 days in total unless a time extension is applied	Clock stops on the date the fee estimate is issued and the deposit is requested. Clock starts again on the date the fee deposit is received. The institution has the remaining days to issue a final access decision to the requester.

WHAT DECISIONS MAY BE APPEALED?

A requester may appeal any of the following decisions to the IPC:

- fee estimate*
- final fee
- fee waiver
- interim access decision**
- final access decision

*On appeal, the IPC may request a sworn affidavit to verify the information provided to it regarding the anticipated costs of responding to a request.

**The interim access decision can only be appealed if it does not contain all of the required elements, as outlined on page 6. There is no right to appeal the decision on access until a final access decision has been made.

FEE WAIVERS

Sections 57(4)/45(4) of the acts and section 8 of Regulations 460/823 require an institution to waive fees if it is fair and equitable² to do so.

An institution's obligation to waive the fee starts at the request processing stage. When fees are assessed, the institution should advise the requester that the acts permit the waiver of all or part of the fee in certain circumstances. The institution should provide the requester with either an

² See *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056.

explanation of the requirements of the acts or a copy of the relevant sections of the acts.

The institution should also advise the requester of the type of evidence required to make a waiver determination. If the requester submits a fee waiver request, the institution must provide the requester with a written decision on the fee waiver.

REQUESTER'S OBLIGATIONS REGARDING FEE WAIVERS

The requester should ask the institution to waive the fee at the earliest possible stage in the request process. The request for a waiver should include the reasons why the requester thinks they are entitled to the waiver. A requester may be asked to provide the institution with documents supporting their claim for the fee waiver [Order PO-2848]. The requester must ask the institution for a fee waiver before appealing a fee waiver decision to the IPC.

WHEN WILL A FEE WAIVER BE GRANTED?

The fee provisions in the acts establish a user-pay principle which is founded on the premise that requesters pay the prescribed fees associated with processing a request unless it is fair and equitable that they not. The requester must present a persuasive argument that a fee waiver is justified because it is fair and equitable to grant it [Order PO-2726].

FAIR AND EQUITABLE

For a fee waiver to be granted under sections 57(4)/45(4), it must be “fair and equitable” in the circumstances.³ Factors that must be considered include:

ACTUAL COST IN COMPARISON TO THE FEE [SECTIONS 57(4)(A)/45(4)(A)]:

- the extent to which the actual cost of processing, collecting, and copying the record varies from the amount of the fee allowable by the acts.

FINANCIAL HARDSHIP [SECTIONS 57(4)(B)/45(4)(B)]:

- generally, the requester must provide details regarding their financial situation, which may include information about income, assets and expenses [Orders M-914, P-591, P-700, P-1142, P-1365, P-1393]
- a large fee does not necessarily mean that payment of the fee will cause financial hardship [Order P-1402]

PUBLIC HEALTH OR SAFETY [SECTIONS 57(4)(C)/45(4)(C)]:

The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under sections 57(4)(c)/45(4)(c):

The institution should advise the requester that the acts permit the waiver of all or part of the fee in certain circumstances.

Fee waivers must be granted when it is fair and equitable to do so.

³ See *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056 (Div. Ct).

- if the subject matter of the record is a matter of public rather than private interest
- if 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:
 - disclosing a public health or safety concern, or
 - 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 IPC has found that dissemination of the record will benefit public health or safety where the record relates to:
 - compliance with air and water discharge standards [Order PO-1909]
 - a proposed landfill site [Order M-408]
 - a proposed industrial quarry that could affect the groundwater supply [Order MO-2163]
 - a certificate of approval to discharge air emissions into the natural environment at a specified location [Order PO-1688]
 - nuclear safety [Orders P-270, P-1190]
 - environmental concerns associated with extending cottage leases in provincial parks [Order PO-1953-F]
 - quality of care and service at group homes [Order PO-1962] and long-term care facilities [Order PO-2333]
 - complaints from the Psychiatric Patient Advocate Office [Order P-754]
 - inspection and other reports concerning long-term care facilities [Order PO-2886]
 - the amount and type of out-of-province health care for cancer treatment the province paid for [Order PO-2566]
 - health effects from the use of wind turbines [Order PO-3074]

The focus of sections 57(4)(c)/45(4)(c) is “public health or safety.” It is not sufficient to declare there is a “public interest” in the records or that the public has a “right to know.” A connection between the public interest and a public health and safety issue must be explained.

ANY OTHER MATTERS PRESCRIBED IN THE REGULATIONS [SECTIONS 57(4)(D)/45(4)(C), SECTION 8 OF REGULATIONS 460/823]:

The institution must consider waiving fees if:

- access to the requested records is denied
 - this might occur when an institution issues a fee estimate based on a sample of representative records and, upon review of all the records, determines that no records will be disclosed
- the amount of the payment would be \$5 or less or the amount is too small to justify payment

OTHER RELEVANT FACTORS

Any other relevant factors must also be considered when deciding whether or not a fee waiver is “fair and equitable.”⁴ Relevant factors may include:

- the manner in which the institution responded to the request
- the institution’s efforts to work 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
- the number of records involved
- whether the requester has advanced a compromise solution which would reduce costs
- if the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution [Orders M-166]

The institution must consider waiving the fees if the amount of the payment would be \$5 or less or the amount is too small to justify payment.

CONCLUSION

One purpose of the acts is to provide a right of access to information under the control of institutions. It is important that institutions not only properly estimate and calculate the fees, but also that they provide a detailed explanation of how the fees were calculated. If the institution chooses to issue an interim access decision, that decision must indicate whether access is likely to be given and the degree of disclosure. As a best practice, if the institution will require more time to respond to a request, it should also issue a time extension as part of the interim access decision. Requesters are then able to make an informed decision as to whether to pursue access to the records, and/or whether to exercise their right of appeal.

⁴ See *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056 (Div. Ct).

APPENDIX A

SECTIONS 57/45 OF THE ACTS

57(1)/45(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. 1996, c. 1, Sched. K, s. 11/ Sched. K s. 23(1).

(2) Repealed: 1996, c. 1, Sched. K, s. 11 (1)/ Sched. K s. 23 (1).

ESTIMATE OF COSTS

(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. R.S.O. 1990, c. F.31, s. 57 (3)/ R.S.O. 1990, M.56, s. 45 (3).

WAIVER OF PAYMENT

(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. R.S.O. 1990, c. F.31, s. 57 (4); 1996, c. 1, Sched. K, s. 11 (2)/ R.S.O. 1990, M.56, s. 45 (4); 1996, c. 1, Sched. K, s. 23 (2).

REVIEW

(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. R.S.O. 1990, c. F.31, s. 57 (5); 1996, c. 1, Sched. K, s. 11 (3)/ R.S.O. 1990, M.56, s. 45 (5); 1996, c. 1, Sched. K, s. 23 (3).

DISPOSITION OF FEES

(6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations. 1996, c. 1, Sched. K, s. 11 (4)/ 1996, c. 1, Sched. K, s. 23 (4).

SECTIONS 6, 6.1, 7, 8 AND 9 OF REGULATIONS 460/823

6. The following are the fees that shall be charged for the purposes of subsection 57(1)/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. O. Reg. 21/96, s. 2; O. Reg. 92/07, s. 1/ O. Reg. 22/96, s. 2; O. Reg. 93/07, s. 1.

6.1 The following are the fees that shall be charged for the purposes of subsection 57(1)/45(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 the personal information requested 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 requested if those costs are specified in an invoice that the institution has received. O. Reg. 21/96, s. 2; O. Reg. 92/07, s. 2/ O. Reg. 22/96, s. 2; O. Reg. 93/07, s. 2.

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. O. Reg. 21/96, s. 3/ O. Reg. 22/96, s. 3.

(2) A head shall refund any amount paid under subsection (1) that is subsequently waived. R.R.O. 1990, Reg. 460, s. 7 (2)/ Reg. 823, s. 7 (2).

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.
R.R.O. 1990, Reg. 460, s. 8/ Reg. 823, s. 8.

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.
R.R.O. 1990, Reg. 460, s. 9/ Reg.823, s. 8.

APPENDIX B

SAMPLE FEE ESTIMATE AND INTERIM ACCESS DECISION CALCULATION FORM

FEE ESTIMATE AND INTERIM ACCESS DECISION CALCULATION FORM

To be completed by the employee conducting the search for the representative sample and/or consulting with experienced employees.

If you are unsure about the scope of the access request or the records that are being requested, please ensure that the request is clarified with the requester.

Complete this form if the fee is estimated to be \$100 or more (typically **greater than 3 hours** of search time). The fee estimate may be based on a representative sample and/or consultations with knowledgeable institution staff that are familiar with the type and content of the records. Please keep detailed notes of the search and/or consultations.

Whether you choose to do a representative sample and/or consultations with experienced staff, all types of records (e.g. paper and electronic files, special media) should be searched and/or discussed.

I. FEE ESTIMATE BASED ON REPRESENTATIVE SAMPLE AND/OR CONSULTATION WITH EMPLOYEES

Search time

What places need to be searched (e.g. legal department, enforcement branch, etc.)

What actions/processes are required to conduct the search and types of files searched (e.g., searching e-mail, other electronic files, paper files, off-site file lists, etc.)

Determine whether the records contain the personal information of the requester. If so, the institution cannot charge a fee for manually searching for these records.

Pages Hours

Number of hours to search the sample		
Estimated number of hours to complete entire search		
Number of pages of responsive records found in the sample		
Estimated total number of pages responsive to the request		

Preparation Time (note: average time to sever is 2 minutes per page)

The institution cannot charge a fee for preparing a record for disclosure containing the requester's personal information

	Pages	Hours
Number of pages in the sample requiring severances (e.g., third party information, another individual's personal information)		
Estimated total number of pages requiring severances		

Photocopying

Number of pages in the sample to be photocopied		
Estimated total number of pages to be photocopied		

Other Costs

Number of hours of computer programming (if applicable) required to retrieve the responsive records		
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Other costs, if any, incurred in searching the sample:

_____ (type)

Total estimated fee

Search time:	(# of hours) @ \$30 per hour	\$
Preparation time:	(# of hours) @ \$30 per hour	\$
Photocopying:	(# of pages) @ 20 cents per page	\$
Other costs:	(type)	\$
Computer programming time:	(# of hours) @ \$60 per hour	\$
<u>Total estimated fee:</u>		\$

Name(s) and titles of any staff contacted during the search/ consultations:

II. INTERIM ACCESS DECISION

Description of the records responsive to the request:

The location of the records (e.g., legal department files, enforcement branch):

Whether any records contain personal information of the requester:

Whether the requester is likely to be given access to the requested records, in whole or in part:

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):

The degree of disclosure (e.g., 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:

The degree of severing for parts of the records (i.e., low, moderate, or extensive):

Request #:

Name:

District/Region:

Position/Responsibilities:

Telephone Number:

Date(s) of search:

APPENDIX C

SAMPLE FEE ESTIMATE AND INTERIM ACCESS DECISION LETTER

[DATE]

Dear [NAME OF REQUESTER]

Reference Number: [REFERENCE NUMBER]

In response to your request made under the [MUNICIPAL] *Freedom of Information and Protection of Privacy Act* (the Act), I am providing you with a fee estimate and interim access decision.

Your request was for access to the following records pertaining to [A NAMED ENTITY]:

1. All reports, briefing papers, discussion papers and evaluations of the funding proposal to create [THE NAMED ENTITY].
2. All approvals and authorizations for grants, including all assessments and audit reports.
3. Any and all correspondence exchanged with [THE NAMED ENTITY].

In our telephone conversation of [DATE], you clarified that:

- you are no longer seeking access to records responsive to item 3; and
- you are not seeking access to any newspaper articles or news releases.

The Act contemplates a user-pay principal. Based on my review of a representative sample of the records obtained from the [LIST NAMES OF ALL PROGRAM AREAS], I estimate there are approximately **[5200 PAGES]** of records responsive to your request and the total fees to process your request will be approximately **[\$2600.00]**.

The fee estimate is broken down as follows:

[NAME OF FIRST PROGRAM AREA]

Search: [3] hours @ \$30 per hour = **[\$90.00]**

Preparation: [4] hours @ \$30 per hour = [**\$120.00**]
 (approximately [10] per cent of records will have severances - possibly [120] pages @ 2 minutes per page = [4] hours)

Photocopying: [1,200] pages @ \$0.20 per page = [**\$240.00**]

Based on a search of the representative sample, the following types of records were identified as responsive to your request:

Item 1 of request: briefing notes; minutes of staff meetings; evaluations; and internal and external correspondence.

Item 2 of request: assessment reports; financial statements; audit reports and internal and external correspondence.

[NAME OF SECOND PROGRAM AREA]

Search: [25] hours @ \$30 per hour = [**\$750.00**]

Preparation: [20] hours @ \$30 per hour = [**\$600.00**]
 (approximately [15] per cent of records will have severances - possibly [600] pages @ 2 minutes per page = [20] hours)

Photocopying: [4,000] pages @ \$0.20 per copy = [**\$800.00**]

Photocopying: [4,000] pages @ \$0.20 per copy = [**\$800.00**]

Item 1 of request: internal e-mail correspondence; minutes of meetings with stakeholders; external correspondence.

Item 2 of request: funding agreements; internal e-mail correspondence; expenditure records; approval documents.

As we have not yet completed the search and reviewed all of the records in detail, no final decision has been made regarding access. It is likely that third party notification will be required since the requested records relate to other individuals and/or third parties.

Based on the review of the representative sample, I estimate that full access will be granted to the majority of the records, and partial access to the remainder. Specifically, sections 17(1)(a) and 21(1) of the Act may apply to portions of records responsive to item 1. Certain portions of records in items 1 and 2 may be exempt under section 13(1).

The costs outlined above are in accordance with section 6 of Regulation 460 made under the Act. In accordance with section 7.1 of Regulation 460, where the fee estimate is \$100.00 or more, an institution may request a deposit equal to 50 per cent of the estimated fee before taking any further

steps to process the request. Please forward a deposit in the amount of [\$1,300.00] by cheque or money order, payable to the Minister of Finance. Please remit payment to [name], Freedom of Information and Privacy Co-ordinator, [MINISTRY NAME, MINISTRY ADDRESS].

The Act provides that all or part of the fee can be waived if, in our opinion, it is fair and equitable to do so, in certain circumstances. Enclosed please find copies of section [57(4) (FOR PROVINCIAL REQUESTS) OR 45(4) (FOR MUNICIPAL REQUESTS)] of the Act and section 8 of Regulation [460 (for provincial requests) or 823 (for municipal requests)]. You may be required to provide evidence in support of any fee waiver request. Please notify me as soon as possible if you wish to proceed with a request for a fee waiver.

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 me. I can be reached at [AREA CODE, TELEPHONE NUMBER].

[NAME AND TITLE OF DELEGATED DECISION MAKER] is responsible for making this decision.

You may request that this fee estimate be reviewed by writing to the Information and Privacy Commissioner/Ontario at Suite 1400 – 2 Bloor Street East, Toronto, Ontario, M4W 1A8.

Please note that you have 30 days from the receipt of this letter to request a review from the Commissioner. If you decide to request a review of this decision, please provide the Commissioner's office with the following:

- The file number listed at the beginning of this letter.
- A copy of this decision letter.
- A copy of your request that you sent to this institution.
- An appeal fee of [\$10.00 (FOR PERSONAL INFORMATION) OR \$25.00 (FOR GENERAL RECORDS)] (cheque or money order) payable to the Minister of Finance.

Sincerely,

[NAME OF CO-ORDINATOR]
Information and Privacy Co-ordinator

Fees, Fee Estimates and Fee Waivers



Information and Privacy
Commissioner of Ontario

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

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June 2018