



Order P21-04

**CATHOLIC INDEPENDENT SCHOOLS OF THE VANCOUVER
ARCHDIOCESE**

Ian C. Davis
Adjudicator

April 15, 2021

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Summary: The complainant made a request under s. 23(1) of the *Personal Information Protection Act* (PIPA) to the Catholic Independent Schools of the Vancouver Archdiocese (organization) for access to records relating to the education of her two minor children. Under s. 32(2) of PIPA, the organization assessed a fee of \$1,049.91 to provide access to approximately 3,000 pages of responsive records. The complainant complained to the Office of the Information and Privacy Commissioner about the fee. The adjudicator determined that the fee is minimal under s. 32(2) and reasonable under s. 36(2)(c).

Statutes Considered: *Personal Information Protection Act*, ss. 32(2) and 36(2)(c).

INTRODUCTION

[1] The complainant made a request under s. 23(1) of the *Personal Information Protection Act* (PIPA) to the Catholic Independent Schools of the Vancouver Archdiocese (organization) for access to records relating to the education of her two minor children.¹ Under s. 32(2) of PIPA, the organization assessed a fee of \$1,184.56 to provide access to the responsive records and asked the complainant to pay half that amount as a deposit.

[2] The complainant complained to the Office of the Information and Privacy Commissioner (OIPC) about the fee. During mediation, the organization reduced

¹ Throughout these proceedings, it appears the complainant is acting jointly with another individual, presumably her husband. For example, this other individual submitted the complainant's inquiry submissions on her behalf. However, since it was the complainant who made the access request and initiated contact with the OIPC, I will simply refer to her as the complainant.

its fee to \$1,049.91. Mediation did not resolve the matter and it proceeded to inquiry.

PRELIMINARY MATTERS

Application of PIPA to the fee

[3] The complainant raises a preliminary issue about whether the organization can charge the fee under PIPA. As I understand the complainant, she argues that the organization cannot charge the fee under PIPA because the fees she paid to the organization for services provided in relation to her children should already cover the cost of providing access to the requested records.²

[4] In reply, the organization submits that PIPA allows it to charge a fee in the circumstances of this case. It also notes that the complainant made her access request after her children ceased to be students at one of the organization's schools.³

[5] Section 23(1)(a) of PIPA states that, on request of an individual, an organization must provide the individual with their personal information under the control of the organization. Section 2(2)(a) of the *Personal Information Protection Act Regulations* permits a guardian of a minor to exercise the minor's rights under s. 23, if the minor is incapable of exercising his or her rights.⁴

[6] Section 32(2) permits an organization to charge an individual who makes a request under s. 23 a "minimal fee for access to the individual's personal information".⁵

[7] In my view, the organization can charge the fee under PIPA. The complainant's access request fits under s. 23(1)(a) of PIPA because it is a request by the complainant for her own personal information and for the personal information of her minor children as permitted by s. 2(2)(a) of the *Regulations*. Accordingly, the access request is a request under s. 23(1)(a) and the organization can charge a minimal fee under s. 32(2).

[8] As for the complainant's argument that the cost of access to the records is covered by a contract or agreement between the parties, that is not within my jurisdiction to decide.

² Complainant's submissions at para. 1(b)-(c).

³ Organization's reply submissions at para. 2(e).

⁴ B.C. Reg. 473/2003.

⁵ Sections 32(1) and (2) also say that an organization must not charge a fee for "employee personal information", which is defined in s. 1. I am satisfied on the material before me that the requested information is not "employee personal information", and neither party suggested that it is. There is no indication in the record that the complainant ever worked for the organization.

Complainant's agreement to the fee

[9] The complainant makes another preliminary point. She says the search for the requested records “was commenced and completed without [her] first agreeing to the fee.”⁶

[10] In reply, the organization says it provided a fee estimate prior to providing services.⁷

[11] Section 32(3)(a) states that the organization “must give the applicant a written estimate of the fee before providing the service”. I can see that the organization did this in an email to the complainant dated October 2, 2019. The organization advised the complainant of the fee, asked her to confirm that she would still like them to proceed with her request, and requested a deposit. In the next email that appears in the record before me, the complainant made her complaint to the OIPC about the fee.

[12] It is not clear to me whether the organization completed the request before the complainant agreed to it. The complainant clearly disagreed with the fee and there is no indication that she paid the deposit. At any rate, even if the organization did complete the request without the complainant's agreement or a deposit, I do not see how that has any bearing on whether the fee is minimal and reasonable. The organization does not argue that the complainant is bound by any prior agreement to pay the fee. If the organization provided the service without confirmation from the complainant or a deposit, it did so at the risk of not recovering its costs.

Complainant's allegations

[13] The final preliminary matter in this case relates to various allegations the complainant made in her submissions. For example, the complainant says the organization has repeatedly breached privacy legislation regarding her children's personal information and “created numerous barriers obstructing” her from accessing her children's personal information, including unreasonable delay.⁸

[14] In my view, the complainant is raising new issues and complaints that were not included in the Notice of Inquiry or the Investigator's Fact Report and are beyond the scope of this inquiry. In general, the OIPC will only consider new issues at the inquiry stage in exceptional circumstances where the OIPC grants permission.⁹ No such circumstances exist here. Accordingly, I decline to decide

⁶ Complainant's submissions at para. 3(b).

⁷ Organization's reply submissions at para. 3(d).

⁸ Complainant's submissions at paras. 4-7.

⁹ See, e.g., Order P18-01, 2018 BCIPC 6 (CanLII) at para. 7.

or comment on the complainant's allegations that go beyond whether the \$1,049.91 fee is minimal and reasonable under PIPA.

ISSUES

[15] The issues to be decided in this inquiry are whether the \$1,049.91 fee complies with s. 32(2) and, if so, whether that fee is reasonable under s. 36(2)(c). PIPA does not establish the burden of proof for this kind of inquiry, so the parties must provide evidence and argument to support their respective positions.¹⁰

BACKGROUND

[16] The organization is a society responsible for overseeing the operation of Catholic independent schools within the Roman Catholic Archdiocese of Vancouver.¹¹ The complainant's son and daughter attended one of the schools within the organization (School) for the 2016-2017 and 2017-2018 school years.

[17] On September 5, 2019, the complainant made a request to the organization for access to the following records relating to her and her family:

1. all records related to monies paid to the School and a specified parish, including but not limited to tuition fees, donations and any miscellaneous costs;
2. all school attendance records including but not limited to all absences, late arrivals and early dismissals; and
3. all records of all meetings and all communications, including but not limited to all handwritten and electronic notes, minutes, memos, agendas and emails, in respect of:
 - a. the School;
 - b. the organization;
 - c. another named school;
 - d. the "Parish Education Committee" for the School; and
 - e. the pastor for the School.¹²

[18] On October 2, 2019, the organization advised the complainant that there were approximately 3,000 pages of records responsive to her request. As noted above, the organization assessed a total fee of \$1,184.56 to process the request

¹⁰ Order P10-03, 2010 BCIPC 48 (CanLII) at para. 5.

¹¹ The information in this background section is based on the Investigator's Fact Report and the evidence, which I accept, in the Signed Statement #1 of the organization's Associate Superintendent at paras. 2-5 and Exhibits "A" and "B".

¹² Email from the complainant to the organization dated September 5, 2019. I have re-worded the request slightly for brevity.

and asked the complainant to pay half that amount as a deposit. In December 2019, the organization updated its calculations and provided a revised fee assessment of \$1,049.91.

FEES FOR ACCESS – ss. 32(2) and 36(2)(c)

[19] Section 32(2) permits an organization to charge an individual who makes a request under s. 23 a “minimal fee for access to the individual’s personal information”.¹³ Section 36(2)(c) says that the Commissioner may resolve a complaint that a fee required by an organization is “not reasonable”.

[20] Past orders establish the proper analytical approach.¹⁴ The first step is to determine whether the fee is “minimal” under s. 32(2). If it is not, then I may reduce or excuse the fee so that it complies with s. 32(2). However, if the fee is minimal, I must still consider whether, in the circumstances, it is “not reasonable” to impose the fee upon the complainant.

The parties’ positions

[21] The organization submits that the fee is minimal and reasonable.¹⁵ It says that to complete the access request, nine different people (staff members) had to review their files.¹⁶ The organization’s evidence is that the work required to process the request involved searching electronic and physical files, sending the responsive files to the Superintendent’s Office, identifying “what could be copied and what needed to be redacted or withheld under PIPA”, and consulting with “individuals whose personal information would be disclosed.”¹⁷

[22] The organization provided the following breakdown of its fee calculation:¹⁸

Staff Member	Time Spent (hrs)	Hourly Rate	Cost
School Principal	2	\$56.08	\$112.16
School Acting Principal	2	\$54.17	\$108.33
School Teacher	2	\$35.42	\$70.84
School Education Assistant	1	\$24.66	\$24.66
School Pastor	0.25	\$0.00	\$0.00

¹³ Sections 32(1) and (2) also say that an organization must not charge a fee for “employee personal information”, which is defined in s. 1. I am satisfied that the information in dispute is not employee personal information: see *supra* note 5.

¹⁴ Order P08-02, 2008 CanLII 30215 (BC IPC) at paras. 33-37; Order P21-03, 2021 BCIPC 11 (CanLII) at paras. 59-60.

¹⁵ Organization’s initial submissions at paras. 21-26.

¹⁶ Signed Statement #1 of organization’s Associate Superintendent at para. 12.

¹⁷ *Ibid* at para. 13.

¹⁸ *Ibid* at para. 15. I have adjusted the presentation of the table slightly, but all of the data is from the organization’s evidence.

Superintendent's Office – Learning Support Staff Member	2	\$41.39	\$82.78
Superintendent's Office – Associate Superintendent HR	1	\$68.48	\$68.48
Superintendent's Office – Associate Superintendent Education	0.5	\$68.48	\$34.24
Superintendent's Office – Finance Director	1.5	\$65.30	\$97.96
Total Time	12 hrs		\$599.43
Copying estimate of pages (3,000) at \$0.10 per page			\$300.00
Copying time 8 hrs at \$18.81 per hr			\$150.48
Total Cost			\$1,049.91

[23] The organization also provided notes accompanying its calculations explaining how the hourly rates in the table were calculated based on the staff members' annual salary scales.

[24] The organization says the staff members had direct knowledge of the subject matter of the access request, so they were in the best position to process the request accurately, efficiently and at the lowest cost.¹⁹ The organization also says it would not have been appropriate to delegate the work because the records contain educational and health information that raises "privacy issues".²⁰

[25] Further, according to the organization, it is "not clear" whether the complainant is challenging the volume of responsive records.²¹ However, the organization explains that the volume of records is due in part to various complaint proceedings that the complainant commenced against the organization or its staff starting in 2018 (complaint proceedings).²² The organization notes that, prior to the complainant making her access request, it sent a significant number of documents relating to the complaint proceedings to the complainant at no charge.

[26] The complainant objects to the fee. She says the fee is "prohibitive" for her family and is the only barrier to them obtaining the requested information.²³ Further, the complainant submits that she was not presented with any options to ensure the fee was minimal, such as limiting the search or providing electronic rather than paper records.

¹⁹ *Ibid* at para. 14.

²⁰ *Ibid*.

²¹ Organization's initial submissions at para. 12.

²² Signed Statement #1 of organization's Associate Superintendent at paras. 17-18. I accept that the complainant did make these complaints.

²³ Complainant's submissions at para. 1(d).

[27] With respect to the documents the organization already sent, the complainant says she did not request them and, at any rate, they do not relate to the PIPA request at issue here. The complainant submits that the organization's mention of the complaint proceedings and related documents is "retaliatory".²⁴

[28] In reply, the organization submits that its mention of the complaint proceedings is not retaliatory, but rather appropriately provides the necessary context for understanding the scope of the access request. The organization denies obstructing the complainant's access to information, noting that it has already provided the complainant with a package of documents free of charge.

[29] Further, the organization says the complainant has not narrowed her request or requested documents in any particular form. The organization submits that most of the responsive records exist in paper form, so it would have to adjust its fee assessment if the complainant wants those records in electronic form.

Is the fee "minimal"?

[30] The first question is whether the \$1,049.91 fee is "minimal". PIPA does not define the term "minimal" nor does it provide a fee schedule or guidance about what fees may be charged.²⁵ However, past orders establish that a minimal fee is one that does not generate profit, but rather aids the organization in recovering its actual, necessarily incurred costs, viewed objectively.²⁶ A minimal fee is associated with the actual cost of locating, retrieving and producing a record, preparing a record for disclosure, and providing a copy of the record (including shipping and handling if the record is not sent electronically).²⁷

[31] However, a minimal fee will not always cover all the costs associated with responding to an access request.²⁸ While PIPA does not explicitly exclude charges for activities such as severing a record, the phrase "minimal fee for access" in s. 32(2) suggests that fees are limited to costs incurred in providing access, not costs for severing, which is an activity that denies access.²⁹

²⁴ *Ibid* at paras. 2 and 7(b).

²⁵ Order P21-03, *supra* note 14 at para. 61. Compare s. 75 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (FIPPA), which says how fees are to be calculated under that Act, and the *Freedom of Information and Protection of Privacy Regulation*, B.C. Reg. 323/93, which provides a schedule of "maximum" fees.

²⁶ Order P08-02, *supra* note 14 at paras. 38-39; Order P08-03, 2008 CanLII 65712 (BC IPC) at paras. 37-38.

²⁷ Order P08-02, *ibid* at para. 39.

²⁸ Order P08-02, *ibid*.

²⁹ Order P08-02, *ibid*; Order P21-03, *supra* note 14 at para. 62. (Emphasis added). This approach is consistent with s. 75(2)(b) of FIPPA, *supra* note 25, which prohibits charging a fee for severing information from a record.

[32] As indicated in the table above, the \$1,049.91 fee is based on the volume of records (3,000 pages), the number of hours worked by the staff members (12 total), the staff members' various hourly rates, the copying rate per page (\$0.10), "copying time" (eight hours), and the hourly rate for copying (\$18.81).

Volume of records

[33] I accept the organization's estimate of 3,000 pages. I am satisfied on the evidence before me that the parties have had considerable interactions, including relating to the complaint proceedings. I do not find it retaliatory for the organization to have mentioned the complaint proceedings; those proceedings are part of the background context between the parties and help explain why the volume of responsive records is approximately 3,000 pages. Further, the access request is expansive; it seeks virtually every document relating to the complainant and her family within the organization's control. Given these factors, I find it objectively reasonable that there would be a significant number of responsive records.

[34] The parties address a package of records that the organization already sent to the complainant. It is not clear to me what relevance this package has to the current fee dispute. If the records in that package overlap with some of the records the complainant is currently requesting, then the complainant is free to withdraw her request for the records she already has and thereby reduce the number of pages. However, the complainant says the package is unrelated. Accordingly, on the evidence before me, I find it reasonable for the organization to have based its calculations on the 3,000 pages of records responsive to the request as currently formulated.

Hourly rates

[35] The staff members' hourly rates for work other than "copying time" range from \$24.66 to \$68.46.

[36] I am not persuaded by the organization's argument that "privacy issues" preclude any lower-paid individuals other than the staff members from performing the tasks necessary to providing access. PIPA imposes obligations regarding the protection of personal information regardless of an employee's or contractor's pay or position. In my view, subject to the facts of each case, there are options open to an organization to allow a lower-paid employee or contractor to assist in providing access while safeguarding personal information.

[37] That said, the organization provided evidence that the staff members are in the best position to process the request in the least amount of time, resulting in the lowest charge. This makes practical sense to me, given that the staff members likely know the subject matter of the request and their records

management system best. I see no basis to reject the organization's evidence on this point. I accept that a lower-paid employee would likely take longer to complete the relevant tasks, resulting in an equivalent or higher charge.

[38] Accordingly, in the circumstances of this case, I am satisfied that, although the hourly rates seem high considered alone, they are "minimal" in the sense that they are the rates required to provide access at the lowest overall cost. In Order P21-03, the adjudicator considered a rate of \$52.88 per hour minimal because there was no evidence to support that a lower-paid employee could do the task. Similarly, I find that the staff members' hourly rates are minimal because a lower-paid employee could not do the necessary tasks for less.

[39] The organization is also charging \$18.81 per hour for "copying time". The organization did not specify who would be doing this task or what exactly it involves. I assume it involves, at a minimum, operating the photocopier. It would have been preferable for the organization to provide further detail. However, as in Order P21-03,³⁰ there is no evidence to suggest that the organization has a lower paid employee to perform the photocopying tasks and the complainant does not suggest otherwise. The rate of \$18.81 per hour is the lowest hourly rate the organization is charging and it is significantly lower than the staff members' rates. I accept that this rate is the organization's actual costs and is therefore minimal in the circumstances.

Hours of work

[40] Excluding "copying time", the organization is charging for 12 hours of work. The organization's evidence is that the work generally includes searching files for responsive records and sending them to the Superintendent's Office. The organization's evidence also indicates that the work includes identifying "what could be copied and what needed to be redacted or withheld under PIPA", and consulting with "individuals whose personal information would be disclosed."³¹ However, the organization clearly states in its submissions that it has "not sought additional costs associated with redacting and severing the records."³²

[41] As I understand the organization, some of its work did involve severing the records, but it did not charge for that work. I accept the organization's clear statement in its submissions that it did not charge for severing, which is an activity that an organization generally may not charge for under s. 32(2). Based on the organization's evidence, the 12 hours of work involves locating and gathering the package of responsive records.

³⁰ Order P21-03, *supra* note 14 at para. 68.

³¹ Signed Statement #1 of organization's Associate Superintendent at para. 13(d).

³² Organization's initial submissions at para. 25.

[42] In my view, 12 hours to locate and gather 3,000 pages of records is minimal in this case. As noted, the access request seeks various kinds of records, located in various electronic and physical locations, and relating to various entities and individuals. Viewed objectively, I accept that 12 hours is minimal to complete that request. To compare, in Order P10-03, the adjudicator did not consider it minimal for an organization to spend 36.5 hours to gather and prepare 5,455 pages of records.³³ Here, however, the organization estimates spending only a third of that time to retrieve more than half as many pages of records.

[43] Ultimately, including “copying time” (eight hours), the organization estimates 20 hours (1,200 minutes) of work to provide access to 3,000 pages of records. That equates to 0.4 minutes per page. In Order P08-02, the adjudicator found 0.5 minutes per page appropriately minimal for an employment services organization to carry out the activities associated with providing access to 3,000 pages of records.³⁴ I make a similar finding here with regard to time spent.

Charges for photocopies

[44] As for the physical photocopies themselves, the organization says it would cost \$0.10 per page for the 3,000 pages. I accept that the rate of \$0.10 per page is minimal for essentially the same reasoning as provided in Order P21-03: although it is preferable for the organization to provide evidence of its actual costs, \$0.10 is minimal in light of the maximum photocopying/printing charge of \$0.25 under the *Freedom of Information and Protection of Privacy Act*.³⁵

[45] I also accept that the overall charge of \$300 for photocopies is minimal. The organization’s evidence establishes that at least some of the responsive records are emails and could be sent electronically.³⁶ However, the complainant did not request the records in any particular form. The organization’s evidence is that the “vast majority” of the responsive records are in paper form.³⁷ Absent prior clarification from the complainant, I find it reasonable for the organization to have based its fee on providing access by one method, that is, a package of paper records.

³³ Order P10-03, *supra* note 10 at paras. 8 and 30-34.

³⁴ Order P08-02, *supra* note 14 at paras. 23 and 40-44.

³⁵ Order P21-03, *supra* note 14 at para. 67.

³⁶ Signed Statement #2 of organization’s Associate Superintendent at para. 2.

³⁷ *Ibid.*

Conclusion

[46] In the result, I conclude that the overall fee of \$1,049.91 is minimal. Order P08-02 found a \$535.44 fee minimal for producing 3,000 pages of records.³⁸ However, that was in 2008 and the evidence in this case establishes that the \$8.00 per hour labour rate used in Order P08-02 is not available to the organization here. I accept that these factors justify the considerably higher minimal fee in this case. I also note that it is of course open to the complainant to revise, clarify or narrow her request, which could reduce the cost of access, and I encourage the parties to cooperate in that regard.

Is the fee “reasonable”?

[47] In most situations, a minimal fee will also be a reasonable one. However, that may not always be the case and it may be appropriate to further reduce or excuse a minimal fee under s. 36(2)(c). The factors to consider when deciding to reduce or excuse a minimal fee vary, but generally include the following:

- If the applicant argues that they are genuinely unable to pay the fee, there must be evidence to support the assertion.
- It is appropriate to consider whether reducing or excusing the fee will cause a hardship to the organization. If an organization cannot afford the resources to provide the requested access, it should not be forced to expend them.
- An applicant may be required to demonstrate that they could not have obtained the documents by some other practical or reasonable means that do not impose costs on the organization.
- The applicant's purpose for seeking access to the records may also be relevant. Consideration should only be given to excusing a minimal fee if the applicant seeks the records in order to protect their real legal or financial interests or rights, for instance, or there is a clear public benefit to providing access.
- Before a minimal fee will be waived, the applicant should demonstrate that they have tailored their request to ensure that the organization is required to provide only those records which are necessary for the applicant's purposes.³⁹

[48] In my view, the minimal fee is also a reasonable one and it should not be excused or reduced. The complainant stated that the fee is “prohibitive” and the only barrier to her accessing the records.⁴⁰ However, the complainant did not

³⁸ Order P08-02, *supra* note 14 at para. 44.

³⁹ Order P21-03, *supra* note 14 at para. 76; Order P08-02, *ibid* at para. 52.

⁴⁰ Complainant's submissions at para. 1(d).

provide any persuasive evidence to establish an inability to pay. It is also not clear to me what the complainant's purpose is for seeking the records. Accordingly, I cannot determine whether the complainant's broadly-worded access request is appropriately tailored, or whether access would provide a clear public benefit or protect the complainant's interests or rights. Considering all the material before me, I am not persuaded that the fee is "not reasonable" under s. 36(2)(c).

CONCLUSION

[49] For the reasons given above, under s. 52(3)(c) of PIPA, I confirm the \$1,049.91 fee assessed by the organization.

April 15, 2021

ORIGINAL SIGNED BY

Ian C. Davis, Adjudicator

OIPC File No.: P19-80699