

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 018/2014

Saskatchewan Research Council

Summary: Saskatchewan Research Council (SRC) received an access request with 22 different sub-requests. In response, it provided the Applicant with a fee estimate of \$148,260 for nine of the sub-requests. Through negotiations, five of the sub-requests were resolved and the fee estimate was lowered. The Commissioner found that SRC did not provide enough information to support its fee estimate and found a fee of \$225 to be reasonable.

I BACKGROUND

- [1] The applicant made a request to Saskatchewan Research Council (SRC) dated July 5, 2013. The access request contained 22 different sub-requests for records (the sub-requests are numbered 5-26).
- [2] On July 25, 2014, SRC provided a fee estimate totalling \$148,260 for 9 of the sub-requests (6, 9, 10, 12, 15, 16, 20, 22 and 23).
- [3] On February 18, 2013, my office received a request for review of the fee waiver. We provided notice to both SRC and the applicant of our intention to undertake a review on March 10, 2014.
- [4] On May 8, 2014, my office received a submission from SRC. It included a revised fee estimate for sub-requests 6, 9, 10, 12, 15, 16, 20, 22 and 23 totalling \$69,690. With

permission, it was shared with the applicant. The applicant was still dissatisfied with the estimate.

[5] Over the course of this review my office has worked with the applicant to clarify and narrow the scope of his reviews. We have also worked with SRC to educate SRC of the formulas that are applied in fee estimate reviews. As a result of these efforts, we have eliminated the fee estimates for sub-requests 6, 12, 15, 16, 22 and 23, although the applicant's view is that some of them are unresolved with respect to other reviewable issues. The total for the fee estimate for the three remaining sub-requests was lowered to \$3,480 as per SRC's submission of November 17, 2014.

[6] However, my office did not receive enough information from SRC to apply established formulas to make a determination regarding a reasonable fee estimate. On December 12, 2014, my office asked one more time for specific information to assist us in coming to a conclusion. My office also indicated that we had made a mistake and that the applicant was still requesting information from sub-request 12.

[7] SRC indicated on January 16, 2015 that it would not provide further information.

II RECORDS AT ISSUE

[8] The 4 remaining sub-requests (9, 10, 12 and 20) vary from information, e-mails and other records involving the Applicant and current and former employees of the SRC.

III DISCUSSION OF THE ISSUES

[9] SRC qualifies as a government institution pursuant to subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and Part I of the Appendix of the FOIP Regulations.

1. Are the fees estimated by Saskatchewan Research Council reasonable?

[10] Section 9(2) of FOIP provides the SRC with the ability to issue a fee estimate to the applicant where the amount will exceed the prescribed fee of \$50. Fee estimates are generally judged on the basis of whether they are reasonable.

[11] In past reports, my office has previously established that there are three kinds of fees that a public body can include in its fee estimate:

- fees for searching for a responsive record;
- fees for preparing the record for disclosure; and
- fees for the reproduction of records.

[12] SRC has applied search and preparation fees to the remaining 4 sub-requests.

[13] Below, the analysis is broken down into the two kinds of fees to determine if SRC's fee estimate is reasonable for each of the 4 remaining sub-requests.

a. Fees for searching for a responsive record

[14] Subsections 6(2) and 6(3) of the FOIP Regulations provide a government institution ability to recover costs associated with searching for responsive records. A public body should develop a search strategy when preparing its fee estimate.

[15] This office has previously stated that search time consists of every hour of manual search time required to locate and identify responsive records. For example, staff time involved with searching for records, examining file indices, file plans or listings of records either on paper or electronic, pulling paper files/specific paper records out of files, and/or reading through files to determine whether records are responsive. However, search time does not include time spent to copy the records, time spent going from office to office or off-site storage to look for records or having someone review the results of the search.

[16] Further, this office has previously established the following guidelines for estimating search time:

- Generally, it should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness;
- Generally, it should take an experienced employee 5 minutes to search 1 regular file drawer for responsive file folders.

[17] In instances where the above tests do not accurately reflect the circumstances, the public body should design a search strategy and test a representative sample of records for time. The time can then be applied to the responsive records as a whole.

Sub-request 9

[18] SRC has indicated sub-request 9 would require a search of both electronic and paper records. It estimated two hours for a search of electronic records and two hours for a search of paper records.

[19] SRC indicated it would take approximately an hour to restore an electronic back up of the information. However, it did not provide an estimate of how many pages there would be or what kind of electronic search functions would assist them in the process. As such, it did not justify the second hour. One hour of electronic search time for this sub-request is reasonable.

[20] With respect to the paper search, SRC provided the following information on what was required to search: “3 notebooks of ~75 pages, 6- 1 and 2 inch binders (~100 pages each); 2-3 inch binders (~200 pages each) and 3 file folders (~50 pages each).” In total, this would amount to approximately 1375 pages. At one minute per 12 pages, searching this amount would take two hours.

[21] Three hours search time is reasonable for sub-request 9.

Sub-request 10

- [22] This sub-request is for e-mail communication of the applicant during his employment with SRC sent to a particular employee.
- [23] SRC indicated in the fee estimate that it would take six hours to electronically search the e-mail for responsive records. In its submission, SRC indicated that it would take about an hour to load the applicant's account. However, the account would have to be restored and re-indexed in order to search it. It also indicated that 2-3 backups of the e-mails had been performed each week which would "significantly increase the time required (this is not reflected in the fee estimate)".
- [24] The information provided by SRC is not enough to reach a conclusion on whether the fee is reasonable. Again, SRC did not provide an estimate of how many pages there would be or what kind of electronic search functions would assist them in the process. Further, my office has stated in past reports that public bodies should not charge fees for administrative inefficiencies. SRC did not indicate whether the method of restoring e-mail was standard practice for comparable organizations.
- [25] Further, the search for sub-request 12, which also included e-mails from the applicant, only required 2 hours search time. The search had already been performed. SRC has not explained the inconsistency between these search times.

Sub-request 12

- [26] Responsive records for sub-request 12 include e-mails from the applicant's employment at SRC. SRC's submission from May indicated that the search time took two hours.

Sub-request 20

- [27] In this sub-request, the applicant asks for all communication between himself and management team members. SRC has not indicated how many management team members there are, but from review of its website, there appears to be seven.

[28] SRC has indicated it would take 40 hours to search electronic records. In its submission it explained that it would require half to three quarters of a day to search for electronic records. This is consistent with the six hour time estimate given for sub-request 10. However, just as in sub-request 10, SRC did not provide enough detail to demonstrate this estimate is reasonable.

[29] In terms of a manual search for responsive records, SRC has indicated that it would take 16 hours. It explained there would be 10 to 12 drawers or cupboards to search in each office of the management team. Seventy seven drawers and cupboards at 5 minutes each would mean a reasonable estimate would be 6.5 hours.

b. Fees for preparation of a responsive record

[30] Subsection 6(2) of the FOIP Regulations allows the government institution to recover costs of preparing a record for disclosure. In Review Report F-2010-001, our office had established that an estimate of two minutes per page to prepare the records requiring severance is reasonable.

[31] I note that in its second interim notice dated July 25, 2013, SRC advised the Applicant that exemptions under sections 18, 19, 22 and 29 of FOIP could be applied to records responsive to the sub-requests at issue in this review.

Sub-requests 9, 10, 20

[32] SRC estimated that it would require approximately eight hours to prepare records responsive to sub-request 9, ten hours to prepare records responsive to sub-request 10 and 32 hours to prepare records responsive to sub-request 20. However, it gave no estimate on how many pages would be involved. Therefore, I cannot determine if these estimates are reasonable.

Sub-request 12

[33] SRC has already performed the search for responsive records for sub-request 12 and there are approximately 50 e-mails. It did not indicate the average number of pages for the emails. SRC estimated 13 hours for severing 50 e-mails. I can only be sure that each e-mail is at least one page. As noted above our office views two minutes per page as reasonable for severing. Two hours for preparation time is reasonable for sub-request 12.

c. Summary

[34] Section 6(2) of the FOIP Regulations state the following:

6(2) Where time in excess of two hours is spent in searching for a record requested by an applicant or in preparing it for disclosure, a fee of \$15 for each half-hour or portion of a half-hour of that excess time is payable at the time when access is given.

[35] In other words, the applicant is allowed 2 hours free search or preparation time for an access request. SRC has chosen to give two free hours on each sub-request.

[36] The following table sums up the hours of search and preparation time that I find to be reasonable for these four sub-requests.

Request	Electronic Search Time	Manual Search Time	Preparation Time	Two hour 'free time'	Total
9	1	2	Not enough information	-2	1
10	Not enough information	-	Not enough information	-2	0
12	2	-	2	-2	2
20	Not enough information	6.5	Not enough information	-2	4.5
					7.5 hours

[37] Section 6(2) of the FOIP Regulations allows government institutions to charge \$15 for every half hour of search or preparation time in excess of two hours. Based on the information provided to me by SRC, a reasonable fee estimate for these four requests would be \$225.

IV FINDINGS

- [38] SRC has not provided enough information to determine if electronic search fees are reasonable for sub-requests 10 and 20.
- [39] SRC has not provided enough information to determine if preparation fees are reasonable for sub-requests 9, 10 and 20.
- [40] SRC's fee estimate was not reasonable for the electronic search time for sub-request 9, the manual search time for sub-request 20 and the preparation time for sub-request 12.

V RECOMMENDATIONS

- [41] SRC should provide a fee estimate to the applicant reflecting the \$225 fee determined to be reasonable in this report.

Dated at Regina, in the Province of Saskatchewan, this 12th day of February, 2015.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner