



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 026-2017

Ministry of Highways and Infrastructure

June 8, 2017

Summary:

The Ministry of Highways and Infrastructure (Highways) issued an estimate of costs to the Applicant in the amount of \$563.00. The Commissioner found that Highways inappropriately provided an estimate of costs to the Applicant after the legislated response time had passed. The Commissioner recommended that Highways complete processing the initial access request and respond to the Applicant with the records (if any) within 30 days of the issuance of this report and not charge fees to the Applicant for this request.

I BACKGROUND

[1] The Applicant submitted an access to information request pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) to the Ministry of Highways and Infrastructure (Highways) that was received on October 28, 2016 requesting access to:

...all emails, including attachments, sent or received by the Deputy Minister of Highways and Infrastructure regarding the purchase of land referred to as the South and East Parcels in the Provincial Auditor's report [Special Report: Land Acquisition Processes] released in June 2016.

[2] The Applicant indicated the time period he was seeking this information for was May 2012.

[3] By letter dated January 4, 2016, Highways provided the Applicant with an estimate of costs in the amount of \$563.00 to process the request. My office confirmed with Highways that there was an error in the date of the letter and it should have read January 4, 2017 [emphasis added].

[4] On January 30, 2017, my office received a Request for Review from the Applicant, in which he disagreed with the \$563.00 estimate of costs.

[5] On February 13, 2017, my office provided notification to Highways and the Applicant of our intention to conduct the review. My office requested Highways provide a submission in support of the \$563.00 estimate of costs. The Applicant was also invited to provide a submission. My office received submissions from both Highways and the Applicant.

II RECORDS AT ISSUE

[6] This review is of the estimate of costs provided by Highways to the Applicant. Therefore, no records are at issue.

III DISCUSSION OF THE ISSUES

[7] Highways is a “government institution” as defined by subsection 2(1)(d)(i) of FOIP.

1. Did Highways meet the legislated response times under section 7 of FOIP?

[8] Although this review is of the \$563.00 estimate of costs, I must first look at the preliminary issue of whether Highways provided the estimate of costs within the legislated response time.

[9] Subsection 7(2) of FOIP outlines the requirements imposed on a government institution when responding to an access to information request. Subsection 7(2)(a) of FOIP provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

- (a) stating that access to the record or part of it will be given on the payment of the prescribed fee and setting out the place where, or the manner in which, access will be available;

[10] Section 12 of FOIP provides for an extension of the response time an additional 30 days when a limited and specific circumstance exists.

[11] As the access request was received by Highways on October 28, 2016, the due date for the written response is within 30 days as provided for in subsection 7(2) of FOIP. By my calculations, that date was November 28, 2016. As the estimate of costs was provided to the Applicant on January 4, 2017, by my calculations, 68 days had elapsed from the time the Applicant submitted the access request.

[12] When a response is not provided to an applicant within the initial 30 day response time, subsection 7(5) of FOIP then applies and addresses the deemed refusal. Subsection 7(5) of FOIP provides:

7(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection of a decision to refuse to give access to the record.

[13] My office requested further details from Highways to see if a letter extending the response time had been sent to the Applicant or if Highways was seeking clarification from the Applicant pursuant to subsection 6(3) of FOIP. Highways advised that there were two conversations in November with the Applicant surrounding the search requirements to respond to the request and the likelihood of a fee being charged, but that no written correspondence was provided to the Applicant until January 4, 2017.

[14] FOIP is very prescriptive in its legislative response times. Highways did not extend the response time pursuant to section 12 of FOIP and it did not provide the estimate of costs within the legislated 30 day response time.

[15] At paragraph [21], Review Report 261-2016 and 284-2016 (Ministry of Central Services), I commented on the timeframe in which an estimate of costs should be provided to an applicant:

...It took 29 days to issue a fee estimate. The Access and Privacy Branch of the Ministry of Justice recommends that public bodies take three to 10 days to issue a fee estimate (*Access Request Checklist*, publications.gov.sk.ca). I agree with this recommendation. It allows time to process the request once the deposit is made....

[16] When fees are necessary, I encourage public bodies to issue the estimate of costs within the first three to 10 days of receiving a request, which is consistent with the Ministry of Justice's advice. That way, there is time remaining in the 30 day response period once an Applicant provides the deposit.

[17] As the legislated response time had passed, Highways does not have the ability under FOIP to provide the Applicant with an estimate of costs. Highways should immediately respond to the Applicant's initial access request at no cost to the Applicant.

[18] As I have found that Highways inappropriately issued the estimate of costs, there is no need to look at the issue of whether the estimate of costs was appropriately calculated.

[19] This report addresses the preliminary issue of the issuance of the estimate of costs. Therefore, the Applicant will have the right to request a review by my office if he is not satisfied, once Highways responds to his October 28, 2016 access request.

[20] In response to my office's draft Review Report, Highways indicated that it cannot accept the Recommendations.

[21] I recognize that FOIP does allow government institutions the ability to charge fees, however Highways was beyond the legislated timelines in which a fee estimate could be provided to the Applicant. Therefore, Highways is not in compliance with the law.

[22] Highways will have 30 days from issuance of this Review Report to reconsider its position. Section 56 of FOIP provides:

56 Within 30 days after receiving a report of the commissioner pursuant to subsection 55(1), a head shall:

(a) make a decision to follow the recommendation of the commissioner or any other decision that the head considers appropriate; and

(b) give written notice of the decision to the commissioner and the persons mentioned in clause 55(1)(b).

[23] Within 30 days, I encourage Highways to reconsider its position and follow my Recommendations outlined in paragraphs [25] and [26] of this Review Report.

IV FINDING

[24] I find Highways inappropriately provided an estimate of costs to the Applicant after the legislated response time had passed.

V RECOMMENDATIONS

[25] I recommend that Highways complete processing the Applicant's initial access request and respond to the Applicant with the records (if any) within 30 days of the issuance of this Review Report with a copy of its response letter to my office.

[26] I recommend that Highways not charge fees to the Applicant for this request.

Dated at Regina, in the Province of Saskatchewan, this 8th day of June, 2017.

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