



## REVIEW REPORT 029-2017

### Ministry of Health

April 21, 2017

**Summary:** The Applicant requested a review of the Ministry of Health's (Health) decision to deny a fee waiver. The Commissioner found that the fee would not cause substantial financial hardship, which is one of the two relevant factors provided by section 9 of *The Freedom of Information and Protection of Privacy Regulations*. He recommended that Health develop a policy on fee waivers.

#### I BACKGROUND

- [1] On January 9, 2017, the Ministry of Health (Health) received an access to information request "seeking all records, as defined by your Act, that referenced Pure North S'Energy Foundation or anyone associated with it".
- [2] Health provided the Applicant with a fee estimate dated January 13, 2017. Health communicated that the estimated fee for responding to the request would be \$91.25 pursuant to subsection 9(5) of the *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] On January 23, 2017, the Applicant requested that the fees be waived because he felt the fees were in the public interest. He indicated he would pay a 50 per cent deposit pursuant to subsection 9(4) of FOIP but still requested the fee waiver. Health received the deposit on January 30, 2017.

[4] On January 31, 2017, Health advised the Applicant that it would not waive the fees because the criteria for a fee waiver prescribed in section 9 of *The Freedom of Information and Protection of Privacy Regulations* (the FOIP Regulations) had not been met.

[5] On February 13, 2017, the Applicant requested a review by my office. On February 14, 2017, my office provided notification to both Health and the Applicant of my intention to undertake a review.

[6] During the week of April 10, 2017, Health provided the Applicant with the records and waived the remaining 50 per cent of the fee.

## **II RECORDS AT ISSUE**

[7] As I am reviewing Health's decision to not waive fees, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

[8] Health qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP.

### **1. Do the prescribed circumstances exist that would qualify this access request for a fee waiver?**

[9] Subsection 9(5) of FOIP provides:

9(5) Where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee.

[10] Section 9 of the Regulations provides:

9 For the purposes of subsection 9(5) of the Act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

(a) where the actual cost of responding to an application varies from the total of the prescribed fees that are applicable to the application;

(b) where payment of the prescribed fees will cause a substantial financial hardship for the applicant and:

(i) in the opinion of the head, giving access to the record is in the public interest; or

(ii) the application involves the personal information of the applicant;

(c) where the prescribed fee or actual cost for the service is \$10 or less.

[11] Subsections 9(a) and (c) of the FOIP Regulations do not apply to this particular set of circumstances. Therefore, subsection 9(b) is what I must consider. The responsive record will not likely involve the personal information of the Applicant. I can further narrow the scope of this review to subsection 9(b)(i) of the FOIP Regulations. Therefore, I must determine if payment of the prescribed fees would cause a substantial financial hardship and if, in the opinion of the head, giving access to the record is in the public interest.

**a. Would payment of the prescribed fees cause a substantial financial hardship for the Applicant?**

[12] Health submitted that it made the decision not to grant a fee waiver on the following factors:

- The Applicant was insistent that the fee should be waived because it was in the public interest and advised Health that the fee would be paid;
- Health stated that once the Applicant was made aware that the fee must cause substantial financial hardship, the Applicant did not “request the fee waiver for the reason that payment would cause him/his corporation a substantial financial hardship”;
- The Applicant paid the deposit in a timely manner; and
- The Applicant is an employee of a major national news service which will pay the fee.

[13] My office has not had the opportunity to formally consider the criteria for fee waivers in depth. In past Reports F-2007-001 and 145-2014, my office has stated that public bodies

should have a policy that identifies the criteria that will be canvassed in assessing financial hardship and public interest.

[14] Health reported that in considering the fee waiver it used the processes described in the following resources:

- *The Freedom of Information and Protection of Privacy Act (FOIP)* and its regulations;
- the Office of the Privacy Commissioner of Saskatchewan's *Best Practices for Responding to Access Requests* and the *IPC Guide to Exemptions for FOIP and LA FOIP*;
- the Health Information and Privacy Unit's *Work Standard: Access to Information (ATI) Process*; and
- The Ministry of Justice's *Procedures for Managing Fee Waiver Requests*.

[15] The Ministry of Justice's *Procedures for Managing Fee Waiver Requests* advises that a public body outline the type of information that will be required from the applicant to substantiate the need for a fee waiver.

[16] None of the material listed by Health describes what type of personal information should be collected from an Applicant. A policy of this type is important because Health should collect as much information as necessary to make a decision but not over collect personal information that is not needed to make a determination. Further, the policy should describe what threshold would cause substantial financial hardship. Such document would assist an Applicant in assessing if he/she would like to go through the effort of supplying Health with personal information. More importantly, it would assist Health in demonstrating that it is making decisions regarding fee waivers consistently and transparently. This type of policy would be helpful for Health in the future when assessing whether a fee would cause substantial financial hardship.

[17] Based on the information provided to Health, I am satisfied with Health's assessment that the fee would not cause substantial financial hardship. After Health explained the criteria

set forth in the legislation, the Applicant insisted that the fee should be waived only on the public interest part of the test and at no point indicated that the fee would cause any financial hardship.

[18] As noted, for a fee waiver, the FOIP Regulations provide a two pronged test. As this part of the test has not been met there is no need to consider whether release of the record was in the public interest.

#### **IV FINDING**

[19] I find that the prescribed circumstances for a fee waiver do not exist.

#### **V RECOMMENDATION**

[20] I recommend that Health develop a policy regarding fee waivers as described in this report.

Dated at Regina, in the Province of Saskatchewan, this 21st day of April, 2017.

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