



REVIEW REPORT 115-2016

Ministry of Agriculture

August 31, 2016

Summary: The Applicant requested that the Commissioner review a fee estimate provided by the Ministry of Agriculture. The Commissioner found that the Ministry's estimate for search time was not reasonable because the Ministry had completed the work before the Applicant had agreed to pay the fees. The Commissioner found the rest of the estimate to be reasonable.

I BACKGROUND

- [1] On February 25, 2016, the Ministry of Agriculture (the Ministry) received an access to information request for “Any documents referencing the appraisal of [a particular land location] AND OR [name of the Applicant].”
- [2] The Ministry replied to the Applicant's request on March 18, 2016. It provided a fee estimate of \$544.90. It also indicated that subsections 19(1) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) might apply to portions of the record.
- [3] On April 18, 2016, the Applicant narrowed his request as follows: “Correspondence referencing the appraisal of [a particular land location]”. On May 5, 2016, the Ministry provided a second fee estimate of \$214.90.

[4] On May 26, 2016, the Applicant requested a review of the second fee estimate by my office. On May 27, 2016, my office provided notification to the Ministry and the Applicant of our intention to undertake the review.

II DISCUSSION OF THE ISSUES

[5] The Ministry of Agriculture qualifies as a government institution pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

1. Is the Ministry's fee estimate reasonable?

[6] Subsection 9(1) of FOIP states:

9(1) An applicant who is given notice pursuant to clause 7(2)(a) is entitled to obtain access to the record on payment of the prescribed fee.

[7] Subsections 6(2) and 6(3) of the FOIP Regulations provide a government institution the ability to recover costs associated with searching for responsive records. 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.

[8] The FOIP Regulations allow the Ministry to charge \$15.00 per half hour for searching and preparing records for disclosure. The Ministry should not charge for the first two hours of work. The FOIP Regulations also allow the Ministry to charge \$0.25 per page in photocopying fees.

[9] The Ministry provided the Applicant with the following fee estimate:

Types of Fee	Calculation of Fees	Total Amount of Fees
Time required to search for records	5 hours x \$15.00/half hour for records	\$150.00
Time required to prepare records for disclosure	3.3 hours x \$15.00/half hour	\$99.90
Photocopies of records	100 x \$0.25/page	\$25.00
LESS:	2 hours free x \$15.00/half hour	(\$60.00)
TOTAL		\$214.90

Search Fees

[10] The Ministry’s estimate indicated that five hours would be required to search for responsive records.

[11] This office has previously established the following guidelines for estimating search time:

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

[12] In its submission to my office, the Ministry indicated that: “The searching of the physical records... and the electronic records of three individuals took an estimated 5 hours.” The Ministry confirmed that it had already performed the search for records.

[13] Section 7(1) of the FOIP Regulations state:

7(1) For the purposes of subsection 9(2) of the Act, \$50 is prescribed as the amount of fees beyond which an estimate must be given by the head.

[14] The Ministry was required to provide the estimates once the fees would surpass \$50. However, it did five hours of work on the request and identified all responsive records before providing the fee estimates. I have recommended that public bodies take the approach that fee estimates occur early in the process. Some initial work will be required in order to make a determination that a fee estimate is warranted. However, completing

the entire search before the Applicant has agreed to pay fees or has had an opportunity to narrow the request is a potential waste of government time. Any work searching for records that a Ministry does before an Applicant agrees to pay fees is done at the risk of the Ministry as an Applicant may or may not agree to pay the fees. In past reports 146-2015 & 147-2015, 149-2015 and 098-2016, I have recommended the following steps for processing an access to request when charging fees:

1. Clarify or narrow request with Applicant.
2. Make a search plan (non-compensable).
3. Based on search plan, prepare a fee estimate (do not complete the search).
4. Decide whether charging a fee (consistent with the policy of the public body).
5. Send out fee estimate and suspend work.
6. If Applicant initiates, clarify or narrow request with Applicant.
7. When Applicant pays deposit, start search.

[15] Therefore, it is not reasonable to charge the Applicant fees for work completed before he agreed to the fees and pays the deposit. I recommend that the Ministry remove the \$150.00 search charge from the estimate.

Preparation fees

[16] In previous reports 149-2014, 152-2015, 135-2015 & 136-2015 and 149-2015, I have indicated that preparation includes time spent preparing the record for disclosure such as time anticipated to be spent physically severing exempt information from records. Preparation time does not include:

- Deciding whether or not to claim an exemption;
- Identifying records requiring severing;
- Identifying and preparing records requiring third party notice;
- Packaging records for shipment;
- Transporting records to the mailroom or arranging for courier service;
- Time spent by a computer compiling and printing information;
- Assembling information and proofing data;

- Photocopying; and
- Preparing an index of records.

[17] Generally, it is reasonable that an experienced employee should take two minutes per page to physically sever information.

[18] Although the Ministry has completed its search for records, it estimated that there are 100 pages of responsive records. During the review, the Ministry indicated that 100 pages was a low estimate. I note, pursuant to subsection 9(2) of FOIP, the Ministry cannot charge the Applicant more than the estimated amount.

[19] As the Ministry has estimated there are 100 pages of responsive records and it should take two minutes per page to prepare the record, it is reasonable to assume that it will take 200 minutes or 3.3 hours to prepare the record. The Ministry's estimate of \$99.90 for preparation fees is reasonable.

Reproduction fees

[20] Subsection 6(1)(a) of the FOIP Regulations allows the Ministry to charge \$0.25 per page for photocopying. Given the Ministry's estimate of 100 pages of responsive records, \$25 is reasonable for reproduction fees.

[21] In summary, the following table indicates what I have determined to be a reasonable fee estimate:

Types of Fee	Calculation of Fees	Total Amount of Fees
Time already spent searching for records	5 hours	\$0.00
Time required to prepare records for disclosure	3.3 hours x \$15.00/half hour	\$99.90
Photocopies of records	100 x \$0.25/page	\$25.00
LESS:	2 hours free x \$15.00/half hour	(\$60.00)
TOTAL		\$64.90

III FINDING

[22] I find that a reasonable fee estimate would be \$64.90.

IV RECOMMENDATION

[23] I recommend that the Ministry provide a new fee estimate to the Applicant for \$64.90.

Dated at Regina, in the Province of Saskatchewan, this 31st day of August, 2016.

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