

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 145/2014

Saskatchewan Research Council

Summary: The Applicant requested a fee waiver when he requested certain records from Saskatchewan Research Council (SRC). SRC informed the Applicant that it would not waive the fees. The Applicant requested a review. The Commissioner established a test to determine whether the release of records would be in the public interest. In this review, he found that the prescribed circumstances for a fee waiver did not exist.

I BACKGROUND

- [1] On August 14, 2014, the Saskatchewan Research Council (SRC) received an access to information request for e-mails relating to the preparation of a trip to Argentina involving SRC employees. In his request, the Applicant indirectly requested a fee waiver. SRC responded to the Applicant's request in a letter dated September 10, 2014. Included in the letter was a fee estimate of \$690, an interim notice and a statement that SRC would not waive the fees.
- [2] The Applicant was not satisfied with this response and made a request for a review to my office on November 25, 2014. On December 17, 2014, notification of my office's intention to undertake the review was provided to both the Applicant and SRC.

II DISCUSSION OF THE ISSUES

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

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

[4] Subsection 9(5) of FOIP states:

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

[5] Section 9 of the FOIP Regulations state:

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.

[6] 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 for the Applicant and if giving access to the record is in the public interest.

[7] In one past Report, my office has stated that public bodies “should have a policy that identifies the criteria that will be canvassed in assessing the public interest and the test for financial hardship.” However, my office has not had the opportunity to formally consider the criteria for fee waivers in more depth.

a. Would giving access to the record be in the public interest?

[8] Mindful of the fact that public bodies should collect the least amount of personal information needed for the purposes, I will begin my analysis by considering whether access to the record would be in the public interest as the financial information of the Applicant would not need to be collected.

[9] To establish suitable criteria to determine ‘if access would be in the public interest’ for Saskatchewan’s FOIP, I have looked to four other jurisdictions: Alberta, British Columbia (BC), Newfoundland and Ontario. The Information and Privacy Commissioner (IPC) of Newfoundland has also not had the opportunity to discuss this issue in a formal report. I determined that the wording of the relevant subsection of Ontario’s *Freedom of Information and Protection of Privacy Act* was too different from our own. As such, I turn to Alberta and BC.

[10] The wording of the Acts from both of these provinces is as follows: “the record relates to a matter of public interest, including the environment or public health or safety.” However, I find it to be similar enough to consider the tests from the respective IPCs.

[11] Order 03-19 from the BC IPC laid out this test for determining if a record would relate to a matter of public interest:

- (a) has the subject of the records been a matter of recent public debate?;
- (b) does the subject of the records relate directly to the environment, public health or safety?;

- (c) could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
- (i) disclosing an environmental concern or a public health or safety concern?;
 - (ii) contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue?; or
 - (iii) contributing to public understanding of, or debate on, an important policy, law, program or service?;
- (d) do the records disclose how the Ministry is allocating financial or other resources?

[12] Alberta's IPC originally used 13 criteria to determine if a record would relate to a matter of public interest. It noted that it was a non-exhaustive criteria list. Because of the overlap of several of the 13 points, it has since condensed them into simpler criteria as follows:

[para 43] The first set of criteria (numbers 1 to 3) is relevant to decide if a record "relates to a matter of public interest":

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it? The following may be relevant:
 - Have others besides the Applicant sought or expressed an interest in the records?
 - Are there other indicators that the public has or would have an interest in the records?
2. Is the Applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public? The following may be relevant:
 - Do the records relate to a conflict between the Applicant and government?
 - What is the likelihood the Applicant will disseminate the contents of the records?
3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government? The following may be relevant:
 - Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?
 - Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?

- Will the records shed light on an activity of the Government of Alberta or a public body that have been called into question?

[para 44] The following additional factors may be relevant to decide if a waiver is warranted on grounds of fairness:

1. If others have asked for similar records, have they been given at no cost?
2. Would the waiver of the fee significantly interfere with the operations of the public body, including other programs of the public body?
3. Are there other less expensive sources of the information?
4. Is the request as narrow as possible?
5. Has the public body helped the Applicant to define his request?

[13] I prefer the Alberta criteria for our jurisdiction as it is broader in scope. This is especially important as Saskatchewan's FOIP does not have the reference to the environment, public health or safety. As such I adopt the following criteria to determine if giving access to the records would be in the public interest:

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it? The following may be relevant:
 - Have others besides the Applicant sought or expressed an interest in the records?
 - Are there other indicators that the public has or would have an interest in the records?
2. Is the Applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public? The following may be relevant:
 - Do the records relate to a personal conflict between the Applicant and the government institution?
 - What is the likelihood the Applicant will disseminate the contents of the records in a manner that will benefit the public?
3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government? The following may be relevant:
 - Do the records contain information that will show how the government institution reached or will reach a decision?
 - Are the records desirable for the purpose of subjecting the activities of the government institution to scrutiny?
 - Will the records shed light on an activity of the government institution that have been called into question?

[14] I note that not all of the above criteria have to be met in order to find that release of a record would be in the public interest. Further, a government institution or Applicant would be able to provide other relevant information that would be outside of these criteria for consideration.

[15] I now must apply the circumstances of this review to the established criteria. Both the Applicant and SRC have addressed certain criteria in their submissions to my office.

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?

[16] In general, travel expenses of government officers are frequently requested. Many government institutions proactively post this type of information on their websites as it is more efficient than responding to multiple access requests. However, not all do. There is no evidence to suggest that this trip has been a matter of concern or interest to the public. I am unaware of any public concern or controversy surrounding the trip. Further, SRC has indicated in its submission that “the records have not been sought by others”. This weighs against the fee waiver.

2. Is the Applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public?

[17] SRC’s submission indicates that the Applicant was recently terminated from SRC. It states:

Following the termination, the Applicant and SRC were unable to reach a settlement concerning the Applicant's termination of employment. The Applicant has repeatedly threatened litigation against SRC, SRC’s senior management and SRC’s Board of Directors regarding the termination of his employment as well as other alleged causes of action, but such litigation has not yet commenced. In addition to making a number of access requests pursuant to [FOIP], the Applicant has also commenced proceedings under *The Public Interest Disclosure Act*, SS 2011, c P-38.1. Further, the Applicant has unsuccessfully pursued complaints with the Law Society of Saskatchewan against SRC's external legal counsel.

[18] The Applicant has made many requests for review or privacy complaints involving SRC to my office. The nature of the complaints and requests and the tone of the Applicant suggest that he is motivated by personal interests.

[19] Further, in his submissions, the Applicant made several suggestions that the trip in question was not within the mandate of SRC. However, he provided nothing to support this allegation. He also alleged that his attempts to expose SRC led to his dismissal. There is no indication that the Applicant will disseminate this information in a manner that will benefit the public. This weighs against a fee waiver.

3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government?

[20] The Applicant contends that the records requested will show that SRC has contravened its own Act, but did not provide anything to support these allegations. Nonetheless, the nature of the request indicates that the records would be likely to show how SRC reached decisions and could be used to scrutinize its activities. As such, they would contribute to an open, transparent and accountable organization. As such, this would weigh in favour of a fee waiver.

[21] In conclusion, I am not persuaded that giving access to these records would be in the public interest. Although the nature of the records would usually be used to hold a government institution to account, in this instance there is nothing that demonstrates that the subject matter is an issue of concern or controversy. Further, in my opinion, the Applicant is motivated by personal interests.

[22] There is no need to consider whether the prescribed fees would cause the Applicant substantial financial hardship.

III FINDINGS

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

IV RECOMMENDATIONS

[24] I recommend that SRC take no further action until the Applicant pays the deposit outlined in SRC's letter of September 10, 2014.

Dated at Regina, in the Province of Saskatchewan, this 16th day of March, 2015.

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