

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 149/2014

Financial and Consumer Affairs Authority

Summary: The Applicant requested records from Financial and Consumer Affairs Authority (FCAA) and received a fee estimate for \$1,063.75. The Commissioner found that the fee was reasonable.

I BACKGROUND

- [1] On October 15th, 17th and 21st, 2014 Financial and Consumer Affairs Authority (FCAA) received thirteen access to information requests from the Applicant via email requesting access to similar information. Two of the 13 access to information requests were identical.
- [2] In a letter dated December 4, 2014, the FCAA provided a fee estimate of \$1,063.75 to the Applicant pursuant to subsection 9(2) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] On December 8, 2014, my office received a request for review from the Applicant.
- [4] In correspondence dated December 11, 2014, my office notified FCAA and the Applicant of its intention to undertake a review of the fee estimate issued. In my office's notification letter to FCAA, my office requested a submission outlining how the fee estimate was calculated.

[5] On December 12, 2014, my office received a submission from FCAA. No submission was received from the Applicant despite being invited by my office to provide one in its notification letter.

II RECORDS AT ISSUE

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

III DISCUSSION OF THE ISSUES

[7] FCAA is a “government institution” as defined in subsection 2(1)(d)(ii) of FOIP.

1. Are the fees estimated by FCAA reasonable?

[8] Section 9 of FOIP provides FCAA with the ability to provide a fee estimate to the Applicant where the cost for providing access will exceed the prescribed fee of \$50. Fee estimates are generally judged on the basis of whether they are reasonable.

[9] The Applicant’s three access to information requests were broad and requested access to the following:

October 15, 2014:

a) all copies of per diem and expense receipts (food, gas, accommodations, incidentals) of the FCAA Panel members [names removed] in relation to my matters with the FCAA. I would like copies and detailed line by-line item of all of the receipts and all of expenditures submitted by these three while involved in my file--including the details of what the Ministry of Justice paid them as in wages/salaries/bonus and reimbursements for food, gas and accommodations.

I for sure want the copies of all their food, gas, hotel rooms, etc -expenses – pertaining to my pre-hearing, hearing and post-hearing matters involving my case.

b) I also want the official duties and role of [name removed] in regards to his “newly acquired” duties/position as an FCAA commissioner. You had previously stated he

sits on an internal FCAA committee, drafting and overseeing policy for about 5 people. I am requesting all records and information pertaining to this, specifically covering:

- a) What is his pay or remuneration for this?
- b) What are his exact duties and roles on this committee?
- c) What are the objectives on this committee?
- d) When was this committee struck? For what purpose?
- e) and what are the ultimate goals of this committee?
- f) How many people will this policy that [name removed] is observing be applicable to?
- g) Who else is on this committee?
- h) What are their deadlines to have this policy completed and implemented?

October 17, 2014: (The Applicant sent five separate emails on this date to the FCAA worded almost the same and requesting the same information but for different years including the years 2009, 2010, 2011, 2012 and 2013)

a) copies of all payments made to [names removed] for the year 2009 by the Ministry of Justice and/or the SFSC/FCAA. This will include all wages, salaries, bonuses, per diems, travel and business expenses, bonuses, gifts, etc that went to these three from the Ministry of Justice and/or the SFSC/FCAA. I also request copies of their expense receipts submitted in relation to any expenses being paid to them by Justice or the FCAA/SFSC. I want a detailed list of all payments made to them, the purpose of said payment and receipts/records to confirm payments of expenses. I understand that a simple query into MIDAS can produce this report and print it out.

b) how many days did they work, in relation to the SFSC/FCAA matters for 2009?

c) What duties did they conduct, in detail, for the SFSC/FCAA in 2009?

October 21, 2014: (The Applicant sent seven separate emails on this date to the FCAA worded almost the same and requesting the same information for different years including the years 2009, 2010, 2011, 2012 and 2013. Of the seven requests, the Applicant sent two of the requests twice.)

a) all travel and business expense receipts, invoices and payouts by the FCAA and/or Ministry of Justice in regards to accommodation, gas, food, incidentals, etc for [names removed] for the year 2009.

b) all wages paid out and or any other financial compensation paid out by the FCAA and/or SK Ministry of Justice to [names removed] in 2009. Also request any and all legal documents that support such payments, such as contracts, oaths of office, declarations, etc

- c) any records/contracts/ legal documents that show and/or confirm and/or verify how much each FCAA commissioner and/or board member gets paid, financially compensated for, or financially remunerated per day, while being part of a SFSC/FCAA Tribunal and/or Hearing Panel involving FCAA (SFSC) matters.

[10] The Applicant raised issue with FCAA bundling the 13 access to information requests together and issuing the fee estimate. Based on the request for review submitted to my office, the Applicant appears to suggest that the access to information requests were submitted separately to avoid a fee. From a review of each of the 13 access requests, the Applicant is asking for the same records spanning five years.

[11] Fees encourage responsible use of the right of access by applicants. Further, FOIP provides for reasonable cost recovery associated with providing individuals access to records. A fee estimate is *reasonable* when it is proportionate to the work required on the part of the public body to respond efficiently and effectively to an applicant's request(s). In this case, as the 13 access to information requests ask for the same records, the search involved would have required FCAA to return to the same location multiple times in one day in order to process them separately. This would have been redundant and inefficient. As such, it was appropriate for FCAA to bundle them.

[12] The applicant has included questions in some of the access to information requests. If a record can be provided that contains the information that answers the applicant's questions the government institution should consider the record responsive to the access request. However, FOIP does not require a government institution to create records in order to answer questions.

[13] There are three kinds of fees that a public body can include in its fee estimate:

- (1) fees for searching for responsive records;
- (2) fees for preparing the record for disclosure; and
- (3) fees for the reproduction of records.

(1) Fees for searching for responsive records

[14] Subsections 6(2) and 5(3) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) provide the ability for FCAA to recover costs associated with searching for responsive records. Where the search for responsive records exceeds two hours, FCAA can charge \$15.00 for every half hour after that. The FCAA appropriately deducted two hours of time from its fee estimate.

[15] Search time consists of every half 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
- reading through files to determine whether records are responsive.

[16] 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 else re-review the results of the search.

[17] The tests related to a reasonable search are:

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

[18] In instances where the above tests do not accurately reflect the circumstances, the public body should test a representative sample of records by timing themselves. The time can then be applied to the responsive records as a whole.

[19] FCAA estimated that the cost for searching for responsive paper and electronic records would be \$306.00 and would involve 10.2 hours of staff time.

[20] In its submission, FCAA advised that any responsive paper records would be contained in two and a half boxes. Each box holds approximately 2,500 sheets of paper, this equates to 6,250 pages to sort through to find responsive information. FCAA advised that it used the following calculations to determine the cost for searching and visually scanning pages for responsive information in paper records:

(12 pages per minute to review the records to see if they are responsive)

$6250 \text{ pages} / 12 \text{ pages per minute} = 521 \text{ minutes (8.7 hours)} \times \$15/\text{half hour} = \$261.00$

[21] Based on my office's test and the calculations provided by FCAA, I find that this amount is reasonable.

[22] For electronic records (MIDAS reports) the FCAA advise that there would be a total of six reports to sort through to find responsive information. Each report would be roughly five pages, this equates to 30 pages to sort through to find responsive information. FCAA advised that searching MIDAS reports involved first researching what codes need to be inputted, entering the codes into the system, monitoring the system while it prepares an electronic report and then reviewing it to ensure it has the relevant information requested. MIDAS is not specific enough to necessarily capture exactly what applicants want. FCAA estimated 15 minutes per report but advised that this estimate would be on the low side. FCAA advised that the actual time it took to run one report was an hour. Determining what codes were needed to ensure the correct information was produced took the most amount of time. The time taken to run a MIDAS report can depend upon a number of factors:

- Whether they are familiar with the type of information requested, or whether they have to research it and run a trial and error report first? This can take considerable time;
- Setting and requesting the report takes approximately five minutes once familiar with the report type needed;

- Having MIDAS actually run the report can take five or more minutes, depending on the type of report and demands being placed on MIDAS at the time by other users; and
- Reviewing the report generated to determine if it has given the information sought can add another 5 - 10 minutes minimum, depending on volume.

[23] FCAA advised that it used the following calculations to determine the cost for searching and visually scanning pages for responsive information:

Electronic records:

(15 minutes per report for a total of 90 minutes)

90 minutes (1.5 hours) x \$15/half hour = \$45.00

[24] Based on the details and calculations provided by FCAA, I find that the amount of \$306.00 is reasonable for searching for responsive records in this case.

(2) Fees for preparing the record for disclosure

[25] Preparation includes time spent preparing the record for disclosure including:

- time anticipated to be spent physically severing exempt information from records.

[26] 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.

[27] The test related to reasonable time spent on preparation is:

- Generally, it should take an experienced employee two minutes per page to physically sever.

[28] In instances where the above test does not accurately reflect the circumstances (i.e. a complex record), the public body should test the time it takes to sever on a representative sample of records. The time can then be applied to the responsive records as a whole.

[29] FCAA estimated that it would cost \$654.00 and 21.8 hours of staff time to prepare the responsive records for disclosure.

[30] In its submission, FCAA indicated that it estimated that 10% of the paper records in the two and a half boxes would be responsive and 100% of the electronic records (MIDAS reports) would be responsive. FCAA advised that it used the following calculations to determine the cost for preparing the record for disclosure:

Paper = 625 pages
Electronic = 30 pages
Total = 655 pages

Redaction of the pages is estimated at two minutes per page (655 x 2= 1310 minutes (21.8 hours)

21.8 hours x \$15/half hour = \$654.00

[31] In its fee estimate to the Applicant dated December 4, 2014, FCAA indicated that some exemptions may apply to the requested records including but not limited to subsections 15(1)(b)(i), (c), (d), (e), (f), (i), (k), 17(1), 18(1), 22(a), (b), (c), 19(1), 29(1) and section 23.

[32] Based on my office's test criteria and the details and calculations provided by FCAA, I find that the amount of \$654.00 is reasonable for preparing responsive records for disclosure in this case.

(3) Fees for reproduction of records

[33] Subsection 6(1)(a) of the FOIP Regulations is explicit with regards to the fees allowable for the reproduction of records. The allowable fee is \$0.25 per page.

[34] In this case, FCAA estimated 655 pages of photocopying at \$0.25 per page totaling \$163.75. I find that this is in compliance with subsection 6(1)(a) of the FOIP Regulations.

IV FINDINGS

[35] I find that the fee of \$1,063.75 estimated by FCAA is reasonable.

V RECOMMENDATIONS

[36] Given the finding, there are no recommendations to be made at this time.

Dated at Regina, in the Province of Saskatchewan, this 15th day of January, 2015.

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