



REVIEW REPORT 152-2015

Ministry of Highways and Infrastructure

November 19, 2015

Summary: The Ministry of Highways and Infrastructure (Highways) received an access to information request for vehicle repair contracts. Highways issued a fee estimate to the Applicant in the amount of \$2,733.11. The Commissioner found that the fee estimate was reasonable.

I BACKGROUND

[1] On June 23, 2015, the Ministry of Highways and Infrastructure (Highways) received an access to information request for: “All Fleet Services contracts (including attachments), for the repair of Ministry of Highways and Infrastructure vehicles, dating from the 2014-15 fiscal year.”

[2] On July 16, 2015, Highways provided the Applicant with a fee estimate for the request in the amount of \$2,733.11.

[3] On July 30, 2015, the Applicant requested my office undertake a review of Highways fee estimate.

[4] During the early resolution stage, my office was advised by Highways that they viewed work orders as contracts and they based the estimate on those work orders. Later in the review, it was clarified that work orders would not always have been issued. In those cases, Highways would consider the invoice or the purchase order to be the contracts.

[5] On August 11, 2015, my office notified both the Applicant and Highways of the review and invited both parties to provide a submission. Both the Applicant and Highways provided my office with submissions for consideration.

II RECORDS AT ISSUE

[6] There are no records at issue in this review. Only the fee estimate will be reviewed.

III DISCUSSION OF THE ISSUES

1. Is Highways fee estimate reasonable?

[7] Subsection 9(2) of *The Freedom of Information and Protection of Privacy Act* (FOIP) states:

9(2) Where an amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

[8] Highways' response dated July 16, 2015 to the Applicant outlined the fee estimate as follows:

	Type of Fee	Calculation of Fees	Total Amount of Fees
1	Time required to retrieve records for disclosure (Redacted source documents)	96 hours x \$27.923	\$2,680.61
2	Photocopying	450 pages x \$0.25	\$112.50
3	LESS:	2 hours free x \$15.00/half hour	(\$60.00)
Total amount of fees required to process access request			\$2,733.11

[9] The Applicant's submission provided the following:

Based on the test outlined in the Guide, and on the Ministry estimate of 450 pages of records, only approximately fifteen hours should be required to sever sensitive information from the responsive records (450 pages x 2 minutes per page = 900 minutes, or 15 hours.)...

According to the Ministry's estimate of 96 hours required, this leaves an estimated 81 hours, which are presumably dedicated to searching for, retrieving, and determining the responsiveness of the records. According to the test outlined in the Guide, only 37.5 minutes should be required to scan the responsive records for responsiveness (450 pages divided by 12 pages per minute.) While it will presumably be necessary to scan some records that are found not to be responsive, even generously assuming that 10 unresponsive documents must be scanned for each responsive one, this accounts for only a modest 6.25 hours spent scanning unresponsive records...

Rounding the time required to determine responsiveness up to seven hours, there are 74 hours remaining in which to search for and retrieve the records. While I do not have the benefit of familiarity with the Ministry's document filing system, I wish to point out that these are very recent records, all originating within the last fiscal year. The Ministry is therefore unlikely to have to spend any time adapting to outdated filing systems, storage media formats, etc., in order to fulfil the request. The fact that the request is for a single, specific type of document (rather than for information that might be contained across a range of documents types) should also simplify the search process.

...

For the reasons outlined above, the fees estimates provided by the Ministry are unreasonably high, and should be reduced to a reasonable level.

[10] The IPC Guide to Exemptions indicates that the following three types of fees can be included in a fee estimate:

1. Fees for searching for a responsive record
2. Fees for preparing the record for disclosure
3. Fees for reproduction of records.

[11] I will consider each of these types of fees.

i. Fees for searching for a responsive record

[12] In Highways submission they provided as follows:

Fleet Services estimated that it would take approximately 2 working days (16 hours) to identify and prepare a list of invoices in the financial systems.

It was estimated an additional 80 hours (10-12 minutes/invoice) would be required to locate the physical batch information, pull the records, review, separate and remove maintenance records including tire and windshield repairs (Standing Offers), photocopy and return the files to their station.

It is important to note invoice “batches” do not include just maintenance records. They are simply a group of invoices processed on a given day at a certain time; the physical batches – as indicated above – would have to be located and taken apart to pull out the responsive records.

For fee estimate purposes an estimate 150 tire and windshield repairs were considered completed under the Standing Offers reducing the total number of invoices to 450 from 600.

...

In summary, the Ministry estimated the total time required to query the financial systems, identify, list, retrieve and photocopy records would be approximately 96 hours.

[13] Subsection 6(2) of the FOIP Regulations provides as follows:

6(2) Where time in excess of two hours is spent searching for a record requested by an applicant or in preparing it for disclosure, a fee of \$15 for each half-hour or portion of a half hour of that excess time is payable at the time when access is given.

[14] The IPC Guide to Exemptions lists the following as being reasonable to charge back to the Applicant:

- Staff time involved with searching for records;
- Examining file indices, file plans or listing 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.

[15] My office asked Highways for clarification on the 16 hours required to identify and prepare a list of invoices in the financial system. Highways responded indicating:

an accounts payable person will have to go into the system and run a report for each of the 84 shops and pull all of the batches and go through each invoice and record the information (equipment repair, tire repairs and windshield repairs/replacements) and then prepare a list with this information and also contact fleet services if explanations are required.

[16] My office met with Highways and viewed the process to compile this information. Once a report is run in the financial system for the repair code, the invoice numbers and vendor names then need to be inputted into an a second financial system where a batch number can be located. That batch number needs to be recorded as this number corresponds with the banker's box where the responsive records are stored.

[17] This process must be done for each of the invoices generated on the report. Highways advised that 24 reports would need to be generated for the 2014-15 fiscal year as Highways uses two sub-votes. As well, Highways indicated it had compiled information on another matter in a similar fashion and that process took approximately two business days to complete.

[18] Based on the information provided to me, this portion of the fee estimate for searching for responsive records does not appear to be unreasonable.

[19] As mentioned earlier, Highways advised that it considered the work orders, invoices and/or purchase orders to be contracts. It is my understanding that all of these documents are saved in the financial records along with all other invoices for Highways.

[20] The IPC Guide to Exemptions indicates that 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 review the results of the search.

[21] Highways clarified in an October 2, 2015 email to my office that its fee estimate included time spent photocopying. Highways stated that the "rationale comes from section 6(3) in the Regulations under Fees... including machinery and operator costs..."

[22] Subsection 6(3) of the FOIP Regulations provides as follows:

6(3) A search and retrieval of electronic data is required to give access to a record requested by an applicant, a fee equal to the actual cost of the search and retrieval, including machinery and operator costs, is payable at the time when access is given.

[23] Subsection 6(3) of the FOIP Regulations is regarding search and retrieval of electronic data. Therefore, I do not find that this subsection would apply or support the fees associated with the time spent photocopying.

[24] Highways had also included time spent returning files to their station and separating and removing maintenance records (such as removing staples) in their fee estimate. I do not find that these tasks should be included in the fee estimate for the Applicant.

[25] Highways explained that they estimated there would be approximately 60 banker's boxes of records that would need to be searched to locate the records and approximately 2400 pages would need to be visually scanned to identify responsive records.

[26] The IPC Guide to Exemptions provides the following tests for a reasonable search:

- Generally, it should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness;
- Generally it should take an experienced employee 5 minutes to search 1 regular file drawer for responsive file folders.

[27] Based on these tests and the assumption that approximately two banker's boxes would be similar to one regular file drawer of records, it would be reasonable to estimate this would take an employee approximately 150 minutes or two and a half hours to search the boxes. As well, it would be reasonable to estimate that an employee would need approximately 200 minutes or approximately three and a half hours to review 2400 pages of records for responsiveness.

[28] Based on this information, my office found that it would be reasonable for Highways to estimate search for responsive records to take approximately 22 hours at \$15/half-hour or \$660.00.

[29] My office provided this analysis to Highways in a Draft Report, Highways responded to my office as follows:

...In an effort to reduce the cost estimated prepared... we significantly reduced the number of copied pages estimated as responsive as well as used the actual salary (\$27.93/hour) of the administrative staff person as opposed to the \$15/30 minute allowed under regulation.

...we believe we have a practical and on-going example of the time and effort the request would require through our experience with compiling eligible cost records related to flood damages that occurred across the province in recent years. The flood cost recovery work is very similar in nature to retrieving the required fleet records with the exception that flood related expenses have only a single natural account they can be billed to.

The disparity between our estimate and the recommendation found in the report is the application of s. 6(2)(3) of the regulations. Our estimate is based on a single staff person undertaking both the search (electronic) and preparation of records (search of bankers boxes/copying). The Draft Report discounts the labour costs to an unreasonable level based on our real experience.

[30] In the future, if Highways believes the tests outlined in the *IPC Guide to Exemptions* to estimate a reasonable search do not apply to their situation, it could consider timing themselves for a representative sample of the record and applying that to the entire record. However, Highways would need to ensure that the recorded time did not include any non-compensable tasks, such as the ones discussed in this Report.

ii. Fees for preparing the record for disclosure

[31] The *IPC Guide to Exemptions* provides that preparation time would include the “time anticipated to be spent physically severing exempt information from records.”

[32] The IPC Guide to Exemptions provided that “it should take an experienced employee 2 minutes per page to physically sever only.”

[33] My office estimated the time to prepare the record for disclosure based on the 450 pages of responsive records recorded by Highways in their fee estimate to the Applicant. Based on this, it was estimated that Highways may spend 900 minutes or 15 hours severing the record to prepare it for release.

[34] However, Highways had indicated in its response to the Draft Report that it had “significantly reduced the number of copied pages estimated as responsive.” My office contacted Highways to clarify this claim and it explained that the 450 invoices would be four pages on average. Highways provided my office with an email dated July 15, 2015 from the Director of Fleet, Operations Division with Highways. The email discussed the request and provided further detail regarding the estimated number of pages. The emails provided as follows:

Fleet Services contracts the repair of equipment when it is unable to complete the work internally, either due to a lack of resources or lack of required tools/equipment. We only have invoices and in some cases quotes for this work, we don't have contract documents or agreements.

...

It is estimated that each invoice would have 4 pages on average...

[35] Based on this email, it would be reasonable for Highways to base their estimate for preparing the record for disclosure on the estimated 1800 pages. It would be reasonable to estimate 3600 minutes or 60 hours at \$15/half-hour in the amount of \$1800.

iii. Fees for reproduction of records

[36] In Highways' fee estimate it calculated the fees for photocopying 450 pages of records at \$0.25 per page for photocopying, as specified in the regulations, in the amount of \$112.50.

[37] Based on the revised number of pages provided to my office, it would be reasonable for Highways to estimate that 1800 pages at \$0.25 per page in the amount of \$450.

[38] Based on this information, the fees reasonable for this request are as follows:

Type of Fee	Calculation of Fee	Amount
1. Fees for searching for a responsive record	Generating information using financial systems (16 hours at \$15/half-hour) = \$480.00 Searching approximately 60 bankers boxes (2 and a half at \$15/half-hour) = \$75.00 Visually scanning 2400 pages of records to determine responsiveness (3 and a half hours at \$15/half-hour) = \$105.00 Total Hours: 22 hours	\$660
Deduct: 2 hours of search (\$15/half-hour)	2 hours at \$15/half-hour	(\$60.00)
2. Fees for preparing the record for disclosure	Based on 1800 pages, 60 hours at \$15/half-hour	\$1800.00
3. Fees for reproduction of records	Photocopying 1800 pages of records at \$0.25/page	\$450.00
TOTAL		\$2,850.00

[39] Based on this, it appears Highways fee estimate of \$2,733.11 to be reasonable for this request.

IV FINDING

[40] I find Highways' fee estimate to be reasonable for this request.

V RECOMMENDATION

[41] I recommend Highways take no further action regarding this fee estimate.

Dated at Regina, in the Province of Saskatchewan, this 19th day of November, 2015.

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