



## **REVIEW REPORT 178-2016**

### **Ministry of Government Relations**

**October 28, 2016**

**Summary:** The Applicant submitted an access to information request to the Ministry of Government Relations (the Ministry). The Ministry issued a fee estimate to the Applicant. The Applicant appealed the fee estimate to the Information and Privacy Commissioner (IPC). The Commissioner found that had proper records management practices been in place, the fee estimate would not have been necessary, and recommended the Ministry consider charging no fee.

#### **I BACKGROUND**

[1] On May 25, 2016, the Ministry of Government Relations (the Ministry) received an access request for the following:

Please provide all documentation related to a runaway CN Rail train full of asphalt in Regina, which reportedly rolled across the tracks unmanned on September 23, 2011. Restrict email search to only Deputy Minister and executive director of Communications (including emails sent, received and cc'd)

[2] The access request referred to two specific email accounts, which were within the former Ministry of Corrections, Public Safety and Policing (CPSP) in 2011. On May 25, 2012 the Ministry of Government Relations was created, bringing together the former Ministry of Municipal Affairs, various components of the former Ministry of First Nations and Metis Relations, and the public safety area of the former CPSP.

[3] The portion of the access request containing the emails of the Executive Director of Communications was transferred to the Ministry of Justice, as the position had moved there when CPSP was dissolved.

[4] The portion of the access request containing the emails of the Deputy Minister (DM) was kept within the Ministry of Government Relations. However, the Ministry determined that the records were no longer available within the Ministry, as the DM's email from CPSP had been deactivated, and required a search and retrieval of electronic records.

[5] On June 23, 2016, the Ministry sent a fee estimate to the Applicant for \$238.00. This fee estimate was only for the retrieval of the emails and the creation of a personal storage table (PST). The Ministry advised that they could not guarantee that responsive records would be found in the search.

[6] On July 12, 2016, my office received a Request for Review from the Applicant. On July 18, 2016, notification of this office's intention to undertake a review was provided to the Ministry and the Applicant.

## **II RECORDS AT ISSUE**

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

## **III DISCUSSION OF THE ISSUES**

[8] The Ministry is a government institution pursuant to subsection 2(1)(d)(i) of FOIP.

**1. Is the Ministry's fee estimate reasonable?**

[9] 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.

[10] Subsections 6(2) and 6(3) of the FOIP Regulations provides a government institution with 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.

[11] In this instance, I will only be looking at the fee estimate provided for the Ministry's search. There were no other fees estimated.

[12] In its submission, the Ministry advised that as the email account that may contain the requested information had been deactivated when CPSP was dissolved in 2012, the Information Technology Division (ITD) would need to conduct the search.

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

<b>Type of Fee</b>	<b>Calculation of Fees</b>	<b>Total Amount of Fees</b>
Time required to restore	1 hour x 1 files x \$119.00/hour	\$119
Time required to create PST (Personal Storage Table)	1 hour x 1 files x \$119.00/hour	\$119
<b>Total</b>		<b>\$238</b>

[14] The Ministry provided the fee estimate pursuant to subsection 6(3) of *The Freedom of Information and Protection of Privacy Regulations* (the Regulations), which states:

6(3) Where 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.

[15] Subsection 6(3) of the FOIP Regulations provides a government institution with the ability to recover costs associated with searching for responsive records. A public body should develop a search strategy when preparing its fee estimate.

[16] This provision is unique to Saskatchewan. Subsection 6(3) contemplates recourse to electronic equipment that involves data stored in a fashion that restricts access to dedicated computer technicians.

[17] In its submission, the Ministry advised:

The data of the ITD's partner ministries is maintained by Information Systems Management Canada Corporation (ISM), an Information Technology service company based in Regina, Saskatchewan, under a contract for the provision of data center services to the ITD. The ITD pays time and materials to ISM to provide the service and charges the requesting ministry back for the cost. This service by ISM involves retrieval of data, which is search through and restored, and the creation of a personal storage table (.pst) file. This work has associated time and material costs.

[18] The Ministry had also contacted the Applicant before requesting ITD to commission the search to explain to the Applicant that the records were electronically archived and would have to be searched for and retrieved, which would result in a fee. The Applicant wanted to continue.

[19] Subsection 6(3) of the FOIP Regulations to charge an appropriate fee that allows the Ministry to recover the cost of restoring the email. However, I question whether the Ministry had appropriately classified and retained the email in question. If they had, the fee may not have been necessary.

[20] The Ministry advised that when CPSP dissolved in 2012, the portion of the DM's position related to public safety went with him to his new position at Government Relations.

[21] It is reasonable to believe that the information the Applicant has requested, if in possession of the Ministry, should have been moved over with the DM to Government Relations in 2012, instead of being stored away in a deactivated email.

[22] My office confirmed in conversations with the Ministry that they follow Administrative Records Management System (ARMS) 2014. The Ministry is also subject to *The Archives and Public Records Management Act*, in which subsection 24(5)(b)(i) states:

24(5) The Legislative Assembly, Legislative Assembly Service, every Officer of the Legislative Assembly, every government institution and every court shall:

...

(b) create and implement a records management policy and procedure to protect and maintain all public records that are in the custody or under the control of the Legislative Assembly, Legislative Assembly Service, Officer of the Legislative Assembly, government institution or court so that those public records are, considering the purposes for which they are being maintained:

(i) usable and accessible;

[23] According to the Provincial Archives of Saskatchewan's (the Archives) *Email Management Guidelines*, emails should be classified and retained alongside other records that pertain to the activity or business transaction to ensure that they are usable and accessible.

[24] The Archives has recommended that Ministries use an Electronic Document and Records Management Software (EDRMS) through their Information Management Unit. EDRMS allows institutions to integrate email into their recordkeeping systems, and stores them in a repository where they are classified along with related records, which makes them easily searched for.

[25] If an EDRMS is not available, the Archives have recommended that records may also be printed and filed accordingly to an existing filing system. Also, emails may be saved into

a shared electronic directory that mirrors the institution's approved classification schedule.

- [26] In the instance of government reorganizations, which occur from time to time, I consider it the responsibility of the existing Ministry who is losing a branch or a function to take steps to properly organize records and reallocate them to the new Ministry. In doing so they should follow Archives guidance and directions. If existing Ministries do not do this, every reorganization will result in the unnecessary discontinuance of accounts or archiving of emails which will lead to potential fees for Applicants, fees that the Applicant would not pay except for the fact of the reorganization. If existing Ministries do not assume this responsibility, there is a serious risk of records just being lost.
- [27] The primary responsibility rests with the existing Ministry affected by the reorganization. In this case, CPSP, before its dissolution, should have followed the various guidance guidelines of the Archives to ensure that the records were properly organized and stored. In these circumstances, Government Relations inherited the problem created by CPSP. Once it recognized the problem, it should have taken steps to ensure that the records were organized according to Archive guidelines.
- [28] I find that neither Ministry had proper records management policies in place to deal with reorganizations and retaining of emails. The cost of inefficiencies of the Ministry should not be passed on to a citizen. If the records had been stored in a folder in the Ministry's network instead of being electronically archived, the fee to retrieve the records would not have been necessary.
- [29] Because government reorganizations do occur from time to time, I encourage all Ministries to develop policy and practices relating to records, including e-mails, when reorganizations occur.

#### **IV FINDING**

[30] I find that, according to subsection 6(3) of the Regulations, the Ministry could charge a fee but under the circumstances, by no fault of the Applicant, and caused by government reorganization, the Ministry should revisit the question of charging a fee in this case.

#### **V RECOMMENDATIONS**

[31] I recommend that the Ministry review their records management policies, specifically related to reorganizations and the archiving of emails.

[32] I recommend that the Ministry reconsider the fee in this case and consider charging no fee.

[33] I recommend that all other Ministries review their record retention policy relating to government reorganization and the archiving of e-mail.

Dated at Regina, in the Province of Saskatchewan, this 28th day of October, 2016.

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