



REVIEW REPORT 186-2020

Ministry of Justice and Attorney General

April 27, 2021

Summary: The Ministry of Justice and Attorney General (Justice) received an access to information request and provided the Applicant with a fee estimate of \$212.50. The Applicant asked the Commissioner to review the reasonableness of the fee estimate. The Commissioner found that Justice's fee estimate was reasonable, but recommended that Justice reduce its fee estimate by \$62.50 if the Applicant is willing to receive records electronically by email.

I BACKGROUND

[1] On July 2, 2020, the Ministry of Justice and Attorney General (Justice) received the following access to information request from the Applicant:

Any and all records pertaining to [previous access request made by Applicant] received by your office, February 2020 to Present. Please include any emails, phone call notes, and hard copy requests for the report requested.

[2] On July 10, 2020, Justice responded in writing to the Applicant advising that a fee estimate was being issued for \$212.50. Justice stated:

You have requested access to records that will involve a large volume of material. Therefore, in accordance of section 7(1) of *The Freedom of Information and Protection of Privacy Regulations* (Regulations), a fee estimate is required to process your access request.

[3] On August 10, 2020, the Applicant requested that my office undertake a review of the reasonableness of Justice's \$212.50 fee estimate.

[4] On August 24, 2020, my office provided notification to both Justice and the Applicant of my office's intent to undertake a review.

II RECORDS AT ISSUE

[5] As this is a review of the reasonableness of Justice's fee estimate, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] Justice is a "government institution" pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, I have jurisdiction to conduct this review.

2. Was Justice's fee estimate reasonable?

[7] Subsections 9(1) and (2) of FOIP provide as follows:

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.

(2) Where the 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] Subsection 9(2) of FOIP requires a government institution to provide a fee estimate where the cost for providing access to records exceeds the prescribed amount of \$100. This prescribed amount is found in subsection 7(1) of *The Freedom of Information and*

Protection of Privacy Regulations (FOIP Regulations). Further, applicants are not required to pay any fees beyond what is originally estimated (*Guide to FOIP, Chapter 3: Access to Records*, Updated: August 7, 2020, at page 48 (Guide to FOIP)).

[9] FOIP provides for reasonable cost recovery associated with providing individuals access to records. A reasonable fee estimate is one that is proportionate to the work required on the part of the government institution to respond efficiently and effectively to an applicant's request. A fee estimate is equitable when it is fair and even-handed; that is, when it supports the principle that applicants should bear a reasonable portion of the cost of producing the information they are seeking, but not costs arising from administrative inefficiencies or poor records management practices (Guide to FOIP, p. 48).

[10] When charging fees, a government institution should undertake the following steps:

1. Contact the applicant:
 - a. advise that fees will be necessary;
 - b. attempt to clarify or offer ways to narrow the request to reduce or eliminate fees;
 - c. follow up in writing with the applicant when narrowing occurs to ensure agreed scope is clear; and
 - d. address any requests for a fee waiver accordingly.
2. Make a search strategy;
3. Prepare a fee estimate based on the search strategy (do not complete the search yet);
4. Decide whether to charge a fee (refer to your internal policy or procedure);
5. Send out fee estimate and suspend work;
6. Clarify or narrow the request again (if the applicant initiates it);
7. Start searching for records when applicant pays 50% deposit.

(Guide to FOIP, p. 49)

[11] There are three kinds of fees that can be included in a fee estimate:

1. Fees for searching records;
2. Fees for preparing records; and
3. Fees for reproduction of records.

[12] Justice’s fee estimate to the Applicant was as follows:

Description	Total # Pages	Time (in hours)			Total Cost
Computer printout/document copy (pages)	250	NA	X	\$0.25 per page	\$62.50
Document Search and Retrieval for electronic records		1.0	X	\$15.00 per half hour	\$30.00
Document Search and Retrieval for paper records		0.0	X	\$15.00 per half hour	\$0.00
Severing and Document Preparation		6.0	X	\$15.00 per half hour	\$180.00
Subtotal					\$272.50
Less 2 hours search and/or preparation time @ 2 hours x \$15 per half hour					(\$60.00)
Total Fee Estimate					\$212.50
Deposit Required 50%					\$106.25

[13] I note Justice applied the three fees as I have outlined at paragraph [11] of this Report. I will assess each separately.

Searching

[14] Fees for searching for a responsive record are pursuant to subsection 6(2) of the FOIP Regulations. Fees for 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. Search time does not include time spent copying records, going from office to office or to offsite storage, or having someone review the results of a search (Guide to FOIP, p. 50).

[15] Generally, for search, the following can be applied:

- It should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness;
- It should take an experienced employee 5 minutes to search one regular file drawer for responsive file folders; and
- It should take 3 minutes to search one active email account and transfer the results to a separate folder or drive.

(Guide to FOIP, p. 50)

[16] Justice estimated the record is 250 pages total. With respect to document search and retrieval for paper records, Justice calculated no time or cost. For search of electronic records, Justice stated, “[o]ne hour was allotted for document search and retrieval, the total cost amounted to \$30.00...” In terms of justifying this hour, Justice stated as follows:

We would like to note that request [reference number of first file] is a separate and distinct request from [reference number of second file] and the records would not overlap. The records responsive to [reference number of second file] were created in response to [reference number of first file]...

The one hour search time is a collective search of emails and records of several individuals from Court Security and our branch that were involved in the initial request [reference number for first file]. The search would be mostly of emails but would involve at least one electronic folder. The search would be completed by the individuals who were involved in the initial request.

[17] With Justice’s explanation, I am satisfied with Justice’s estimate of 1 hour (or 60 minutes) of search time for electronic records, and will include this time in my calculation.

Preparing

[18] Preparation includes time spent preparing the record for disclosure including time anticipated to be spent physically severing exempt information from records. The test related to reasonable time spent on preparation is generally that it should take an experienced employee 2 minutes per page to physically sever (Guide to FOIP, p. 51).

[19] Justice estimated it would take 6 hours (360 minutes). Using my office's test that it should take 2 minutes per page to sever, I estimate it should take 500 minutes to sever 250 pages. As subsection 9(2) of FOIP states that an applicant shall not be required to pay an amount greater than the estimated amount, I will use Justice's time estimate of 6 hours (360 minutes).

Reproducing

[20] Fees for the reproduction of records are pursuant to subsection 6(1) of the FOIP Regulations. The FOIP Regulations provides for \$0.25 per page for photocopying or computer printouts (Guide to FOIP, p. 52).

[21] The Ministry calculated a cost of \$62.50 to print 250 pages; I agree with this cost. In my final calculation, however, I will account for the fact the Applicant agrees to receive records electronically to reduce the fee by the full amount for reproduction of \$62.50. This would mean the Applicant would agree to receive them by email as opposed to on a USB stick, which would involve some cost.

Total fees

[22] As per subsection 6(2) of the FOIP Regulations, where the search for responsive records exceeds two hours, the government institution can charge \$15.00 for every half hour in excess of two hours for search or preparation.

[23] Based on the times I have assessed for search, preparation and reproduction, I calculate the fee estimate as follows:

Description	Unit Cost	Total
Search	60 minutes x (\$15.00 per 30 minutes)	\$30
Preparation	360 minutes x (\$15.00 per 30 minutes)	\$180.00
Reproduction	250 pages x \$0.25/page	\$62.50
Subtotal		\$272.50
Less first two hours	2 hours x \$30/hour	(\$60.00)
Total		\$212.50

[24] My calculation is the same as Justice's fee estimate of \$212.50. As such, I find Justice's fee estimate was reasonable. In saying this, I note the Applicant stated they are willing to accept electronic records. If the Applicant remains willing to accept the records electronically by email, I recommend Justice further reduce its fee estimate by the cost for reproduction, or \$62.50, for an adjusted fee estimate of \$150.00.

IV FINDING

[25] I find Justice's fee estimate was reasonable.

V RECOMMENDATION

[26] I recommend Justice further reduce its fee estimate by the cost for reproduction, or \$62.50, for an adjusted fee estimate of \$150.00 if the Applicant receives the record by email.

Dated at Regina, in the Province of Saskatchewan, this 27th day of April, 2021.

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