

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF ██████████ IN RELATION TO FEES LEVIED  
FOR INFORMATION REQUESTED BY SASKATCHEWAN PROPERTY  
MANAGEMENT CORPORATION**

By an Access to Information Request Form dated June 27, 2000, ██████████  
██████████ (the "Applicant") requested information from the Saskatchewan Property Management Corporation (the "Respondent") regarding reports dealing with the Provincial Health Laboratory in Regina.

The Request was worded as follows:

"Please provide all reports and/or other documents prepared by or for or held by SPMC relating to all building systems at Provincial Health Lab (Regina) since 1990."

In a letter from Ms. Leslie Krug, Access Officer, Freedom of Information, for the Respondent, dated August 22, 2000, the Respondent advised the Applicant as follows:

"Our office is currently processing your request for access to information on reports and other documents relating to building systems at the Provincial Health Lab.

However, due to the large volume of records requested, access to the records will be given upon payment of the fees prescribed by *The Freedom of Information and Protection of Privacy Act* and Regulations. Our estimate of those fees is as follows:

Photocopying at \$0.25/page: approximately 650 pages	\$162.50
Search and preparation time at \$15.00/half hour: 26 hours	\$780.00
<b>TOTAL</b>	<b>\$942.50</b>

Access will be given upon payment of a \$471.00 deposit, payable to "Saskatchewan Property Management Corporation". We will not proceed further with the document search until we have your

confirmation that you wish to proceed with the application, accompanied by payment of the deposit and the completed white copy of the enclosed form.

If you wish to request a review of this decision, you may do so within one year of this notice. To do so, you must complete a "Request for Review" form, which is available at the same location where you applied for access. Your request should be sent to the Mr. Gerald Gerrand, Q.C., Acting Information and Privacy Commission, #700 - 1914 Hamilton Street, Regina, Saskatchewan, S4P 3N6."

The Applicant then replied to the Respondent, in a letter dated August 29, 2000, which stated:

"Attached please find the required form to pay for access to records sought in my access request of June 29, 2000, and a cheque to cover the deposit required.

In making this payment, I wish to draw to your attention the following:

- 1) You should be aware that, as per the regulations of the Freedom of Information and Protection of Privacy Act, the first two hours of work by an institution to search and prepare a record for release are not to be charged to an applicant.
- 2) Your estimate indicates that (including the 2 hours "free") the institution expects to spend 28 hours searching and preparing the record for release. I will require confirmation and evidence showing how this time was actually spent: for example, a copy of the time-card(s) of the individual(s) doing the work, or other such record which shows the actual time spent. (You should also be aware that, in the case where the estimate is greater than the actual time spent, only the time actually incurred may be charged.)
- 3) You should also be aware that the regulations regarding fees are applicable only to the work related to finding the records and preparing them for release. Any time spent by the institution to "vet" the record or examine the record for possible exemptions can not be charged to an applicant. The regulations are clear in that fees may only be charged where access to a record is given - no fees may be charged where access to a record is denied.
- 4) You are also aware that the department of labour has provided access (at no charge) to records held by that department relating to the Provincial Health Lab. Please do not duplicate those efforts.

I trust that these points are in accord with your understanding of the Act and the regulations, and what has taken place with regard to this request for access to information.

However, even if you do not agree with these points, you have my cheque and may proceed with providing the documents.”

The Applicant then wrote to me, by letter dated September 5, 2000, requesting that I review this matter. His letter stated as follows:

“This is a request for review, made pursuant to the Freedom of Information and Protection of Privacy Act of Saskatchewan. The applicant seeks recommendations from the Commissioner concerning the fees charged in respect of the applicant’s Access to Information request.

The background to this request is relatively straightforward and is easily summarized. On June 27<sup>th</sup>, 2000, the applicant made a formal request for information to SPMC (the Saskatchewan Property Management Corporation) for information concerning the Provincial Health Laboratory in Regina. SPMC responded to this request on July 25<sup>th</sup>, 2000, indicating that it was extending the time to respond to August 28<sup>th</sup>, 2000. Then on August 22<sup>nd</sup>, 2000, SPMC responded further by granting access upon payment of fees, estimated at \$942.50. The applicant forwarded a deposit in the amount of \$471.00 (Please see attachments for copies of all this material.)

With respect to this request for review, I submit that there are two main issues to consider: first; are the fees charged “reviewable” by the commissioner? Second; what recommendations are possible, if the first question is answered in the affirmative?

On the first question, I submit that the matter of fees does indeed fall within the scope of the commissioner. Support for this is found in the Act itself. Section 49(1) of the Act allows for reviews of decisions made by government heads pursuant to section 7, 12, or 37 of the Act. Specifically, section 7(2)(a) of the Act outlines how access to a record is to be provided “*on payment of the prescribed fee*”. As such, it flows that decisions by government heads, as they relate to fees, are matters properly within the scope of the commissioner.

The alternative, that the decisions of heads regarding fees is not a matter open to review, would expose the process to abuse. It would allow department heads to determine fees without concern that the determination may be examined. It would be open to department heads to choose to ignore the regulations of the Act, as

they pertain to fees. As such, I submit, even where an applicant would be able to show a determination of fees is contrary to the regulations, if the matter is not open to review, that applicant would have no recourse. That there ought to be recourse, by way of review, seems clear, especially in light of the fact that the Act allows a commissioner to review decisions of heads made pursuant to the Act. The determination of fees, I submit, must also be made pursuant to the Act, and the determination ought to be similarly open to review.

There is a secondary issue involved in this particular case which may require some discussion as well. It concerns the fact of the applicant has submitted a deposit which may be taken as acquiescence on the matter of fees. However, that is not the case and, in any event, ought not – it is submitted – affect how the matter is handled by the commissioner. First, the applicant has explicitly indicated to the department that the matter of fees charged is not satisfactory. The unsatisfactory elements are outlined in a covering letter accompanying the deposit monies. (See attached.) As such, it could not be taken that the payment of a deposit automatically relieves the department of any review regarding its determination of fees. Further, there is nothing in the Act which prevents the applicant from seeking a review, save that the request for a review must happen within one year of having received a decision from a head.

I turn now to the second main matter, that is: what recommendations are possible in this particular matter. It is, I submit, open to the commissioner to review the fees charged in this matter to determine if the charges fall within the Act and regulations.

The Act and the regulations allow for the charging of a long list of fees. In this matter, two are relevant: search fees and photocopy fees.

On the issue of “search” fees, there are several matters for the commissioner to consider.

First, has the department followed the regulations and applied the appropriate fee? The regulations indicate that the first two hours of a search for a record are not to be charged to an applicant. There is no indication that this rule was followed. As such, I submit, the search fee ought to be reduced by that amount.

Second, has the department charged fees for work not within the scope of “search” and “preparation”? There is no evidence from the department that this rule has been followed. Indeed, indirect evidence shows the contrary to be so. The department seems to indicate that it intends or expects to spend some 26 hours to locate

and prepare the information for release. It should be noted that "preparation" time may only be related to the actual time spent to reproduce and package the information for release. It does not include time spent by department officials to "vet" the information. It may properly include time spent by the department in making "black-out" marks on the information, if portions are being severed. However, the time may not include the deliberations and considerations of the department as it determines which sections (if any) ought to be severed. The regulations are explicit in that regard, stating that fees may only be charged for information that is released, not for information that is withheld.

Further on the matter of time spent, it should be noted that a modern photocopy machine can reproduce a normal page of text in about 4 seconds. Depending on the machine, an attendant may have to individually load pages for copying, or the machine may be able to handle that collation on its own. In either case, including actual copying time, a single page of text would need no more than 5 seconds to be reproduced. As such, reproducing 650 pages could not reasonably be expected to take more than .9 hours. Similarly, if a "black-out" process were required, to sever portions of text, the application of the severing marks could not reasonably take more than a few minutes in total. This preparation function requires only that a person transcribe marks from an original to the copy being released. To make these marks on some pages could not take more than ten seconds per page - that is; time to scan an original, find the matching text in the copy, and make the deleting mark. Applying this process to 650 pages could not reasonably be expected to take more than 1.8 hours.

From these two functions it is reasonable to expect that about 2.7 hours may be needed by the department to prepare information for release. From this, one is left with the indication that some 23 or more hours is being taken by the department to "search" for the information. The position would have one believe that a department of government, in this day and age, does not maintain open and active files in a coherent and easily accessible form. Beyond defying belief, there is again no evidence to support the position and the much indirect evidence to the contrary.

It should be noted that two other departments have processed, or are processing, similar requests for information (the department of health and the department of labour). Both of those departments were able to respond to the request without requiring any fees at all (the department of labour supplying more than 500 pages, it is to be noted) or by requiring a relatively small fee (five hours of time charged, after two "free" hours, by health). Even if the time spent searching for documents is proportionate to the number of pages prepared, which is a tenuous proposition

at best, the estimate of SPMC does not hold. The ratio is greater.

Ultimately, estimations and suppositions about how the department conducts a response to a request for information must yield to tangible evidence in support of how much time was actually spent by the department.

As such, it remains open to the commissioner to examine more direct evidence on the point, such as time cards or other accounting systems used by SPMC to support its determination of charges. It may even be of use to the commissioner for visit the offices of SPMC, to be shown the physical lay out and the accessibility of files.

It should be noted that it is well within the powers of the commissioner to examine or inspect any document or thing controlled by a department, in order to conduct a review.

In conclusion, it is the submission of the applicant that the fees charged by SPMC in respect of the access to information request of June 27<sup>th</sup>, 2000 are – *prima facie* – not supportable by the Act and the regulations. It is respectfully left to the commissioner to determine amounts which are more appropriate.”

Then, in a formal Request for Review dated September 20, 2000, addressed to me, the Applicant requested a review of this matter, stating that he disagreed with the Respondent’s estimate of fees.

By letter dated November 27, 2000, I advised the Respondent of the Applicant’s Request for Review, and asked the Respondent to provide me with its reasons for the justification of the charges imposed in this matter.

In a letter dated November 30, 2000, the Applicant wrote to me as follows:

“I have received a copy of your letter of November 27<sup>th</sup>, 2000 to Leslie Krug at SPMC concerning my request for a review of the setting of fees for an access to information request relating to building systems at the Provincial Health Lab.

My objective today is to provide you with some additional information on the subject, which may or may not illuminate the issue.

I am enclosing a large binder that was sent as part of the "response" of SPMC to the access to information request. As you will note, the binder is – essentially – a manual on how to use a computer system.

It is, I submit, arguable as to whether or not the inclusion of this old manual was responsive to the request for information. While the request may, on the surface, seem rather broad, it ought not to have been taken so broad as to include a 1989 reference manual. The inclusion of the manual, I submit, may have been to "pad" the request such that the fees would be high.

There is another issue on this manual: did the department "reproduce" the manual ... or simply provide its original or a second copy they had on hand?

I am enclosing exactly what I received, to offer you an opportunity to examine that question. I submit that if the department can not, itself, produce an original manual; or show that the manual provided was reproduced by them (and not an available "second copy") then, at least the photo-copy fees relating to the binder must be revised.

I further submit that your findings on this matter would illuminate the overall approach adopted by the department in setting fees.

I hope this additional information is useful to you.

Finally, I have not made any copies of the enclosed binder. However, the contents are of no use to me whatsoever, and I therefore entrust it and its contents to you, for use in work on the review of the fees, and I have no expectation that the binder will be returned to me."

By letter dated December 18, 2000, the Respondent replied to my November 27, 2000 correspondence as follows:

"Thank you for your letter of November 27, 2000.

The materials you provided to me do not disclose the reasons [REDACTED] [REDACTED] thinks the fees in this case were inappropriate. It appears that his reasons were contained in a letter to you dated September 5, 2000, which is not contained in the materials. Nevertheless, I can explain how the estimate of fees was arrived at and what the actual costs were. SPMC's estimate of costs and correspondence dated July 25, 2000, August 22, 2000 and October 10, 2000, are attached to this letter for your review.

██████████ initial application for access to “all reports and/or other documents prepared by or for or held by SPMC relating to all building systems at Provincial Health Lab since 1990” was received by SPMC on June 29, 2000. It was determined that this request would necessitate a search through a large number of documents. Accordingly, I sent a letter to ██████████ on July 25, 2000, extending the deadline by an additional 30 days. During this period, I made inquiries as to how much time would need to be spent on search and retrieval of the documents. Four employees had files pertaining to the Provincial Health Lab. The nature of the application necessitated a search through the files each employee had accumulated over the past 10 years. The estimates provided by each employee were as follows:

Ray Morhart, Building Operator	8.0 hours
Eldor Schmidt, Project Administration	6.0 hours
Al Bateman, Project Co-ordinator	8.0 hours
Howard Arndt, Manager, Energy Management	6.0 hours
<b>TOTAL</b>	<b>28.0 hours</b>

Since fees can only be charged after the first two hours of search and retrieval, an estimate was prepared based on 26 hours of search and retrieval time. The estimate was also based on 650 pages of photocopying (the actual amount of photocopies was closer to 900 pages). The total amount of the estimate provided to ██████████ was \$942.50, of which ██████████ paid one half. When the documents were ready for release, ██████████ was asked to pay the remaining portion of the estimated fees.

At that time, I understood that each of the above employees had spent at least the amount of the estimated time searching for and retrieving documents. However, since receiving your letter I have asked each person to clarify exactly how much time he actually spent searching for and retrieving documents. As a result of this inquiry, I have learned that Howard Arndt spent only 2 of his estimated 6 hours searching for and retrieving documents. Ray Morhart actually spent 7.5 years searching for and retrieving documents.

Accordingly, the actual hours spent on search and retrieval amount to the following:

Ray Morhart, Building Operator	7.5 hours
Eldor Schmidt, Project Administration	6.0 hours
Al Bateman, Project Co-ordinator	8.0 hours
Howard Arndt, Manager, Energy Management	2.0 hours
<b>TOTAL</b>	<b>23.5 hours</b>



Therefore, the actual cost to the applicant should have been as follows:

Photocopying at \$0.25/page: approximately 650 pages	\$162.50
Search and preparation time at \$15.00/half hour:21.5 hours	\$645.00
<b>TOTAL</b>	<b>\$807.50</b>

It is apparent that [REDACTED] was overcharged by \$135.00. Accordingly, SPMC will undertake to immediately reimburse [REDACTED] for this amount.”

By letter dated July 18, 2001, the Respondent provided me with further explanation of its position with respect to this matter. In this letter, the Respondent stated that:

“In response to your letter of July 11, 2001, I am enclosing a copy of my letter to you dated December 18, 2000 as well as a listing of the documents which were provided to [REDACTED]. You will note from the letter, that SPMC undertook to reimburse [REDACTED] in the amount of \$135.00 with respect to the charge for search and preparation of the records and I can advise that SPMC did, in fact, reimburse him. Furthermore, I believe the letter provides a complete answer to the issues raised in [REDACTED] letter of September 5, 2000, notwithstanding the fact that I did not have the benefit of reviewing his letter when I prepared my response to you.

Nevertheless, in the course of today’s letter, I will address the issues raised by [REDACTED] in both his letters:

A. Request for Review dated September 5, 2000

1. [REDACTED] submits that the search fee ought to be reduced by 2 hours since there is no indication that we did so in our August 22, 2000 letter.

As you can see from the December 18, 2000 letter, I originally estimated that the search and retrieval fees would be 28 hours. You will also note that in my August 22, 2000 letter to [REDACTED], this estimate was reduced to 26 hours. Accordingly, I submit that the estimate of search and retrieval time was appropriately reduced by 2 hours.

2. [REDACTED] asks whether SPMC charged fees for work other than search and preparation time and he suggests that the total time spent photocopying and deleting portions of documents should only amount to 2.7 hours.

In response to this question, I will refer you to the second paragraph of the December 18<sup>th</sup> letter, where it is explained that the estimate of “search and preparation” time, pertains only to the time spent by four different employees, in the search and retrieval of all relevant documents since 1990. The estimate of fees does not include any time associated with photocopying or other work. In fact, with respect to the matter of photocopying, it is my understanding that *The Freedom of Information and Protection of Privacy Act* does not authorize SPMC to charge for time spent photocopying. The only cost that is recoverable is \$0.25 per page of photocopying.

3. [REDACTED] submits that the amount of time spent in search and retrieval is unreasonable, especially given the number of pages of material yielded by the search and he specifically refers to the fees charged by the Departments of Health and Labour.

In answer to this submission, I can advise that as the operator of the Provincial Health Lab, SPMC generates and maintains far more records with respect to the building systems of the Lab than either the Department of Health or the Department of Labour. One of the employees who was involved in the search for the records informed me at the time, that he had a whole filing cabinet full of files on the Provincial Health Lab which he would have to look through. It is important to remember that in his request, [REDACTED] asked for:

“all reports and/or other documents prepared by or for or held by SPMC relating to all bldg. systems @ Prov. Health Lab since 1990”.

I would submit that the scope of this request necessitated a search through a very large number of documents and that the hours spent by the employees are thereby justified. I would also submit that the fact that the search yielded a relatively small number of documents is irrelevant. The search was necessary in order to comply with the request.

B. Letter dated November 30<sup>th</sup>, 2000

1. [REDACTED] questions whether the inclusion of the manual was responsive to his request.

I would submit that the manual is certainly a document that relates to the building system at the Lab and therefore falls within the scope of his request.

2. [REDACTED] questions whether SPMC actually reproduced the manual and suggests that SPMC must produce an original and prove that it is an original or reduce the fees.

I can advise that the manual was reproduced and if necessary, I will provide you with the original.

3. [REDACTED] suggests that the inclusion of the manual may have been to "pad" the fees.

There was certainly no intention to "pad" the request. As I mentioned above, we only collect \$0.25 per page for photocopying. I would submit that this amount is not sufficient to cover the employee's time spent in photocopying. For this reason, SPMC is certainly not interested in wasting valuable employee time in reproducing documents for which the applicant has no use. I would suggest, that in future, [REDACTED] should consider either narrowing the scope of his requests or providing us with an explanation as to what information he is really interested in receiving."

Also included with this letter was a copy of an internal memorandum dated November 19, 2000, in which the Respondent detailed the list of materials provided to the Applicant in response to his request. This list consisted of 21 separate items.

The relevant provisions of *The Freedom of Information and Protection of Privacy Act* are as follows:

"7(2) The head shall give written notice to the applicant within 30 days after the application is made:

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available."

The relevant provisions of *The Freedom of Information and Protection of Privacy Regulations* are as follows:

"6(2) Where time in excess of two hours is spent in searching for a record requested by an applicant or in preparing it for disclosure, a fee of \$15.00 for each half-hour or portion of a half-hour of that access time is payable at the time when access is given.

7(2) Where the amount of an estimate exceeds the actual amount of fees determined pursuant to Section 6, the actual amount of fees is the amount payable by the application.

8(1) No fees are payable where access to a record is refused."

In my view, Section 7(2)(a) *The Freedom of Information and Protection of Privacy Act* allows me to review the decision of a head of a government department regarding the fee applicable with respect to an application.

Section 6(2) of the Regulations provides that time spent in searching for records requested or in preparing these records for disclosure is chargeable to an Applicant who has requested the information. The Applicant has provided me with a copy of a decision of the Ontario Information and Privacy Commissioner dated September 8, 1988, dealing with the Ministry of Agriculture and Food. A portion of this decision discusses whether the amount of the fees estimate in that matter was in accordance with the terms of the Ontario Act. Having reviewed this decision, I note that the Ontario Act's provisions quoted therein are more detailed with respect to the charges that may be incurred with respect to requests for access. Section 57(1) of the Ontario Act states as follows:

“Where no provision is made for a charge or fee under any other Act, a head may require the person who makes a request for access to a record or for correction of a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.”

The Applicant relies on this Ontario decision to support his position that preparation time is only allowable for the actual time to reproduce and package the information requested for release. In my view, the Ontario decision is not of assistance in determining the issue referred to me for Review. As indicated, the Ontario Act's provision is more detailed than Section 6(2) of the Saskatchewan Regulations and restricts charges to the specific items listed in the Section 57(1).

The Applicant also acknowledges that preparation time may include actual severing time. His position is that deliberation time regarding which portions of the requested material should be severed cannot be considered to be preparation time. The Applicant draws this interpretation from the provision in the Regulations indicating that fees can only be charged if information is released.

In my view, search and retrieval time by a government department will often be the most significant portion of time spent with respect to complying with a request for information. It is

reasonable for a government department to expect to be compensated for its search and retrieval time, and in my view, the wording of the Regulations permits this type of time to be chargeable to an Applicant. The Respondent states that it only charged the Applicant for search and retrieval time in this matter, and not for time spent to prepare the documents for disclosure. As such, it is necessary for me to review only whether the time charged was reasonable with respect to searching for the disclosed documents, and not whether the time spent to prepare them for disclosure was reasonable. I note that in this case, the Applicant's request was very broad in scope. In general, the Respondent's search and retrieval time charged in this matter appears to me to be within an appropriate range.

I also note that included in the list of documents provided by the Respondent to the Applicant were three pre-1990 documents. As the Applicant's request only referred to documents "since 1990", these documents should not have been included. One of these pre-1990 documents was the binder referred to by the Applicant in correspondence to me. Since the Applicant only requested documents from 1990 onwards, I recommend that the Respondent refund to the Applicant the portion of the fees charged in this matter that represents the costs of locating and producing these three documents for disclosure.

In conclusion, excepting the fees described in the preceding paragraph, it is my view that the fees charged by the Respondent to the Applicant in this matter were reasonable, and I decline to recommend that any other portion of these fees be refunded to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 2<sup>nd</sup> day of August, 2001.

GERALD L. GERRAND, Q.C.  
Commissioner of Information  
and Privacy for Saskatchewan