

**SASKATCHEWAN**  
**OFFICE OF THE**  
**INFORMATION AND PRIVACY COMMISSIONER**

**REPORT F-2007-001**

**Saskatchewan Northern Affairs**

**Summary:** The Applicant requested access to records from Saskatchewan Northern Affairs (Northern Affairs) and was given a fee estimate. The Applicant applied to the Office of the Information and Privacy Commissioner of Saskatchewan (OIPC) to request a review of the fee estimate. The Commissioner found that Northern Affairs erred in failing to address the request for a fee waiver. The Commissioner determined that the fee estimate from Northern Affairs included work to be done by two other government departments on records neither in the possession nor in the control of Northern Affairs. The Commissioner further determined that the fee estimate was not properly prepared and failed to provide the information necessary for the Applicant to decide whether to proceed with the request. Northern Affairs failed to satisfy the burden of proof that the fee estimate was reasonable. Furthermore, Northern Affairs failed to satisfy the implicit duty to assist.

**Statutes Cited:** **Saskatchewan:** *The Freedom of Information and Protection of Privacy Act*, [S.S.1990-91, c. F-22.01 as am.], ss. 2(1)(d), 2(1)(e), 5, 6, 7(1)(a),(b), 7(2)(a), 7(2)(e), 9, 11(1)(a),(b), 11(2)(a),(b), 24(1)(k)(i),(ii), 24(2), 29  
*The Freedom of Information and Protection of Privacy Act Regulations*, [c. F-22.01 Reg 1], ss. 6(2), 7, 9

**Authorities Cited:** Saskatchewan OIPC Reports F-2004-003, F-2004-005, F-2004-007, F-2005-005, F-2006-001, F-2006-004; Saskatchewan OIPC 2004-2005 and 2005-2006 Annual Reports

## I. BACKGROUND

[1] On July 19, 2005, the Applicant requested access to documents from Saskatchewan Northern Affairs (Northern Affairs). The Applicant requested information on “[h]ow many funding payments were made to North West Communities Wood Products when funding commitments were not met since 1999?” The Applicant also requested a waiver of fees related to the access request.

[2] After we commenced our formal review, we were provided with an email of August 2, 2005 from an official in Northern Affairs addressed to both “Department A” and to “Department B”. These are government institutions for purposes of *The Freedom of Information and Protection of Privacy Act* (the Act or FOIP). This email included the following:

*We are dealing with a further FOI request from [the Applicant] respecting the above. Specifically, [the Applicant’s] July 19 request asks: “How many funding payments were made to North West Communities Wood Products when funding commitments were not met since 1999?” Because the question is awkwardly worded, I spoke with [the Applicant] to seek clarification. His interpretation of “funding commitments” is any contractual commitment made by NWCWP.*

*If [Department A] or [Department B] prefer, I could have SNA [Saskatchewan Northern Affairs] “transfer” the application to your departments, as it relates to agreements between your departments and NWCWP. However, because SNA provided a consolidated response to the previous request for copies of funding agreements between the Government and NWCWP, and because some of those agreements were jointly administered and funded by two of our departments, I suggest we continue to deal with [the Applicant’s] related FOI questions in the same coordinated manner.*

*On the basis of input from [Access Officer, Department B] and my own estimate for reviewing SNA files, I propose to send [the Applicant] an “estimate of costs” letter on Wednesday based on four days of research to determine if any such records exist – one day (8 hours) for each of [Department A] and [Department B] and two days (16 hours) for Northern Affairs.*

[3] On August 3, 2005, a fee estimate from Northern Affairs totaling \$960.00 for 32 hours was provided to the Applicant for the documents requested. The explanation given for the estimated amount was as follows: “*It will therefore be necessary for the departments*

*involved to locate and review their files related to the company to determine if such records do exist.”*

[4] In the course of the review it was determined that Northern Affairs had received several access requests from the same Applicant and in the past the Applicant had been provided with what was described by Northern Affairs as “*a consolidated response*”. In those other cases, the records responsive to the request involved agreements that were jointly administered and funded by two different departments. In those cases, Northern Affairs’ finance and administration functions were administered out of Department B. All expenses were entered into the MIDAS accounting software program by Department B. Northern Affairs up until 2003-2004 was a sub-vote under Department B. These funding agreements with North West Communities Wood Products were joint agreements between Northern Affairs and Department B.

[5] On August 10, 2005, our office received a written request from the Applicant to review the fee estimate of Northern Affairs. The Applicant asserted that the estimated fees for searching and preparing records he had applied for were “*excessive and prohibitive.*”

## **II. RECORDS AT ISSUE**

[6] There are no records at issue since the question to be addressed is the adequacy of the fee estimate provided by Northern Affairs to the Applicant and the response to the fee waiver request.

## **III. ISSUES**

- 1. Was the access request in conformity with the Act?**
- 2. Was the initial response of Northern Affairs to the access request appropriate?**
- 3. When should Northern Affairs start to deal with the fee waiver request?**
- 4. What response is appropriate to a fee waiver request?**
- 5. Was it appropriate to include fees for work to be done by other government institutions?**
- 6. Are the fees estimated by Northern Affairs reasonable?**
- 7. Did Northern Affairs fulfill its duty to assist?**

#### IV. DISCUSSION OF THE ISSUES

##### **Jurisdiction of the OIPC**

[7] Northern Affairs is a 'government institution' within the meaning of section 2(1)(d) of the Act and therefore is subject to the Act.

[8] The Applicant has requested that I review the fee estimate provided by Northern Affairs. I found in Report F-2005-005 [25] to [28] that I have authority to review fees and fee estimates.

[9] The relevant provisions of the Act are as follows:

*5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.*

*6(1) An applicant shall:*

*(a) make the application in the prescribed form to the government institution in which the record containing the information is kept; and*

*(b) specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject matter to identify the record.*

*(2) Subject to subsection (4) and subsection 11(3), an application is deemed to be made when the application is received by the government institution to which it is directed.*

*(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.*

*(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.*

...

*7(1) Where an application is made pursuant to this Act for access to a record, the head of the government institution to which the application is made shall:*

*(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or*

*(b) transfer the application to another government institution in accordance with section 11.*

*(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;*

...

**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.*

...

(3) *Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.*

(4) *Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced for the records for which access is sought.*

(5) *Where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee.*

...

**11(1)** *Where the head of the government institution to which an application is made considers that another government institution has a greater interest in the record, the head:*

(a) *may, within 15 days after the application is made, transfer the application, and, if necessary, the record to the other government institution; and*

(b) *if a record is transferred pursuant to clause (a), shall give written notice of the transfer and the date of the transfer to the applicant.*

(2) *For the purposes of this section, a government institution has a greater interest in a record if:*

(a) *the record was originally prepared in or for the government institution; or*

(b) *the government institution was the first government institution to obtain the record or a copy of the record.*

[10] The relevant sections of *The Freedom of Information and Protection of Privacy Regulations* (the 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 for each half-hour or portion of a half-hour of that excess time is payable at the time when access is given.*

...

**7(1)** *For the purposes of subsection 9(2) of the Act, \$50 is prescribed as the amount of fees beyond which an estimate must be given by the head.*

(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 applicant.*

...

**9** For the purposes of subsection 9(5) of the Act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

- (a) where the actual cost of responding to an application varies from the total of the prescribed fees that are applicable to the application;
- (b) where payment of the prescribed fees will cause a substantial financial hardship for the applicant and:
  - (i) in the opinion of the head, giving access to the record is in the public interest; or
  - (ii) the application involves the personal information of the applicant;
- (c) where the prescribed fee or actual cost for the service is \$10 or less

## **1. Was the Access Request in Conformity with the Act?**

[11] The access request was for “[h]ow many funding payments were made to North West Communities Wood Products when funding commitments were not made since 1999?”

[12] This request is for information. The access provisions in Part II of the Act however are record driven. Furthermore, a reasonable person would likely find the request somewhat confusing and unclear. Section 6(1)(b) of the Act requires that a request be comprehensible. Section 6(3) of the Act permits the government institution to suspend processing of the access request until the applicant supplies “*additional details that might lead to identification of the record*”. An employee of Northern Affairs, other than the Access Officer, spoke with the Applicant by telephone to clarify the request. The Northern Affairs employee was apparently satisfied after the telephone exchange that the request was clear. As Northern Affairs did not invoke section 6(3) of the Act, I find that Northern Affairs was satisfied it understood what records the Applicant sought.

[13] It was appropriate for the government institution to communicate with the Applicant to clarify the access request. Such action is consistent with the implied duty to assist<sup>1</sup> that must be met by government institutions. This duty has been described by our office as a duty to respond openly, accurately and completely to an applicant. It is unclear why the

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<sup>1</sup> SK OIPC Reports F-2004-003, [12] to [15]; F-2004-005, [19]; F-2004-007, [13] to [17]; F-2006-001, [96]; F-2006-004, [13]. Available at [www.oipc.sk.ca](http://www.oipc.sk.ca).

Access Officer was not however engaged in this dialogue with the Applicant. Later in this Report I will revisit the issue of fragmentation of responsibility within Northern Affairs for responding to this access request.

[14] I find that, given the actions of Northern Affairs, the access request was in conformity with the Act.

## **2. Was the Initial Response of Northern Affairs to the Access Request Appropriate?**

[15] As noted above, it was appropriate for Northern Affairs to engage the Applicant in a telephone conversation to obtain sufficient clarity with respect to the record being sought by the Applicant.

[16] The next section of the Act engaged on these facts would be section 7(2)(a). The response in this case took the form of the August 3, 2005 letter from Northern Affairs' Access Officer, Freedom of Information (hereinafter the Access Officer). This letter included the following statement:

*There are no specific records that provide the information related to your request. It will therefore be necessary for the departments involved to locate and review their files related to the company to determine if such records do exist. Therefore, attached to this letter is an "Estimate of Costs" form that details the estimated expenses of processing your application. A deposit of one half the estimated cost is required prior to the further processing of your application. Therefore, if you wish to continue your application, please return the completed form and together with a cheque or money order for \$480.00 payable to the Minister of Finance.*

[17] It was appropriate for Northern Affairs to advise the Applicant that to process the access request there would be costs in excess of \$50.00. This appears to correspond with sections 9(3) and (4) of the Act and Regulation 7(1). I will comment later on the specific content and form of the fee estimate.

**3. When Should Northern Affairs Start to Deal with the Fee Waiver Request?**

- [18] A closer examination of Northern Affairs' August 3, 2005 response reveals a couple of problems. One is that the original access request included a request for a waiver of fees. The Applicant requested a fee waiver in the original Access to Information Request Form. This was done by the Applicant checking the box on the form "*Check if requesting waiver of fees: I request that the payment of fees related to this request be waived because payment will cause me substantial financial hardship. Details are as follows:*".
- [19] To our knowledge, no particulars were provided by the Applicant in support of the fee waiver request. It appears that Northern Affairs did not respond to the fee waiver request as there is no evidence of correspondence from Northern Affairs nor evidence of any verbal discussion between the Applicant and the Northern Affairs Access Officer concerning the fee waiver request.
- [20] It appears that Northern Affairs proceeded to prepare its fee estimate but took no action in response to the fee waiver request. This would mean that there would undoubtedly be additional delay if the Applicant is required to wait for the fee estimate from Northern Affairs and only then receive for the first time communication from Northern Affairs outlining what kind of material would be required to enable the government institution to make its determination in respect of the fee waiver request.
- [21] Consistent with the implicit duty to assist, Northern Affairs should have contacted the Applicant immediately upon receipt of the request for the fee waiver and advised the Applicant as to what information would be required to be able to assess the fee waiver request. Ideally all government institutions should have a form letter or document that explains the Act's fee waiver provision and that indicates the kind of information that is required to enable the government institution to assess a fee waiver request. By sending such information to the Applicant at an early date, further delays can be avoided once the fee estimate has been prepared and supplied to the applicant.



#### **4. What Response is Appropriate to a Fee Waiver Request?**

[22] Section 9(5) of the Act provides that: “*Where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee.*”

[23] The prescribed circumstances are addressed in section 9 of the Regulations. Since this review deals only with a general information request and not a personal information request, the two relevant tests are as follows:

- 1) Will payment of the prescribed fees cause a substantial financial hardship for the applicant? and
- 2) In the opinion of the head, is access to the record in the public interest?

[24] Northern Affairs should have invited the Applicant to provide sufficient information to enable Northern Affairs to determine if a ‘substantial financial hardship’ would be caused by a fee requirement. This determination turns on the unique circumstances of the Applicant. It would entail certain financial information being supplied by the Applicant. Obviously this would be sensitive information and would need to be closely held by only those individuals in Northern Affairs who had a legitimate ‘need-to-know’ in order to respond to the access request.

[25] I understand that at the material time the Saskatchewan Government had not provided any written guidance for government institutions on fee waivers, the test of substantial financial hardship or the types of information that would be appropriate for the Applicant to submit in support of the fee waiver request.

[26] I find that Northern Affairs should have a policy that identifies the criteria that will be canvassed in assessing the public interest and the test for financial hardship.

**5. Was it Appropriate to Include Fees for Work to be Done by Other Government Institutions?**

[27] A second problem with Northern Affairs' fee estimate is that it included work to be done by other government institutions, namely Department A and Department B.

[28] The right of access under the Act is to "records that are in the possession or under the control of a government institution".<sup>2</sup> [emphasis added] The government institution that receives an access request has a number of options that it may exercise within 30 calendar days of receiving an access request which include:

- 1) It can respond that it has no responsive records pursuant to section 7(2)(e) of the Act;
- 2) It can respond by transferring the request to another government institution pursuant to section 11 of the Act;
- 3) It can respond to the Applicant pursuant to section 6(3) of the Act that it needs more specificity in the request before it can respond in accordance with section 6(1)(b) of the Act; or
- 4) It can provide the Applicant with a fee estimate and wait for the Applicant to pay one-half of that fee estimate before proceeding to process the access request.

[29] In this case, Northern Affairs elected to follow option 4) above. It did so by providing to the Applicant a fee estimate of \$960 for 32 hours of anticipated work to search for responsive records and to prepare the record. This was manifest in the letter dated August 3, 2005 from Northern Affairs to the Applicant.

[30] The structure of the Act is that each separate government institution has individual responsibility for statutory compliance. Whenever a government institution receives a formal Request for Access under the Act, clear responsibilities are triggered for the "head"<sup>3</sup> of that government institution.

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<sup>2</sup> FOIP s. 5

<sup>3</sup> FOIP s. 2(1)(e)

[31] In other words, the minister of each government department is the head for purposes of the Act. There is provision allowing the minister to formally delegate in writing his or her responsibility to another.<sup>4</sup> That minister is accountable for the way his or her government institution responds to any access to information request. The Act is written such that accountability and responsibility can be traced directly to individual departments and their respective heads. Section 7(1) of the Act specifies that:

*[w]here an application is made pursuant to this Act for access to a record, the head of the government institution **to which the application is made** shall:*

*(a) consider that application...;or*

*(b) transfer the application...*

[emphasis added]

[34] Section 7(2) of the Act specifies that:

***the head** shall give written notice to the applicant within 30 days after an application is made:*

*(a) stating that access to the record or part of it will be given on payment of the prescribed fee...*

[emphasis added]

[35] Section 9(2) of the Act on fees states that “...**the head** shall give the applicant a reasonable estimate of the amount...” [emphasis added]

[36] It is inappropriate and contrary to the Act for any government institution to purport to act on behalf of other government institutions in responding to an access request.

[37] I understand that an official in Northern Affairs decided that, because of an earlier request from the same applicant, the way that request had been handled and because of certain linkages involving two other departments and Northern Affairs in certain programs, it seemed logical for Northern Affairs to coordinate the response on behalf of all three departments. Such a decision, however, reflects a lack of understanding of the structure and operation of the Act. It also muddles the kind of clear responsibility and accountability that is fundamental to the Act.

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<sup>4</sup> FOIP s. 60

- [38] We have determined copies of the August 3, 2005 letter from Northern Affairs to the Applicant were sent by Northern Affairs to the Access Officer at Department B, the Access Officer at Department A and the Freedom of Information Coordinator for Saskatchewan Justice. It is not clear what the ‘need-to-know’ might be for the Freedom of Information Coordinator at Saskatchewan Justice.
- [39] In addition Northern Affairs sent an e-mail dated July 26, 2005 that communicated to these other departments both the nature of the access request and the identity of the Applicant.
- [40] In the case at hand, Northern Affairs originally provided an estimate to the Applicant in which a total amount was presented without any breakdown of hours, activities and correlative costs. The amount of work estimated was simply noted at 32 hours with a corresponding total cost of \$960.00. The letter accompanying the estimate elaborated that the estimated cost was based on the necessity of “*the departments involved to locate and review their files...*”. It was not until exactly a year later, after several promptings by our office, that Northern Affairs produced a second letter regarding the fee estimate, dated August 3, 2006, in which the total of \$960 was broken down into more discrete components. This also clarifies that the term “*departments*” in Northern Affairs’ August 3, 2005 letter referred to three entirely distinct government departments (not just business units within Northern Affairs), and that the fee estimate included not only the number of hours predicted for Northern Affairs to comb its files for the records sought by the Applicant (namely 16 hours), but also the number of hours ostensibly required by Department B (8 hours), and of the Department A (8 hours), to comb their respective files for the responsive records.

[41] This is problematic in two respects:

(a) **Disclosure to Those with No Need-to-Know**

[42] The identity of the Applicant was disclosed to persons outside of Northern Affairs who presumably had no need-to-know the identity to enable Northern Affairs to respond in terms of records within its possession or control.

[43] The names of any applicant together with information about that applicant's request for access would qualify as "personal information" within the meaning of section 24(1)(k). That section provides as follows:

*24(1) Subject to subsections (1.1) and (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:*

*...*

*(k) the name of the individual where:*

*(i) it appears with other personal information that relates to the individual; or*

*(ii) the disclosure of the name itself would reveal personal information about the individual.*

[44] Section 24(2) of the Act excludes certain kinds of information from the definition of "personal information," but is not applicable to this situation.

[45] Section 29 of the Act prohibits disclosure of personal information without consent unless one of the twenty-two enumerated circumstances applies. Sending particulars of the Applicant's Request for Access including his identity from Northern Affairs to another government institution would constitute a disclosure. None of the twenty-two circumstances in section 29 applies to justify this non-consented disclosure. This analysis assumes that there has been no transfer of the request in accordance with section 11 of the Act.

[46] Earlier in this Report, I noted the particular history of some linkage between the departments in question. I find that history is not sufficient reason to ignore the clear requirements of the Act.

**(b) Scheme of the Act**

- [47] If other departments may have responsive records, the scheme of the Act would be that the Access Coordinator for the government institution receiving the access request should encourage the Applicant to make further access requests to those other departments or, where appropriate, transfer the request to another department that has a greater interest in the record.
- [48] If it was Northern Affairs' intention to be helpful to the Applicant, the process followed in this case did not achieve that objective. The evidence shows that even though the request was made to Northern Affairs, Northern Affairs appears to have taken it upon itself to provide the fee estimate on behalf of other government institutions. In taking it upon itself to submit an estimate that included the fee estimates of other government departments, Northern Affairs acted contrary to the Act's requirements that "***the head** of the government institution to which the application is made shall...*"<sup>5</sup> respond to the access request. [emphasis added]
- [49] In this case, there is no evidence that an identical access request was also made to Department B and to Department A.
- [50] Speaking for other departments, or at least purporting to do so, not only constitutes an overreach on the part of the department in question, but also prevents the Applicant from exercising the rights the Act codifies. Depending on whether consultation has occurred with other departments on whose behalf Northern Affairs is speaking, such action may also preclude or impair the exercise of the discretion of the heads of those other departments on the question of waiving or adjusting access fees if they determine such waiver or adjustment may be appropriate. The first two hours of searching for responsive records and reviewing them are free.<sup>6</sup> If the Applicant made separate requests to these departments, he would be entitled to six hours in the aggregate without charge. By attempting to act on behalf of two other departments, Northern Affairs deprived the Applicant of four free hours of search/preparation time.

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<sup>5</sup> FOIP s. 7(1)

<sup>6</sup> FOIP Regulations s. 6(2)

**6. Are the Fees Estimated by Northern Affairs Reasonable?**

[51] I discussed the purpose and elements of a fee estimate in Report F-2005-005 at [18] and [19].

[52] I also previously determined that the government institution bears the burden of proof to establish that a fee estimate is reasonable.<sup>7</sup>

[53] Northern Affairs provided the Applicant with a document entitled *Estimate of Costs* on August 3, 2005. This is a printed form that refers to a “*search and preparation fee*”. It indicates as follows:

<i>Excess time at the rate of \$15.00 per half hour</i>	
<i>No. of hours</i> _____32_____	\$960.00
...	
<i>Total Estimated Cost</i>	\$960.00
<i>Deposit Required</i>	\$480.00

[54] I note that this form is not prescribed by the Act or the Regulations.

[55] Northern Affairs has produced no written policy that deals with the treatment of fee estimates and fee waivers.

[56] I considered fees in some detail in Report F-2005-005 and also discussed what information needs to be furnished to the applicant. I found that the government institution needs to breakout for the applicant estimated costs for (1) searching for responsive records and (2) preparing the record for disclosure. I also discussed in that Report those items that were compensable and those items that were not compensable. The *Estimate of Costs* provided to the Applicant in this case does not comply with our specific recommendations in Report F-2005-005. The result is that it leaves the Applicant disadvantaged in not knowing whether or not the government institution is attempting to claim fees to which it may not be entitled under the Act.

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<sup>7</sup> FOIP s. 61; SK OIPC Report F-2005-005, [29]

[57] Furthermore, in Report F-2005-005 [75] I recommended that any estimate of fees should be accompanied by an interim notice that indicates to the applicant whether, if the estimated fees are paid, access will likely be provided to the records sought. This is a modified version of a well-established Ontario practice and is in the interests of fairness to any applicant in Saskatchewan. I see no evidence that such an interim notice was provided by Northern Affairs to the Applicant in this case.

[58] The failure of Northern Affairs to provide an interim notice puts the Applicant in the difficult position of deciding whether to proceed with paying the deposit without an adequate basis to know whether, at the end of the process, he may receive anything useful.

## **7. Did Northern Affairs Fulfill its Duty to Assist?**

[59] Previous Reports have determined that government institutions have a duty to assist applicants based on the power and knowledge imbalance between applicants and public bodies<sup>8</sup>. The duty to assist consists largely of a proactive, transparent, communicative and timely response taken by the public body *vis á vis* individuals who make access requests. It involves respecting the spirit, as well as the letter, of the law. As found in our Report F-2004-003, paragraph [15], “*to realize and respect the ‘right’ guaranteed to Saskatchewan residents by the Act, there is an implicit requirement for government institutions to assist applicants and to respond openly, accurately and completely to an access request.*”

[60] In the case at hand, the duty to assist would include directing the Applicant to other relevant public bodies if doing so would be likely to assist the Applicant in gaining access to the information/records in question, assisting the Applicant in refining his access request and/or facilitating an open, complete and accurate response to the Applicant.

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<sup>8</sup> SK OIPC Report F-2004-003.



- [61] I find that Northern Affairs failed to discharge its duty to assist the Applicant by:
- a) failing to advise the Applicant that Department A and/or Department B may have responsive records;
  - b) failing to provide the Applicant with particulars of the information required by Northern Affairs to assess his request for a fee waiver;
  - c) failing to provide adequate particulars of the global fee estimate; and
  - d) failing to provide an interim notice as to whether the Applicant was likely to receive any documents in any event.

## **V. CONCLUSION**

[61] This file highlights significant problems in the organization of Northern Affairs to manage access to information requests. In this case, those problems resulted in an inappropriate response to the Applicant, a failure to deal with a fee waiver request, and excessive delays in providing our office with a submission in support of its original actions in dealing with the access request.

[62] In the course of our review we have identified a surprising number of persons engaged to a greater or lesser extent in processing this access request. No less than five different persons within Northern Affairs, one lawyer at Saskatchewan Justice, the Freedom of Information Coordinator at Justice, at least one person in Executive Council Office, at least two persons in Department B and at least one person in Department A were all involved in dealing with this access request. At least two different persons within Northern Affairs discussed the file with the Applicant. The involvement of so many persons contributed to the delays on this file. Instead of one properly trained FOIP Coordinator making the necessary decisions, it appears that almost all decisions, both minor and major involved an interdepartmental ‘committee approach’. It appears that at least some of those various persons involved had little or no formal access and privacy training or experience.

[63] All of these factors most likely contributed to a cumbersome and inefficient process but also didn’t assist Northern Affairs in meeting its statutory requirements.

## **VI. RECOMMENDATIONS**

[64] I recommend that Northern Affairs address the fee waiver request of the Applicant.

[65] I recommend that Northern Affairs provide the Applicant with a revised estimate in accordance with our Report F-2005-005 within 60 days in respect of those records that are or may be in the possession or under the control of Northern Affairs.

[66] I further recommend that Northern Affairs provide the Applicant with an interim notice in accordance with our Report F-2005-005 within 60 days.

[67] I further recommend that Northern Affairs develop a policy to deal with fee waiver requests including a sample form to assist any applicant seeking a fee waiver provide the appropriate information to enable Northern Affairs to make its determination.

[68] I further recommend that Northern Affairs ensures that it appoints a senior individual with the specific mandate to oversee FOIP responsibilities including:

- a) the training of staff;
- b) the development of policy and procedures;
- c) the development of appropriate forms;
- d) increased awareness of the Act's responsibilities; and
- e) streamlined procedures for dealing appropriately with access requests.

Dated at Regina, in the Province of Saskatchewan, this 22<sup>nd</sup> day of March, 2007



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R. GARY DICKSON, Q.C.  
Information and Privacy Commissioner for  
Saskatchewan