



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 015-2024

Ministry of Education

March 25, 2024

Summary:

The Applicant submitted an access to information request to the Ministry of Education (Education). Education issued a fee estimate of \$900 and requested a deposit of \$450.00 to proceed with processing their request. The Applicant requested a review of Education's fee estimate. During the review, Education determined it had made an error and calculated a revised fee estimate of \$858.00, resulting in a 50% deposit of \$429.00 to proceed with processing the request. The Commissioner found that Education's revised fee estimate is reasonable. The Commissioner recommended that Education continue processing the access request if the Applicant pays the 50% deposit of \$429.00, as outlined in Education's revised fee estimate.

I BACKGROUND

[1] On January 17, 2024, the Ministry of Education (Education) received an access to information request from the Applicant requesting the following records:

Please provide documents showing all costs associated with billboard advertising since August 1, 2023.

[2] On January 24, 2024, Education issued a \$900 fee estimate to the Applicant advising that a deposit of \$450.00 would be required to proceed with processing the request.

[3] On January 25, 2024, the Applicant asked my office to review Education's fee estimate.

[4] On February 12, 2024, my office notified the Applicant and Education that my office would be undertaking a review.

[5] On February 21, 2024, the Applicant provided their submission to my office. On March 13, 2024, Education provided its submission to my office.

II RECORDS AT ISSUE

[6] This review is about Education's fee estimate for the records requested by the Applicant; therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Was Education's fee estimate reasonable?

[8] Subsections 9(1) and 9(2) of FOIP provides 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.

[9] Subsection 9(2) of FOIP required a government institution to provide a fee estimate where the cost for providing access to the records exceeds the prescribed amount of \$100 which

is found in subsection 7(1) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations).

[10] The *Guide to FOIP*, Chapter 3, “Access to Records”, (*Guide to FOIP*, Ch. 3) at page 72, indicates that 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.

[11] There are generally 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 reproducing records.

[12] I will assess each fee separately. As Education did not quote a fee for reproducing fees, I will not include that fee in my review. Education’s fee estimate, provided to the Applicant on January 24, 2024, is as follows:

	Type of Fee	Calculation of Fees	Total
1	Time required to search for records	3 hours x \$15.00/half hour	\$90.00
2	Time required to prepare records for disclosure	29 hours x \$15.00/half hour	\$870.00
3	Photocopies or computer printouts of Records	0 pages x \$0.25/page	\$0.00
4	LESS:	2 hours free x \$15.00/half hour	(\$60.00)
Total amount of fees required to process access request			\$900.00

1. Fees for searching records

[13] Subsection 6(2) of the FOIP Regulations describes the fee formula government institutions can apply when estimating a fee for searching or preparing records. Subsection 6(2) of the FOIP Regulations provides 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.

[14] Page 74 of the *Guide to FOIP*, Ch. 3, provides that 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 listing of records either on paper or electronic.
- Pulling paper files/specific paper records out of files.
- Reading through files to determine whether records are responsive.

[15] The *Guide to FOIP*, Ch. 3 at page 75, provides 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.
- Having someone review the results of the search.

[16] The *Guide to FOIP*, Ch. 3 at page 75, also provides that generally, the following has been 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.

- It should take 3 minutes to search one active email account and transfer the results to a separate folder or drive.

[17] Education’s submission outlines that the relevant branches/individuals identified to conduct the search for records included the Communications and Sector Relations (CSR), the Project Advisor, and Corporate Services. Its submission also provided that:

On January 22, 2024, the Project Advisor replied that they had approximately 10 emails and 4-5 documents, a total of 10-15 pages.

On January 22, 2024, the Director of LSP [Legislative Services and Privacy] and the Director of Correspondence and Case Management (CCM) had several email exchanges related to this request. The Director of CCM asked who should conduct the search, to which the Director of LSP responded that all staff that may have records related to the request should conduct the search to ensure that records are not missed. The Director of CCM then asked about whether they should count each email in a chain individually, or just the final email in the chain. The Director of LSP was concerned that this may cause an unreasonably high cost estimate and asked the Director of CCM to only count the final email in the chain.

On January 22, 2024, CSR advised that they had approximately 1,148 pages of records. Including the records from the Project Advisor, there were approximately 1,165 pages of records.

[18] As indicated in its fee estimate, Education estimated that the search and retrieval of electronic records would take three hours to complete. In its submission, Education stated that it had reached this estimate as “the branches had a mixture of the types of records, it was determined that 12 pages per minute was a reasonable estimate of the time it would take to search and retrieve records.”

[19] Given the estimated 1,165 pages of records, the total hours to search can be calculated as follows:

$$1,165 \text{ pages} / 12 \text{ pages per minute} = 97 \text{ minute or } 1.6 \text{ hours}$$

[20] As it was unclear how Education had calculated 3 hours for the search for records, my office followed up with Education for clarification. On March 22, 2024, Education advised

this was an error on their part for the calculations and provided a revised fee estimate as follows:

	Type of Fee	Calculation of Fees	Total
1	Time required to search for records	1.6 hours x \$15.00/half hour	\$48.00
2	Time required to prepare records for disclosure	29 hours x \$15.00/half hour	\$870.00
3	Photocopies or computer printouts of Records	0 pages x \$0.25/page	\$0.00
4	LESS:	2 hours free x \$15.00/half hour	(\$60.00)
Total amount of fees required to process access request			\$858.00
Deposit Required 50%			429.00

[21] I note that Education also emailed the Applicant the revised fee estimate on March 22, 2024.

[22] Based on the revised fee estimate provided to my office on March 22, 2024, I find that Education’s estimate of 1.6 hours for searching an estimated 1,165 pages at a cost of \$48.00 is reasonable.

2. Fees for preparing records

[23] As noted earlier, subsection 6(2) of the FOIP Regulations describes the fee formula government institutions can apply when estimating a fee for preparing records. That fee formula is \$15.00 for every half hour of preparation that is in excess of one hour for search or preparation.

[24] The *Guide to FOIP*, Ch. 3 at page 75, provides that preparation includes time spent preparing the record for disclosure including:

- Time anticipated to be spent physically severing exempt information from records.

[25] The *Guide to FOIP*, Ch. 3 at page 76, provides that preparation time **does not** include:

- Deciding whether to claim an exemption.
- Identifying records requiring severing.
- Identifying and preparing records requiring third party notice.
- Packaging records for shipment.
- Transporting records to the mailroom or arranging for courier service.
- Time spent by a computer compiling and printing information.
- Assembling information and proofing data.
- Photocopying.
- Preparing an index of records.

[26] The *Guide to FOIP*, Ch. 3 at page 76, also provides that the test related to reasonable time spent on preparation is that it should generally take an experienced employee two minutes per page to physically sever.

[27] In its fee estimate to the Applicant, Education estimated it would take 29 hours to prepare the records for disclosure. Education's submission outlined the following regarding its calculation for the hours for severing and document preparation:

...the Ministry of Education concluded that approximately 75 per cent of the records would require some type of severing. This is because referral type correspondence was included in the search, and most, if not all, of these records would not have been from the Applicant. Therefore, redactions would be required in order to protect the privacy of other individuals. The amount of severing that would be required is assessed on a case by case basis, depending on the records that are requested. Based on 1,165 pages, it was estimated that the time to sever and prepare the documents for release would take approximately 29 hours.

[28] Given the estimated 1,165 pages of records, and Education's estimate that 75% of the records would require some type of severing, the total hours for preparing the records for disclosure can be calculated as follows:

1,165 pages x 75% = 873.75 pages

873.75 pages x 2 minutes per page = 1,747.5 minutes or 29.1 hours

29 hours x \$15.00 for each half hour = \$870.00

[29] Based on the Education's fee estimate for preparing records, I find that Education's estimate of 29 hours at a cost of \$870.00 is reasonable.

Total fees

[30] In summary, the total fee estimate would be \$48.00 (search) and \$870.00 (preparation) for a total of \$918.00. Taking into account the two hours of search and preparation that a government institution cannot charge (or -\$60.00), I calculate the total fee estimate to be \$918.00 - \$60.00 = \$858.00. This is equal to Education's revised fee estimate of March 22, 2024.

[31] I find, therefore, that Education's total revised fee estimate of \$858.00 is reasonable. I recommend that Education continue processing the request if the Applicant pays the 50% deposit of \$429.00, as outlined in Education's revised fee estimate.

IV FINDINGS

[32] I find that I have jurisdiction to conduct this review.

[33] I find that Education's revised total fee estimate of \$858.00 is reasonable.

V RECOMMENDATION

[34] I recommend that Education continue processing the request if the Applicant pays the 50% deposit of \$429.00, as outlined in Education's revised fee estimate.

Dated at Regina, in the Province of Saskatchewan, this 25th day of March, 2024.

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