



Review Report 173-2024

Saskatchewan Workers' Compensation Board

August 14, 2024

Summary: The Applicant made an access to information request to Saskatchewan Workers' Compensation Board (WCB). WCB issued a fee estimate, which the Applicant disputed and asked the A/Commissioner to review. The A/Commissioner found that WCB's fee estimate was reasonable. The A/Commissioner recommended that WCB continue processing the Applicant's access to information request if the Applicant pays the required deposit.

I BACKGROUND

[1] On June 4, 2024, Saskatchewan Workers' Compensation Board (WCB) received the following access to information request from the Applicant:

1. Communications around issues, concerning and formal complaints through letters, emails and texts between Karen Smith to Minister Morgan in relation to Gord Dobrowolsky (WCB board of Directors) and Peter Federko (WCB CEO).
2. Communications around issues, concerning formal complaints through letters emails and texts from Marg Romanow to Minister Morgan in relation to Gord Dobrowolsky (WCB board of Directors) and Peter Federko (WCB CEO)
3. Communication from Minister Morgan to Gord Dobrowolky (WCB board of directors) and Peter Federko (WCB CEO) pertaining [sic] to the complaints, issues or concerns raised by Karen Smith and Marg Romanow.
4. Documented reasons for the tow [sic] board members Karen Smith and Marg Romanow dismissal.

- [2] On June 13, 2024, WCB applied to the Commissioner to disregard the Applicant's access request. On June 24, 2024, the Commissioner issued [Disregard Decision 159-2024](#) regarding WCB's application. As the Commissioner refused WCB's application to disregard, WCB was compelled to continue processing the Applicant's access request.
- [3] In correspondence dated June 24, 2024, WCB provided the Applicant with a fee estimate in the amount of \$390.00, requesting that the Applicant pay a deposit of \$195.00 prior to processing the access request.
- [4] At this point, the time for WCB to provide its section 7 decision to the Applicant was suspended pursuant to subsection 9(3) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Accounting for the time elapsed (June 4, 2024, to June 13, 2024), and the time suspending upon WCB's application to disregard and the provision of its fee estimate to the Applicant, a total of nine days would have elapsed.
- [5] On June 26, 2024, the Applicant asked the Commissioner to review WCB's fee estimate.
- [6] On July 8, 2024, the now A/Commissioner notified the Applicant and WCB of his intent to undertake a review.
- [7] WCB provided its submission on August 7, 2024. The Applicant did not provide a submission.

II RECORDS AT ISSUE

- [8] As this is a review of WCB's fee estimate, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] WCB qualifies as a “government institution” as defined by subsection 2(1)(d)(ii) of FOIP and section 3, PART I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I find that I have jurisdiction to conduct this review.

2. Is WCB’s fee estimate reasonable?

[10] Subsections 9(1) and 9(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.

[11] Subsection 9(2) of FOIP requires 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). Furthermore, applicants are not required to pay any fees beyond what is originally estimated (*Guide to FOIP*, Chapter 3: “Access to Records”, Updated May 5, 2023 [*Guide to FOIP*, Ch. 3], p. 72).

[12] 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*, Ch. 3), p. 72).

[13] There are generally three types of fees included in a fee estimate: 1) fees for searching; 2) fees for preparing a record; and 3) fees for reproduction. In this matter, WCB is not including an estimate for reproduction, so I will only consider fees for searching and preparation.

Searching

[14] Subsection 6(2) of the FOIP Regulations sets out the fee formula government institutions can apply 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.

[15] 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 in searching, examining file indices or listings of paper and electronic records, pulling paper files, and reading through files to determine whether there are records that may be responsive.

[16] The *Guide to FOIP*, Ch. 3 at page 75, provides that search time **does not** include: time spent copying records, time spent physically looking for records such as from office-to-office or off-site, and having someone review the search results.

[17] 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; and
- It should take 3 minutes to search one active email account and transfer the result to a separate folder or drive.

[18] In my blog post, [3 Minutes for a Search](#), I have also stated that, as a rule of thumb, my office will accept that it takes an employee 3 minutes to search their email account for each search parameter.

[19] In its estimate to the Applicant, WCB quoted \$420.00 for searching and \$30.00 for preparation, minus \$60.00 for the first two hours of time as provided by subsection 6(2) of the FOIP Regulations. This resulted in a fee estimate of \$390.00.

[20] Regarding its search estimate of \$420.00, WCB stated it would need to search multiple locations and scan potentially hundreds or thousands of different types of documents, including emails, for responsiveness. Regarding time, WCB estimated a review of certain types of documents, such as emails, would take upwards of 51 hours. This is in addition to other time estimates for other locations. While estimating is not an exact science, it would have been helpful for WCB to have considered using keyword searches or testing a representative sample to further refine its fee estimate [*Guide to FOIP*, Ch. 3, p. 75].

[21] Nonetheless, WCB quoted an estimate of one hour to search paper records, and 13 hours to locate electronic records. Fourteen hours at a rate of \$15.00 per half hour (or \$30.00 per hour), is \$420.00. Based on the information WCB provided, its estimated search fee of \$420.00 is reasonable.

Preparation

[22] 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 for every half hour of preparation that exceeds two hours for search or preparation.

[23] 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 severing the record. Page 76 states that preparation time does not include:

- deciding whether to claim an exemption;
- identifying records requiring severing;
- identifying and preparing records requiring third-party notice;
- packing records for shipment;

- transporting records for shipment;
- spending time compiling and printing information;
- assembling information and proofing data;
- photocopying; or
- preparing an index of records.

[24] 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.

[25] Regarding preparation, WCB stated on its fee estimate to the Applicant that it would require approximately two hours to prepare the records. It reduced this time to one hour based on the experience of the employee completing the review. One hour preparation at \$15.00 per half-hour (or \$30.00 per hour) is \$30.00. Given the scope of WCB's potential search and what WCB believes will result, \$30.00 is reasonable for preparation.

Total fee estimate

[26] The total fee estimate is the search estimate plus the preparation estimate, minus the first two hours of time. In this matter, this is as follows:

$$(\$420.00 + \$30.00) - \$60.00 = \$390.00$$

[27] Based on my calculations, I find WCB's fee estimate of \$390.00 is reasonable. A 50% deposit, then, is \$195.00. I recommend that WCB continue processing the Applicant's access to information request if the Applicant pays the required deposit of \$195.00.

[28] I add that, as per subsection 9(2) of FOIP, if WCB's final fee is less than its estimated amount, it can only charge the Applicant the lesser amount. This could result in WCB owing the Applicant a partial refund from any fees the Applicant has paid.

IV FINDINGS

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

[30] I find that WCB's fee estimate is reasonable.

V RECOMMENDATION

[31] I recommend that WCB continue processing the Applicant's access to information request if the Applicant pays the \$195.00 deposit.

Dated at Regina, in the Province of Saskatchewan, this 14th day of August, 2024.

Ronald J. Kruzeniski, KC
A/Saskatchewan Information and Privacy
Commissioner