



REVIEW REPORT 213-2024

Financial and Consumer Affairs Authority of Saskatchewan

November 12, 2024

Summary:

The Applicant made an access to information request to Financial and Consumer Affairs Authority of Saskatchewan (FCAA) under *The Freedom of Information and Protection of Privacy Act* (FOIP). FCAA issued a fee estimate, which the Applicant disputed and asked the A/Commissioner to review. The A/Commissioner found that FCAA's fee estimate was not reasonable. The A/Commissioner recommended that FCAA, within 30 days of the issuance of this Report, complete its search for records and issue a final decision pursuant to subsection 7(2)(a) of FOIP, which should not include fees for search time and preparation. Fees for reproduction of the records may be charged based on the number of pages identified as responsive to the request, unless the Applicant opts to receive the records in electronic form.

I BACKGROUND

[1] On August 9, 2024, the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) received an access to information request (original request) from the Applicant for the following records relating to the "Maidstone Cemetery Investigation" and dated between January 16, 2023 to the date of the request:

1. Number of Consumer Protection Division personnel involved in the investigation, designate full or part time Name of investigator and assistant(s) as assigned and involved in the investigation as leader or other if not in charge.
2. Number and dates of meeting with Town of Maidstone personnel.
3. Number of non-Maidstone personnel interviewed or contacted during the course of the investigation to date.

4. True copies of interim reports, or final report in respect to the investigation.
5. Meetings by Consumer Protection personnel. Officers or other, including citizens and council in the Town or RM Eldon 471 with Maidstone personnel and officers, and council or other (specify) to change:

Licensee definition (used in all cemetery bylaws in the Province of Saskatchewan in bylaws 01.02 2022, to Owner in bylaw 06-2023 with schedule b, a purported contract

Section 2(e) of by laws [sic] 01 02 2023 to 2(e) of by law 02-2023.

6. Any other changes made Maidstone personnel, officers, or other with parties as noted in section 5 supra, with respect to the bylaw or other administrative records of the Town of Maidstone.
7. True copy of approval of the changes by the FCAA and CPD and Maidstone, officials, council or other.
8. Reports, written or typed, or oral (summaries) with dates with respect to the investigation.
9. Meetings and dates and reports of meetings with RM 471, council or administrator or other and copies of any reports or summaries.
10. Reasons for 20 MONTHS time taken FOR THIS MATTER to this date, and summary of results to this date.

Date of completed report, actual or expected. Date to be completed if not done and to be sent to complainant as per Premier Moe's letter of March 21, 2023.

Date of report sent to Minister Eyre's department, and or the office of the Premier. Copies of same. And dates of meeting with same.

- [2] In response to the original request, by letter dated August 26, 2024, FCAA provided the Applicant with a fee estimate in the amount of \$1,935.00 (original estimate), requesting that the Applicant pay a deposit of \$967.50. FCAA advised the Applicant that it would be happy to work with them to modify the request if that would help reduce or eliminate the fees.

- [3] On August 28, 2024, FCAA received an amended access to information request (amended request) from the Applicant in which they requested, for the period between January 16, 2023 to August 28, 2024, the following records:
1. Copy of the most recent report or correspondence from the CPD to the CEO FCAA with reference to the current status, or expected date of completion of the inexplicable length of time (21 months) “investigation” of the Maidstone Cemetery as referenced by the Premier in the March 21 letter submitted hereto.
 2. Copy of the most recent correspondence or directive from the CEO of the FCAA to the CPD requesting an update or report on the afore referenced “Investigation”.
 3. Copy of the most recent report or correspondence to or from the Minister of Justice/Attorney or the Premier in reference to the Maidstone Cemetery “Investigation.”
 4. Any correspondence, or oral summary from the CPD or the FCAA, or any officer therein with an anticipated date of completion of the Maidstone Cemetery “Investigation” provided to the Attorney General Minister of Justice.
 5. Main Topic headings of the sections within the 780 page in the file or updated number, referenced on Page 2 in the letter of August 26 2024 from [the CEO] received August 28 2024. In reference to the Maidstone Cemetery “Investigation”.
- [4] On August 29, 2024, the Applicant asked my office to review FCAA’s fee estimate.
- [5] On August 30, 2024, the Applicant sent by fax a letter to FCAA advising that they intended to “appeal the original estimate.”
- [6] On September 3, 2024, FCAA received a voicemail from the Applicant in which they stated that they wished to work with FCAA to modify the access request to reduce the fees in the original estimate.
- [7] By letter dated September 6, 2024, FCAA provided the Applicant with a “revised fee estimate” noting an error in the original estimate. The revised fee estimate was for \$1,827.50. In its letter to the Applicant, FCAA asked them to clarify whether they intended to withdraw the original access request when they submitted the amended access request.

- [8] On September 9, 2024, the Applicant and the FCAA's Access Officer had a telephone call in which the Applicant advised that they had not received the revised fee estimate. According to FCAA's submission, the Applicant stated that they were:
- ... open to narrowing [their] request, as [their] request came down to records relating to the following two items: the status of the investigation; and the date that the investigation concluded or the anticipated date that the investigation would be concluded.
- [9] FCAA asked the Applicant to confirm in writing any amendments to or withdrawals of the original request and the amended request. The Applicant stated that they would advise FCAA of how they intended to proceed after they received the revised fee estimate.
- [10] On September 17, 2024, the Applicant advised my office and FCAA that instead of withdrawing the original request, they were withdrawing the amended request until my office had completed its review of the original fee estimate.
- [11] On September 20, 2024, FCAA provided the Applicant with a second revised fee estimate (second revised fee estimate). The second revised fee estimate was for a total of \$1,010.00 if the Applicant preferred to receive printed copies of the released records and \$922.50 if the Applicant preferred to receive electronic copies of released records.
- [12] On September 20, 2024, my office sent a notice of review to FCAA advising that the Applicant wished to proceed with a review of FCAA's second revised fee estimate. That same day, my office notified the Applicant of my intent to undertake a review of FCAA's second revised fee estimate dated September 20, 2024. My office advised the Applicant that if they disagreed with the scope of the review or had additional concerns, they should notify my office accordingly.
- [13] FCAA provided its submission on October 17, 2024. The Applicant did not provide a submission or contact my office after receiving the notice of review. However, the Applicant did provide some information to support their position in their request for a review.

II RECORDS AT ISSUE

[14] As this is a review of FCAA's second revised fee estimate, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[15] FCAA 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* (FOIP Regulations). Therefore, I find that I have jurisdiction to conduct this review.

2. Is FCAA's fee estimate reasonable?

[16] 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.

[17] 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. The prescribed amount is set out in subsection 7(1) of the FOIP Regulations (*Guide to FOIP*, Chapter 3: "Access to Records", updated May 5, 2023 [*Guide to FOIP*, Ch. 3], p. 72).

[18] FOIP permits reasonable cost recovery for providing access to records. A "reasonable 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).

[19] There are generally three types of fees that can be included in a fee estimate: 1) fees for searching; 2) fees for preparing a record; and 3) fees for reproduction. FCAA’s second revised fee estimate included all three types.

[20] The FCAA’s second revised fee estimate was broken down as follows:

Type of Fee	Calculation of Fees	Amount of Fee
Search	24 hours x \$15.00/half hour	\$720.00
Preparation	8.75 hours x \$15.00/half hour	\$262.50
Reproduction	350 pages x \$0.25/page	\$87.50
LESS	2 hours free x \$15.00/half hour	(\$60.00)
Total fee estimate		\$1,010.00

[21] Subsection 6(2) of the FOIP Regulations governs the fees chargeable for searching for and preparing the responsive records for disclosure. It states:

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.

[22] Page 74 of the *Guide to FOIP*, Ch. 3, provides that in calculating the time spent searching, government institutions can charge for the time spent by all staff involved in a manual search for records, including time spent locating and identifying responsive records. This includes time spent in 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.

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

[24] The *Guide to FOIP*, Ch. 3 at page 75, also states that generally speaking my office considers that:

- 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.

[25] In my blog post entitled, [3 Minutes for a Search](#), I have also stated that, as a rule of thumb, my office will accept that it takes an employee three minutes to search their email account for each search parameter. This approach was followed recently in my office's Review Reports [133-2024](#) and [173-2024](#).

[26] In instances where the three guidelines do not accurately reflect the circumstances, the government institution should design a search strategy and test a representative sample of records for time taken to complete the search. The time can then be applied to the responsive records as a whole (*Guide to FOIP*, Ch. 3, p. 75).

[27] I will consider FCAA's fee estimate for searching first.

Search estimate

[28] FCAA estimated a fee of \$720.00 for searching emails, calendars and a digital investigation file based on a time estimate of 24 hours. Below I consider all of the circumstances of this case relating to search and conclude:

- The scope of FCAA's search was too broad in that it included a search of emails and calendars of the consumer protection division (CPD) staff who were not assigned to the investigation to which this access to information request relates.
- FCAA chose to conduct a keyword search of the emails, calendar and investigation file but it was not necessary to search using all of the keywords it selected. Further,

in many cases, it could have combined key words to reduce the number of searches that were required.

- FCAA should not have applied the guideline that it takes three minutes per search parameter to search the investigation file. The guideline applicable to digital record holdings, other than email accounts, is that it takes one minute to review 12 digital or paper pages.
- FCAA should not have applied both of the above noted guidelines in calculating the search time. The decision to apply both guidelines resulted in double counting the search time for the email, calendar and investigation accounts/files.
- Finally, FCAA treated the Director's email and calendar accounts as a representative sample of records. FCAA should have calculated the time it took to complete the search of those email and calendar accounts and used that as a basis for estimating how much time was required to search the other email and calendar accounts. FCAA should not have created a representative sample of records **and** applied my office's guidelines regarding search fees for the email and calendar accounts.

[29] I now turn to set out the analysis supporting each of these conclusions.

a) Scope of the electronic searches

[30] FCAA stated that no charges would be applied for the time to search for hardcopy records because the number of those was limited. It claimed that all ten employees and the Director of FCAA's CPD were required to search for email and calendar records. It added that FCAA's CEO was also required to search their email and calendar records for correspondence or meetings between FCAA and the Minister of Justice and Attorney General or the office of the Premier. However, there is only one digital investigation file, and it contained approximately 390 records as of the date of the request.

[31] Regarding the organization of its record holdings, FCAA stated:

CPD is the division responsible for administering and investigating complaints made concerning *The Cemeteries Act, 1999* and would therefore be the division within the FCAA that would have records relating to the investigation referenced by the Applicant in the Access Request.

[32] My office asked FCAA how many CPD staff were assigned to the investigation to which the access to information request relates. FCAA responded that one CPD employee and the Director were assigned to the investigation. It added that other CPD employees were also involved in limited capacities such as for administrative matters like reviewing fax messages, preparing documents for mailing, etc.

[33] In light of this information and given the nature of the access to information request, it would not be reasonable for FCAA to include a search of the email and calendar records for the CPD staff who were not involved in the investigation.

[34] Based on the information provided to my office, FCAA's estimate for search time and fees should have been limited to a search of the records of the investigator initially assigned to the file, the Director of the CPD division and the CEO. Therefore, instead of 11 email and calendar accounts, FCAA was only required to search three email accounts, three calendar accounts, and the investigation file. The fee estimate should have been based on a search of these seven record holdings.

b) Number of keywords chosen for the search

[35] FCAA compiled a list of search terms to be used for its electronic records searches. Its list included a total of 59 search terms the details of which were provided to my office. In calculating the time to complete the electronic searches, it used:

- 21 search terms for emails.
- 12 search terms for calendars.
- 26 search terms for the investigation file.

[36] FCAA stated that the search terms were chosen by it to ensure that its search efforts met the standards set by my office for a reasonable search. Given the broad nature of this access to information request, I appreciate that a large number of keywords would be required to complete the search. However, the nature and number of search terms chosen by FCAA appear to be unreasonable. For example, it appears that FCAA conducted separate searches

for each of the keywords when it could have combined the keywords in many cases to reduce the number of searches required. A single search in the calendar accounts for “Ministry of Justice and Attorney General & Minister of Justice” would have pulled up all of the potentially responsive meetings and avoided two separate searches. This approach would have reduced the number of necessary searches materially.

[37] Another example is its search for records responsive to part one of the request. To find a responsive record that revealed the number of personnel who were assigned to the investigation file, FCAA searched using the names of each of the employees of CPD and the words “leader” and “personnel.” A search for a record that included the answer to part one should have been easily retrievable without such a cumbersome keyword search. I would normally expect that this information would have been documented at the outset of the investigation as a standard practice.

[38] Instead, in relation to this part of the request, FCAA’s estimate allocated three minutes per search for each of the names of 12 staff members of the CPD (this number includes the administrative coordinator). It also allocated three minutes for searching each of the terms “leader” and “personnel” to find this record. This meant that FCAA allocated 15 search terms to find this record and at three minutes per search term it allocated 45 minutes to find this record.

[39] The guideline of three minutes per search term or keyword is only a guideline. It should not be applied in circumstances where it has an unreasonable or unfair result. In this case, it would have been reasonable to combine the keywords given the number of keywords required to complete a reasonable search.

[40] I note that parts one through three and part 10 of the access to information request include questions. FCAA should have worked with the Applicant to clarify the scope of these portions of the request which may have reduced the estimated search time. FOIP does not require government institutions to answer questions that come in an access to information request such as access to information requests that ask why the government institution made certain decisions. FOIP provides access to records and unless answers are in a record,

the government institution is not required under FOIP to answer them (*Guide to FOIP*, Ch. 3, p. 7).

c) Use of my office's guidelines to calculate search time

[41] FCAA estimated the time to complete the keyword searches, based in part on my office's guideline or rule of thumb namely, that it takes three minutes per search term to complete a search. However, this guideline applies to a search of active email accounts, which includes calendars. The guideline to be used in estimating the time to search other digital files or paper records such as word or PDF files is one minute to review 12 pages of records. This is set out in my office's *Guide to FOIP*, Ch. 3 at page 75. The approach has been described and followed in previous reports of my office including Review Reports [243-2021](#) and [133-2024](#).

[42] Therefore, FCAA erred in applying the guideline of three minutes per search term to estimate the time required to search the investigation file.

d) Use of two guidelines to calculate search time

[43] In addition to the guideline that is based on three minutes per search parameter, FCAA calculated additional time for searching emails, calendar entries and the investigation file using my office's guideline that it should take an employee one minute to scan 12 pages for responsiveness. The result was that it arrived at an estimate of 19 hours to do a search based on its search parameters and my office's three-minute guideline, and a further 17 hours to review records for responsiveness. I acknowledge that it then reduced the total time estimate to 24 hours.

[44] By applying the two guidelines, FCAA effectively charged the Applicant twice for the same action because the guideline of three minutes per search parameter includes the review time necessary to identify responsive records or portions of records. This approach was set out in Review Report 243-2021, where I stated:

[24] As noted above it should take an employee three minutes to scan one active email account and transfer the results to a separate folder. This is achieved through search terms based upon the Applicant's request such as "Lemsford Ferry Regional Park", "Lemsford Ferry Regional Park closure". Therefore, the search of the Park Planner's email account should have taken a total of three minutes and not 47 minutes as calculated by PCS.

[25] I add that PCS' estimate for the email search also included 23 minutes of time for the FOIP Co-ordinator to review the records for responsiveness. This is an action that is to take place at the time the records are searched – either the Park Planner identifies the responsive records in search or the FOIP Co-ordinator. PCS cannot charge twice to perform this action. **In other words, PCS cannot charge a search fee to search for the records and then another fee to review the records for responsiveness.** As such, I will not include this time in my calculation.

[Emphasis added]

[45] FCAA's decision to apply both guidelines to all record holdings, that is email, calendar and the investigation file, resulted in double counting the search time. As I said in Review Report 243-2021, government institutions cannot charge a search fee to search for records in an email account and then another fee to review the records for responsiveness.

e) Representative sample of records

[46] FCAA decided to complete a search of the Director's email and calendar records, to arrive at a representative sample of records to be used to calculate the number of records that it needed to be reviewed for responsiveness. Properly applied, the approach of working with a representative sample is consistent with the recommended approach set out in my office's *Guide to FOIP*, Ch. 3 at page 75, and my office's [*Fee Estimate – Quick Calculation Guide*](#) and described above.

[47] However, once FCAA decided to complete a search of the Director's email and calendar accounts using keywords, it should have *calculated* the *actual time* involved in carrying out these searches rather than rely on my office's guidelines. This would have produced a more accurate estimate of the time required to complete the search for email and calendar records.

[48] FCAA did not prepare a representative sample of the investigation file. Therefore, in relation to that file, it was appropriate for FCAA to rely on my office's guideline to calculate the amount of time to conduct the searches. Given the nature of the information in the investigation file, it should have applied the guideline that it takes one minute to review 12 pages of records and used that as a basis for a calculation of the time necessary to search that file. As noted above, it should not have also applied the guideline regarding three minutes per search parameter.

[49] In conclusion, FCAA's search should have been based on a calculation of the time required to search the representative sample of email and calendar records, namely the Director's accounts, which could have been used to determine the time involved in searching other email and calendar accounts. FCAA's search of the investigation file should have been based on the guideline that it takes one minute to review 12 pages of records. As this approach was not followed, FCAA's fee estimate for searching was not reasonable.

Preparation

[50] Like a fee estimate for searching, subsection 6(2) of the FOIP Regulations states that government institutions can charge \$15 for every half hour of preparation time that exceeds two hours.

[51] The *Guide to FOIP*, Ch. 3 at page 75, provides that "preparation time" refers to the time spent preparing the record for disclosure including time spent severing the record. However, as set out on page 76, 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.

[52] In determining if a government institution's estimate is based on a reasonable time for preparation of the records, the *Guide to FOIP*, Ch. 3 at page 76, states that it should generally take an experienced employee two minutes per page to physically sever.

[53] As noted above, FCAA calculated that it would take 8.75 hours to prepare an estimated 350 records for release and therefore, estimated the fee for preparation was \$262.50. Its calculations were based on the premise that there would be responsive records in 11 email and calendar accounts and the investigation file. Having found that FCAA's search should have included three email and calendar accounts and one investigation file, it follows that FCAA's estimation of the number of responsive records and the estimation of the fee for preparation of the email and calendar records is not reasonable.

[54] However, FCAA estimated that 41 of the 48 investigative file search results will be responsive. At a rate of two minutes per page, the fee estimate for preparing these records should have been based on 82 minutes (1.4 hours) which is equal to approximately \$45.00.

Reproduction

[55] The fees that can be charged for the reproduction of records are set out in subsection 6(1) of the FOIP Regulations, which states in part:

6(1) Where access to a record or part of a record is given by providing the applicant with a copy of the record, the following fees are payable at the time when access is given:

- (a) for a photocopy, \$0.25 per page;
- (b) for a computer printout, \$0.25 per page;

[56] FCAA's fee estimate includes a charge of \$0.25 per page for photocopying or computer printouts of an estimated 350 pages for a total of \$87.50. It stated that it offered to provide the Applicant with electronic copies of the records to eliminate the fees for printing and photocopying. FCAA's fee estimate for reproduction accurately describes the amount chargeable for reproduction.

[57] For the reasons set out above, I find that FCAA's fee estimate was not reasonable.

[58] I must now determine the appropriate remedy. If I recommend that FCAA issue a revised fee estimate based on the search of the Director's email and calendar account and the application of the appropriate guideline to the investigation file, that will further delay the Applicant's efforts to obtain access to the records. Nor would it be fair for me to make a recommendation that FCAA search, prepare and reproduce the records and issue a final letter pursuant to subsection 7(2)(a) of FOIP with a fee. If I were to make such a recommendation, the result would be the Applicant would have lost their right to narrow the scope of the request in order to reduce the amount of the fee to be charged.

[59] Furthermore, if I disallow the fee for search but allow a fee of \$45.00 for preparation of the records from the investigation file and reproduction costs are not at issue, FCAA has discretion to waive the fees pursuant to subsection 9(1)(c) of the FOIP Regulations, which states:

9(1) 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:

...

(c) if the prescribed fee or actual cost for the service is \$100 or less.

[60] In these circumstances, I recommend that FCAA complete its search for records and issue a final decision pursuant to subsection 7(2)(a) of FOIP, which should not include fees for search time and preparation. Fees for reproduction of the records may be charged based on the number of pages identified as responsive to the request, unless the Applicant opts to receive the records in electronic form. In that case, no fees should be charged for reproduction.

IV FINDINGS

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

[62] I find that FCAA's fee estimate was not reasonable.

V RECOMMENDATION

[63] I recommend that, within 30 days of the issuance of this Report, FCAA complete its search for records and issue a final decision pursuant to subsection 7(2)(a) of FOIP, which should not include fees for search time and preparation. Fees for reproduction of the records may be charged based on the number of pages identified as responsive to the request, unless the Applicant opts to receive the records in electronic form.

Dated at Regina, in the Province of Saskatchewan, this 12th day of November, 2024.

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