



REVIEW REPORT 243-2021

Ministry of Parks, Culture and Sport

September 13, 2022

Summary: After being dissatisfied with its response to their access to information request, the Applicant requested a review of a fee estimate they received from the Ministry of Parks, Culture and Sport (PCS) in the amount of \$2,730.00. As PCS' fee estimate included charging twice for some of its search time activities, the Commissioner found the fee estimate was not reasonable. The Commissioner recommended that within 30 days of issuance of this Report, PCS issue a new fee estimate to the Applicant in the amount of \$2,490.00.

I BACKGROUND

[1] The Applicant made the following access to information request to the Ministry of Parks, Culture and Sport (PCS), which PCS received on August 23, 2021:

I wish to access all communications, reports, meeting minutes and any other information about any issues regarding Lemsford Ferry Regional Park, including its closure. This information I am interested in includes the following: Internal Ministerial communications; communications and meetings with Lemsford Regional Park Authority and the public; any communications and meeting records pertaining to the RMs on the Lemsford Ferry Regional Park Authority and the RM of Clinworth who administers the regional park; and communication and meeting records with any cabin owner working groups. Please include any attachments, reports, memos, or any other information related to Lemsford Ferry Regional Park. January 2018 to present.

[2] By letter dated September 8, 2021, PCS advised the Applicant it was issuing a fee estimate in the amount of \$2,730.00 and requested a deposit of \$1,365.00 to proceed with the request.

- [3] By email on September 29, 2021, the Applicant requested a review by my office of PCS' fee estimate.
- [4] By emails on September 30, 2021, my office notified PCS and the Applicant that my office would be undertaking a review and invited both parties to make a submission.
- [5] PCS provided my office with its submission on November 10, 2021. The Applicant did not provide my office with a submission.

II RECORDS AT ISSUE

- [6] As this review considers the reasonableness of PCS' fee estimate, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Was PCS' fee estimate reasonable?

- [8] Section 9 of FOIP provides:

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.

(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.

[9] The *Guide to FOIP*, Chapter 3, “Access to Records”, updated June 29, 2021 (*Guide to FOIP*, Ch. 3) discusses fees and fee estimates starting at page 49.

[10] 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. 50).

[11] FOIP is an instrument to foster openness, transparency and accountability in government institutions. Fees should not present an unreasonable barrier to access to information in Saskatchewan. Therefore, fees should be reasonable, fair and at a level that does not discourage anyone from exercising their access rights. At the same time, the fee regime should promote and encourage applicants to be reasonable and to cooperate with government institutions in defining and clarifying their access requests (*Guide to FOIP*, Ch. 3, p. 50)

[12] In its September 8, 2021 fee estimate letter, PCS provided the following fee breakdown to the Applicant:

Type of Fee	Calculation of Fee	Total amount of fees
Time required to search for records	16 hours x \$15/half hour	\$480.00
Time required to prepare records for disclosure	77 hours x \$15/half hour	\$2,310.00
Less:	Two hours free x \$15/half hour	(\$60.00)
Total amount of fees required to process access request	--	\$2,730.00

[13] The September 8, 2021 fee estimate letter advised the Applicant, "... if you wish to proceed with your access request, our office will require a deposit of \$1,365.00." In addition, the letter advised the Applicant, "... as an alternative, we would be happy to work with you to modify the request if that would help reduce or eliminate fees."

[14] The fee estimate letter has estimated two types of fees in order to process the request – searching for records and preparing the records for disclosure. Section 6(2) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) provides the amount a government institution can charge for these two types of fees:

6(2) Where time in excess of two hours is spend 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] I would like to note that this provision requires that the Applicant be provided two hours of search and/or preparation time for free – totaling \$60.00. In the fee estimate letter, PCS has deducted this amount from the total fee estimate. Therefore, PCS appropriately deducted two free hours of search and preparation time from the fee estimate pursuant to section 6(2) of the FOIP Regulations.

[16] I will now consider if each type of fee estimated by PCS was reasonable.

Searching for Records

[17] When preparing a fee estimate to search for records, the government institution should develop a search strategy. 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 listings of records either on paper or electronically.
- Pulling paper files/specific paper records out of files.
- Reading through files to determine whether records are responsive.

(Guide to FOIP, Ch. 3, p. 52)

[18] Time to search for records does not include:

- Time spent to copy the records.
- Time spent going from office to office or off-site storage to look for record.
- Having someone review the results of the search.

(Guide to FOIP, Ch. 3, p. 52)

[19] Generally, the following time has been applied to search for records:

- It should take an experienced employee one minute to visually scan 12 pages of paper or electronic records to determine responsiveness.
- It should take an experienced employee five minutes to search one regular file drawer for responsive records.
- It should take three minutes to search one active email account and transfer the results to a separate folder or drive.

(Guide to FOIP, Ch. 3, p. 52)

[20] In instances where the search time outlined above does not accurately reflect the actual circumstances, the government institution should design a search strategy and test a

representative sample of records for the time it actually will take. The time can then be applied to the responsive record as a whole (*Guide to FOIP*, Ch. 3, p. 52).

[21] In its submission, PCS advised the following in regard to its search efforts:

The park planner responsible for communications with regional parks conducted a preliminary review of electronic and hard copy files related to Lemsford Ferry Regional Park and the participant rural municipalities of the regional park including RM of Clinworth, RM of Happyland, RM of Newcombe, Village of Sceptre, Village of Prelate, and the Town of Leader.

[22] In its submission PCS provided a breakdown of its fee estimate. In its fee estimate breakdown, PCS advised the following for search of email records:

140 emails x four pages each = 560 pages. 1 minute to scan 12 pages = 47 minutes

[23] My office confirmed with PCS that the Park Planner conducted the email search and it was of the single email account.

[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.

[26] In its fee estimate breakdown, PCS advised the following for search of Word files:

315 pages x 1 minute to scan 12 pages = 26 minutes

[27] As previously outlined in this Report, it should take an employee familiar with the record one minute to search 12 pages. Therefore, 26 minutes is appropriate for this search. PCS' fee estimate for the Word document search also included 13 minutes of time for the FOIP Co-ordinator to review the records for responsiveness. Again, you cannot charge twice for the search. Therefore, I will not include the additional 13 minutes search in my calculations.

[28] In its fee estimate breakdown, PCS advised the following for search of PDF files:

3780 pages x 1 minute to scan 12 pages = 315 minutes

[29] Based on one minute to search 12 pages of records, 315 minutes of search time is reasonable. However, PCS has also estimated search time of 157 minutes for the FOIP Co-ordinator to review the PDFs for responsiveness – again charging two times under search. Therefore, I will not include the additional 157 minutes of search in my calculations.

[30] In its fee estimate breakdown, PCS advised the following for search of A-9 Notebooks:

Seven books x 192 pages/book = 1344 pages x 1 minute to scan 12 pages = 112 minutes

[31] Based on one minute to scan 12 pages, 112 minutes is reasonable. However, PCS again estimated the FOIP Co-ordinator time to review the pages for responsiveness at 11 minutes. As they can only charge for this once, I will not include the additional 11 minutes of time in my calculations.

[32] From what I have outlined above, I calculate the total search time as 456 minutes (3 + 315 + 26 + 112) or 7 hours and 36 minutes. As PCS can charge \$15.00/half-hour or portion of a half hour to search for records, I calculate an estimate of \$240.00 for the search.

Preparing Fees for Disclosure

[33] Section 6(2) of FOIP Regulations also provides that a government institution can charge \$15.00/ half hour (or portion of a half hour) to prepare the record for disclosure.

[34] Preparation time includes time spent preparing the record for disclosure, including the time anticipated to be spent physically severing exempt information from records (*Guide to FOIP*, Ch. 3, p. 53).

[35] Preparation time does not include:

- Deciding whether or not to claim an exemption.
- Identifying records that require 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.

Guide to FOIP, Ch. 3, p. 53.

[36] The test related to reasonable time spent on preparation is that generally it should take an experienced employee two minutes per page to physically sever. In instances where the above test does not accurately reflect the circumstances – such as a complex record – the government institution should test the time it takes to sever on a representative sample of records. The time can then be applied to the responsive record as a whole (*Guide to FOIP*, Ch. 3, p. 54).

[37] In its September 8, 2021 fee estimate letter to the Applicant, PCS outlined it would take 77 hours to prepare the records for disclosure totaling \$2,310.00. In its submission, PCS identified that the preparation time was to sever at two minutes per page. I note that PCS' submission indicated it would take 82 hours to prepare the record for disclosure. However,

I must look at the number that it provided to the Applicant in the fee estimate – which was 77 hours.

[38] In its submission, PCS advised my office that its search would result in a total of 6,059 pages. As it has estimated 77 hours to sever these pages, the total number of pages it has estimated to sever is as follows:

77 hours x 60 minutes/hour = 4620 minutes. 2 minutes/page to sever = an estimate of 2310 pages that require severing

[39] Therefore, out of the estimate of 6059 pages, PCS has estimated that 2310 pages will require severing (at two minutes/page). This equals 77 hours or \$2,310.00 at 2 minutes per page.

[40] Based upon my calculations of time for both search and severing, PCS’ total fee estimate should be as follows:

Type of Fee	Calculation of Fee	Total amount of fees
Time required to search for records	7.6 hours (456 min) x \$15/half hour	\$240.00
Time required to prepare records for disclosure	77 hours x \$15/half hour	\$2,310.00
Less:	Two hours free x \$15/half hour	(\$60.00)
Total amount of fees required to process access request	--	\$2,490.00

[41] Taking into consideration that PCS’ fee estimate included charging twice for some of its search time activities, I find PCS’ fee estimate was not reasonable. I recommend that within 30 days of issuance of this Report, PCS issue a new fee estimate to the Applicant in the amount of \$2,490.00.

[42] I do note the Applicant’s access to information request was quite broad. PCS’ September 8, 2021 fee estimate letter stated, in part:

...we would be happy to work with you to modify the request if that would help to reduce or eliminate fees.

[43] Where fees are necessary to process a request, my office encourages government institutions to send the Applicant its fee estimate letter as soon as possible. It is equally important for a government institution to offer to work with an applicant to try to reduce fees. Therefore, I commend PCS for including this in its letter. I would encourage the Applicant to reach out to PCS to see if there is a way to narrow their access to information request and potentially reduce the costs if they so wish.

[44] I would also note that this is only a fee estimate. Once PCS conducts its search for records and prepares the record for release to the Applicant, it must calculate the actual search and preparation time to process the request. Section 7(2) of the FOIP Regulations provides:

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 applicant.

[45] Therefore, once PCS finalizes the request, if the actual work is less than what PCS estimated, the Applicant pays the lesser amount. However, if the actual work costs more than the estimate, the Applicant only pays the estimated cost.

IV FINDINGS

[46] I find I have jurisdiction.

[47] I find PCS' fee estimate was not reasonable.

V RECOMMENDATION

[48] I recommend that within 30 days of issuance of this Report, PCS issue a new fee estimate to the Applicant in the amount of \$2,490.00.

Dated at Regina, in the Province of Saskatchewan, this 13th day of September, 2022.

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