



REVIEW REPORT 062-2023

City of Weyburn

September 20, 2023

Summary:

The Applicant submitted an access to information request to the City of Weyburn (City). The City responded by issuing a fee estimate and the Applicant paid the deposit. After processing the access request, the City issued its final fee, with a balance owing. The Applicant paid the balance but disagreed with the amount and requested that the Commissioner review it. The Applicant also requested that the Commissioner review the City's search efforts. The Commissioner found the City did not demonstrate that its final fee was reasonable and recommended that the City refund \$258.25 (\$570.25 - \$312.50) to the Applicant within 30 days of the issuance of this Report. The Commissioner also recommended that the City develop policies and procedures for handling access requests and fee estimates. The Commissioner further recommended that the City consider making its policies and procedures available to the public on its website. The Commissioner also found that the City conducted a reasonable search and recommended that it take no further action regarding search.

I BACKGROUND

[1] On November 28, 2022, the City of Weyburn (City) received the following access to information request from the Applicant:

1. Provide records that dictated implementation of Weyburn City's COVID masking policy.
2. Provide records that dictated implementation of Weyburn City's COVID vaccination policy.
3. Provide records relating to cost/benefit (risk/reward) analysis conducted before implementing COVID-19 policies.
4. Provide records of how many cases of city employee-based transmissions were there prior to implementing a masking policy.

5. Provide records of how many cases of city employee-based transmissions were there prior to implementing a vaccination/testing policy.
6. Provide records of how many COVID cases were there after masking and vaccination policies were enacted.
7. If masks and social distancing policies worked, then why the need for a vaccine policy? If vaccines work, then why was there a need for a continued masking and social distancing after a vaccination policy came into effect?
8. Provide records that assert (with evidence) that the vaccination policy stopped city employees and Weyburn citizens from contracting COVID.
9. Provide records of pre-determined parameters that informed City Councillors when their goals were met.

[2] On November 29, 2022, the City requested clarification from the Applicant pursuant to subsection 6(3) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant clarified their request and provided a revised access request on December 5, 2022.

[3] On December 8, 2022, the City provided the Applicant a fee estimate of \$814.00, requiring the Applicant to pay a deposit of 50% or \$407.00. The Applicant paid the deposit on December 22, 2022.

[4] On January 13, 2023, the City informed the Applicant that the actual number of pages responsive to their access request was 301, instead of the 500 pages the City had initially estimated. Therefore, the revised fee was for \$570.25, and that the Applicant could collect the records upon payment of the outstanding balance of \$133.25.

[5] On January 18, 2023, the Applicant paid the remaining fees of \$133.25 and provided the City with a USB drive to use. On the same day, the City provided the records to the Applicant on their USB drive.

[6] On March 7, 2023, the Applicant contacted my office to request a review of the City's final fee of \$570.25 and its search efforts. At this time, the Applicant provided their list of concerns (submission) and copy of the responsive records to my office.

[7] On April 12, 2023, my office provided notification to the Applicant and the City of my office's intention to undertake a review.

[8] On June 8, 2023, the City provided its submission to my office. The Applicant did not provide any further submission.

II RECORDS AT ISSUE

[9] As this is a review of the reasonableness of the City's final fee and its search efforts, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] The City is a "local authority" pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Is the City's final fee reasonable?

[11] In their request for review, the Applicant requested that my office review the final fee charged by the City. I am therefore, reviewing the reasonableness of the City's final fee.

[12] LA FOIP is an instrument to foster openness, transparency, and accountability in local authorities. 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 any resident from exercising their access rights. At the same time, the fee regime should promote and encourage applicants to be reasonable and to cooperate with local authorities in defining and clarifying their access requests (*Guide to LA FOIP*, Chapter 3: "Access to Records", updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], p. 73).

[13] Further, subsection 6(2) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides as follows:

6(2) Where the amount of an estimate exceeds the actual amount of fees determined pursuant to this Act, the actual amount of fees is the amount payable by the applicant.

[14] Pursuant to subsection 6(2) of LA FOIP, an Applicant is only required to pay the actual amount of the fees for searching, preparing and copying records.

[15] On December 8, 2022, the City provided the Applicant with the following fee estimate:

Fee type	# of Staff	Fee Calculations	Rate for Calculation	Fees
Electronic records – time to search for and review search results – estimated 2,600 pages of records	5	6.5 hours	\$30/hr	\$195.00
Electronic – conversion to PDF – 500 pages	1		\$0.25/page	\$125.00
Time required to prepare records for disclosure	1	16 hours	\$30/hr	\$510.00
USB Drive			\$14/ea	\$14.00
Less \$30 – section 5(3) LA FOIP Regulations				(\$30.00)
Total Cost Estimate				\$814.00
Deposit Required		50% of total fees		\$407.00

[16] On January 13, 2023, the City issued its final fee to the Applicant as follows:

... According to Section 5 of *the Local Authority Freedom of Information and Protection of Privacy Regulations*, the following fees will apply prior to release:

- Time required to search for records; [sic] 6.5 hours x \$15.00/half hour = \$195.00

- Time required to prepare records for disclosure: 10 hours x \$15.00/half hour = \$300.00
- Copies of records: 301 pages \$0.25 per page = \$ 75.25

Actual Total of ATIR 2022-05	\$570.25
Less [sic] 1 hour free x \$15.00/half hour:	<\$30.00>
Less 50% of Estimated paid December 22, 2022	<\$407.00>
BALANCE OWING:	\$133.25

[17] Regarding how a local authority is to calculate fees, subsections 5(2) and (3) of the LA FOIP Regulations provide as follows:

5(2) 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;
- (b.1) for electronic copies, the actual cost of the portable storage device provided to the applicant;
- ...

(3) Where time in excess of one hour 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.

[18] There are generally three kinds of fees that a local authority can include in its fee estimate:

- Fees for searching for a responsive record;
- Fees for preparing the record for disclosure; and
- Fees for the reproduction of records.

(Guide to LA FOIP, Ch. 3, p. 74).

[19] Before I consider if the City's final fee is reasonable, I note the Applicant questioned why the City charged them for records that were available on the City's website. When my office contacted the City to question this, it explained:

...Some information is/was accessible on the City Website, such as Council minutes and a power point presentation from SHA provided to the applicant in the responsive records...

[20] I note the SHA (Saskatchewan Health Authority) presentation mentioned above is available on the City's website and is 21 pages in length. However, the version available on the City's website is in a video format, while the City provided the Applicant a PowerPoint presentation format. As such, this does not affect the number of pages released to the Applicant.

[21] Also, I note that the email attachment named, "Covid-19 – Prevention and Response Plan" was provided to the Applicant three times. It appears that each document was an updated version and each document was 27, 60 and 64 pages in length respectively, totaling 151 pages. These pages appear to be draft versions, plus a final version. The City could have contacted the Applicant as part of its duty to assist to understand if the Applicant wanted the draft versions, or just the final copy. This would have also saved the City time to search and prepare a record for release, and the Applicant costs. Further, the City could consider making policies and procedures such as this available on its website, which would also save it administrative time and applicants costs, and I recommend that it do so with any of its policies and procedures.

[22] I note, subsection 53.1(1)(a) of LA FOIP provides as follows:

53.1(1) Every local authority shall make reasonable efforts to:

(a) make available on its website all manuals, policies, guidelines or procedures that are used in decision making processes that affect the public by employees of the local authority in administering or carrying out programs or activities of the local authority; or

[23] I also note that in [Investigation Report F11-02](#) issued by Information and Privacy Commissioner of British Columbia (IPC BC), the Commissioner stated in paragraphs – 114, 129 and 141 as below:

[114] The Vancouver Sun believes it is unfair for all the fees associated with a response to an access request to be charged to the applicant when that response is published. It

is of the view that the public interest fee waiver in s. 75(5)(b) of FIPPA should be applied. The disclosure to the public implicitly acknowledges that the records in question are of vital public interest.

...

[129] 6.5 Three Types of Information Suitable for Proactive Disclosure— There are essentially three distinct types of information suitable for proactive disclosure: disclosure of information useful to the public, disclosure of information likely to be the subject of an access to information request and publishing responses to access to information requests. All three types are present in strong proactive disclosure programs.

...

[144] In my view, charging fees for access requests, when they are published at the same time, is unfair to the applicant.

[24] Similarly, in this matter, if the requested information is available on the website, it is not fair to charge the Applicant for those records.

[25] My office noted that the City has a [page on its website](#) addressing Covid-19. However, the City could consider posting its policies and procedures on its website to provide information to the public, without making the public go through the process of making an access request or being charged a fee for access. Then, the City could simply guide the public to its website or provide links to assist the public. Therefore, I find that the City could have taken steps to reduce the fee and recommend that it do so in the future.

[26] Now, I will consider each part of the City's final fee separately.

1. Fees for searching for a responsive record

[27] Fees for searching for a responsive record are pursuant to subsection 5(3) of the LA FOIP Regulations. 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 electronic;

- pulling paper files/specific paper records out of files; and
- reading through files to determine whether records are responsive.

(Guide to LA FOIP, Ch. 3, p. 75)

[28] 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.

(Guide to LA FOIP, Ch. 3, p. 75)

[29] Generally, for search, the following rules can be applied:

- It should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness (or 720 pages per hour).
- 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.

(Guide to LA FOIP, Ch. 3, p. 75)

[30] In its submission to my office, the City provided the following explanation for its fee:

...To expedite the ATIR response time, I calculated the estimate based on the information provided to me by staff and did not review the files at this time. When staff searched the topic 'Covid', 2,600 pages came up which included every email, draft policy, etc. that contained that word. I then asked staff to review the records and narrow their search to only the relevant items requested in the nine points of the request, and the responsive pages were reduced to 505 pages. As a result, the calculation for pages to be converted to PDF was reduced to 500 pages. It wasn't until after the estimate was provided to the applicant and paid, that the information was reviewed by myself and it was found that there were duplicated documents in files submitted as well as some of the information provided was not relevant to the request.

Once the information was compiled and ready for release, in an effort to be reasonable and provide cost savings to the applicant, the fees were recalculated with the number of pages being reduced from the estimated 500 pages to 301 pages...

[31] In its submission to my office, the City confirmed that it had initially issued the estimate based on 2600 pages, for which it had estimated 6.5 hours for search. However, it located 301 pages responsive to the Applicant's request, therefore, total hours for search can be calculated as below:

- 301 pages/ 720 pages per hour = 25 minutes
- Fees for this would be 25 minutes x \$15/half hour = **\$12.50**

[32] Based on 301 pages, the City's charge for search should only have been \$12.50, and not \$195.00 as calculated by the City. This is a difference of \$182.50. I will account for the one-hour search/preparation time that a local authority cannot charge an applicant in my final calculation later in this Report.

2. Fees for preparing the record for disclosure

[33] Fees for preparing the record for disclosure is pursuant to subsection 5(3) of LA FOIP Regulations. Preparation includes time spent preparing the record for disclosure including the time anticipated to be spent physically severing exempt information from records (*Guide to LA FOIP*, Ch. 3, p. 76).

[34] 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.

[35] The test related to reasonable time spent on preparation is generally, it should take an experienced employee two minutes per page to physically sever only. In instances where the above test does not accurately reflect the circumstances (i.e., a complex record), the local authority should test the time it takes to sever on a representative sample of records. The time can then be applied to the responsive records as a whole. Where the preparation of responsive records exceeds one hour, the local authority can charge \$15.00 for every half hour in excess of one hour for search or preparation (as per subsection 5(3) of LA FOIP Regulations) (*Guide to LA FOIP*, Ch. 3, p. 77).

[36] In its submission to my office, the City explained:

...When searching for the records, each staff that was included in the search, [was] City Manager, Human Resource Manager, HR Consultant and Safety Officer; have files under their umbrella: City Manager, HR, Safety...

...Staff searched emails and electronically filed documents for the relevant information. Then all information was provided to me. All files were onsite at City Hall and were found electronically...

[37] The time required to sever 301 pages, however, can be calculated as follows:

- 301 pages x 2 minutes per page = 600 minutes or 10 hours.
- Fees for this would be 10 hours x \$15/half hour = **\$300.00**

[38] Based on severing 301 pages, the City's charge of \$300.00 is reasonable.

3. Fees for the reproduction of records.

[39] Fees for reproduction of records are pursuant to subsection 5(2) of the LA FOIP Regulations. The LA FOIP Regulations provides \$0.25 per page for photocopying or computer printouts (*Guide to LA FOIP*, Ch. 3, p. 77).

[40] Applicants sometimes want records provided to them in electronic format. Local authorities should not charge fees for records provided electronically. However, if the applicant requests the record on a portable storage device, LA FOIP provides that for reproduction of electronic copies for an applicant, the local authority can charge the actual cost of any portable storage device that is used to provide the records. Examples include USB flash drives and memory cards pursuant to subsection 5(2)(b.1) of LA FOIP Regulations (*Guide to LA FOIP*, Ch. 3, p. 77).

[41] In this matter, I note that on January 13, 2023, the City informed the Applicant that following the balance payment, they had the following options to collect the records:

- Email
- USB Flash Drive
- Regular Mail or
- Pick up at City Hall

[42] On January 18, 2023, the Applicant provided the balance of the fee to the City and provided their own USB flash drive, requesting electronic copies of the record. As the City confirmed that all the responsive records were found electronically, it appears it simply transferred the electronic folders to the Applicant's USB flash drive. As such, the City should not have charged the Applicant \$75.25 for reproduction.

Total fee

[43] Therefore, the total fees can be calculated as follows:

- Search fees = \$12.50

- Preparation fees = \$300.00
- Reproduction fees = \$0
- Less one-hour fees = (\$30.00)
- **Total fees = \$312.50**

[44] Based on the above analysis, I find that the City's final fee should have been **\$312.50**.

[45] For the reasons I have outlined above, I find the City's final fees of \$570.25 was not reasonable. Therefore, I recommend that the City refund \$258.25 (\$570.25 - \$312.50) to the Applicant within 30 days of issuance of this Report.

[46] As it confirmed it does not have any, I also recommend, that the City develop and implement a policy and procedure for handling access to information requests, including a section on issuing fee estimates. The City may find the following resources from my office helpful in developing such policy and procedure:

- [Best practices when responding to Access Requests](#)
- [Steps to Charging Fees](#)
- [Fee Estimate – Quick Calculation Guide](#)
- [Understanding the Duty to Assist](#)

3. Did the City conduct a reasonable search for records?

[47] Section 5 of LA FOIP provides 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 local authority.

[48] Section 5 of LA FOIP establishes a right of access by any person to records in the possession or control of a local authority subject to limited and specific exemptions, which are set out in LA FOIP (*Guide to LA FOIP*, Ch. 3, p. 3).

[49] Subsection 5.1(1) of LA FOIP requires a local authority to respond to an applicant's access to information request openly, accurately and completely. This means that local authorities should make reasonable effort to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process. The threshold that must be met is one of "reasonableness". In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable (*Guide to LA FOIP*, Ch. 3, p. 7).

[50] The focus of a search review, including when a local authority states no records exist, is whether the local authority conducted a reasonable search. A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records reasonably related to the access to information request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances. Examples of information to support its search efforts that local authorities can provide to my office include the following:

- For personal information requests – explain how the individual is involved with the local authority (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches/committees/boards were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches/committees/boards included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches/committees/boards included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by:

- alphabet
 - year
 - function
 - subject
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
 - If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
 - Explain how you have considered records stored off-site.
 - Explain how records that may be in the possession of a third party but in the local authority's control have been searched such as a contractor or information management service provider.
 - Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
 - Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
 - Indicate the calendar dates each employee searched.
 - Indicate how long the search took for each employee.
 - Indicate what the results were for each employee's search:
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided.

(Guide to LA FOIP, Ch. 3, pp. 9-10).

[51] The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

[52] In its submission the City explained:

...No Full records were withheld, if information was exempted under the Act in documents, I redacted only that information...

...all staff that might have information relevant to the request were contacted and asked to review all documentation electronically and otherwise. I personally met with each staff member to ensure they fully understood the information that was being sought. Staff searched emails and electronically filed documents for the relevant information. Then all information was provided to me. All files were onsite at City Hall and were found electronically.

- [53] Upon further email exchange with my office, the City further explained that it searched the key term “covid” and provided more information as below:

...The City Manager, Safety & HR have their files saved under their respective department directory (‘Safety’, ‘HR’, ‘City Manager’) on our City’s secure network. These staff have confirmed that anything COVID related has [sic] it’s own electronic folder under their department directory due to the anomaly COVID-19 was/is. These staff were asked to review all hard copy and electronic records (reports, emails, notes, texts, minutes, etc.) in their possession related to the ATIR (Access To Information Request) listed in the points...

Due to many staff working from home, off and on during the time period of the Pandemic, almost all files were electronic. Most responsive records were internal documents in Outlook either via email or memo attachments to staff on COVID-19 updates and policy around COVID-19.

These staff reviewed and confirmed that in reference to the ATIR, there were no texts and only emails sent from their work outlook email accounts.

Staff have confirmed that they kept COVID-19 emails under a directory in their Outlook and performed searches under these directories for responsive email records. There was also email notification from the Province on Statistics for COVID-19 and a presentation in a Regular Council meeting that were included in the responsive records and I assume this information was also available on the Province’s website...

- [54] Based on the above search efforts explained by the City, it appears that its search was conducted by the departments and staff that had knowledge and managed responsive records; it used the key search term “Covid” to find all records regarding covid; it narrowed and provided only records responsive to the Applicant’s access to information request. The City explained its search strategy and why all search was conducted electronically. Therefore, I find that it conducted a reasonable search to locate records requested in the Applicant’s access to information request.

- [55] As such, I recommend that the City take no further action regarding search.

IV FINDINGS

- [56] I find that I have jurisdiction to conduct this review.
- [57] I find that the City's final fee was not reasonable.
- [58] I find that the City conducted a reasonable search for records.

V RECOMMENDATIONS

- [59] I recommend that the City refund \$258.25 (\$570.25 - \$312.50) to the Applicant within 30 days of issuance of this Report.
- [60] I recommend that the City consider making its policies and procedures available online pursuant to subsection 53.1(1) of LA FOIP.
- [61] I recommend that the City develop and implement a policy and procedure for handling access to information requests, including a section on issuing fee estimates.
- [62] I recommend that the City take no further action in the matter of search for records.

Dated at Regina, in the Province of Saskatchewan, this 20th day of September, 2023.

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