



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 156-2022

Weyburn Police Service

March 14, 2023

Summary:

The Applicant submitted an access to information request to the Weyburn Police Service (WPS). WPS responded by issuing a fee estimate of \$151.00 that was later reduced to \$102.50. The Applicant disagreed with the amount of the fee estimate and requested a review. The Commissioner found that WPS did not demonstrate that the fee estimate was reasonable and recommended that WPS process the access to information request without charging any fees and issue a final decision pursuant to subsection 7(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* within 30 days of the issuance of this Report. The Commissioner also recommended that WPS consider making its policies and procedures available to the public on its website. The Commissioner further recommended that WPS address any records management issues it encountered while processing this request and ensure it has policies and procedures in place regarding the storage and retention of records.

I BACKGROUND

[1] The Applicant attended the Weyburn Police Service (WPS) on March 24, 2022, and submitted an access to information request for the following:

All documents that demonstrably justify in a free and democratic society the implementation and enforcement of all health orders and mandates related to the Covid-19 virus.

In consideration of this request we refer to and include all documentation from the Public Health Order as issued by the Chief Medical Officer:

“I am aware of and have considered that this Order may impact upon constitutionally-protected interests, particularly the rights and freedoms protected by the Canadian Charter of Rights and Freedoms (“Charter”), including freedom of expression,

freedom of peaceful assembly, freedom of association, and mobility rights. I also recognize that the rights and freedoms protected by the Charter are not absolute, and are subject to reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society;

“When issuing this Order, I have considered whether alternate measures that are less impactful on the Charter-protected rights and freedoms of the people of Saskatchewan are appropriate and consistent with public health principles, including the precautionary principle. I am aware of the importance of choosing measures that impact the Charter-protected rights and freedoms of the people of Saskatchewan as little as possible. To that end, this Order: a. allows for the removal of face coverings in a number of instances where the removal of such face covering is conducive to free expression, and where the risk of temporarily removing the face covering is low or manageable; and b. contains exceptions for those with documented medical conditions that may affect their ability to wear a face covering.”

[2] WPS indicated that when the Applicant attended the office on March 24, 2022, the staff in attendance were unsure of the process for accepting access to information requests. Through correspondence with WPS, it was determined that the Office Manager was away from the office from March 17, 2022, through April 4, 2022. WPS acknowledged for this reason, receipt of the Applicant’s request did not occur until March 30, 2022.

[3] On April 5, 2022, the Office Manager contacted the Applicant via telephone, acknowledged the slow response to the access to information request and requested they pay the \$20.00 application fee in order to process the application. The Applicant attended the office and paid the application fee.

[4] On April 7, 2022, WPS sent an email to the Applicant stating the following: “Please find the attached LA FOIP letter explaining the transfer of your request to SHA” (Saskatchewan Health Authority).

[5] Further on April 7, 2022, WPS sent a letter to the SHA notifying them of the following:

This is to advise that an access request was received by our office on March 30, 2022, in which your institution would have a greater interest pursuant to clause 11(2)(a) of the Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP) as “...the record was originally prepared in or for the other local authority or government institution.”

[6] On April 12, 2022, the SHA responded to WPS advising the following:

I went over this ATI request and I have also talked with the requester and what I am understanding from my conversation – The applicant is looking for records related to the enforcement of the PH order by the Weyburn RCMP. So I am sending this back to you as it is not relating to the SHA.

[7] On April 20, 2022, WPS contacted the Applicant to clarify the access to information request. The Applicant advised my office that they had agreed upon a revised scope with WPS for the following:

...include the policy developed by the Weyburn Police Service in respect of the Public Health Order as the Chief indicated they did not have anything else; there was an option to be provided for information on the number of incidents/interactions between the Weyburn Police Service and the Public in respect of the Public Health Order.

[8] On the same day, WPS issued the Applicant a fee estimate of \$151.00 for the policy and records.

[9] In a letter to my office dated May 9, 2022, the Applicant outlined the concerns they had with WPS' fee estimate. As a result, my office contacted WPS and provided it with information on how to calculate a fee estimate.

[10] On August 18, 2022, my office sought clarification from the Applicant whether they were seeking both the policy and records. The Applicant responded and confirmed they were seeking a review of the fee estimate for both the policy and records.

[11] On September 1, 2022, WPS provided the Applicant and my office with a revised fee estimate of \$102.50 for both the policy and records.

[12] Still dissatisfied with WPS' fee estimate, on September 7, 2022, the Applicant confirmed with my office that they would like to proceed with a review of the reasonableness of WPS's fee estimate.

[13] On September 8, 2022, my office provided notification to both WPS and the Applicant of my office's intention to undertake a review.

[14] On October 19, 2022, WPS sent my office an email that it believes the \$102.50 fee is fair as it "only covers three to four hours" of its time.

[15] On January 19, 2023, my office sent an email to WPS requesting further information about its fee estimate and followed up with a telephone call on January 30, 2023. WPS has not provided my office with a further written submission.

II RECORDS AT ISSUE

[16] As, this is a review of the reasonableness of WPS' fee estimate, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[17] WPS is a "local authority" pursuant to subsection 2(f)(viii.1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, LA FOIP applies, and I have jurisdiction to conduct this review.

2. Is WPS's fee estimate reasonable?

[18] Subsection 9(2) of LA FOIP requires a local authority to provide a fee estimate to the Applicant where the cost for providing access to records exceeds the amount prescribed in subsection 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations), which is \$100.00. Fees are intended to provide for reasonable cost recovery associated with providing access to records. Subsection 9(2) of LA FOIP states:

9(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.

[19] Fee estimates are generally judged on the basis of whether they are reasonable. The local authority bears the burden of establishing the reasonableness of the fee estimate. This means that it must provide sufficient information and evidence to support the reasonableness of the estimate. A reasonable fee estimate is one that is proportionate to the work required on the part of the local authority to respond efficiently and effectively to an applicant's request.

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

1. Fees for searching for a responsive record;
2. Fees for preparing the record for disclosure; and
3. Fees for the reproduction of records.

(Guide to LA FOIP, Chapter 3: "Access to Records", updated June 29, 2021 [Guide to LA FOIP, Ch. 3], p. 53).

[21] Subsections 5(2)(a) and (b) of the LA FOIP Regulations prescribe fees for providing copies of records, while subsection 5(3), prescribes amounts a local authority can charge for searching and preparing a record. These subsections 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;

...

(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.

[22] As previously mentioned, WPS provided the Applicant and my office with the fee estimate for both the policy and records as follows:

Search Fee

1 staff member @ 4.0 hours

Total = staff members x hours x \$30 per hour \$ 120.00

Preparation Fee

50 pages @ \$.25 per page \$ 12.50

Less One Free Hour

1 at \$30 per hour \$ -30.00

TOTAL ESTIMATED COST \$ 102.50

[23] I will consider each part of WPS' fee estimate separately.

Search Time

[24] For search, WPS estimated a cost of \$120.00 to search for records based on an estimated 50 pages of records. This is based on one person searching for 4 hours at a cost of \$30 per hour (or \$15.00 for every half hour).

[25] 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.

Search time does not include time spent to copy the records, going from office to office or to offsite storage, or having someone review the results of a search.

(Guide to LA FOIP, Ch. 3, p. 53)

[26] 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.
- 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, pp. 53-54)

[27] The Applicant's access to information request included COVID-19 policies and records regarding the enforcement of COVID-19 related calls by police. WPS advised that it uses the "Police Reporting and Occurrence System" (PROS) to track their *Criminal Code of Canada* investigations. WPS advised my office that it did not log all the records from the enforcement of the COVID-19 orders on the PROS database. WPS did not provide a reason as to why the same process was not applied to all calls relating to the enforcement of the COVID-19 orders. Thus, WPS estimated there would be 50 pages of responsive records and determined it would take approximately 4 hours to search for the records requested. WPS advised there were "several policies sent by Public Health as they changed a few times".

[28] My office further asked WPS to explain how it concluded it would take 4 hours to search. WPS advised its policies are not stored electronically and determined it would take 4 hours to search through several different filing cabinets. WPS did not specify how many filing cabinets it would need to search to obtain the records.

[29] In [Review Report 106-2020, 235-2020](#), my office recommended the public body take steps to address any records management issues it encountered or discovered in the process of managing this access to information request, and ensure it has in place policies and procedures regarding the storage and retention of records.

[30] When preparing a fee estimate, the search time is supposed to be an estimate considering factors such as the volume and location of records. The volume here is not what I would consider excessively high, and the scope was clearly defined to specific types of documents.

[31] WPS asserts four hours was required to search for the estimated 50 pages of documents. I am not certain, then, why it would take one staff member, who has knowledge of where the related information is supposed to be filed or stored to take 4 hours to search. As WPS has not provided me with enough information to substantiate its estimate of 4 hours to search, I find its search estimate of \$120.00 was not reasonable.

Preparation

[32] WPS does not appear to have included a fee for preparation in its revised estimate, so I do not need to consider this fee in my analysis.

Reproduction

[33] 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. 53).

[34] WPS's estimate includes a fee of \$12.50 for reproduction of the records based on an estimated 50 pages at \$0.25 per page. For 50 pages, \$12.50 would be a reasonable cost.

[35] However, I note WPS did not consider options to provide the records in a more cost-effective way to the Applicant. From the Applicant's submission, they also questioned why they were not provided the option of receiving the documents via email. If WPS provided the records to the Applicant this way, there would be no cost for reproduction.

[36] I am also mindful that subsection 53.1(1)(a) of LA FOIP requires local authorities to make reasonable efforts to make policies and guidelines available on its website. This is another

way WPS could make policies available to the public at no cost and I recommend that it do so. Subsection 53.1(1)(a) of LA FOIP provides:

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

(b) provide those documents when requested in electronic or paper form.

[37] If not already posted on a website, policies should be readily available to the public and obtained with minimal effort.

[38] Based on my analysis, I find WPS' fee estimate was not reasonable.

[39] I recommend WPS process the access to information request without charge and issue a final decision letter to the Applicant pursuant to subsection 7(2)(a) of LA FOIP within 30 days of issuance of this Report.

IV FINDING

[40] I find that WPS' fee estimate was not reasonable.

V RECOMMENDATIONS

[41] I recommend WPS address any records management issues it may have discovered or encountered in the course of responding to this access to information request and ensure it has in place policies and procedures for the storage and retention of records.

[42] I recommend that WPS process the access to information request without charge and issue a final decision pursuant to subsection 7(2)(a) of LA FOIP within 30 days of the issuance of this Report.

[43] I recommend that WPS consider making its policies and procedures available online pursuant to subsection 53.1(1) of LA FOIP and advise the Applicant and my office whether it is prepared to do so within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 14th day of March, 2023.

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