



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 184-2023

Conseil des écoles francsaskoises

November 15, 2023

Summary: The Applicant submitted an access to information request to the Conseil des écoles francsaskoises (CEF). CEF provided the information to the Applicant along with an invoice for fees associated with the request. The Applicant requested my office review whether the fees charged by CEF were reasonable. The Commissioner found CEF did not follow appropriate methods for charging fees pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Local Authority Freedom of information and Protection of Privacy Regulations* (Regulations) and that the fees were not reasonable. It also did not provide a fee estimate even though the fees charged amounted to more than \$100. The Commissioner recommended CEF develop procedures for charging fees for access requests to ensure it complies with LA FOIP and the Regulations, refund the fees paid by the Applicant and in future, issue fee estimates where appropriate.

I BACKGROUND

[1] On May 5, 2023, the Applicant made an access to information request by email to the Conseil des écoles francsaskoises (CEF) pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) for:

1. Budget allocation (budget and actual amounts) of the Conseil scolaire francsaskois for all international travel for the 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2023-2023 fiscal years; and
2. Budget allocations (budget and actual amounts) of the Conseil scolaire francsaskois for renovations and repairs to the École canadienne française Pavillon Monique

Rousseau for the fiscal years 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2023-2023.

- [2] On May 8, 2023, CEF acknowledged receipt of the request by email, indicating it would get back to the Applicant as soon as possible.
- [3] On June 2, 2023, the Applicant emailed CEF indicating that it had not responded within the 30-day legislated timeline and asked whether CEF had the intention of replying to the request.
- [4] Then on June 2, 2023, CEF responded to the Applicant by email requesting that they complete an attached Access to Information Request Form and include the applicable \$20 application fee. CEF indicated it would provide the records within the deadlines, once the Access to Information Request Form and the application fee were received.
- [5] On June 14, 2023, CEF received the completed Access to Information Request Form and the application fee by registered mail.
- [6] On June 22, 2023, the Applicant followed up with CEF to inquire if it had received their application fee and Access to Information Request Form.
- [7] On July 7, 2023, the Applicant again contacted CEF to inquire whether it would be providing them with a decision. CEF responded the same day to the Applicant indicating it would be providing them with its decision in a few days by mail.
- [8] On July 18, 2023, CEF advised the Applicant by email that it had sent the requested information by registered mail and that it included an invoice along with the shipment.
- [9] On July 21, 2023, the Applicant received two pages of responsive records and an invoice for \$107.00 but did not receive a section 7 decision.

- [10] On August 3, 2023, my office received a request for review from the Applicant requesting my office review whether CEF's search for records and its fees were reasonable.
- [11] On August 16, 2023, my office contacted CEF requesting whether a section 7 decision was provided to the Applicant and if not, would it be providing one.
- [12] On August 24, 2023, my office again contacted CEF requesting a copy of its section 7 decision.
- [13] On September 5, 2023, a third email was sent to CEF from my office asking if it would provide a section 7 decision before the end of the following day. CEF then provided the Applicant with its section 7 decision by email with a copy to my office. In its decision CEF indicated that its response included an extract of the information requested as no records existed specific to the request.
- [14] On September 7, 2023, the Applicant indicated to my office that they were now satisfied with the search conducted by CEF but would like the reasonableness of the fees to be reviewed. The Applicant indicated they had paid the full \$107.00 fee.
- [15] On September 15, 2023, my office sent notification to CEF and the Applicant of my office's intent to undertake a review of whether the fee of \$107.00 charged by CEF was reasonable.

II RECORDS AT ISSUE

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

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[17] CEF is a “local authority” pursuant to subsection 2(1)(f)(viii) of LA FOIP. Therefore, I find I have jurisdiction to undertake this review.

2. Is CEF’s fee reasonable?

[18] In their request for review, the Applicant requested that my office review the fee charged by CEF. I am therefore reviewing the reasonableness of CEF’s fee.

[19] Section 9 of LA 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.

[20] LA FOIP provides for reasonable cost recovery associated with providing individuals access to records.

[21] 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. 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.

[22] 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 requests 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).

[23] As indicated in subsection 9(1) of LA FOIP above, the fee is to be prescribed. The definition of prescribed is found in subsection 2(1)(i) of LA FOIP and provides:

2(1) In this Act:

...

(i) “prescribed” means prescribed in the regulations;

[24] Therefore, in order to qualify as an acceptable fee, it must be prescribed in *The Local Authority Freedom of Information and Protection of Privacy Regulations* (Regulations). Section 5 of the Regulations provides:

5(1) An application fee of \$20 is payable at the time an application for access to a record is made.

(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;

...

(l) for a form of record not mentioned in clauses (a) to (b.1), the actual cost of copying the record.

(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.

(4) Where a search and retrieval of electronic data is required to give access to a record requested by an applicant, a fee equal to the actual cost of the search and retrieval, including machinery and operator costs, is payable at the time when access is given.

[25] In [Order M-236](#), the Ontario Information and Privacy Commissioner established that only items prescribed in the Regulations can be charged a fee:

In my view, an institution processing a request is only required to charge a fee for the costs that are specifically listed in section 45(1) of the Act, and can only charge the amounts established in the schedule of fees under the Regulation for those costs.

[26] CEF provided the Applicant with the following fees, which have been translated from French:

Description	qty	rate	total
Document search (3 hours @ \$7.50 / 0.25 h)	3	30.00	90.00
Copying a document	2	.25	.50
Shipping costs: Registered letter with signature	1	11.60	11.60
GST Registration Number: 866508534RT0001	Subtotal		102.10
	GST @ 5%		5.11
	Total		107.21
	Balance payable		\$107.21

[27] In its fees, CEF included a charge for shipping at a cost of \$11.60; however, there is no provision in the Regulations for charging an Applicant for shipping as part of its fees as per subsection 5(2) of the Regulations. In addition, the letter could have been sent

electronically, costing the Applicant nothing. There had been email exchanges between the parties, so this was a reasonable option.

[28] CEF included a GST charge in its fees. GST is not listed under subsection 5(2) of the Regulations as an item for which fees can be charged and therefore, cannot be included in the fees.

[29] In email correspondence with my office on September 11, 2023, CEF stated:

In response to [Applicant's name] request, the figures were extracted from various lines of the budget and careful work was done by the finance department. We don't have a budget line specific to [Applicant's name] needs.

[30] It appears that CEF may have created a new record rather than providing a copy of an existing document in response to the Applicant's request. This is also not an item for which a fee can be charged.

[31] In its fees, CEF charged the Applicant for search time but did not provide any explanation of the search in its submission. Subsection 5(3) of the Regulations sets out the fees for searching for a record requested by an Applicant and provides:

5(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.

[32] To determine whether search time is reasonable my office has used the following criteria:

- 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, Chapter 3, p. 75)

[33] As indicated on its invoice, CEF charged the Applicant for three hours of search time for a cost of \$90.00. As prescribed in subsection 5(3) of the Regulations above, fees for searching for a record can be charged for any time excluding the first hour of searching. However, CEF did not indicate in its submission to my office whether its search for fees excluded the first hour of search.

[34] CEF also did not include any information in its submission on the number of pages, records, files, or emails it searched to gather the information relevant to this request. Therefore, I am unable to determine whether the time spent searching was reasonable as per my office's criteria noted at paragraph [32] above.

[35] Of note is the fact that CEF did not provide an estimate of its fees to the Applicant. Subsection 9(2) of LA FOIP and section 6 of the Regulations requires a local authority to provide an estimate where the fees are \$100.00 or more.

[36] Subsection 6(1) of the Regulations provides as follows:

6(1) For the purposes of subsection 9(2) of the Act, the amount of fees beyond which an estimate must be given by the head is \$100 in excess of the fee set out in subsection 5(1).

[37] There is no evidence that CEF considered whether a fee estimate was warranted in the circumstances and as CEF billed the Applicant \$107.00 which is more than \$100.00, I find it did not comply with subsection 9(2) of LA FOIP and section 6 of the Regulations. In the future, I recommend that CEF provide an estimate when the fee is greater than \$100.00 pursuant to subsection 9(2) of LA FOIP and section 6 of the Regulations.

[38] One final issue to address is that CEF did not provide the fee to the Applicant within the legislated timeline pursuant to sections 7 and 12 of LA FOIP. Although it provided it once requested to do so, it was still late. In my office's [Review Report 326-2017 to 332-2017](#) and [Review Report 021-2021, 022-2021, 023-2021](#), I recommended that as these public bodies did not comply with sections 7 and 12 of FOIP, they should refund any fees paid or owing. I follow the same approach in this case.

[39] Given these factors, I find that CEF did not follow appropriate methods for charging fees pursuant to LA FOIP and the Regulations and as such its fees were not reasonable in this circumstance. Therefore, I recommend CEF develop procedures for charging fees pursuant to LA FOIP and the Regulations and refund the \$107.00 fee paid by the Applicant in this case.

IV FINDINGS

[40] I find I have jurisdiction to undertake this review.

[41] I find CEF did not follow the appropriate methods for charging fees pursuant to LA FOIP and the Regulations.

[42] I find CEF did not comply with subsection 9(2) of LA FOIP and section 6 of the Regulations.

[43] I find the fees were not reasonable in this circumstance.

V RECOMMENDATIONS

[44] I recommend CEF develop procedures for charging fees for access to information requests to ensure they comply with LA FOIP and the Regulations.

[45] I recommend that CEF provide an estimate when the fee is greater than \$100.00 pursuant to subsection 9(2) of LA FOIP and section 6 of the Regulations.

[46] I recommend CEF refund the \$107.00 fee paid by the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 15th day of November, 2023.

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