



REVIEW REPORT 252-2024

Town of Dalmeny

January 22, 2025

Summary:

The Applicant submitted an access to information request to the Town of Dalmeny (Town) for records related to a local property. The Town issued a fee estimate, which the Applicant appealed to the A/Commissioner. As an early resolution measure, the Town issued a revised fee estimate, with which the Applicant remained dissatisfied, requesting the A/Commissioner continue with his review. The A/Commissioner found that the Town did not fulfill its duty to assist the Applicant as required by subsection 5.1(1) *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as it did not give the Applicant an opportunity to narrow the scope of their request to reduce the fee estimate. Ultimately, the A/Commissioner found that the Town did not demonstrate that the fee estimate was reasonable. The A/Commissioner recommended that, within 30 days of issuance of this Report, the Town waive its fee estimate and provide the records to the Applicant at no cost. He also recommended that, within 60 days of issuance of this Report, the Town's employees complete training to promote a greater understanding of how to fulfill its obligations under LA FOIP. Finally, he recommended that, within 60 days of issuance of this Report, the Town finalize and create a written policy and procedures to assure it fulfills its duty to assist during the completion of access to information requests.

I BACKGROUND

- [1] On October 11, 2024, the Town of Dalmeny (the Town) received the following access to information request by the Applicant:

For [address redacted]

- NBC occupancy classification of property from 2005-2019 (when it was [business name redacted])
- 2019 Development permit/building permit for [business name redacted] [two names redacted]
- “correspondence from the owner that the building ([business name redacted]) was and is not being used for cooking purposes.” (As indicated in March 21, 2024 letter from CAO)
- documentation showing that “the building was originally considered a D occupancy within the scope of Part 9 based on guidance from the BC Building Code Article 3.1.” as indicated in the March 21, 2024 letter from CAO
- All development and building permit applications and permits issued for [address redacted] Dalmeny from January 2023-present day
- All Municode plan examination reports for the same time period for the same address
- all Municode inspection reports for the same time period
- Municode inspection reports for patio
- All professional (architect and engineered) plans for the [address redacted] (for structural, mechanical (ventilation - NFPA 96), plumbing, electrical and natural gas) with cooking appliance and ventilation hood specifications/listings from January 2023-present
- All Letters of assurance/field review from the design professionals for the same location and time period
- design occupant load calculations and the occupant load provided for the February 2020 SLGA permit
- Design Occupant load calculation for 2024, including the patio
- any Building official orders regarding the same property from 2019 to present day
- development conditions for discretionary use permit for patio 2024
- fire inspection reports and orders for [address redacted] from May 2023-present day [October 11, 2024]

[2] On October 24, 2024, the Town issued a receipt to the Applicant for payment of the \$20.00 for their application for information request.

[3] On October 29, 2024, the Town emailed a letter to the Applicant that stated:

Upon review, you have requested a considerable amount of information. Due to the large number of files to be reviewed, an additional fee of \$380.00 (\$400.00 - \$20.00) will be required. Please advise the Town that 50 percent (\$190.00) of this additional fee will be paid at this time, with the balance being paid on the completion of the Request Form.

- [4] On October 30, 2024, the Applicant contacted my office to request a review of the Town's fee estimate.
- [5] On November 5, 2024, my office asked the Town to provide, by November 12, 2024, an explanation of how it prepared the fee estimate.
- [6] On November 14, 2024, the Town emailed my office a letter dated November 12, 2024 that explained its calculation of the fee estimate. Further, as an early resolution measure, the Town offered to decrease the fee estimate to a lower total cost of \$261.00, a difference of \$119.00. The Town authorized my office to provide this information to the Applicant.
- [7] On the same day, my office emailed the Applicant providing the Town's revised fee estimate and asked if the Applicant would accept the reduced fee estimate.
- [8] On November 15, 2024, the Applicant informed my office that they remained dissatisfied with the revised fee estimate and would like to continue with a review. The Applicant did not pay a 50% deposit.
- [9] On November 18, 2024, my office emailed a notice of review to the Town and the Applicant, indicating the focus of the review was to determine if the Town's revised fee estimate was reasonable. Submissions were required by Wednesday, December 12, 2024.
- [10] Both the Town and the Applicant provided submissions: the Applicant did so on December 2, 2024 and the Town did so on December 11, 2024.

II. RECORDS AT ISSUE

- [11] This review will only consider the revised fee estimate provided by the Town to the Applicant; therefore, there are no records at issue in this review.

III. DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[12] The Town is a “local authority” pursuant to subsection 2(1)(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I have jurisdiction to conduct this review.

2. Did the Town fulfill its duty to assist?

[13] Subsection 5.1(1) of LA FOIP outlines a local authority’s duty to assist when responding to an access to information request:

5.1(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[14] According to my office’s resource [Understanding the Duty to Assist](#), updated August 2024, at page 4: “Responding openly to an applicant requires a local authority to be transparent by providing an explanation of the processes, actions, and decisions taken to fulfill an access request, including the basis for fees being charged in relation to an access request.”

[15] First, I will consider if the Town fulfilled its duty to assist the Applicant by providing a fee estimate (and accepting a deposit) prior to conducting a search for responsive records.

[16] Subsection 9(4) of LA FOIP provides:

9(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.

[Emphasis added]

[17] On October 29, 2024, the Town emailed its initial fee estimate to the Applicant. In its correspondence with the Applicant on the same day, the Town indicated:

I've spent a considerable amount of time on your latest request. I'm expecting my estimated time to be paid for. If not, I'm stopping the proceed. Do you expect to get the information you have requested for \$20.00. Hopefully, you value my time.

[18] Based on this message and information included in the Town's December 11, 2024 submission, it appears the Town conducted a search for responsive records prior to providing a fee estimate (and accepting a deposit). Therefore, I find that the Town did not fulfill its duty to assist the Applicant as required by section 5.1(1) of LA FOIP.

[19] Second, I must consider if the Town fulfilled its duty to assist by providing the Applicant an opportunity to narrow the scope of their request to reduce the fee estimate.

[20] In our resource [Best Practices for Responding to Access Requests](#), updated September 2023, at page 4, my office has previously established:

If an applicant makes a broad request or the request may result in a large fee because of the volume of records, it is best practice for a public body to contact the applicant and work together to clarify or narrow the scope of the request. This may result in getting the applicant the information they are seeking with less work for the public body. This is part of the duty to assist.

[21] My office has previously emphasized this aspect of a local authority's duty to assist in several reports, including [Review Report 306-2017](#) at paragraph [10], which states:

... As a best practice, where an estimate of costs is being issued, the public body should take steps to contact the applicant in an attempt to narrow the scope of the request to reduce work and costs ([Review Report 064-2016 to 076-2016](#) and [Review Reports 078-2016 to 091-2016](#)).

[22] In their December 2, 2024 submission, the Applicant asserted that the Town, "did not fulfill duty to assist by asking if I wanted to narrow my request to reduce the fees." Based on my review of the correspondence between the Applicant and the Town, I find that the Town did not fulfill its duty to assist by providing the Applicant an opportunity to narrow the scope of their request to reduce the fee estimate.

[23] On January 14, 2025, my office contacted the Town to inquire if it has a policy and procedures document to guide its responses of access to information requests. The same day, the Town informed my office it does not have a policy and procedures document for responding to access to information requests.

[24] I recommend that, within 60 days of issuance of this Report, the Town's employees complete the Government of Saskatchewan's [Access and Privacy Course for Saskatchewan Local Authorities](#) online training to promote a greater understanding of how to fulfill its obligations under LA FOIP.

[25] I recommend that, within 60 days of issuance of this Report, the Town create a policy to respond to access to information requests.

3. Is the Town's revised fee estimate reasonable?

[26] Subsections 9(1) and (2) of LA FOIP provide:

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.

[27] Subsection 9(2) of LA FOIP requires a local authority to provide a fee estimate where the cost for providing access to the records exceeds the prescribed amount of \$100, which is found in subsection 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations). Furthermore, applicants are not required to pay any fees beyond what is originally estimated (*Guide to LA FOIP*, Chapter 3: "Access to Records", updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], p. 72).

[28] My office's *Guide to LA FOIP*, Ch. 3, states at page 73:

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.

[29] LA FOIP offers a detailed framework for reasonable cost recovery to local authorities that endeavor to provide applicants access to records. My office's *Guide to LA FOIP*, Ch. 3, explains the basis for creating a "reasonable fee estimate" at page 73:

- 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.
- When it comes to charging fees, local authorities should ensure:
 - Fairness: All applicants are treated the same (fairness).
 - Consistency: Fees are calculated the same way for all applicants.

[30] My office's *Guide to LA FOIP*, Ch. 3, outlines, at page 74, the three kinds of fees typically included in a fee estimate:

1. Fees for searching for records.
2. Fees for preparing records.
3. Fees for reproduction of records.

[31] I will consider each of these types of fees.

Fees for searching for a responsive record

[32] First, I must determine how the Town arrived at its calculations for search time in its revised fee estimate.

[33] The LA FOIP Regulations provide the ability for the Town to recover costs associated with searching for responsive records. Specifically, subsection 5(3) of the LA FOIP Regulations 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.

[Emphasis added]

[34] Fees for search time consists of every half hour of manual search time required to locate and identify responsive records. This may include:

- Staff time involved with searching for records.
- Examining file indices, file plans or listings of records, either paper or electronic.
- Pulling paper files/specific paper records out of files.
- Reading through files to determine whether records are responsive.

[35] My office's *Guide to LA FOIP*, Ch. 3, maintains at page 75:

- 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.

[36] As previously established in my office's [Review Report 213-2024](#) at paragraph [25], my office will accept that it takes an employee three minutes to search their email account for each search parameter.

[37] Further, my office's *Guide to LA FOIP*, Ch. 3, provides, at the same page, that 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.

[38] My office's notification email (sent November 18, 2024) communicated the following explanation of the review process to the Town:

For more information on the review process, please check out [What to Expect During a Review with the IPC: A Resource for Public Bodies and Trustees](#) which can be found on our website at www.oipc.sk.ca.

... In your submission, please explain:

- How the fee estimate was calculated (for paper and electronic records) and demonstrate how the fee is reasonable in the circumstances. To assist you in preparing your submission, there are three general kinds of fees that can be included in a fee estimate: fees for searching for a responsive record; fees for preparing the record for disclosure; and fees for the reproduction of records. **Also, indicate what actions were taken to reduce costs for the Applicant (e.g., talked to the Applicant about scope, considered providing records in electronic form).** For more on the tests/criteria considered relating to fee estimates, please refer to [Chapter 3](#) of our [IPC Guide to LA FOIP](#) and [Review Report 186-2020](#) or [Review Report 151-2020](#), both available on our website under the *Reports* tab.

For additional guidance on preparing your submission, please refer to our resource, [A Guide to Submissions](#).

[Emphasis added]

[39] It is worth noting that each of the hyperlinks in the above correspondence were active and functional. In this way, my office explicitly guided the Town to formulate arguments to defend how it arrived at its fee estimates.

[40] Further, on December 3, 2024, and, after receiving no response, again on December 10, 2024, my office emailed the Town to remind it of the requirements for a submission. In correspondence on December 10, 2024, the Town stated: "I need clarification on the type of letter you require, as I [sic] just sending the justification for the charge of \$261.00. Nothing more, nothing less." Again, my office directed the Town to read the section of

Chapter 3 of our *Guide to LA FOIP* on fee estimates, as well as our resource *What to Expect During a Review with the IPC: A Resource for Public Bodies and Trustees*.

[41] In its December 11, 2024 submission, the Town provided the following estimation of time spent in search of responsive records for this request:

As a gesture of good faith, I found many of the documents that the Town has in their possession. **Initially, I spent 3 hours of my time working on this request prior to advising [the Applicant] of the additional charge.** Once I did advise [them] and received [their] response, I stopped the process. ... In my discussions with Intake Officer [name of IPC Intake Officer removed], **I then spent at least another hour searching and gathering the balance of the documents.**

I requested my Office Manager [name removed] and my Fire Chief [name removed] to also **search and gather documents** ...

[Emphasis added]

[42] The Town then pointed towards its previously provided (November 12, 2024) revised fee estimate, which outlined the following:

Search

- Fire Chief [name redacted] – 30 minutes
- Office Manager [address redacted] – 30 minutes
- Chief Administrative Officer [address redacted]– 4 hours

[43] It appears the Town estimated a total of five hours spent in an effort to search for responsive records; however, it does not appear the Town accounted for the one uncompensated hour a local authority is obligated to provide under subsection 5(3) of the LA FOIP Regulations.

[44] Again, the Town appears to have initiated a search for responsive records prior to preparing a fee estimate. I base this conclusion on the Town’s December 11, 2024 submission, wherein the Town states: “Initially, I spent 3 hours of my time working on this request prior to advising [the Applicant] of the additional charge.” As previously discussed at paragraph [15] of this Report, and as emphasized in office’s *Guide to LA FOIP*, Ch. 3, at page 75: “Local authorities should not complete the work when fee estimates are being prepared. It should be a true estimate.” I have previously found public bodies should not

commence work when fee estimates are being prepared, as established in my office's [Review Report 136-2022](#) at paragraph [20] and [Review Report 110-2022](#) at paragraph [20]. Similar to the case in [Review Report 115-2016](#) at paragraph [34], I find that it is not reasonable to charge the Applicant fees for work that has already been completed.

[45] In addition, I find that the Town has provided insufficient supporting details to explain how it arrived at its estimate of five hours to search for eighty pages of responsive records. For example, I would expect to see arguments to substantiate how the Town's records are stored, where it searched, what search terms it used for electronic records, whether paper records were searched, and how the search was conducted. Going forward, I expect the Town to provide such details when requested by my office.

[46] Therefore, I find that the Town has not demonstrated that the five hours charged for searching for records was reasonable pursuant to LA FOIP and the LA FOIP Regulations.

[47] I recommend that the Town waive its fee for the search for responsive records.

Fees for preparing the record for disclosure

[48] As in the case for the fee for searching, subsection 5(3) of the LA FOIP Regulations allows the Town to charge a fee of \$15.00 for each half-hour for preparing the records, if the time is in excess of one hour.

[49] My office's *Guide to LA FOIP*, Ch. 3, explains what is compensable for preparation at page 76; that is, to include time spent preparing the record for disclosure including the time anticipated to be spent physically severing exempt information from the records. However, preparation time **does not** include:

- Deciding whether or not to claim an exemption.
- Identifying records requiring severing.
- Identifying and preparing records requiring third party notice.

- Time spent by a computer compiling and printing information.
- Assembling information and proofing data.

[50] According to my office's *Guide to LA FOIP*, Ch. 3, at page 77, there are specific standards to account for time when establishing a fee estimate:

- The test related to reasonable time spent on preparation is, generally, that it should take an experienced employee 2 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 the LA FOIP Regulations).

[51] In its December 11, 2024 submission, the Town asserted:

I requested my Office Manager [name redacted] and my Fire Chief [name redacted] to also search and gather documents and charged [the Applicant] for 30 minutes of search time each and 30 minutes of **prepare time** each.

[52] The Town again pointed to its November 12, 2024 revised fee estimate, wherein it provided the following estimation of time spent in search of responsive records for this request:

Prepare

- Fire Chief [name redacted] – 30 minutes
- Office Manager [name redacted]– 30 minutes
- Chief Administrative Officer [name redacted] – 2 hours

[53] The Town estimated a total of three hours were spent in an effort to prepare the responsive records; however, it is not clear if it accounted for the one uncompensated hour a local authority is obligated to provide under LA FOIP as noted above in this Report. As established in subsection 5(3) of the LA FOIP Regulations, the Town is only entitled to

provide a fee estimate based on what is in excess of one hour of searching or preparing a record.

[54] Therefore, I find that the Town did not demonstrate that the three hours charged for preparation of the records was reasonable.

[55] I recommend that the Town waive its fee for the preparation of responsive records.

Fees for reproduction of records

[56] Subsection 5(2)(a) of the LA FOIP Regulations provides:

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;

[57] In its submission, the Town stated:

Photocopies

- 80 photocopies at \$0.25 per copy, plus GST - \$21.00

[58] As previously established in my office's [Review Report 184-2023](#) at paragraph [28], GST is not listed under subsection 5(2) of the LA FOIP Regulations as an item for which fees can be charged and, therefore, it cannot be included in the fees.

[59] In terms of calculating the fee estimate, the Town is entitled to charge \$0.25 per page photocopied. Given its claim it photocopied 80 pages, the fee estimate for the reproduction of responsive records should be \$20.00.

[60] At the time of their application, the Applicant did not express a preference for an electronic copy of the record. However, in their December 2, 2024 submission, the Applicant indicated their preference to be provided an electronic copy of the responsive records, as

had been the practice of the Town in responding to the Applicant's previous, recent access to information request. Providing to the Applicant a scanned version of the responsive record would entirely eliminate the need for a cost for paper reproduction. My office's [Review Report 184-2023](#) points out a similar situation at paragraph [27] where it states: "... 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."

[61] Therefore, I recommend that the Town waive the fee for reproduction and provide the Applicant an electronic version of the responsive record.

[62] In conclusion, I find that the Town did not demonstrate that the fee estimate was reasonable. In addition, it completed some work before giving the Applicant an opportunity to decide if they wanted to pay fees or narrow their request to reduce the fees. Therefore, I recommend the Town waive its fee estimate and provide the records to the Applicant at no cost.

IV FINDINGS

[63] I find that I have jurisdiction to undertake this review.

[64] I find that the Town did not fulfill its duty to assist by providing the Applicant an opportunity to narrow the scope of their request to reduce the fee estimate.

[65] I find that the Town has not demonstrated that the five hours charged for searching for records was reasonable.

[66] I find that the Town did not demonstrate that the three hours charged for preparation of the records was reasonable.

[67] I find that the Town has not demonstrated that the fees charged for reproduction are reasonable.

[68] I find that, overall, the Town did not demonstrate that the fee estimate was reasonable.

V RECOMMENDATIONS

[69] I recommend that, within 30 days of issuance of this Report, the Town waive its fee estimate and provide the records to the Applicant at no cost.

[70] I recommend that, within 60 days of issuance of this Report, the Town's employees complete the Government of Saskatchewan's [Access and Privacy Course for Saskatchewan Local Authorities](#) online training to promote a greater understanding of how to fulfill its obligations under LA FOIP.

[71] I recommend that, within 60 days of issuance of this Report, the Town create a policy to respond to access to information requests.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of January 2025.

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