



REVIEW REPORT 256-2024

Rural Municipality of Reford No. 379

December 9, 2024

Summary:

The Applicant made an access to information request to the Rural Municipality of Reford No. 379 (RM) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The RM issued a fee estimate, which the Applicant disputed and asked the A/Commissioner to review. The A/Commissioner found that the RM's fee estimate was not reasonable. The A/Commissioner recommended that the RM, within 30 days, complete a review of and revise any policies and procedures that it has in place regarding access to information requests and reviews to ensure that they comply with LA FOIP. He also recommended that, within 30 days, the RM complete its search and prepare records for disclosure and issue a final decision pursuant to subsection 7(2)(a) of LA FOIP not charging the Applicant a fee for processing the access to information request.

I BACKGROUND

[1] On October 16, 2024, the Rural Municipality of Reford No. 379 (RM) received an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) from the Applicant. The Applicant sought access to the following information:

Invoices to match the following cheques to [name redacted] for "mileage": #16545, dated 2022-12-30 - \$528.00; #16583, dated 2023-01-12 - \$1,029.60; #16587, dated 2023-01-27 - \$396.00; #16614, dated 2023-02-16 - \$712.80; #16628, dated 2023-02-28 - \$792.00

Timesheets for [name redacted] from December 19th, 2022 to March 30, 2023

Road reports from December 19, 2022 to March 30, 2023 for [name redacted]

- [2] In response to the request, by letter dated October 29, 2024, the RM provided the Applicant with a fee estimate in the amount of \$90.00, requesting that the Applicant pay a deposit of \$45.00.
- [3] On November 2, 2024, the Applicant requested that my office review the RM's fee estimate.
- [4] On November 6, 2024, my office sent a notice of review to the RM advising that the Applicant wished to proceed with a review of the RM's fee estimate. My office also sent a notice of review to the Applicant.
- [5] The RM provided its submission on November 25, 2024. The Applicant did not provide a submission.

II RECORDS AT ISSUE

- [6] As this is a review of the RM's fee estimate, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [7] The RM qualifies as a "local authority" as defined by subsection 2(1)(f)(i) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

2. Is the RM's fee estimate reasonable?

- [8] Section 9 of LA FOIP sets out the rules regarding fees and fee estimates. It states:

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] 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. The prescribed amount is set out in subsection 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Act Regulations* (LA FOIP Regulations) (*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], p. 72).

[10] LA FOIP permits reasonable cost recovery for providing access to records. A “reasonable 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 (*Guide to LA FOIP*, Ch. 3, p. 73).

[11] There are generally three types of fees that can be included in a fee estimate: 1) fees for searching; 2) fees for preparing a record; and 3) fees for reproduction.

[12] The RM did not include an estimate for reproduction, and so they are not at issue here. The RM’s fee estimate for search and for preparing the records for disclosure was broken down as follows:

Type of Fee	Calculation of Fees	Amount of Fee
Search	2 hours x \$15.00/half hour	\$60.00
Preparation	2 hours x \$15.00/half hour	\$60.00
LESS	1 hour free x \$15.00/half hour	(\$30.00)
Total fee estimate		\$90.00

Search

[13] Subsection 6(2) of the LA FOIP Regulations governs the fees chargeable for searching for and preparing the responsive records for disclosure. It states:

6(2) Where time in excess of two hours 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.

[14] Page 75 of the *Guide to LA FOIP*, Ch. 3, provides that in calculating the time spent searching, local authorities can charge for the time spent by all staff involved in a manual search for records, including time spent locating and identifying responsive records. This includes time spent in examining file indices or listings of paper and electronic records, pulling paper files, and reading through files to determine whether there are records that may be responsive.

[15] The *Guide to LA FOIP*, Ch. 3 at page 75, provides that search time **does not** include time spent copying records, physically looking for records such as from office-to-office or off-site, and having someone review the search results.

[16] The *Guide to LA FOIP*, Ch. 3 at page 75, also sets out the following guidelines:

- 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.

[17] In instances where the three guidelines in paragraph [16] above do not accurately reflect the circumstances, the local authority should design a search strategy and test a representative sample of records for time taken to complete the search. The time can then be applied to the responsive records as a whole (*Guide to LA FOIP*, Ch. 3, p. 76).

[18] As set out in the *Guide to LA FOIP* at page 76, where the search for responsive records exceeds one hour, the local authority can charge \$15.00 for every half hour or portion of a half hour in excess of one hour for search or preparation (as per subsection 5(3) of the LA FOI Regulations).

Preparation

[19] The *Guide to LA FOIP*, Ch. 3 at page 76, provides that “preparation time” refers to the time spent preparing the record for disclosure including time spent severing the record. However, as set out on page 77 of the *Guide to LA FOIP*, Ch. 3, 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.

[20] In determining if a local authority’s estimate is based on a reasonable time for preparation of the records, the *Guide to LA FOIP*, Ch. 3 at page 77, states that it should generally take an experienced employee two minutes per page to physically sever.

[21] My office has found that the burden of establishing the reasonableness of a fee estimate under LA FOIP and its equivalent *The Freedom of Information and Protection of Privacy Act* (FOIP) rests on the public body. This was set out in my office's [Review Report 2005-005](#) and [Review Report 156-2022](#).

[22] In its submission, the RM stated that the fee estimate was “an informed approximation” based on the time taken to locate similar documents in past requests. It added that as the current staff were not employed by the local authority when these records were initially created, it was unsure of exact timelines. No further information was provided.

Analysis

[23] Before I consider the reasonableness of the RM's fee estimate, I have a concern about the RM's decision to issue a fee estimate. There is no requirement to issue a fee estimate when the fee will be less than \$100.00 as was the case here. As noted above, this is set out in subsections 9(2) of LA FOIP and 6(1) of the LA FOIP Regulations.

[24] The consequences of issuing a fee estimate are described in the *Guide to LA FOIP*, Ch. 3 at page 79. Once the decision was made to issue a fee estimate, the 30-day deadline to respond to the access to information request was suspended and remained suspended until the Applicant pays the deposit. Therefore, by issuing a fee estimate when it was not necessary to do so, the RM unnecessarily stopped the clock on the 30-day deadline for responding to the request. This resulted in unnecessary delays in processing the Applicant's access to information request.

[25] Similar circumstances existed in [Review Report 336-2023](#) which my office issued on July 31, 2024 and also involved the RM. In that report, I recommended that the RM review its policies and procedures for responding to access to information requests and make any necessary changes to ensure the fee estimate processes complied with best practices. It appears from this review that if the RM complied with that recommendation, it did not follow its own policies.

- [26] In summary, by issuing a fee estimate in this matter when it was not necessary to do so, the RM did not follow best practices and caused unnecessary delays in processing the access to information request.
- [27] My office's concerns about this RM's processing of access to information requests were also expressed in [Review Report 071-2024](#), which my office issued on September 26, 2024. In that case, I repeated the recommendation made in Review Report 336-2023 referred to above and recommended that the RM complete a review and revise any policies and procedures that it has in place regarding access to information requests and reviews. I will repeat that recommendation again here.
- [28] Turning to the fee estimate, I note that there are three distinct types of records that are responsive to this request. They are invoices related to five cheques issued between December 2022 and February 2023, and time sheets and road reports dated between December 2022 and March 2023. Given the recent age of the records and their distinct nature and assuming appropriate record classifications are in place, these records should be easily retrievable by the RM. If the records are not easily retrievable, then the RM should take steps to ensure that they are, and the Applicant should not have to bear the financial burden of poor records management practices.
- [29] The RM has provided my office with limited information to support its estimate of the time to search for these records. In its fee estimate decision it described the records as paper records and suggested that it was required to review two years of paper records even though the responsive records are dated between December and March – a four-month period. The RM did not provide any information about how these records are stored. Nor did it describe the type, location and number of records holdings that it was required to search or provide information about lists of indices that it was required to review.
- [30] Nor did the RM provide me with information about how it arrived at the estimate for preparation of the record for release other than to say that “multiple records will be found.” For example, the RM did not provide me with an estimate of the number of responsive

records and how it calculated the time involved in severing the records. The RM cited two hours for search, but as outlined above, the types of records the Applicant seeks are well defined and would likely be limited to a specific number of pages. They should also exist in defined locations within the RM's filing systems. Two hours of search, given my office's recommended formula described in paragraph [16] above, would mean searching through approximately 1,900 pages of records to find what the Applicant seeks – that does not seem reasonable, here.

[31] It is not sufficient to state that the fee estimate was based on an “informed approximation” of the time involved as the RM did in this case. A local authority must be able to provide an explanation to an applicant of how it arrived at its fee estimate, and also provide this same information for my office to consider in a review of that estimate.

[32] For these reasons, I find that the RM's fee estimate was not reasonable.

[33] I must now determine the appropriate remedy. I note that subsection 8(1)(c) of the LA FOIP Regulations gives the RM the discretion to waive payment of fees where the prescribed or actual cost is \$100 or less. This provision states:

8(1) For the purposes of subsection 9(5) of the Act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

...

(c) if the prescribed cost or actual cost for the service is \$100 or less.

[34] If I recommend that the RM issue a revised fee estimate, that will further delay the Applicant's efforts to obtain access to the records which would not be reasonable. As the fee estimate is less than \$100 and therefore meets the circumstances for a fee waiver that are listed in subsection 8(1)(c) of the LA FOIP Regulations, I will follow the approach taken in other reports such as Review Reports 336-2023 and 156-2022 which are linked above.

[35] I recommend that, within 30 days of the issuance of this Report, the RM search and prepare the responsive records and issue a section 7 decision to the Applicant and not charge the Applicant a fee for processing the access to information request.

IV FINDINGS

[36] I find that I have jurisdiction to conduct this review.

[37] I find that the RM's fee estimate was not reasonable.

V RECOMMENDATIONS

[38] I recommend that, within 30 days of the issuance of this Report, the RM complete a review of and revise any policies and procedures that it has in place regarding access to information requests and reviews to ensure that they comply with LA FOIP.

[39] I recommend that, within 30 days of the issuance of this Report, the RM complete its search and prepare the responsive records for disclosure.

[40] I recommend that, within 30 days of the issuance of this Report, the RM issue a final decision pursuant to subsection 7(2)(a) of LA FOIP and not charge the Applicant a fee for processing the access to information request.

Dated at Regina, in the Province of Saskatchewan, this 9th day of December, 2024.

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