



## REVIEW REPORT 258-2022

### University of Saskatchewan

April 13, 2023

#### Summary:

The Applicant made an access to information request to the University of Saskatchewan (U of S) for information relating to salaries for all employees. The U of S initially denied access to the information claiming that no record exists. It subsequently offered to produce a record with the responsive information for a fee and issued a fee estimate. The Applicant asked the Commissioner to review why the U of S initially indicated that no record existed, but later applied a fee estimate. They also asked for a review of the fee estimate. The Commissioner found that the U of S did not properly apply subsection 7(2)(e) of LA FOIP, because the record existed in a database in its possession. However, the Commissioner found that the fee estimate was reasonable. The Commissioner recommended that the U of S continue processing the request once the deposit requested in the revised fee estimate is paid.

#### I BACKGROUND

[1] The University of Saskatchewan (U of S) received an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) from the Applicant on November 14, 2022. The Applicant sought access to the following information:

...the number of employees (including but not limited to professors) that got a pay raise, pay cut, and/or bonus (or other forms of performance incentives) for calendar year 2019, 2020, and 2021. Separate this information by type (raise, cut, or bonus) and year. Omit pay raises due to promotion to new positions, but include step pay raises. Please provide the annual cost of these pay increases and bonuses. Provide equivalent records and/or ranges if exact amounts cannot be provided.

- [2] On November 16, 2022, the U of S asked the Applicant to clarify the request. Later the same day, the Applicant confirmed that they were seeking access to information relating to all staff, including faculty, administration and operations staff.
- [3] On November 24, 2022, the U of S issued a decision in accordance with subsection 7(2)(e) of LA FOIP stating that no responsive records exist. The U of S also referred the Applicant to publicly available information regarding its employees' salaries and employment agreements.
- [4] On November 25, 2022, the Applicant advised the U of S that the publicly available records were not satisfactory. The Applicant asked if the U of S "was able to create a record" similar to the one provided by another organization.
- [5] On December 1, 2022, the U of S emailed the Applicant advising them that LA FOIP does not require it to create records. The Access and Privacy Office (APO) added that they would make "inquiries to see if this information can be queried from electronic systems in the format" requested.
- [6] On December 2, 2022, the U of S sent a letter to the Applicant advising them that "to retrieve the data and produce a record would take approximately three person days." It also stated that pursuant to subsection 5(4) of *The Local Authority Freedom of Information and Protection of Privacy Act Regulations* (LA FOIP Regulations) a fee for the actual cost to produce the record is payable. It stated that the cost to retrieve the information was estimated to be \$2,025.00. It requested a deposit and stated that it would process the request upon payment of the deposit.
- [7] The Applicant requested an explanation of the fee estimate. In response, the U of S sent an email dated December 14, 2022, providing more information and reducing the fee estimate to \$1,350.00.
- [8] On December 27, 2022, my office received a request for review from the Applicant who disagreed with the fee estimate.

[9] On January 23, 2023, my office notified the Applicant and the U of S that my office would be undertaking a review and invited them to provide a submission.

[10] My office received a submission from the Applicant on February 21, 2023, and from the U of S on March 8, 2023.

## **II RECORDS AT ISSUE**

[11] As the issues in this review involve the initial claim that no records exist and the fee estimate, there are no responsive records.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

[12] The U of S is a “local authority” as defined by subsection 2(f)(xii) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

### **2. Did the U of S properly claim that records did not exist pursuant to subsection 7(2)(e) of LA FOIP?**

[13] The U of S’s initial decision dated November 24, 2022, claimed that the responsive records did not exist pursuant to subsection 7(2)(e) of LA FOIP. That subsection states:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...

(e) stating that access is refused for the reason that the record does not exist;

[14] In support of its claim that the record did not exist, the U of S asserted, “[The Manager of Compensation] indicated that a record of information as requested on November 11, 2022 did not exist. The [Access and Privacy Office (APO)] relied on the knowledge and expertise of [the Manager of Compensation] ...” in arriving at its initial decision.

[15] In its submission, the U of S stated that its HRIS database is maintained by the U of S administrative unit overseen by the Manager of Compensation and this unit is responsible for pay raises, cuts or bonuses. The U of S acknowledged that HRIS contains the data responsive to the request. It claimed that while it could produce a report using HRIS that would show various salary adjustments for faculty, it could not produce a similar report for all staff.

[16] Normally, before concluding that responsive records do not exist, my office expects public bodies to conduct a reasonable search for the records. However, in this case, the Applicant sought access to information that the U of S acknowledged was stored in HRIS, and therefore, it was not necessary for U of S to conduct a search for the records.

[17] Subsequent to issuing its decision that no records existed, by email dated December 1, 2022, U of S's APO told the Applicant that it would make inquiries to see if the responsive information could be "queried" in the format requested by them. In consultation with a Manager in the Information and Communications Technology unit (ICT Manager), the APO determined that it was possible to "pull the information" from HRIS, but it would involve a "few person days of work."

[18] On December 2, 2022, the APO offered to produce a report with the requested information and provided a fee estimate to the Applicant.

[19] Section 5 of LA FOIP is relevant here. It provides individuals with the right of access to records that are in the possession or under the control of a local authority. It states:

**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.

[20] Subsection 2(j) of LA FOIP defines "record" as follows:

**2** In this Act:

...

(j) “record” means a record of information **in any form** and includes information that is written, photographed, recorded **or stored in any manner**, but does not include computer programs or other mechanisms that produce records;

[Emphasis added]

[21] Consistent with previous reports of my office, I find that “record” includes a record of information stored in any manner, including in a database (See for example my office’s [Review Report 057-2019](#)).

[22] While the U of S initially decided that responsive records did not exist, by letter dated December 2, 2022, the U of S acknowledged that it was possible to “retrieve the data” from HRIS and “produce a report” containing the responsive information.

[23] Despite this, in its submission, the U of S repeated its claim that the record did not exist and asserted the following:

Producing the information requested by the Applicant, as will be explained below, would require technical expertise not normally used on a day-to-day basis with respect to the HRIS. While the data is contained in the HRIS, it is not in an existing report and cannot be produced in the normal course of business. While we do have technical expertise on staff, it is not normally used to create a report in response to an access request.

[24] In the past, my office has said that public bodies are not obligated to create records which do not exist. However, if the public body has a database containing the raw information that is sought by the Applicant and that information can be extracted or produced, then that information would qualify as a responsive record. This approach was followed in my office’s [Review Reports 038-2018, 057-2019](#) and [058-2020](#).

[25] In Review Report 057-2019, an applicant sought access to data stored in the Ministry of Corrections and Policing’s (Corrections) CJIMS database. Corrections claimed that the records did not exist relying on subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP). I found that Corrections had improperly claimed that a record did not exist where the information requested could be found in its CJIMS database. I stated:

...we cannot use a reason for denying access that doing something on our computer such as querying would create another record. If something is stored electronically and a citizen requests some information, of course the public body will need to take some steps to reproduce that information. This existed in the paper world - if you ask for a paper record, a photocopy would have to be made. As we switch from a paper world to a digital world, government at all levels, are storing more information in databases. I ask [Corrections] and all Ministries to approach this issue creatively because such access to information requests will recur.

[26] As the U of S's ICT Manager confirmed that the information requested could be pulled or extracted from HRIS and the U of S's fee estimate included a commitment to do the work subject to payment of a fee, I find that the U of S's initial claim that responsive records did not exist was not appropriate. I also find that the information contained in the HRIS database is the responsive record.

[27] Before I turn to consider the Applicant's request for a review of the fee estimate, I note that the U of S's submission raised an argument relating to subsection 10(2) of LA FOIP. As the U of S has agreed to extract the information requested by the Applicant from HRIS for a fee, it is not necessary for me to consider this argument.

### **3. Was the U of S's fee estimate reasonable?**

[28] The U of S's December 2, 2022 fee estimate for search and retrieval of the information responsive to the Applicant's request was in the amount of \$2,025.00. The fee estimate stated that if the Applicant wished to pursue access to the information, the U of S would require the payment of a deposit equal to half the amount of the estimate. The U of S stated that it would process the request once the deposit was received.

[29] Following discussions about the fee estimate between the U of S and the Applicant, the U of S sent an email dated December 14, 2022, reducing the fee estimate to \$1,350.00 and repeating the request for payment of half that amount before it would process the request (the revised fee estimate).

[30] Subsection 9(2) of LA FOIP requires a local authority to provide a fee estimate where the cost for providing access to records exceeds the prescribed amount of \$100. This prescribed

amount is found in subsection 6(1) of LA FOIP Regulations. Further, applicants are not required to pay any fees beyond what is originally estimated (*Guide to LA FOIP*, Chapter 3: “Access to Records”, updated June 29, 2021 [*Guide to LA FOIP*, Ch. 3] p. 30).

[31] Subsections 9(1) and (2) of LA FOIP provide as follows:

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.

[32] 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 (*Guide to LA FOIP*, Ch. 3, p. 31).

[33] When charging fees, a local authority should:

1. Contact the Applicant:

- a. advise that fees will be necessary;
- b. attempt to clarify or offer ways to narrow the request to reduce or eliminate fees;
- c. follow up in writing with the applicant when narrowing occurs to ensure agreed scope is clear; and
- d. address any requests for a fee waiver accordingly.

2. Make a search strategy;

3. Prepare a fee estimate based on the search strategy (do not complete the search yet);

4. Decide whether to charge a fee (refer to your internal policy or procedure);

5. Send out fee estimate and suspend work;
6. Clarify or narrow the request again (if the applicant initiates it); and
7. Start searching for records when applicant pays 50% deposit.

*(Guide to LA FOIP, Ch. 3, pp. 52-53)*

[34] The U of S's revised fee estimate of \$1,350.00 was based on 15 hours at \$90.00 per hour for a computer operator to search for and retrieve the information from HRIS.

[35] The revised fee estimate was calculated under subsection 5(4) of the LA FOIP Regulations which applies where search and retrieval of electronic data is required to give access to a record. That subsection states:

5(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.

[36] As noted above, the U of S provided my office with an affidavit sworn by the ICT Manager in which they stated:

- They have been employed in the information technology field for 23 years and with the U of S since 2010.
- The HRIS system requires technical expertise in Java, People Tools, PERL, shell scripting, etc.
- The requested information could be pulled from HRIS, but the system does not produce a standard or existing report containing the information.
- The age and nature of HRIS is such that there is not a robust analytics engine as you might see in more modern systems.
- Their technical staff will likely need to develop a new custom PeopleSoft SQR (Structured Query Report) to produce a report containing the Requested Information from HRIS.
- This would require staff with technical expertise to write the code, create model data and testing to verify accuracy. It may also require that non-technical staff, such as compensation analysts, spend time to validate the results.
- The total time to complete this work is estimated to be "a few days."

[37] The U of S also provided my office with its Finance and Resources department's internal fee guidelines and rates used to recover the costs of services provided by various departments within the university. These fees are used to transfer funding from one



department to the service unit. The fees allow for recovery of the actual cost of the services provided (salaries, benefits, administrative overhead, non-available and non-billable hours) and do not include an amount for profit. According to the fee guideline, IT technicians or technologist services are charged at the rate of \$90.00 per hour and are based on a 7.5-hour day. These internal fee guidelines were used to calculate the fee estimate for search and retrieval of the information requested by the Applicant.

- [38] In their submission, the Applicant stated that it was unreasonable to charge fees for the retrieval of electronic records. They added that other institutions in the province, including one that the Applicant claimed was less well funded, were able to provide the information with no fee. The Applicant asserted:

Public universities are largely government funded. This funding is used by the university for many things. However, salaries and benefits for employees often make up one of the largest line items on university budgets. Given these two facts, I believe it is reasonable that information regarding costs of this nature, especially pay raises and bonuses, should be readily available to taxpayers in the interest of transparency.

The ability to be transparent in university costs should not depend on software strength, notably in a day and age where data systems are readily available and used by others. Especially if other, less well funded, institutions can provide the same information without a fee.

- [39] I accept that the Applicant appears to have been able to obtain access to similar information from other organizations without paying a fee. However, I have no information about how the requested information was stored or retained by these other organizations. I also have no information about the capabilities of the systems involved.

- [40] In this case, I have an affidavit sworn by the ICT Manager that includes information about the HRIS system used by the U of S and describes the actions necessary to retrieve the information from HRIS. The Manager's estimates of the work and time required to retrieve the requested information from the HRIS system appear to have been made in good faith and appear to be based on an informed and expert evaluation of the system. Finally, the U of S only suggested going to this effort in order to provide the record in the format desired by the Applicant.

[41] On that basis, I am satisfied that a search and retrieval of electronic data was required to give access to the information requested by the Applicant. I am also satisfied that the revised fee estimate, and the estimate of the time, resources and cost involved, is reasonable.

[42] For these reasons, I find that the U of S appropriately relied on subsection 5(4) of the LA FOIP Regulations to calculate the fee in this case and the revised fee estimate is reasonable.

[43] I recommend that the U of S begin processing the Applicant's access to information request once the Applicant pays the deposit requested in the revised fee estimate.

**4. Did the U of S comply with its duty to assist in subsection 5.1(1) of LA FOIP?**

[44] The duty to assist applicants is set out in subsection 5.1(1) of LA FOIP which provides:

**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.

[45] Subsection 5.1(1) of LA FOIP requires a local authority to respond to an applicant's written access to information request openly, accurately and completely. This means that local authorities should make a 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 and seek any necessary clarification on the nature or scope of the request within the legislated timeframe. The duty to assist also involves making reasonable effort to assist without delay (*Guide to LA FOIP*, Ch. 3, pp.15-16).

[46] A reasonable effort is what a fair and rational person would expect to be done or would find acceptable and helpful in the circumstances. How a local authority fulfills its duty to assist will vary according to the circumstances of each request and requires the exercise of judgment (*Guide to LA FOIP*, Ch. 3, pp. 16-17).

[47] My office's guidance, [\*Understanding the Duty to Assist\*](#), at page 1, provides:

Though FOIP [*The Freedom of Information and Protection of Privacy Act*], LA FOIP and HIPA [*The Health Information Protection Act*] require the public body to respond openly, accurately and completely, the duty also involves making every reasonable effort to assist without delay. This should occur pre and post receipt of any access to information request.

[48] The requirement to respond openly means that a local authority must be honest, forthcoming and transparent. To respond openly to an access request, local authorities must be transparent and provide explanations of the processes, actions and decisions taken to respond to an access request (*Guide to LA FOIP*, Ch. 3, p.16).

[49] To be accurate means the local authority must provide the applicant with sufficient and correct information about the access process and how decisions are made. This includes understanding what the applicant is actually looking for and includes clarifying the nature of the access to information request (*Guide to LA FOIP*, Ch. 3, p. 16).

[50] A complete response is one that includes every item or element, without omissions or deficiencies; and is not lacking in any element or particular. Furthermore, it means the information from a local authority must be comprehensive. A local authority should provide all the necessary details to enable an applicant to understand how a decision was reached. This will include explaining the factors that were relied upon in exercising its discretion (*Guide to LA FOIP*, Ch. 3, p. 17).

[51] In its submission, the U of S asserted that it took many steps to assist the Applicant including:

- Clarified the scope of the request,
- Provided publicly available information that showed overall salary and benefit costs, pay over time and collective agreements,
- Made inquiries about what would be involved in “creating a record,”
- Provided an explanation as to how the estimate was arrived at when asked to do so, and
- Made further inquiries about the fee estimate and subsequently reduced the amount of the fee estimate.

[52] I am satisfied that while its initial decision to claim that the record did not exist was made in error, appropriate efforts were made to work with the Applicant to help narrow the scope of the request, explain the manner in which the information was stored and provide explanations when requested as to how the fees were calculated. In this regard, I note that the U of S reduced the fee by \$675.00 as a result of discussions with the Applicant. For all of these reasons, I find that the U of S complied with its duty to assist the Applicant.

#### **IV FINDINGS**

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

[54] I find that initially the U of S improperly applied subsection 7(2)(e) of LA FOIP and that the information contained in the HRIS database is the responsive record.

[55] I find that the U of S appropriately relied on subsection 5(4) of the LA FOIP Regulations to calculate the fee and the revised fee estimate is reasonable.

[56] I find that the U of S complied with subsection 5.1(1) of LA FOIP.

#### **V RECOMMENDATION**

[57] I recommend that the U of S continue processing the Applicant's access to information request once the Applicant pays the deposit requested in the revised fee estimate.

Dated at Regina, in the Province of Saskatchewan, this 13th day of April, 2023.

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