



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 328-2023

City of Warman

February 23, 2024

Summary:

The City of Warman (City) received an access to information request from the Applicant along with a request to waive the full fee for processing the request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The City provided the Applicant with its fee estimate. The Applicant requested the Commissioner review the City's decision to not waive the fees and the reasonableness of the fee estimate. During the course of the review, the City waived a portion of the fees and issued a new fee estimate which became the focus of the review. The Commissioner found that circumstances did not exist for the City to grant a fee waiver. In addition, the Commissioner found that the new fee estimate would be reasonable if the Applicant required paper copies of records. Further, the Commissioner found that a revised fee estimate with a deduction of reproduction fees would be reasonable if the Applicant requested the record be provided electronically and if the City was able to provide records to the Applicant in that manner. The Commissioner noted that the City did not communicate its decision to grant or deny the fee waiver to the Applicant and recommended that it do so within 10 days of receiving the access to information request for all applicants going forward. Further, the Commissioner noted that the City did not have a policy or procedure to guide it when handling fee waiver requests and recommended the City develop them within 30 days of receiving this Review Report. Finally, the Commissioner recommended that the City continue processing the request if the Applicant pays the 50% deposit.

I BACKGROUND

- [1] On November 23, 2023, the City of Warman (City) received an access to information request via email from the Applicant as follows:

Requesting the following: All invoices paid to all Hydro vac companies at # 3 Lift station Crenshaw way / 6th Ave. Including hours of operation and amount paid.

2. A copy of totals that the city of Warman charged the entire City of Warman for water only per year.

I am requesting this information from June 2008 – to present day November 23, 2023 for both issues. I had asked for the information regarding the water previously and was told that the City made zero revenue.

All information regarding bringing doctors to Warman. All informal offers that were brought forward. From anytime to present. I believe one was a \$8 per month tax levy and the second offer as well, that were both turned down.

- [2] On November 28, 2023, the City sent an email to the Applicant asking them to clarify the scope of their access to information request. The City wrote as follows:

...

I am currently in the process of reviewing your Form A, Access to information Request Form that was received by our office on Thursday, November 23, and [sic] drafting an estimate. In accordance with section 6(3) of the Local Authority [sic] of Information and Protection of Privacy Act, I ask that you please provide additional details on the following statement:

“All information regarding bringing doctors to Warman. All informal offers that were brought forward from anytime to present”

The scope of the request is broad. Can you please provide additional details that would help the city narrow down out search [sic] What years are you looking for? When it comes to bringing doctors to Warman – What documents are you looking for? What type of information are you looking for?

Please try to be specific as possible.

- [3] On December 4, 2023, the City sent another email to the Applicant asking them to clarify the scope of their access to information request. The City wrote as follows:

...

I wanted to follow-up on the email below (dated November 28). When, in your application, you asked for information regarding bringing doctors to Warman, are you wanting us to focus our search efforts solely on the alleged “\$8/month tax levy and the second offer as well, that were both turned down”?

If you are wanting more/different information, I ask that you please provide me with as much detail as possible so that we can narrow down our search...

[4] Also on December 4, 2023, the Applicant responded to the City's emails as follows:

...
All offers/discussions, formal or informal from any and all sources.

[5] In a letter to the Applicant dated December 7, 2023, the City provided the Applicant with its fee estimate of \$1,440.00. The City also requested a 50% deposit before proceeding with the processing of the access to information request as per subsection 9(4) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[6] On December 13, 2023, my office received a request for review from the Applicant regarding the City's fee estimate of \$1,440.00 and its decision to not waive the fees.

[7] In an email to the City on December 20, 2023, my office indicated to the City that the Applicant had authorized my office to amend the scope of the access request as follows:

...I've spoken with the Applicant, and I am authorized to ask if you would be willing to re-issue the fee estimate re-calculated with the following modification to the scope of the request:

Documentation/correspondence related to proposals for bringing doctors to the City of Warman within the last 5 years.

The scope of the Applicant's request for information around hydrovac truck invoices and totals charged for water per year remains unchanged.

I also note that on the access to information request form, the Applicant requested a waiver of processing fees. Did the City of Warman consider this when creating the fee estimate? With the revised narrowed scope, would the City be willing to consider a waiver or partial waiver of the fees?

[Emphasis in original]

[8] On December 21, 2023, my office sent an email to the City regarding the possibility of the City waiving the fee on the first two items on the Applicant's access request as follows:

...

In our conversation yesterday, you indicated that the City of Warman may be willing to waive the fees on the records related to the hydrovac truck invoices and the totals that the City of Warman charged for water per year. I note you also mentioned that due to records retention policies, you may not be able to provide records as far back as 2008. Would the City be willing to commit to waiving the fees on these items? If so, the City should issue a section 7 decision letter for these points after resuming the process of these parts of the request according to legislative timelines.

If the City commits to waiving the fees on the first two items and continues processing the request, the review will focus on the fee estimate for the revised scope of **“Documentation/correspondence related to proposals for bringing doctors to the City of Warman within the last 5 years.”** If the City is not willing to waive the fees for this portion of the request, the City will need to issue a new fee estimate based on the revised scope.

...

[Emphasis in original]

[9] Before receiving a response from the City, on December 22, 2023, my office sent notices to the City and the Applicant advising of my office’s intent to undertake a review of the City’s fee estimate and its decision to not waive the fees. My office requested that the City provide its submission by January 22, 2024. The Applicant was also invited to provide a submission by January 22, 2024. In my office’s notice to undertake a review, it asked the City to do the following:

- Explain how the fee estimate was calculated (for paper and electronic records) and demonstrate how the fee is reasonable in the circumstances.
- 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).
- Indicate whether the City would be willing to waive the fee. If not, please explain the City’s decision not to consider and/or grant the Applicant’s fee waiver request.
- If you provided the Applicant with any instructions regarding what you require from them in order to make a determination as to whether or not to grant a fee waiver, please provide a copy of that correspondence. If you did not provide instruction to the Applicant, please explain why not.

[10] On January 4, 2024, the City sent a revised fee estimate of \$615.00 to the Applicant and my office. The City requested a 50% deposit before proceeding with processing the revised

access to information request. Also on this date, the Applicant indicated they would like my office to conduct a review of the new fee estimate. The Applicant did not pay the 50% deposit.

[11] On January 19, 2024, the City provided my office with its submission. The Applicant did not provide a submission.

[12] On January 30, 2024, upon reviewing the City's submission, my office asked the City to provide a breakdown of the number of pages it estimated it would search through for records.

[13] On January 31, 2024, the City provided my office with an estimated number of pages it would search through for records.

II RECORDS AT ISSUE

[14] As this is a review of the reasonableness of the City's fee estimate as well as its decision to not grant a fee waiver, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[15] The City qualifies as a "local authority" pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I find that I have jurisdiction to review this matter.

2. Do circumstances exist for a full fee waiver?

[16] The Applicant requested my office review the City's decision not to provide a full waiver of the fees estimated. In its submission to my office on January 19, 2024, the City indicated that it waived the fees for the first two items in the Applicant's revised access to information request and that the new fee estimate represented only fees for the third item

in the request. As the City has agreed to waive the fees for the first two items, this Report will only look at the City's decision to not waive the fees for the third item in the Applicant's revised access to information request.

- [17] My office's authority to consider the Applicant's request can be found at subsection 38(1)(a.2) of LA FOIP which provides:

38(1) Where:

...

(a.2) an applicant believes that all or part of the fee estimated should be waived pursuant to subsection 9(5);

...

the applicant or an individual may apply in the prescribed form and manner to the commissioner for a review of the matter.

- [18] The *Guide to LA FOIP*, Ch. 3 at pages 84 and 85, provides that a review of a fee waiver denial considers the criteria or process used by the local authority to deny the request and whether it was consistent with LA FOIP. A local authority should be able to explain in detail how it arrived at its decision to deny the request for a fee waiver.

- [19] Subsection 9(5) of LA FOIP provides as follows:

9(5) Where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee.

- [20] Subsection 9(5) of LA FOIP provides that a local authority can waive payment of all or part of the fees in prescribed circumstances. The prescribed circumstances are outlined at section 8 of the *Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations).

- [21] Based on the information provided to my office, the Applicant appears to have requested a fee waiver based on the criteria established at subsection 8(1)(b) of the LA FOIP Regulations which provides:

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:

...

(b) with respect to the fees set out in subsections 5(2) to 5(4), if payment of the prescribed fees will cause a substantial financial hardship for the applicant and, in the opinion of the head, giving access to the record is in the public interest;

[Emphasis added]

- [22] Subsection 8(1)(b) of the LA FOIP Regulations allows a local authority to waive the payment of fees if payment would cause substantial financial hardship for the applicant and giving access is in the public interest.

- [23] In its submission to my office, the City stated as follows:

...The City did in good faith, waive the fees for the first two requests, however, after considering the public interest test and other relevant arguments as it relates to the request for “[all] documentation/correspondence related to proposals for bringing doctors to the City of Warman within the last five (5) years” the City determined that the fees should **not** be waived for that request.

...

In paragraph 37 of Review Report 302-2018, 303-2018, 304-2018..., the Saskatchewan Information and Privacy Commissioner stated, “[i]t is recommended by my office that **before** the public body collects sensitive personal information from the individual, that the public interest test be considered. Once the public body has first determined that releasing the information is in the public interest, only then should they collect the personal information required to determine whether the fee would cause financial hardship to the Applicant.” After considering the public interest test that is set out in Review Report 145/2014...the City found that access to the records requested is **not** in the public’s interest.

[Emphasis in original]

- [24] In my office’s [Review Report 145-2014](#) at paragraph [8], I described the importance of determining if a record would be in the public interest before determining if payment of the prescribed fees would cause substantial financial hardship to an applicant as follows:

[8] Mindful of the fact that public bodies should collect the least amount of personal information needed for the purposes, I will begin my analysis by considering whether access to the record would be in the public interest as the financial information of the Applicant would not need to be collected.

[25] Further, in my office's [Review Report 102-2019](#) at paragraph [13], I highlight the importance of determining the public interest aspect of a record before deciding if the prescribed fees will cause a substantial financial hardship for the applicant as follows:

[13] My office suggests that the public bodies determine whether giving access to the requested records would be in the public interest before determining the prescribed fee would cause financial hardship to the Applicant. This is to help public bodies minimize the amount of sensitive personal information it needs to collect from applicants in determining financial hardship.

[26] From my office's Review Reports [302-2018](#), [303-2018](#), [304-2018](#), [145-2014](#), and [102-2019](#) mentioned in paragraphs [23], [24], and [25] of this Report, my office emphasized that local authorities should collect sensitive personal information from applicants only when it is absolutely necessary for the purpose of determining an outcome of an access to information request. More specifically, it is only necessary to ask an applicant for documentation to support their claim of substantial financial hardship only after a determination of records being in the public's interest has been made. I will follow this process in determining whether or not circumstances exist for a fee waiver by first determining if releasing the records are in the public interest. Only then would I determine if the City followed the required process to determine whether the fee would cause financial hardship to the Applicant.

[27] In its submission to my office, the City asserted that providing the Applicant access to the records would not be in the public interest and it set out the criteria noted in my office's *Guide to LA FOIP*, Ch. 3 at pages 83 and 84. The criteria to determine if giving access to records would be in the public interest is as follows:

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be if the public knew about it. The following may be relevant:

- Have others besides the applicant sought or expressed an interest in the records.
- Are there other indicators that the public has or would have an interest in the records.

2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public? The following may be relevant:

- Do the records relate to a personal conflict between the applicant and the local authority.
- What is the likelihood the applicant will disseminate the contents of the records in a manner that will benefit the public.

3. If the records are about the process or functioning of the local authority, will they contribute to open, transparent and accountable government. The following may be relevant:

- Do the records contain information that will show how the local authority reached or will reach a decision.
- Are the records desirable for subjecting the activities of the local authority to scrutiny.
- Will the records shed light on an activity of the local authority that have been called into question.

[28] In its submission to my office, the City described how the release of the records to the Applicant would not be in the public's interest as follows:

1. While admittedly doctor shortages are a Canada-wide issue, no residents, other than the Applicant had ever sought or expressed interest in the records requested. Moreover, there were no indicators that the public has or would have an interest in the records.

2. The records relate to a personal conflict...between the applicant and the City. On numerous occasions, the Applicant and their spouse have insinuated that Warman City Council is profiting off taxpayers, that Warman City Council and members of staff are hiding information from residents, and they have threatened litigation against members of staff...Given their disdain for Warman City Council and city hall staff, the City does not believe that the Applicant will disseminate the requested information in a manner that will benefit the public.

3. The records requested will not show how Warman City Council has or will reach a decision. The records are not desirable for the purposes of subjecting the activities of the government institution to scrutiny. The records do not shed light on an activity of the government institution that has been called into question.

After having considered the public interest test, it is the City's position that the release of the records would **not** be in the public's best interest. Following the Privacy Commissioner's recommendation in Report 302-2018, 303-2018, 304-2018...the City did **not** collect personal information from the Applicant as it relates to whether the fee

would cause financial hardship as the prescribed circumstances for a fee waiver do not exist.

[Emphasis in original]

[29] For the first part of the criteria, I have no evidence before me that suggests that any other person besides the Applicant has requested the records nor is there any indication that the public has or would have an interest in the records.

[30] To support its argument for the second part of the criteria, the City provided my office copies of emails it received from the Applicant to describe a conflict between the Applicant and the City. I consider the Applicant's emails to the City dated November 15 and 16, 2023. The Applicant wrote the following:

November 15, 2023:

Thanks for your reply but it still has not addressed the doctor shortages.

I plan to file a complaint and include all the neighbours that have suffered the noise emissions from the Hydrovac truck for the past 15 years, which I will be filing through the Ministry and OHS.

I will be obtaining all the information through the Freedom of Information Act as many questions have not been answered satisfactorily.

When is the next election?

I can see Warman needs representation that will support [sic] issue and stop wasting our taxpayer funds on what the current Mayor wants and ignores what the residents need and want.

It was the MLA's office that told me about the possibility that the Government would match the tax levy to bring doctors to Warman. Don't pretend that this whole issue was not discussed...

November 16, 2023:

I will be starting my campaign regarding the decimal levels these trucks emit over the past 15 years.

I have an email from yesterday stating there would be no Hydrovac trucks and surprise we got woken up to the wonderful or so familiar high decibel sound of the Hydrovac trucks.

See you in court!

...

[31] Based on the Applicant's emails, it appears there is a personal conflict between the Applicant and the City. While it is conceivable the Applicant could disseminate the contents of the records to the public, it is not clear how the dissemination would benefit the public or if there is any interest in those records by the public.

[32] For the third part of the criteria, the City indicated in its submission to my office as follows:

The records requested will not show how Warman City Council has or will reach a decision. The records are not desirable for the purposes of subjecting the activities of the government institution to scrutiny. The records do not shed light on an activity of the government institution that has been called into question.

[33] From a read of the access to information request – all information regarding bringing doctors to the City from anytime to present – it appears the records could be about a process or functioning of the City, and would contribute to open, transparent and accountable government. It also appears the records could be used to scrutinize the activities of the City. As such, this would weigh in favour of a fee waiver.

[34] In considering all of the above, I am not persuaded that giving access to the records would be in the public interest. Although the nature of the records would usually be used to hold a local authority to account, in this instance, it is not clear how the subject matter is an issue of concern or controversy.

[35] As I have not found that giving access to the record is in the public interest, there is no need to consider whether payment of the fees would cause a substantial financial hardship to the Applicant.

[36] There are two items which need to be addressed with the City in terms of its handling of the fee waiver request. Firstly, it appears that at no time did the City communicate in writing to the Applicant its decision in terms of the fee waiver. At the time it issued its

initial fee estimate, it should have included its decision on the fee waiver in that communication. Applicants need a formal response in writing of the City's decision where waiver of fees has been requested. In the future, the City should ensure that it formally responds in writing to all requests for a fee waiver. To make a determination of what time frame is reasonable for a local authority to respond in writing to requests for a fee waiver, I refer to my office's Review Reports [037-2017](#), [216-2022](#), [141-2023](#), and [142-2023](#). In those Review Reports, I indicated that a local authority should issue a fee estimate within three to ten days of receipt of an access request, so it has time to process the request once a deposit is received within the initial legislated 30-day timeline. Since a local authority should provide an applicant with its decision on a fee waiver prior to providing a fee estimate, a reasonable timeframe for a local authority to provide an applicant with its decision on a fee waiver is within the first ten days. As indicated in paragraph [24] of this Report, a local authority should establish whether or not releasing responsive records would be in the public's interest prior to asking an applicant to provide evidence of substantial financial hardship. If within this time period a local authority determines that releasing the responsive records would be in the public's interest, the local authority should then ask the applicant to provide evidence of financial hardship before the tenth day so a final decision may be made with respect to whether or not to grant the fee waiver. Upon receiving a response from the Applicant regarding evidence of financial hardship or if nothing is provided by its deadline, a local authority would then be able to make a final decision with regard to the waiver.

[37] Secondly, my office inquired if the City had a policy and procedure to guide it in its internal handling of fee waiver requests. On February 13, 2024, the City indicated it did not have a policy or procedure. In past reports, my office has stated that public bodies should have a policy that identifies the criteria that will be canvassed in assessing financial hardship and public interest. Examples of such Review Reports include [F-2007-001](#), [145-2014](#), [029-2017](#), and [136-2022](#). A policy and procedure also ensures that fee waivers are handled in a consistent, equitable, fair and even-handed fashion amongst all applicants.

[38] In conclusion, I find that circumstances do not exist for a fee waiver for the third item on the Applicant's access to information request. I recommend that for future fee waiver

decisions, the City communicate its decision to applicants in writing and that it immediately develop a policy and procedure to guide it in handling fee waivers. I will now consider the new fee estimate issued by the City on January 4, 2024.

3. Was the City's fee estimate reasonable?

[39] As the City waived the fees for the first two items in the Applicant's revised access to information request, the City provided the Applicant with a new fee estimate on January 4, 2024, based on the remaining third item in the Applicant's revised access to information request. The new fee estimate was as follows:

	Fee Type	Fee Calculations	Fees
1	Time required to search for records and time required to prepare records for disclosure.	19 hours X \$15/ half hour	\$570.00
2	Photocopies or computer printouts of records.	300 pages x \$0.25/page	\$75.00
3	Less	1-hour free x \$15/half hour	\$30.00
4	Total estimate of costs to process this request		\$615.00
	Deposit required	50% of the Total Estimate of Costs	\$307.50

[40] Subsections 9(1) and 9(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.

[41] 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 LA FOIP Regulations.

[42] My Office's *Guide to LA FOIP*, Chapter 3, "Access to Records" (*Guide to LA FOIP*, Ch. 3) at page 73, provides that for reasonable cost recovery associated with providing individuals access to records. 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.

[43] There are generally three kinds of fees that can be included in a fee estimate:

1. Fees for searching records;
2. Fees for preparing records; and
3. Fees for reproducing records.

1. Fees for searching records

[44] Subsection 5(3) of the LA FOIP Regulations describes the fee formula local authorities can apply when estimating a fee for searching or preparing records. Subsection 5(3) of the LA FOIP Regulations provides as follows:

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 access is given.

[45] The *Guide to LA FOIP*, Ch. 3 at page 75, provides that 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.

- Reading through files to determine whether records are responsive.

[46] The *Guide to LA FOIP*, Ch. 3 at page 75, also provides 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.

[47] The *Guide to LA FOIP*, Ch. 3 at page 75, also provides that generally, the following has been 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.

[48] The *Guide to LA FOIP*, Ch. 3 at page 76, provides that in instances where the above does not accurately reflect the circumstances, the local authority should design a search strategy and test a representative sample of records for time. The time can then be applied to the responsive records as a whole. 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 FOIP Regulations.

[49] In its new fee estimate to the Applicant on January 4, 2024, the City included a \$570.00 charge for nineteen hours of search and preparation time. In its submission to my office on January 19, 2024, the City indicated thirteen out of the nineteen hours were for time to search through electronic and paper records. The City estimated \$390.00 (13 hours X \$30/hour) for search.

[50] In its submission to my office, the City indicated the 13 hours of search time would be spread among six individuals (3 councillors, the City manager, the Economic Development

Officer, and the Mayor). This includes a total spread of seven hours of search for electronic records and 6 hours of search for paper records.

[51] Also, in its submission to my office, the City indicated:

The estimated fee for searching for records includes:

1. Staff time involved with searching for records
2. Time examining file indices, file plans, and/or listings of records either on paper or electronic;
3. Time pulling paper files/specific paper records out of files; and
4. Time reading through files to determine whether the records are responsive.

[52] From paragraph [47] of this Report, 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 FOIP Regulations). The City deducted the first hourly charge of \$30.00, bringing the final search estimate to \$360.00 (12 hours x \$30/hour).

[53] On January 31, 2024, the City clarified to my office that it estimated a total of 8,100 pages to search through for responsive records.

[54] From paragraph [47] of this Report, the estimated time for an experienced employee to virtually scan 12 pages of paper or electronic records to determine responsiveness should be 1 minute. Therefore, the estimated search time for City representatives to search through 8,100 pages of records should be 675 minutes or 11.25 hours (8,100 pages / 12 pages).

[55] As indicated in paragraph [52] of this Report, the City estimated 12 hours for searching an estimated 8,100 pages of records. It appears the City should have based its search hours on 11.25 hours, not 12 hours. The City's fee estimate for search should be \$337.50, not \$360.00. The City overestimated its search fee by \$22.50 (\$360.00 - \$337.50). I will now

shift to looking at the fees for preparing records before concluding whether the fee estimate is reasonable.

2. Fees for preparing records

[56] As noted earlier in this Report, subsection 5(3) of the LA FOIP Regulations describes the fee formula local authorities can apply when estimating a fee for preparing records. That fee formula is \$15.00 for every half hour of preparation that is in excess of one hour for search or preparation.

[57] The *Guide to LA FOIP*, Ch. 3 at page 76, provides that preparation includes time spent preparing the record for disclosure including:

- Time anticipated to be spent physically severing exempt information from records.

[58] The *Guide to LA FOIP*, Ch. 3 at page 77, provides that 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.

[59] The *Guide to LA FOIP*, Ch. 3 at page 77, also provides that the test related to reasonable time spent on preparation is generally, it should take an experienced employee two minutes per page to physically sever. 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.

- [60] In its fee estimate to the Applicant on January 4, 2024, the City provided the Applicant with a combined search and preparation fee estimate of \$570.00 (19 hours x \$30/hour). As indicated in paragraph [52] of this Report, the City estimated 12 hours for search only and deducted one hour off the total search and preparation time as per subsection 5(3) of the LA FOIP Regulations. As a result, the City estimated 6 hours for preparing records. The City's fee estimate for preparing records is \$180.00 (6 hours X \$30/hour).
- [61] In its submission to my office, the City indicated the estimated fee for preparing records includes time anticipated to be spent physically severing exempt information from records.
- [62] Also, in its submission to my office, the City estimated a total of 300 pages requiring preparation and reproduction. As described in paragraph [59] of this Report, it should take an experienced employee two minutes per page to physically sever only. That means it should take the City 600 minutes or 10 hours (2 minutes/page x 300 pages) to sever records. The City estimated 6 hours for preparation, which is 4 hours (or \$120.00) less than the number of preparation hours (or dollars) it could have estimated. I will now consider the fees for reproduction.

3. Fees for reproducing records.

- [63] Subsection 5(2) of the LA FOIP Regulations prescribes the fee local authorities can apply. They can charge \$0.25 per page for photocopying or computer printouts.
- [64] The City estimated \$75.00 (300 pages at \$0.25/page) for photocopies or computer printouts of records. This is in line with what the LA FOIP Regulations prescribes. Applicants sometimes want records provided to them in electronic format. Local authorities should not charge fees for records provided electronically. However, if the Applicant requests the records on a portable storage device, LA FOIP provides that for reproduction of electronic copies for the applicant, the local authority can charge the actual cost of any portable storage device that is used to provide the records. The City did not indicate to my office if it verified if the records could be provided to the Applicant electronically.

[65] In conclusion, although the City overestimated its search fee by \$22.50 as described in paragraph [55] of this Report, its estimate for preparation was \$120.00 less than the maximum amount it could have estimated as described in paragraph [62] of this Report. However, the City did not indicate to my office if it can provide records electronically, nor does it appear it asked the Applicant if they could receive the records electronically. I find that the total fee estimate of \$615.00 would be reasonable if the Applicant requires paper copies of records. Alternatively, if the Applicant requests the records be provided electronically, the fee should be reduced.

[66] I recommend the City continue processing the request if the Applicant is willing to pay the 50% deposit of \$307.50 or less if the records may be provided electronically.

FINDINGS

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

[68] I find that circumstances do not exist for a fee waiver.

[69] I find that the City's total fee estimate of \$615.00 would be reasonable if the Applicant requires paper copies of records, but less if the records may be provided electronically.

V RECOMMENDATIONS

[70] I recommend that for future fee waiver decisions, the City communicate its decision to applicants in writing within the first 10 days or prior to issuing a fee estimate, and that it develop a policy and procedure to guide it in handling fee waivers within 30 days of receiving this Review Report.

[71] I recommend the City continue processing the request if the Applicant pays the 50% deposit of \$307.50 or less if the records may be provided electronically.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of February, 2024.

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