



REVIEW REPORT 102-2019

City of Saskatoon

October 29, 2019

Summary: The Applicant submitted an access to information request to the City of Saskatoon (the City). The City issued a fee estimate. The Applicant requested a fee waiver but the City refused to waive the fee. The Applicant appealed to the Information and Privacy Commissioner. The Commissioner found the prescribed circumstances for a fee waiver do not exist. Therefore, the IPC recommended that the City take no further action.

I BACKGROUND

[1] In a letter dated February 25, 2019, the Applicant submitted the following access request to the City of Saskatoon (the City):

Give me all records relating to me. My identification is attached. I'm unable to pay.

[2] In a letter dated March 5, 2019 to the Applicant, the City sent a fee estimate pursuant to the fees set out in subsections 5(2), 5(3), and 5(4) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations).

[3] In a letter dated March 9, 2019 to the City, the Applicant indicated that they were unable to pay the fee. The letter said the following:

I don't have six hundred 3 score and zero dollars, but I know you do.

If I did paying you would cause financial hardship. You've accepted waiving the fee for a previous request. I've attached proof of enrollment in a provincial disability program.

You may now claim the hardship clause was repealed in legislation and the fee is required and I will escalate the matter and accuse you of delay for the purpose of mitigating loss in a civil claim.

- [4] In a letter dated March 21, 2019, the City refused to waive the fees. The letter said the following:

On March 13, 2019, the City Clerk's Office received your letter dated March 9, 2019, regarding the City's refusal to waive the associated fees as per your request. You will note section 9(5) of *The Local Authority Freedom of Information and Protection of Privacy Act* is a discretionary clause regarding the waiver of prescribed fees. The City has waived the \$20 application fees for all of your access to information requests thus far as well as the associated costs to search and provide previous records. Given the vast search required by all areas of the City in this request: "Give me all records relating to me" fees will not be waived.

- [5] In a letter dated March 25, 2019 to the City, the Applicant sent additional information in efforts to prove that the fee payment will cause financial hardship.

- [6] In a letter dated March 28, 2019 to the Applicant, the City responded by indicating it will not be waiving the fees for the reasons outlined in its letter dated March 21, 2019.

- [7] In a letter dated April 1, 2019, the Applicant requested that my office review the City's refusal to waive the fees.

- [8] In separate emails dated April 8, 2019, my office notified the Applicant and the City that it would be undertaking a review.

II RECORDS AT ISSUE

- [9] This review is focused on the City's refusal to waive the fees for processing an access request. Therefore, there are no records at issue in this review.

III DISCUSSION OF THE ISSUES

1. Does *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)* apply and do I have jurisdiction to review this matter?

[10] The City qualifies as a “local authority” as defined by subsection 2(f)(i) of LA FOIP. Therefore, I find that LA FOIP applies and that I have jurisdiction to review this matter.

2. Do the prescribed circumstances exist that would qualify this access request for a fee waiver?

[11] 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.

[12] The fee estimate issued by the City were for fees set out in subsections 5(2) to 5(4) of the LA FOIP Regulations. Subsection 8(1)(b) of the LA FOIP Regulations requires the head of a local authority to consider if two circumstances exist in determining if it will waive fees set out in subsection 5(2), 5(3) and 5(4) of the LA FOIP Regulations. The first circumstance is that the prescribed fees would cause a substantial hardship for the Applicant. The second circumstance is that giving access to the record is in the public interest. Subsection 8(1)(b) of the LA FOIP Regulations provides as follows:

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;

...

[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.

[14] In its submission, the City asserts that providing the Applicant access to the records would not be in the public interest. The City referenced its Access to Information Standard Operating Procedure (SOP), which outlines a “public interest” to include records “in which society has a stake or interest in” having disclosed. The City asserts that the Applicant is seeking their personal information held by the City and such information was assessed to not hold public interest.

[15] In Review Report 145-2014, my office established criteria to determine if giving access to records would be in the public interest. The criteria 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 public body?
 - 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 government, will they contribute to open, transparent and accountable government? The following may be relevant:
 - Do the records contain information that will show how the public body reached or will reach a decision?

- Are the records desirable for the purpose of subjecting the activities of the public body to scrutiny?
- Will the records shed light on an activity of the public body that have been called into question?

[16] 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.

[17] For the second part of the criteria, I consider the Applicant's email dated April 24, 2019, to my office. The Applicant said the following:

...My intent is to use them to force the City to stop violating artists' charter rights. The other way of looking at it is that my records will force a cash compensation at the tax payer's expense, and that's the opposite of the public interest. ...

Note I've accused them of municipal corruption (CC s.123) and I also intend a malicious prosecution tort.

[18] Based on the Applicant's email, it appears that the records relate to a personal conflict between the Applicant and the City. While it is conceivable, the Applicant can disseminate the contents of the records to the public, it is not clear how the dissemination will benefit the public.

[19] For the third part of the criteria, the requested records appear to be about the Applicant and not about the process or functioning of local government.

[20] Based on the above, I find the giving of access would not be in the public interest. As such, I find the prescribed circumstances for a fee waiver do not exist.

IV FINDING

[21] I find the prescribed circumstances for a fee waiver do not exist.

V RECOMMENDATION

[22] I recommend that the City take no further action.

Dated at Regina, in the Province of Saskatchewan, this 29th day of October, 2019.

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