



REVIEW REPORT 140-2018

Rural Municipality of Blaine Lake #434

September 10, 2018

Summary: The Applicant submitted an access to information request to the Rural Municipality of Blaine Lake #434 (RM). The RM issued a fee estimate. The Applicant appealed the fee estimate to the Information and Privacy Commissioner (IPC). The IPC found that the RM's fee estimate for preparing the records for disclosure to be unreasonable but he found that the fee estimate for photocopying to be reasonable. He recommended that the RM adjust its fee estimate.

I BACKGROUND

[1] On June 21, 2018, the Rural Municipality of Blaine Lake #434 (RM) received the following access to information request:

Time sheets turned in by employees documenting when they worked. From Jan 1 2018 to date this request is complied with.

Particulars and a copy of written contract with Councillor Lamontagne.

Details such as price per yard specs for gravel quality.

[2] In a letter dated July 20, 2018, the RM issued the following fee estimate to the Applicant:

You have requested access to records that will take considerable time to copy and redact. Therefore, the following fee estimate is provided, for the processing of your access request.

	Type of Fee	Calculation of Fees	Total Amount of Fees
1	Time required to prepare records for disclosure	100 x \$15.00/half hour	\$1500.00

2	Photocopies or computer printouts of Records	232 x \$0.25/page	\$58.00
3	LESS:	4 x \$15.00/half hour	(\$60.00)
Total amount of fees required to process access request			\$1498.00

[3] The RM provided the Applicant the following breakdown:

Access to Information Application Number 2018-01
Estimate of Costs

LOCATING RELEVANT RECORDS					
Program areas/offices to be searched	Paper Records		Electronic Records		Total Cost
	# of records to review & time to locate relevant records	Cost to locate possible records	# of records to review (or other description of size of task) & time to locate relevant records	Cost to locate possible records	
Employee records	232 paper records. 0 hours to locate.	0 @ \$15 per half hour			\$0.00
REVIEWING AND PREPARING RECORDS					
After locating relevant records, it is estimated that 232 pages It is estimated that it will take approximately 100 hours to review and prepare these records for disclosure. Estimate at 100 hours x \$15/half hour = \$1500.00					1500.00
PHOTOCOPYING AND OTHER					
232 pages to photocopy x \$0.25/page					\$58.00
MINUS 2 HOURS PROVIDED FREE OF CHARGE [(\$60.00)
TOTAL ESTIMATE OF COSTS					\$1498.00
DEPOSIT REQUIRED – 50% OF TOTAL ESTIMATE OF COSTS					\$749.00

[4] On July 26, 2018, the Applicant requested a review by my office. On the same day, my office notified both the Applicant and the RM that it would be undertaking a review.

II RECORDS AT ISSUE

[5] At issue is the RM’s fee estimate. There are no records at issue in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to review this matter?

[6] The RM qualifies as a local authority as defined by subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I have jurisdiction to review this matter.

2. Is the RM's fee estimate reasonable?

[7] Section 9 of LA FOIP provides that the RM can issue a fee estimate to the Applicant where the amount will exceed the prescribed fee of \$100. Fee estimates are generally judged on the basis of whether they are reasonable. The local authority bears the burden of establishing the reasonableness of the fee.

[8] There are four kinds of fees that a local authority can include in its fee estimate:

- a. Fees for searching for responsive records;
- b. Fees for preparing the record for disclosure;
- c. Fees for the reproduction of records;
- d. Fees for retrieval of archived emails.

[9] As noted in the background section, the RM's fee estimate contemplates only two types of fees: 1) the fee for preparing the record for disclosure, and 2) the fee for the reproduction of records.

[10] Below is an analysis of whether the RM's fee estimate is reasonable.

a. Fee for preparing the record for disclosure

[11] My office had established that an estimate of two minutes per page to prepare the records requiring severance is reasonable. Subsection 5(3) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) allows the local

authority to charge a fee of \$15 for each half-hour for preparing the records, if the time is in excess of one hour.

[12] Preparation includes time spent preparing the record for disclosure including the time anticipated to be spent physically severing exemption information from the records.

[13] 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;
- 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.

[14] Based on the fee estimate as described in the background section, the RM estimates there to be 232 pages of responsive records. 232 pages at two minutes per page to prepare is 464 minutes, which is 7.73 hours or 15.467 half-hours.

[15] Subsection 5(3) of LA FOIP Regulations states that any time in excess of one hour (or two half-hours) should be charged at a rate of \$15 for each half-hour. Therefore, the fee estimate for search and preparation should be $[(15.467 \text{ half-hours} - 2 \text{ half-hours}) \times \$15/\text{half-hour}] = \$202.01$.

[16] In its fee estimate, the RM estimated it would take 100 hours to prepare the records and the fee for preparing the records was \$1500.00. In its email dated August 17, 2018, it provided the following explanation for why it would take 100 hours:

The list of pages is simple but for the hours and this is part of the reason the fees are as high as there are. For a lot of it requires both myself and the reeve to be present. As your agency as [sic] designated him as the head of the authority & I have a legal obligation to secure & protect the records of the municipality. In essence the reeve can't view the records without me being present and I can't release the records without reeves approval. The other reason the time costs are high is that the employees time sheets are hand written & have things like doctors' appointments that should be redacted in my opinion. If the applicant had just requested the amount paid or number of hours worked it would be considerably shorter.

[17] Based on the above explanation, the RM has not demonstrated how it would take 100 hours to prepare 232 pages of records. Based on this estimate, it is suggesting it would take approximately 26 minutes to redact one page. This is a gross overestimate. If it believes it would take more than two minutes to redact a page, then it should demonstrate that to my office. It should explain the complexity of the record and why it would take 26 minutes to redact the page. It has not done so.

[18] Further, the RM is asserting that both the reeve and administrator must be present to review the records. It should take note of section 50 of LA FOIP which provides that the head may delegate its power to one or more officers or employees:

50(1) A head may delegate to one or more officers or employees of the local authority a power granted to the head or a duty vested in the head.

(2) A delegation pursuant to subsection (1):

(a) is to be in writing; and

(b) may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

[19] I find that the RM's fee estimate for preparing the records for disclosure to be unreasonable. I recommend that the RM adjust its fee estimate for preparing the records for disclosure to \$202.01.

b. Fees for reproduction of the records

[20] Subsection 5(2)(a) of the LA FOIP Regulations allows for \$0.25 to be charged for each page that is photocopied.

[21] As noted earlier, the RM estimated there to be 232 pages of records that may be responsive. Therefore, the estimate would be 232 pages at \$0.25/page. The RM estimated \$58.00 in its fee estimate for photocopying. I find that the RM's fee estimate for photocopying is reasonable.

IV FINDINGS

[22] I find that the RM's fee estimate for preparing the records for disclosure to be unreasonable.

[23] I find that the RM's fee estimate for photocopying is reasonable.

V RECOMMENDATIONS

[24] I recommend that the RM adjust its fee estimate for preparing the records for disclosure to \$202.01.

[25] I recommend the RM continue to estimate the photocopying fees to be \$58.00.

[26] I recommend that the RM re-issue its fee estimate based on the above two recommendations.

Dated at Regina, in the Province of Saskatchewan, this 10th day of September, 2018.

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