



## **REVIEW REPORT 149-2015**

### **Resort Village of Candle Lake**

**November 5, 2015**

#### **Summary:**

The Applicant submitted an access to information request to the Resort Village of Candle Lake (Candle Lake) for records related to a Council meeting motion. Candle Lake responded to the request indicating that they were applying a time extension for responding to the request. Candle Lake then sent a fee estimate to the Applicant. The Commissioner found that Candle Lake's fee estimate was reasonable. The Commissioner recommended that Candle Lake revise its procedure for processing access requests involving fees.

#### **I BACKGROUND**

[1] On July 3, 2015, the Resort Village of Candle Lake (Candle Lake) received an access to information request from the Applicant for:

The Resort Village of Candle Lake Council meeting May 8, 2015, item 9.20, motion 142/2015

1. True copy of report #56/2015
2. True copy of the budget and any correspondence, documents, invoices, associated with item 9.20, motion 142/2015 including and without limiting the foregoing, copies of all correspondence and communications between Urban Systems and the Resort Village and/or its staff; copy of the invoice and attaching correspondence if any with documentation identifying GL510-201-110; copy of cheque for final payment to Urban systems for capacity study which from the minutes was approved for payment in Dec of 2014; total amount paid to Urban systems to date and break out

3. Copies of all minutes or records maintained by the Resort Village with respect to the initiation, conduction of and reporting out of the Urban systems public presentation on May 29, 2015.

[2] On July 22, 2015, Candle Lake advised the Applicant that they were extending their response period by 30 days pursuant to subsections 12(1)(a)(i) and 12(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On July 23, 2015, Candle Lake then issued a fee estimate to the Applicant in the amount of \$662.50.

[4] On July 30, 2015, my office received a request for review from the Applicant.

[5] On August 4, 2015, my office notified both Candle Lake and the Applicant of the review.

[6] In an email dated August 5, 2015, Candle Lake advised my office that they had made an error on the fee estimate and it should have amounted to \$542.50.

## **II RECORDS AT ISSUE**

[7] There is no record at issue in this review. The review is regarding the fee estimate.

## **III DISCUSSION OF THE ISSUES**

### **1. Did Candle Lake process the request appropriately?**

[8] After receiving the Applicant's request for information, Candle Lake first advised the Applicant of an extension of time pursuant to subsections 12(1)(a)(i) and 12(1)(c) of LA FOIP.

[9] Subsections 12(1)(a)(i) and 12(1)(c) of LA FOIP provide as follows:

**12(1)** The head of a local authority may extend the period set out in a section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records; or

...

(c) where a third party notice is required to be given pursuant to subsection 33(1).

[10] Candle Lake indicated the reasons for the extension of time are for search of a large number of records and to provide third party notice. LA FOIP defines a third party as a person, including an unincorporated entity, other than an Applicant or a local authority. In order for the information in the record to qualify as third party information, the information in the record would need to qualify as information described in section 18 of LA FOIP.

[11] To ensure all third parties are identified and the information contained in the record qualifies as third party information, it is recommended that the third party notification not take place until the search and review of responsive records has been completed. Further, subsection 33(1) of LA FOIP states that third party notice is required when the local authority intends to provide access to the records. Candle Lake should first make that determination before providing notice to third parties.

[12] A day later, Candle Lake sent a second letter to the Applicant providing a fee estimate for the request in the amount of \$662.50. Candle Lake later advised my office in an email that they had made an error on the amount for the estimate. The estimate should have totaled \$542.50.

[13] Candle Lake indicated in their submission as follows:

The files were then reviewed for relevance regarding the request (responsive records)... At that point 7.5 hours had been spent sourcing the relevant files and then viewing the others to ensure one had not been missed. Due to the time already spent, it was determined that an estimate needed to be prepared...

[14] At the time when the fee estimate was issued, Candle Lake had advised my office it spent over seven hours searching for records and had advised my office that they had printed

off 108 emails responsive to the request. While some initial work will be required to determine if a fee estimate is required, fee estimates should be issued prior to a large amount of time is spent on the request.

[15] In future, it is recommended that Candle Lake consider the following steps for processing an access to information request when charging fees:

1. Clarify or narrow request with Applicant.
2. Make a search plan (non-compensable).
3. Based on search plan, prepare a fee estimate (do not complete the search).
4. Decide whether charging a fee (Public Body policy).
5. Send out fee estimate and suspend work.
6. If the Applicant initiates, clarify or narrow request with Applicant.
7. When Applicant pays deposit, start search.

**2. Is Candle Lake’s fee estimate reasonable?**

[16] Candle Lake provided the following fee estimate to the Applicant in the amount of \$662.50:

<b>LOCATING RESPONSIVE RECORD (s. 5(3) of the LAFOIP Regulations)</b>			
<b>Description of Search</b>	<b>Estimated time required to complete the search</b>		<b>Total Cost</b>
We will need to search all email records for the office which will include a minimum of two email addresses, files related to the Capacity Study and records of payments	<b>10 hours</b>	@ \$15 per half hour (or portion thereof)	\$300.00
<b>PREPARING RECORD FOR DISCLOSURE (s. 5(3) of the LAFOIP Regulations)</b>			
After locating the responsive record, it is estimated that over 100 records will be found.			\$240.00
It is estimated that it will take approximately 8 hours to prepare the records for disclosure. Estimate at 8 hours x \$15/half hour = \$240.00			
<b>MINUS 2 HOURS PROVIDED FREE OF CHARGE TO SEARCH FOR THE RECORD AND/OR PREPARE THE RECORD FOR DISCLOSURE (\$15/half hour x 2 hours free, s. 5(3) of the LAFOIP Regulations)</b>			(\$60.00)

<b>PHOTOCOPYING / REPRODUCTION COSTS (s. 5(2)(a) of the LAFOIP Regulations)</b>	
250 pages to photocopy x \$0.25/page	62.5
<b>TOTAL ESTIMATE OF COSTS</b>	<b>662.50</b>
<b>DEPOSIT REQUIRED – 50% OF TOTAL ESTIMATE OF</b>	<b>331.25</b>

[17] Candle Lake then advised my office in an email that they had made an error and added the free search time rather than reducing that amount in the fee estimate. Candle Lake indicated that the fee estimate should have totaled \$542.50.

[18] Candle Lake’s submission provided as follows:

The files were then reviewed for relevance regarding the request (responsive records). As there had been a previous request for information related to items discussed in an in camera session, all the records had to be opened and reviewed. This took a considerable longer time than 12 pages per minute.

At that point 7.5 hours had been spent sourcing the relevant files and then viewing the others to ensure one had not been missed. Due to the time already spent, it was determined that an estimate needed to be prepared...

The file cabinets had not yet been searched. There will be two file drawers to search and the records in the file holders in the administrators office (active files not yet filed in the general file cabinets). It was estimated to take an additional 2.5 hours to finish the search.

As the office did not have the IPC Guidelines, the administrator estimated that it would take at least 1 full day to review and sever any information particularly any information related to personal information from the writer.

[19] The IPC Guide to Exemptions indicates that the following three types of fees can be included in a fee estimate:

1. Fees for searching for a responsive record
2. Fees for preparing the record for disclosure
3. Fees for reproduction of records.

[20] I will consider each of these types of fees.

*i. Fees for searching for a responsive record*

[21] The *IPC Guide to Exemptions* provides the following tests for a reasonable search:

- Generally, it should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness;
- Generally it should take an experienced employee 5 minutes to search 1 regular file drawer for responsive file folders.

[22] Candle Lake indicated in their submission that it took more time than suggested in the Guide. It did not provide an explanation as to why more time was required. My office requested further clarification from the Candle Lake to support the estimated time to search for responsive records but found that not enough detail was supplied. My office issued the Draft Review Report to Candle Lake and indicated that we could not find the fee estimate to be reasonable as sufficient detail could not be provided.

[23] Candle Lake responded to the Draft Review Report as follows:

There are approximately 760 emails in and 1100 emails out that were in the timelines requested from the applicant... I printed off 108 records and estimate looking through approximately another 1000. I will estimate that 10% may be responsive or have relevance which means an additional 100 pages. Also there is file drawers with approximately 25-100 files- 2 or 3 that may hold responsive records. Estimated records to search in the files – 50. This will total 258 records (already printed and estimated.)

[24] Candle Lake had indicated that they recorded the time they spent searching for responsive records. Based on a review of the dates and times recorded, this totaled 393 minutes, or approximately six and a half hours, not seven and a half hours as specified by Candle Lake.

[25] I have no reason to believe that Candle Lake's recorded time to search for records responsive to the request to be unreasonable or inflated.

[26] Candle Lake then estimated it would take an additional two and a half hours to complete the search for responsive records.

[27] Based on the response to the Draft Review Report, this would consist of approximately 1000 pages, approximately three file drawers and 50 pages of records. Using the tests found in the IPC Guide to Exemptions, Candle Lake could estimate that the review of 1050 pages of records to determine responsiveness would take an employee approximately 87.5 minutes. To search three file drawers for responsive folders, it should take an employee approximately 15 minutes. Using these two calculations, it could be estimated that the remaining search should take Candle Lake approximately 102.5 minutes or approximately two hours.

[28] Based on the six and a half hours recorded by Candle Lake as time spent searching records and an estimated two additional hours to complete the search, this would total eight and a half hours to search for responsive records.

[29] Candle Lake's Fee Estimate to the Applicant provided for two hours of free search. However, 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 when access is given.

[30] Therefore, Candle Lake is only required to provide one hour of free search time for the estimated time of search for responsive records.

*ii. Fees for preparing the record for disclosure*

[31] The *IPC Guide to Exemptions* provides that preparation time would include the "time anticipated to be spent physically severing exempt information from records."

[32] Candle Lake indicated in their fee estimate that it would take approximately eight hours to sever the responsive records prior to releasing the records to the Applicant.

[33] The *IPC Guide to Exemptions* provides that “it should take an experienced employee 2 minutes per page to physically sever only.”

[34] Using this calculation for 258 pages of records, it should take approximately 516 minutes or approximately eight and half hours to complete the severing.

**iii. Fees for reproduction of records**

[35] Candle Lake’s fee estimate indicated that for photocopying of 250 pages at \$0.25 per page, would amount to \$62.50.

[36] The LA FOIP Regulations at subsection 5(2)(a) provides for \$0.25 per page for photocopying. As Candle Lake indicated in their response to the Draft Report an estimate of 258 pages, this would mean photocopying charges of \$64.50.

[37] Below is a chart detailing the fees discussed:

<b>Type of Fee</b>	<b>Calculation of Fees</b>	<b>Total Amount of Fees</b>
Search for responsive records	8.5 hours @ \$15/half-hour	\$255.00
Preparing record for disclosure (258 pages)	8.5 hours @ \$15/half-hour	\$255.00
Deduct: One hour of free search time	1 hour @ \$15/half-hour	(\$30.00)
Photocopying	258 pages @ \$0.25/page	\$64.50
<b>TOTAL</b>		<b>\$544.50</b>

**IV FINDINGS**

[38] I find that Candle Lake’s procedure for processing access requests involving fees should be revised and be guided by the steps at paragraph [15].

[39] I find that Candle Lake’s fee estimate was reasonable at \$542.50.



**V RECOMMENDATION**

[40] I recommend that Candle Lake revise its procedure for processing access requests involving fees based on the steps outlined at paragraph [15].

Dated at Regina, in the Province of Saskatchewan, this 5th day of November, 2015.

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