



REVIEW REPORT 150-2016

Town of Kindersley

September 26, 2016

Summary: The Applicant submitted six separate freedom of information requests on the same day. The Town issued a fee estimate that appeared to be for all six requests. The Applicant requested the Office of the Information and Privacy Commissioner (IPC) review the fee estimate. The Town clarified that that fee estimate was meant for only one of the requests, and not for all six. The IPC found that fees cannot be charged for creating records. The IPC recommended that the Town revise its procedures.

I BACKGROUND

- [1] On May 4, 2016, the Town of Kindersley (the Town) received the following freedom of information request:
- A breakdown of how consumption and amounts billed to citizens. Who reads the amounts and who enters data. Who sends leak notices with billing.
- [2] The Applicant had submitted five other freedom of information requests to the Town. In a letter dated June 1, 2016, the Town issued a fee estimate to the Applicant for all six requests. The fee estimate amounted to \$159.75.
- [3] On June 15, 2016, the Applicant requested reviews by my office of her freedom of information requests, including the request that is at issue in this Review Report. My office made efforts into finding an early resolution to issues. Unfortunately, the efforts were unsuccessful. Therefore, on July 12, 2016, my office notified both the Town and the Applicant that it would be undertaking a review.

II RECORDS AT ISSUE

[4] The focus of this review is on the fees charged. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

[5] The Town 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).

1. Is the fee estimate reasonable?

[6] As mentioned in the background section, the Town issued a fee estimate dated June 1, 2016. The fee estimate read as follows:

On May 4, 2016 the Town of Kindersley received from you 6 separate request for access to information pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (the “Act”). Your requests were as follows:

1. Billing & Consumption Breakdowns, amounts billed to citizens, who reads the amounts and who enters the data. Who send leak notices with billing?
2. Agreement with Holland's Back Wash Pond
3. Agreements/Contracts with South Saskatchewan Watershed Stewards Inc. from 2008 to current date
4. Most current agreement/contract with Flocor Inc.
5. Most current agreement/contract with Neptune Technology Inc.
6. Agreement/Contract/Cost with EK Water Administration Board; specifically, for the amount of \$104,700 of this year.

The table below sets out the Town's estimate to undertake the search for records beyond the first hour prescribed in the Act that is absorbed by the municipality:

TASK	NOTES	EST. Time (hrs.)	CHARGE PER HOUR	COST
Retrieve electronic documents stored on accessible hard-drive	6 requests	5	\$30	\$150
Printing Cost	39 @ 25 cents			\$9.75
TOTAL				\$159.75

[7] Based on the above, it would appear that the fee estimate was meant for the six separate requests by the Applicant. However, in a letter dated July 12, 2016, the Town wrote to the Applicant (with a copy to my office) that the above fee estimate was only meant for one out of the six freedom of information requests. The one request it was meant for is the one at issue on this file.

[8] In the letter dated July 12, 2016, it revised its fee estimate to read as follows:

On June 1, 2016 the Town of Kindersley forwarded to you a letter with a description of six (6) LAFOIP requests which you had requested. For clarification of the fees outlined in that letter, and the specific request above, please note that the fee listed below pertains only to the billing and consumption request.

TASK	NOTES	EST. Time (hrs.)	CHARGE PER HOUR	COST
Retrieve electronic documents stored on accessible hard-drive	1 Requests	5	\$30	\$150
Printing Cost	44 @ 25 cents			\$9.75
TOTAL				\$161.75

[9] Section 9 of LA FOIP provides the Town with the ability to issue a fee estimate to the Applicant where the amount will exceed the prescribed fee of \$50.

[10] 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.

[11] There are three kinds of fees that a local authority can include in its fee estimates:

- a. Fees for searching for a responsive records;
- b. Fees for preparing the record for disclosure; and
- c. Fees for the reproduction of records.

[12] In its submission dated August 3, 2016, the Town indicated it undertook efforts to extricate information and formatted it so that the information could be understood by a lay person. It provided:

The billing is further broken down as follows:

Utility Clerk	2.5 hours @ \$30.00	\$75.00
Deputy Administrator	2.5 hours @ \$30.00	\$75.00
Printing Cost	44 copies @\$0.25	\$11.00

The record itself was not difficult to locate but the time taken was a combined effort of two staff members working in tandem to extricate the required information and format same into a legible and printable document which would make sense to the lay person while also protecting the list of customer names as attached in our electronic files to each account number. This proved to be a rather labourious undertaking.

[13] Based on the above, the Town took information from existing records and created a new record to respond to the Applicant's request. In the past, my office has stated that the obligation on a public body to assist an Applicant does not include an obligation to create records which do not currently exist. As stated above, fees can only be charged for searching, preparing, and the reproduction of records. Therefore, I find that fees cannot be charged for the time it takes to create a new record.

[14] I must note, though, that the Town's creation of records appears to be within the spirit of the Act because the creation of the record was to provide the Applicant access to information while protecting the privacy of the customers. In the future, I recommend that the Town advise the Applicant that the requested information exists in various, separate records. It would be entirely up to the Applicant to decide whether or not to obtain these separate records. If she wants these various separate records, then the Town can continue to process the request under LA FOIP. This can include issuing a fee estimate and the Town severing information within the records prior to disclosing the records.

[15] However, if the Applicant wishes the Town to create a new record from existing records, then the Applicant and the Town can come up with an agreement entirely outside of LA FOIP of what that new record should be and what fees the Applicant is willing to pay. This is because the Town does not have any obligation under LA FOIP to create a new record. An agreement between the Applicant and the Town should come in advance of the Town creating a record.

[16] I commend the Town on its efforts to provide access to the Applicant. However, fees cannot be charged for the creation of the record. Therefore, in the course of this review, my office recommended that the Town refund the Applicant the amount charged for creating the record. In a letter dated September 16, 2016 to my office, the Town's legal counsel responded by stating the Town will ask the Applicant to voluntarily pay the fee to the Town.

[17] The Town sent a letter dated September 16, 2016 to the Applicant. In that letter, it offered the Applicant the following two options: 1) the Town will reimburse her \$150 or 2) the Applicant chooses to close the file with no reimbursement if the Applicant feels that that the fee was reasonable given the time spent by Town staff in preparing the document.

[18] It would have been ideal that the Town presented these two options to the Applicant prior to the Town undertaking the work to create these records. Given the circumstances, though, I find that these two options are appropriate.

[19] For the future, I recommend that the Town contact the Applicant to determine if she wishes to continue to proceed with her request under LA FOIP as described in paragraph [14], or if she wishes to gain access to a newly created record outside of LA FOIP as described in paragraph [15].

IV FINDING

[20] I find that fees cannot be charged under LA FOIP for the time it takes to create a new record.

V RECOMMENDATION

[21] I recommend the Town improve its procedures so that, in the future, it will contact the Applicant as described in paragraphs [14] and [15].

[22] I recommend that the Town revise its procedures so that it responds to each access to information request separately.

Dated at Regina, in the Province of Saskatchewan, this 26th day of September, 2016.

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