



## **REVIEW REPORT 302-2018, 303-2018, 304-2018**

### **City of Regina**

**November 8, 2019**

#### **Summary:**

The City of Regina (the “City”) received three separate access to information requests along with a request to waive the full fee for processing each request. The City provided its fee estimate for each request to the Applicant, and included a fee reduction, but not a full fee waiver. The City also deemed the application abandoned because the Applicant had not provided the required deposit to proceed with each request in what the City felt was the applicable timeline. The Applicant appealed to the Information and Privacy Commissioner. The Commissioner found that the fees were reasonable, that the Applicant did not provide what was requested by the City in order to establish financial hardship and to meet the prescribed circumstances, and that the City improperly issued a notice of abandonment to the Applicant.

#### **I BACKGROUND**

[1] On September 19, 2018, the City of Regina (the “City”) received a request for fee waiver and a request for information from the Applicant that included four separate requests “for any and all paper records, emails, audio or video recordings or information contained in any other format related to:

- A. The redevelopment of the Regent Par III Golf Course in Coronation Park. Timeframe is 2012 to present.
- B. Communications or records that are related to [the Applicants], the Coronation Park Community Group or the Urban Planning Watchdog Group. This would include any communication between the Mayor, City Councillors, the City Manager, City lawyers, Planning and Development (including Chris Sale) that includes the names [Applicants], the Coronation Park Community Group or the Urban Planning Watchdog Group. The timeframe is 2011 to present.

- C. Any representations particularly concept plans and artist renditions (this would include artist renditions, concept plans, architects drafts and any communication regarding these) used by the City or in the possession of the City that relate to the redevelopment and rezoning of the lands located at the former Regent Park School. The last phase (Pisimokamik) was completed in 2015 (initial phase 2010). Include records from 2010 to present. This would include council and committee reports.
  - D. Information on the number of social and subsidized rental units there are in each Regina neighbourhood.
- [2] On September 21, 2018, the City responded to the Applicant's request in writing to identify that the application, in its view, contained four separate requests that required a separate application fee for each. They also attempted to clarify the scope of the request, indicated it does not have records that would be responsive to request D and instead directed the Applicant to another public body for that particular request. The City noted at this time that if there was no response from the Applicant within 30 days, then the City would consider the application abandoned.
- [3] On October 12, 2018, the Applicant responded in writing to the City that they agreed to proceed with requests A, B and C only, and provided the additional application fees for requests B and C (the application fee for A appears to have been considered paid by the Applicant with the initial application).
- [4] On October 16, 2018, the City wrote to the Applicant to remind them that the City will deem their access to information application abandoned if they do not receive a response by October 22, 2018 to the letter they sent the Applicant on September 21, 2018.
- [5] On October 22, 2018, the City wrote two separate letters to the Applicant regarding requests B and C to acknowledge receipt of the application fees for each and to clarify each request.
- [6] On October 25, 2018, the City wrote to the Applicant to inform them that the City was extending the 30-day response period by an additional 30 days because of the work involved in searching records.

- [7] On October 29, 2018, the Applicant wrote to the City regarding the City's correspondence to the Applicant dated October 16, 2018 and October 22, 2018 (two letters sent regarding requests B and C). The Applicant acknowledged that the City's interpretations for requests B and C (October 22, 2018 correspondence) were accurate. With respect to the City's October 16, 2018 correspondence (request A), the Applicant noted, "You indicate this request would be considered abandoned if you did not receive a reply by October 22, 2018. In view of that, please see the enclosed new request for Access to Information (attached)".
- [8] On November 7, 2018 (requests A and C) and November 15, 2018 (request B), the City wrote the Applicant to provide the three respective fee estimates and to inform them the City was prepared to waive 50% of the remaining fee for each request. They also stated that the Applicant would need to provide a deposit of 50% before the City would begin any work on the file.
- [9] On November 19, 2018, the Applicant wrote to the City in response to the City's letters dated November 6, 2018 (request A) and two letters dated November 7 (requests B and C). The Applicant asked the City to waive all fees, and asked additional questions to which they wanted the City to respond.
- [10] On November 21, 2018, the City wrote to the Applicant to advise that the City was denying their request for a full waiver off fees for requests A, B and C, and to state that the City's "offer of a 50 percent fee waiver remains unchanged".
- [11] On November 29, 2018, the Applicant wrote to the City to ask them to respond to the questions they had asked the City in their November 19, 2018 letter to them.
- [12] On December 5, 2018, the City wrote to the Applicant to respond to these questions.
- [13] On December 11, 2018, the City wrote to the Applicant to inform them that their application for requests A and C had been deemed abandoned because there was no response from the Applicant.

- [14] On December 14, 2018, the Applicant asked my office to review the City's denial of the waiver for the entire fees for requests A, B and C.
- [15] On December 19, 2018, the City wrote to the Applicant to inform them that their application for request B had been deemed abandoned as well because there was no response from the Applicant.
- [16] On January 3, 2019, the Applicant asked to also have my office review the City's notices of abandonment as well as the reasonableness of the fee estimates for requests A, B and C.
- [17] On January 8, 2019, my office notified both the Applicant and the City of my intention to undertake a review of the reasonableness of the fee estimates, the decision regarding the lack of full fee waivers and the notice of abandonment for requests A, B and C.

## **II RECORDS AT ISSUE**

- [18] There are no records at issue.

## **III DISCUSSION OF THE ISSUES**

### **1. Does LA FOIP apply in these circumstances?**

- [19] The City of Regina qualifies as a local authority pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). I have jurisdiction to conduct this review.

### **2. Were the City's fee estimates reasonable?**

- [20] With respect to fee estimates, LA FOIP provides:

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.

[21] A reasonable fee is one that is proportionate to the work required by the local authority to respond efficiently and effectively to an applicant's request. The public body should be able to detail how it arrived at its fee estimate for each of the types of fees that can be charged. In past reports, my office has established that there are three kinds of fees that a public body can include in its fee estimate:

1. fees for searching for a responsive record;
2. fees for preparing the record for disclosure; and
3. fees for the reproduction of the records.

[22] 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; and
- Reading through files to determine whether records are responsive.

[23] 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; or
- Having someone else re-review the results of a search.

[24] Preparation time includes time spent preparing the record for disclosure, including time anticipated to be spent physically severing exempt information from records. Generally, the test related to reasonable time spent on preparation is that it should take an experienced employee approximately two minutes per page to physically sever. Preparation time does not include:

- Deciding whether or not to claim an exemption;
- Identifying records that require 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 on a computer compiling and printing information;
- Assembling information and proofing data;
- Photocopying; and
- Preparing an index of records.

[25] If the preceding for searching and severing do not accurately reflect the circumstances of the local authority, the local authority should test a representative sample of records, for either searching or severing, by timing the process. The time can then be applied to the responsive record as a whole.

[26] Subsection 5(3) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (the “Regulations”) provides the ability for the local authority to recover costs associated with searching for responsive records. Where the search exceeds one hour, the local authority can charge \$15 for every half hour after that. Local authorities cannot charge for the first hour of search and/or preparation time.

[27] With respect to requests A, B and C, the City provided the Applicant with the following fee estimates, including partial fee reduction and required deposit for each, which I have translated in the following tables:

Request A

<b>Activity</b>	<b>Number of hrs</b>	<b>Fee/hr</b>	<b>Total</b>
Search paper records	2.3	\$30	\$69
Search & review electronic records	11.3	\$30	\$339
Search time to locate relevant paper & electronic records	22.3	\$30	\$669
Prep for disclosure	150	\$30	\$4500.00
<b>Subtotal One</b>			\$5577.00
Standard Fee Waived			-\$100.00
<b>Subtotal Two</b>			\$5477.00

Additional 50% Fee Reduction	-\$2738.50
<b>Subtotal Three</b>	\$2738.50
USB Stick	\$14
<b>Total Fee</b>	<b>\$2752.50</b>
50% Deposit Required	\$1376.25

Request B

Activity	Number of hrs	Fee/hr	Total
Search paper records	1.25	\$30	\$37.50
Search & review electronic records	4.4	\$30	\$132
Search time to locate relevant paper & electronic records	9.9	\$30	\$297
Prep for disclosure	23.5	\$30	\$705
<b>Subtotal One</b>			\$1171.50
Standard Fee Waived			-\$100.00
<b>Subtotal Two</b>			\$1071.50
Additional 50% Fee Reduction			-\$535.75
<b>Subtotal Three</b>			\$535.75
USB Stick			\$14
<b>Total Fee</b>			<b>\$549.75</b>
50% Deposit Required			\$274.88

Request C

Activity	Number of hrs	Fee/hr	Total
Search paper records	1.8	\$30	\$54
Search & review electronic records	3.5	\$30	\$105
Search time to locate relevant paper & electronic records	8.6	\$30	\$258
Prep for disclosure	26.7	\$30	\$801
<b>Subtotal One</b>			\$1218.00
Standard Fee Waived			-\$100.00
<b>Subtotal Two</b>			\$1118.00

Additional 50% Fee Reduction	-\$559.00
<b>Subtotal Three</b>	\$559.00
USB Stick	\$14
<b>Total Fee</b>	<b>\$573.00</b>
50% Deposit Required	\$286.50

[28] In its submission, the City provided my office with a spreadsheet containing greater detail that included the number of responsive pages, both paper and electronic, on which it based its calculations for both searching and severing for requests A, B and C. The City did not provide an explanation as to how it arrived at its estimated number of pages for both searching and severing (e.g. through using a representative sample). This made it difficult for my office to determine the City’s exact methodology. In past reports, however, my office has stated that local authorities should base fee estimates on the estimated number of responsive pages.

[29] To calculate the estimated fees for requests A, B and C, I will use the City’s estimated number of responsive pages it provided to my office for both searching and severing and their fixed cost of \$14 for a USB stick. I will use the allowable charge of \$15 per half hour, and subtract the first hour of time (or \$30). I will also base the number of pages to search or sever per hour as per my office’s “*Fee Estimate Quick Calculation Guide*”, which provides:

- Searching – one minute to scan 12 pages (or 720 pages per hour); and
- Severing – two minutes per page to sever (or 30 pages per hour).

Request A

Search (10,367 pages)	$10,367/720 \times \$15 \text{ per half hour} = \$431.96$
Sever (4,517 pages)	$4,517/30 \times \$15 \text{ per half hour} = \$4,517.00$
Subtotal	\$4,948.96
Subtract First Hour	(\$30)
Total Search and Sever	\$4,918.96
Add USB Stick	\$14.00
<b>Total Fee Estimate</b>	<b>\$4,932.96</b>



Request B

Search (2,098 pages)	$2,098/720 \times \$15 \text{ per half hour} = \$87.41$
Sever (705 pages)	$705/30 \times \$15 \text{ per half hour} = \$705.00$
Subtotal	\$792.41
Subtract First Hour	(\$30)
Total Search and Sever	\$762.41
Add USB Stick	\$14.00
<b>Total Fee Estimate</b>	<b>\$776.41</b>

Request C

Search (3,923 pages)	$3,923/720 \times \$15 \text{ per half hour} = \$163.46$
Sever (805 pages)	$805/30 \times \$15 \text{ per half hour} = \$805.54$
Subtotal	\$969.00
Subtract First Hour	(\$30)
Total Search and Sever	\$939.00
Add USB Stick	\$14.00
<b>Total Fee Estimate</b>	<b>\$953.00</b>

[30] I based my calculations for requests A, B and C on what the City described as responsive pages in its submission. My calculations are slightly less than what the City calculated for each request (as shown by the line “Subtotal One” in each of the calculation tables at paragraph [27]), but I note that the City did provide a fee reduction of 50%, which substantially lowered the fees for each request. I find the City’s fee estimates were reasonable considering the volume of pages involved for each request and taking into consideration the applied fee reductions.

[31] I wish to add that a best practice for a local authority, when processing an access to information request, is to provide applicants with as much information as possible regarding the volume of responsive pages that may be involved with fulfilling the request. This allows applicants and local authorities to further narrow the scope of a request, or identify the types of documents that an applicant does not need or require, in an effort to reduce or eliminate fees.

**3. Do the circumstances exist for a full fee waiver?**

[32] The Applicant requested my office review the City's decision to not provide a full waiver of the fees estimated. See the tables at paragraph [27] for the City's total and adjusted fee estimates for requests A, B and C.

[33] 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.

[34] Subsection 9(5) of LA FOIP provides:

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

[35] The prescribed circumstances for waiving a fee can be found at subsection 8(1) of the Regulations. 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.

[36] This provision prescribes two circumstances, joined by the word "and", that must exist before a head can waive any part of a fee estimate. These two circumstances are: 1) the prescribed fee would cause financial hardship; and, 2) in the opinion of the head, giving access to the record would be in the public interest.

[37] It 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.

[38] The City has a form titled *Application for Fee Waiver* (the “Application”), that applicants are required to complete to request a fee waiver. My office reviewed the Application, a copy of which the City provided to my office, and noted it includes the following statement:

To be considered eligible for a fee waiver based on substantial financial hardship, an applicant must supply documented evidence that at least one of the circumstances apply. It is up to the applicant to determine what information to provide.

[39] I find that the City’s Application includes all of the necessary criteria prescribed at section 8 of the Regulations.

[40] Once the City receives an Application, it must exercise its discretion whether to grant the request. The City has a form titled, *Fee Waiver Assessment Form* (the “Form”), which is used by the City to assess the eligibility of an applicant to be granted a fee waiver. According to the City’s submission to my office, it takes the information provided by applicants in the Application and inserts it into the Form when making its decisions.

[41] My office reviewed the Form, used by the City, and noted that when considering whether substantial financial hardship applies, the City considers whether the records involve the personal information of an applicant. The Form also considers the public interest using criteria first established by my office in Review Report 145-2014. Further, the Form considers the evidence provided by an applicant, including consideration of whether the evidence provided was sufficient or not. Finally, the Form has a comment section at the end for the assessor to add any factors found to be relevant in the decision.

[42] A public body’s decision to grant or deny a fee waiver request should be made fairly, using consistent criteria that apply to all applicants. I find that the City’s Form is an appropriate

and effective tool for assisting the City, in exercising its discretion, in fairly and consistently applying this criteria to all applicants.

[43] In this case, the Applicant completed the Application and submitted it to the City. Although the City required “documented evidence” to support their claim of financial hardship, which is indicated on their Application, the Applicant did not provide any. The City wrote the Applicant on December 5, 2018 and included a reminder that they were required to provide documentation in order for the City to consider their request for a fee waiver. In this correspondence, the City reiterated that, “It is the applicant’s responsibility to establish that payment of the prescribed fees will cause a substantial financial hardship and to determine what supporting documentation to provide to establish evidence of substantial financial hardship”.

[44] When the City provided its decision to the Applicant dated November 15, 2018, the Applicant responded on November 20, 2018, with a letter explaining why the fee waiver should be granted. However, I note that nothing in the way of evidence was included with the Applicant’s letter to support their claim for financial hardship. In this case, the burden of proof rests on the Applicant to provide evidence.

[45] In the matter before me, the Applicant did not provide any documented evidence to the City. Despite this, I note that the City still provided the Applicant with a fee reduction when it provided the Applicant its written fee estimates dated November 7, 2018 (requests A and C) and November 15, 2018 (request B).

[46] In its submission to my office, the City indicated that in making its decision, it “inserted the fee waiver information provided by the applicant” into its Form to assess the Applicant’s eligibility to be granted a reduction in fees. My office reviewed the completed Form, which the City provided to my office, and it appears that the City considered all factors that were included on the Form. Therefore, its decision was not solely based on the lack of evidence provided by the Applicant.

[47] I find that the Applicant did not provide what was requested by the City in order to establish financial hardship and to meet the prescribed circumstances. I wish to commend the City, however, for granting a fee reduction in any event of 50%.

[48] I would, however, recommend that the City amend its Application to include, in addition to the requirement to provide “documented evidence”, examples of “documented evidence,” so that applicants are aware what constitutes acceptable documentation or evidence. This may include, but not be limited to, such documents as a copy of a Notice of Assessment, an existing program eligibility letter or a pay stub; it is, however, ultimately up to the City to determine what type of documentation may work.

**4. Did the City properly issue notices of abandonment to the Applicant pursuant to section 7.1 of LA FOIP?**

[49] In its written correspondence to the Applicant and in its written submission to my office, the City stated it treated the Applicant’s requests as abandoned pursuant to section 7.1 of LA FOIP, which provides:

7.1(1) If the head has invited the applicant to supply additional details pursuant to subsection 6(3) or has given the applicant notice pursuant to clause 7(2)(a) and the applicant does not respond within 30 days after receiving the invitation or notice, the application is deemed to be abandoned.

(2) The head shall provide the applicant with a notice advising that the application is deemed to be abandoned.

(3) A notice provided pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

[50] Often, it is clear that an applicant has decided to not pursue an access request. They may indicate to the public body in writing or by phone their intention to not proceed. For example, they may have found the information some other way, or they no longer need the information.

[51] Subsection 7.1(1) of LA FOIP, however, is intended to address circumstances where an applicant ceases to respond at certain times. This subsection of LA FOIP provides that a public body can consider an application abandoned if, the applicant does not respond within 30 days when: 1) the public body invites the applicant to supply additional details to help identify the record pursuant to subsection 6(3) of LA FOIP; or 2) the public body completes processing the request and provides notice pursuant to subsection 7(2)(a) .

[52] With respect to the matter before me, the City provided its written fee estimates to the Applicant for requests A and C on November 7, 2018, and for request B on November 15, 2018. The Applicant provided written acknowledgment of the fee estimates to the City on November 19, 2018, and further asked the City to consider a full waiver. Also, as evident in the background section of this report, there was constant communication between the two parties, and neither circumstance provided for in subsection 7.1(1) applied.

[53] I find that the conditions for issuing a notice of abandonment pursuant to section 7.1 of LA FOIP were not met and that the City improperly issued a notice of abandonment to the Applicant.

[54] I would recommend the City continue fulfilling the Applicant's requests.

#### **IV FINDINGS**

[55] I find that the City's fee estimates were reasonable.

[56] I find that the Applicant did not provide what was requested by the City in order to establish financial hardship and to meet the prescribed circumstances.

[57] I find that the City improperly issued a notice of abandonment to the Applicant.

#### **V RECOMMENDATIONS**

[58] I recommend that the City continue working with the Applicant on further narrowing the request in order to reduce the fees, or processing the request if the Applicant is willing to pay the 50% deposit.

[59] I recommend that the City amend its *Application for Fee Waiver* to include examples of what “documented evidence” might look like or include.

Dated at Regina, in the Province of Saskatchewan, this 8th day of November, 2019.

Ronald J. Kruzeniski, QC  
Saskatchewan Information and Privacy  
Commissioner