

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2020-07

April 14, 2020

EDMONTON POLICE SERVICE

Case File Number 003562

Office URL: www.oipc.ab.ca

Summary: The Applicant requested that the Commissioner review a fee estimate calculated by the Edmonton Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

The Adjudicator found that the Public Body had estimated the fees for searching for and retrieving responsive records appropriately. The Adjudicator determined that she did not have sufficient evidence to confirm the Public Body's estimate for photocopying costs. She asked the Public Body to review the costs it had estimated for leasing a photocopier.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 72, 93; *Freedom of Information and Protection of Privacy Regulation*, Alberta Regulation 186/2008, Schedule 2

Authorities Cited: AB: Order F2019-18

I. BACKGROUND

[para 1] On November 25, 2015, the Applicant made an access request to the Public Body. He requested the following:

Requesting all policies and procedures for Edmonton Police Service (EPS) donations and sponsorship. Requesting names of organizations that have donated to or sponsored EPS or EPS-affiliated foundations. For all donations and sponsorship, requesting information on type (e.g.

ongoing installments, singular installments) and kind (e.g. cash, in-kind) of arrangement. Sponsorship information includes sponsor arrangements for annual events, galas, golf tournaments, suppers and other fundraising initiatives hosted by your agency and/or any charity organization officially recognized by your agency (e.g., a police foundation).

Please limit the search to the period of January 1 2012 to November 1 2015.

Please provide electronic rather than printed copies of all files.

[para 2] The Public Body estimated the fees for processing the access request and required the Applicant to pay a deposit prior to processing the access request. In its correspondence to the Applicant, the Public Body stated:

On 2016 July 8 we had the opportunity to speak by telephone, at which time you advised that you would like to reopen your request and receive another fee estimate for the following:

- "Requesting names of organizations that have donated to or sponsored EPS or EPS-affiliated foundations."
- "For all donations and sponsorship, requesting information on type (e.g. ongoing installments, singular installments) and kind (e.g. cash, in-kind) of arrangement." Sponsorship information includes sponsor arrangements for annual events, galas, golf tournaments, suppers and other fundraising initiatives hosted by your agency and/or any charity organization officially recognized by your agency (e.g., a police foundation)." ·

The time period for your request is from 2012 January 1 to 2015 November 1.

Section 93 of the *FOIPP Act* provides that fees may be charged for providing you with the requested information. I have calculated the estimated fee for this request in accordance with Schedule 2 of the FOIPP Regulation as follows:

268 potential donations x 18.75 minutes per donation searching for, locating, and retrieving the requested records = 83.75 hours x \$27.00 per hour of employee work = \$2261.25

Photocopying 268 pages in black and white = \$67.00

Total estimated fee = \$2328.25

Please note that this fee estimate takes into account that the 2012 information has been archived and therefore will take longer to retrieve.

[para 3] The Public Body decided it would not provide electronic copies, but would provide photocopies instead. As noted in the excerpt from its decision above, it charged \$67 for this service, based on the maximum rate in the Fee Schedule of \$0.25 per page.

[para 4] On August 10, 2016, the Applicant requested review by the Commissioner of a fee estimate he had received from the Public Body.

[para 5] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the Applicant requested an inquiry.

II. ISSUE

Issue A: Did the Public Body properly estimate the amount of fees in accordance with sections 93(1) and 93(6) of the Act, and the Regulation?

[para 6] Section 93 of the FOIP Act establishes that fees may be charged for services under the FOIP Act and sets out the circumstances in which they may be waived. It also limits the fees that may be charged for services. It states:

93(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

(3) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fee before providing the services.

(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

(4.1) If an applicant has, under subsection (3.1), requested the head of a public body to excuse the applicant from paying all or part of a fee, the head must give written notice of the head's decision to grant or refuse the request to the applicant within 30 days after receiving the request.

(5) If the head of a public body refuses an applicant's request under subsection (3.1), the notice referred to in subsection (4.1) must state that the applicant may ask for a review under Part 5.

(6) The fees referred to in subsection (1) must not exceed the actual costs of the services.

[para 7] Section 93 establishes that a public body may charge fees for the services it provides in processing an access request, so long as the fees charged are authorized by the regulations and the fees do not exceed the actual costs to a public body. If it decides to charge fees, a public body must provide a fee estimate, as the Public Body did in this case.

[para 8] The Fees Schedule in the Freedom of Information and Protection of Privacy Regulation establishes that a public body may charge fees not exceeding \$6.75 per ¼ hour, for searching for, locating and retrieving a record. The Fees Schedule also establishes that a public body may charge up to 25 cents per page for producing black and white photocopies of records.

[para 9] The Public Body decided to require payment of fees to offset the costs of searching for the requested records and for making photocopies. It provided the following explanation of its estimate of the costs it estimates it will incur in searching for and retrieving responsive records:

The EPS searched for and identified potentially responsive donation and sponsorship records by searching its financial software known as Systems, Applications, and Proceedings ("SAP"). The EPS identified 268 records potentially responsive to the Access Request. The records potentially responsive included:

- a. 67 records from 2012;
- b. 49 records from 2013;
- c. 71 records from 2014; and
- d. 81 records from 2015.

Affidavit at para 3(f).

SAP provided the EPS with the date of the sponsorship/donation, the amount of the sponsorship/donation, the purpose of the sponsorship/donation, and the location of the records associated with the sponsorship/donation. SAP did not include the sponsorship/donation provider information or information about the type and kind of the sponsorship/donation, which were the details requested by the Applicant in the Access Request. Accordingly, the available electronic records would not provide an accurate or complete response to the Access Request.

Affidavit at para 3(g).

The additional information was not electronically available so a manual search for the records and a manual review of the information found in the records was required.

Affidavit at para 3(g).

[...]

Finding the actual potentially relevant records was determined to be a labor intensive process. In order to find the requested information in the records, the EPS needed to look on SAP to determine the date of each donation and then locate each record of the donation. Some of the information was at the Data Retention Centre so the EPS needed to identify the boxes and arrange for them to be transported to EPS. The EPS then needed to locate the records for the donation or sponsorship transaction. For records still at EPS Police Headquarters, the EPS had to look up each donation by the date of transaction and locate the donation or sponsorship information in its transaction record. Once the records were located, the records had to be [individually] reviewed to determine if they were responsive to the Access Request.

Affidavit at para 3(i).

A simple estimation of the time required to search for, locate, and retrieve the records was not possible. The volume of potentially responsive records was high, the records were located in different areas, and the records were distributed across a range of different files. Similarly, reviewing the 268 potentially responsive records to create a fee estimate would have been unreasonably onerous.

Accordingly, in accordance with the recommendations in the FOIP Bulletin Number 1: Fee Estimates and in an attempt to assess as accurately as possible the nature and extent of records responsive to a request and the amount of work involved in processing the request, the EPS processed two sample records and based its fee estimate on the time required to search for, locate, and retrieve the sample records in relation to the number of total records involved in the Access Request.

Specifically, an EPS staff member searched for the donation provider information for 2 of the identified sponsorships/donations from 2015. It took the staff member, who had help during the

search, between 30 to 45 minutes to find the information for the 2 records. This worked out to 15 to 22.5 minutes per record. Based on this approximation, the estimated time to find the sponsor/donor provider information for all 268 records was over 100+ hours.
Affidavit at para 3(j).

Based on the trial process, the EPS determined that it would take an average of 18.75 minutes to find each potentially relevant record and determined it would take approximately 83.75 hours to find the 268 potentially relevant records. Although the initial estimate was over 100+ hours to find the 268 records if the upper end of the approximation was used, the EPS adjusted the estimated time to 83.75 hours, which was based on the average time spent to locate the records, in order to ensure the EPS' estimate would not exceed what was reasonable in the circumstances.
Affidavit at para 3(k).

[para 10] The Public Body provided the following explanation of its estimate of its photocopying costs:

The EPS does not provide electronic copies of responsive records so photocopying was required.
Affidavit at para 6.

The fee estimate for photocopying, which accounted for only \$67.00 of the total estimated fee of \$2,328.25, was based on the EPS' determination that its actual photocopying costs were \$0.3345 per page. This determination was made by the EPS in 2014 and was based on the following calculation:

2014 Page Released for General and Personal FOIPP Requests 16045
Per Copy
Photocopier Lease: \$197.72/month x 12 months = \$2372.54 per year
Lease cost per copy: $\$2372.54 \div 16045 = 0.1479$
Additional cost per copy: Black and white copies 0.0096
Paper per copy: \$47.59 per box/5000 sheets 0.0095
Facilities: $\$8.71/\text{sq ft} \times 25 = \$217.75 \div 16045 = 0.0136$
Personnel: $\$247,000/100 = \$24760/\text{year} \div 16045$
(13.5 minutes per day for Unit) 0.1539
Actual cost per page for black and white copying: \$0.3345
Affidavit at para 7.

As the EPS' actual photocopying costs exceeded the maximum \$0.25 per page charge listed in Schedule 2 of the FOIP Regulation, the EPS relied on the maximum \$0.25 per page. Accordingly, the EPS' estimate for photocopying was based on its actual costs and the FOIP Regulation and was reasonable at the time.

The EPS acknowledges that the OIPC has held that the labour costs associated with producing copies of records are not among the activities for which fees can be assessed. While the EPS submits that its actual costs for photocopying include labour costs related to the photocopying, the EPS accepts that the OIPC has ruled such costs should not be included.

High River (Town) (Re), 2016 CanLII 82129 (AB OIPC) at paras 34-40 [TAB 10]

If the \$0.1539 estimated for labour costs is removed from the EPS' estimate, the actual per-page costs would be approximately \$0.18. This would equal \$48.24 as compared to the estimated \$67.00.

Affidavit at para 9.

Therefore, if the per page cost of photocopying is calculated without references to labour costs, the \$67.00 for photocopying may be reduced to \$48.24.

This is only a small reduction in the overall fee estimate, which remains reasonable.

[para 11] The Applicant did not make submissions for the inquiry. However, in his request for inquiry, he stated:

Second, I requested a review of the larger fee estimate in effect prior to reducing the timeframe. This required me to reopen the original request with the EPS, which they agreed to do. The review of the larger fee estimate for the files (\$2,328.25) was again conducted by [the SIPM] who found numerous issues with the way the EPS had (over-)calculated their fee estimate. [The SIPM] found numerous ways that the EPS had erroneously calculated its fee estimate. In response to [the SIPM's] findings in this second review, the EPS agreed to reduce their fee estimate to about half of the original amount (\$1,254.33).

This amount of \$1,254.33, while reduced from almost half of the original is still considerably higher than other agencies in the rest of Canada. This request is part of a large SSHRC-funded research project on paid duty and private sponsorship of public policing across Canada. As part of this research project, I have now filed this same request with hundreds of other police departments across Canada, not just in Alberta but in every province.

No other police department has provided me with such a high quote for the information I am asking for. Even reduced by half, this is the highest fee estimate I have received in the country, and the EPS is by no means the most heavily donated to/sponsored police agency in the country (cf. Vancouver, for example). Most police departments in Alberta and elsewhere in Canada have either processed these records for free or for a considerably lower cost. The EPS is by no means the only department in Canada to have had to prepare these records for release in this way. Many other police departments have reported similar workloads, usually asking for extensions or small fee payments. I don't believe there is anything unique about the circumstances of the EPS.

Based on the responses I have received from other police departments in Canada, I expected a lower fee estimate (with only minimal redactions as well). I do not accept the EPS' rationale for the abnormally high fee estimate for the original request. The EPS has not shown a duty to assist, and has taken several steps to prevent access to these requested records. I am requesting that the EPS' calculation of its fee estimate in relation to FOI request #2015-G-418 go to Inquiry.

I am aware that Inquiries by the Commissioner or Adjudicator are heard *de novo*. It is therefore the original request (EPS File #2015-G-418) and fee estimate calculation of \$2,238.25 that I am submitting for Inquiry.

[para 12] The Applicant's primary objection to the Public Body's calculation of fees is that its estimate is much higher than the estimates he has received in other jurisdictions to process the same request. He also argues that the SIPM found that the Public Body had overestimated the fees and that the Public Body had agreed to reduce the fees to \$1254.33 in the course of the mediation process.

[para 13] I find that the Public Body has provided a satisfactory explanation of the method by which it estimated the fees for searching for records. Moreover, the activities it has included in its estimate of the costs for searching are reasonable and in line with previous decisions of this office. It does not keep the records onsite or in one place and so employees must look for the records individually in various repositories and briefly read some records in order to ensure they are locating responsive records.

[para 14] The Regulation permits a public body to charge for employees' search time up to \$27 per hour. The Public Body also provided evidence (not reproduced here) to establish that the employees who will be conducting the search are paid at least \$27 per hour.

[para 15] The fact that the Public Body's fee estimate is greater than that in other jurisdictions does not mean that it has not estimated the fees for searching appropriately under Alberta's legislation. The time spent searching for records will vary depending on how and where records are stored. In this case, the Public Body does not have a dedicated space where records responsive to the access request are kept and organized. If all the records were filed and located in a dedicated file on a hard drive, or in a particular filing cabinet, the search time would be less. However, in this case, the requested records are not crucial to the Public Body's day to day operations and the majority of them have been stored offsite with other records that are also not crucial to its operations, with the result that the search time to locate them is greater.

[para 16] I acknowledge that Applicant refers to the SIPM recommending that the Public Body reduce the fee estimate. However, the evidence she had available to her is not available to me. I do not know what the basis for her recommendations was. It may be that the Public Body's offer to reduce the estimate was intended to settle the matter to avoid an inquiry. In any event, based on the Public Body's uncontradicted evidence, I find that its estimate of the costs for searching for records is reasonable.

Photocopying Costs

[para 17] The Public Body estimates the costs per page of photocopying at \$0.25 if labour costs are included, and at \$0.18 per page if such costs are excluded.

[para 18] In Order F2019-18, the Adjudicator reviewed a public body's decision to charge fees of 25 cents per page. In doing so, she reviewed the actual photocopying costs public bodies have indicated to this office they have calculated for use in estimating fees.

The range of costs given by other public bodies for black and white copies ranges from \$0.045 per page to \$0.0635 per page. I do not know any of the costs of the Public Body associated with making copies in response to an access request. If at least one public body (also a municipality) can produce a copy for \$0.045 per page then it seems possible that the Public Body can as well. It may be that the Public Body's costs are closer to \$0.0635 per page, similar to Alberta Health Service's costs, but that might be an overestimate (since at least two public bodies estimated costs almost 2 cents lower). The Public Body can charge its costs but not more. Therefore, I will allow the Public Body to calculate the fees for photocopying based on the lowest number: \$0.045 per page.

For future access requests, the Public Body should undertake its own calculation of its costs, taking into account the factors that it can reasonably calculate and keeping in mind that the number it arrives at needn't be *the* actual cost but must be no higher than the actual cost.

[para 19] In the foregoing order, the public body did not calculate its actual costs for photocopying but charged the statutory maximum because it considered it impossible to calculate actual costs. As the public body did not submit evidence as to its actual costs,

the Adjudicator assessed the costs at \$0.045 per page, as that was at the lower end of fees assessed by public bodies for photocopying.

[para 20] In this case, the Public Body has calculated photocopying costs well in excess of the per page costs other public bodies have calculated.

[para 21] In Order F2019-18, the Adjudicator rejected the argument that labour costs should be included in the calculation of photocopying fees. She said:

The Public Body also provided a table of costs charged by Staples, noting that 50% of the fees were above \$0.25 per page. However, only the “full-service” fees and/or colour copies have fees over \$0.25 per page. Public bodies cannot include labour costs into the fee for photocopying (see Orders F2013-10 at paras. 79-86 and F2013-27 at para. 42); in this case, the Public Body has not argued that labour costs should be included. Staples apparently charges \$0.11 per page for black and white self-serve copies. Presumably, as Staples is a for-profit business, \$0.11 per page is higher than its actual costs.

I agree with the Adjudicator’s analysis of past orders and I agree with her reasoning and that of past orders. I therefore reject the Public Body’s assessment of \$0.25 per page for photocopying, as this fee includes labour costs.

[para 22] \$0.18 per page remains a much higher cost per page for photocopying than that calculated by other public bodies. From my review of the Public Body’s evidence, I believe that the reason the Public Body’s photocopying costs are higher is because of the lease costs it has calculated.

[para 23] The Public Body has assessed a lease cost per copy of \$0.1479 per page. It arrived at this number by dividing the cost of the lease for the year by the number of FOIP records it released for the same year using the photocopier. If it is the case that the Public Body uses this photocopier for the sole purpose of copying records for disclosure, then this assessment may reflect its actual costs for making photocopies. However, if the Public Body uses this photocopier to make copies for other purposes than releasing copies of records for disclosure, then those copies should be included in its calculation of the lease costs, given that the lease cost would be defrayed by using the photocopier to make records for other purposes.

[para 24] As I do not know whether the Public Body uses the photocopier for purposes other than releasing copies of records under the FOIP Act, I am unable to confirm that its photocopying cost estimate is reasonable. I will therefore ask the Public Body to review the cost it estimated for its photocopier lease, by ensuring that the photocopier is not used for other purposes. If it is, then the amount of other records photocopied should be used in calculating the cost of the lease.

[para 25] I acknowledge that calculating “actual costs” may result in disparities in fees between public bodies. If a public body spends public money efficiently its actual costs may be less. If it does not, then the costs to an applicant may be more, even though the service is the same.

[para 26] To conclude, I find that the estimate of fees for searching for and retrieving the requested records is reasonable. I am unable to confirm the estimate the Public Body provided for photocopying as I lack the necessary information to do so. I will therefore ask it to review the costs it has estimated for leasing its photocopier.

[para 27] I acknowledge that the fee estimate may make it prohibitively expensive for the applicant to obtain the records he is seeking. However, a public body may charge fees to partially offset the costs to the public of administering the FOIP Act. Requiring employees to search for records and retrieve them is not an insignificant cost. At the same time, section 93(4) of the FOIP Act, reproduced above, permits an applicant to request a fee waiver if the applicant cannot afford the fees, if the requested records relate to a matter of public interest, or for some other reason it is fair to excuse the fees. The Applicant may wish to consider whether any of these factors apply to the request and, if so, make an application to the Public Body accordingly.

III. ORDER

[para 28] I make this Order under section 72 of the Act.

[para 29] I confirm the Public Body's estimate with regard to the costs of searching for and retrieving responsive records.

[para 30] I require the Public Body to review the costs of leasing the photocopier as described in the order, above, and to recalculate its estimate of fees for photocopying if the photocopier is used for purposes other than responding to access request.

[para 31] I order the Public Body to provide the Applicant with a revised fee estimate that excludes the costs of employees' time spent photocopying and includes any changes made in relation to the costs of leasing the photocopier.

[para 32] I order the Public Body to notify me and the Applicant in writing, within 50 days of being given a copy of this order, that it has complied with it.

Teresa Cunningham
Adjudicator
/kh