

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2020-24

August 18, 2020

## ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number 006412

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** An individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to Alberta Justice and Solicitor General (the Public Body).

The Public Body provided the Applicant with a fee estimate of \$650.00 to provide responsive records. The Applicant asked the Public Body to waive the fees. The Public Body denied the Applicant's request for a fee waiver. The Applicant sought a review of that decision by this Office. Subsequently, the Applicant requested, and the Commissioner agreed to conduct, an inquiry into the Public Body's response.

The Adjudicator found that the Public Body failed to establish that the \$0.25 per page for photocopying it used in its fee estimate did not exceed the Public Body's actual costs for photocopying, as required by the Act. The Adjudicator reduced the fees for photocopying responsive records to zero.

**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, ss. 12, 13, Schedule 2 – Fees Schedule, s. 3.

**Authorities Cited: AB:** Orders F2009-009, F2010-036, F2011-015, F2012-06, F2012-16, F2013-10, F2013-27, F2013-54, F2014-05, F2014-11, F2015-34, F2016-39, F2016-51, F2017-02, F2017-39, F2017-40, F2018-55, F2019-18, F2020-07.

## I. BACKGROUND

[para 1] On March 14, 2017, an individual (the Applicant) sent an e-mail to Alberta Justice and Solicitor General (the Public Body), requesting information under the *Freedom of Information and Protection of Privacy Act* (the Act). In his e-mail he stated:

Please kindly find attached a request which has also been faxed and mailed to your office. I also want to see any and all conversations in the internal government messenger that [names of four employees of the Public Body] sent about me, pertaining me [sic], or in any way connected to me. Please ensure I get the attached among any other requested emails and information immediately.

[para 2] The attachment to the Applicant's e-mail was a Request to Access Information form (the Form), also dated March 14, 2017, in which the Applicant indicated he was seeking access to his own personal information. He stated:

I want to receive a copy of any and all sent and received e-mails located in the following inboxes and folders of [email addresses of five employees of the Public Body]

The time frame specified by the Applicant for his request was "2010 – present time".

[para 3] Four of the names of the employees in the Applicant's e-mail and in the Form were the same; however, the Applicant included the name of an additional employee in the Form that he did not include in the e-mail.

[para 4] By letter dated March 15, 2017, the Public Body acknowledged receipt of the Applicant's access request and stated, in part (emphasis in original):

On March 14, 2017, the Alberta Justice and Solicitor General (JSG) FOIP Office received your request under the *FOIP Act* for access to records containing your personal information.

Specifically, you requested access to:

**a copy of any and all sent and received emails and internal government messages related to you from the following:**

**[e-mail addresses of five employees of the Public Body]  
For the time period of 2010 to present (March 14, 2017.)**

Section 93 of the *FOIP Act* provides that copying fees may be charged for providing you with the information you requested. Copying fees will be charged in accordance with the amounts set out in section 12 of the FOIP Regulation. Photocopying fees will be charged at the rate of \$0.25 per page for paper records. We will notify you of any fees if the total amount exceeds \$10.00.

[para 5] By e-mail dated March 16, 2017, the Public Body informed the Applicant it had made an error in one of the names in its March 15, 2017 letter and that it would be searching for records under the name provided by the Applicant.

[para 6] By letter dated March 29, 2017, the Public Body provided the Applicant with a fee estimate of \$650.00 to provide responsive records. The Public Body stated it had calculated this amount as shown in the table below:

Description	Rates	Amount	Cost
Releasable Records	\$0.25 per page	2,600 pages	\$650
TOTAL FEE ESTIMATE			\$650
Deposit Required			\$325

[para 7] In its letter, the Public Body also provided the Applicant with the following information:

Section 93(4) of the *FOIP Act* provides some limited situations where fees can be formally reduced or waived entirely. We have enclosed an explanatory note which provides instructions concerning the process to formally apply for a fee waiver under the *FOIP Act*.

[para 8] The explanatory note enclosed with the Public Body's letter stated, in part (emphasis in original):

Section 93(4) of the *Freedom of Information and Protection of Privacy (FOIP) Act* says "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."

You must make a request for a fee waiver in writing. If you request to be excused from paying all or part of the fees, you are also required to provide our office with the necessary documentation to support your request. If you feel that you cannot afford payment of the fee, we will require **detailed financial information that accurately demonstrates your household income and expenses**. When preparing this document, you must include the income and expenses of all individuals (names and relationships of these individuals are not required) who contribute financially to your household. The decision to waive fees is based on the information you provide. If you do not provide sufficient evidence to support your request, the fee waiver may be denied.

[para 9] On April 8, 2017, the Applicant wrote to the Public Body and requested that the Public Body waive the fee. He stated:

Further to your correspondence dated March 29th, 2017, please kindly find attached a statement of fee waiver that was granted in court waiving the filing fees completely in

other court actions. Accordingly, please kindly use this fee waiver decision to waive the fees in this foip request, including any other foip request I may have that has not already been dealt with by your office and in which I am requesting information.

[para 10] Attached to the Applicant's April 8, 2017 request was a copy of a document titled "Application for Fee Waiver and Statement of Finances". The document was stamped to indicate it had been filed with the Registrar of the Court of Appeal of Alberta on March 20, 2017.

[para 11] On May 3, 2017, the Public Body responded to the Applicant's request for a fee waiver and stated (emphasis in original):

Section 93(4) of the FOIP Act provides some limited situations where fees can be reduced, or waived entirely, if an applicant cannot afford payment, if the records relate to a matter of public interest or if there are other reasons that justify excusing the fee.

**After reviewing your request for a fee waiver, along with the additional information you have provided and Section 93(4) of the FOIP Act, JSG has decided to deny your request. Payment of the deposit will be required if you wish our office to continue to process your request.**

[para 12] The Applicant requested a review of the Public Body's decision by the Commissioner. The Commissioner appointed a senior information and privacy manager to review the Public Body's decision.

[para 13] Subsequently, the Applicant requested an inquiry. The Commissioner agreed to conduct an inquiry and delegated her authority to me.

[para 14] On the Request for Inquiry form, the Applicant identified the following concerns for the inquiry:

I believe that the decision maker erred, including in fact, law and/or a mix of fact and law, and did not properly identify, outline or satisfy the issues using the correct method. Other concerns and grounds exist or may exist and I reserve and preserve my rights.

[para 15] As noted in prior Orders of this Office, an inquiry is *de novo*, which means it is a new process and is not a review of the investigation, mediation or findings of the senior information and privacy manager (see, for example, Orders F2013-27 at para. 4, F2015-34 at para. 5, F2017-02 at para. 14, F2017-39 (upheld on judicial review) at para. 10 and F2017-40 (upheld on judicial review) at para. 10). Therefore, in this inquiry I will not be reviewing or considering any of the findings of the senior information and privacy manager.

## II. ISSUES

[para 16] The Notice for Inquiry dated February 13, 2020, states the issues for this inquiry as follows:

1. 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?
2. Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4)(a) of the Act (fees)?

### **III. DISCUSSION OF ISSUES**

#### **1. 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 17] Section 93 of the Act authorizes public bodies to charge fees. 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 a 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 18] Where an applicant has made an access request for their own personal information, section 93(2) provides that the only fee a public body may require the applicant to pay is the cost of producing a copy.

[para 19] Section 12 of the *Freedom of Information and Protection of Privacy Regulation*, Alberta Regulation 186/2008 (the Regulation) further provides:

*Fees for personal information*

*12(1) This section applies to a request for access to a record that is a record of the personal information of the applicant.*

*(2) Only fees for producing a copy of a record in accordance with items 3 to 6 of Schedule 2 may be charged if the amount of the fees as estimated by the public body to which the request has been made exceeds \$10.*

*(3) Where the amount estimated exceeds \$10, the total amount is to be charged.*

[para 20] Section 13(2) of the Regulation states:

*13(2) An estimate for access to a record of the personal information of the applicant need include only the cost of producing a copy of the record in accordance with section 12(2).*

[para 21] In this case, the Public Body used the amount of \$0.25 per page to calculate its estimate to provide photocopies of responsive records to the Applicant's access request.

[para 22] I must determine if, based on the information before me, the Public Body's estimated fee is reasonable and done in accordance with the Act and the Regulation.

[para 23] I note that in the Public Body's letter to the Applicant dated March 15, 2017 it stated that the Applicant had requested internal government messages related to him from the email addresses of *five* employees of the Public Body, when in his email of March 14, 2017, the Applicant requested any and all conversations in the internal government messenger that *four* named employees of the Public Body sent about him, pertaining to him, or in any way connected to him. The discrepancy, however, does not affect my analysis regarding whether the Public Body's use of the amount of \$0.25 per page to calculate its estimate to provide photocopies of responsive records complied with the Act and the Regulation.

[para 24] With respect to its decision to use the amount of \$0.25 per page to calculate its fee estimate to photocopy responsive records, the Public Body referenced section 3 of Schedule 2 of the Regulation.

[para 25] Schedule 2 of the Regulation sets out the maximum amounts that public bodies can charge to applicants for certain services. It states:

*The amounts of the fees set out in this Schedule are the maximum amounts that can be charged to applicants.*

[para 26] Section 3 of Schedule 2 provides:

*3 For producing a paper copy of a record:*

*(a) photocopies and computer printouts:*

*(i) black and white up to 8 1/2" x 14" \$0.25 per page*

*(ii) other formats \$0.50 per page*

*(b) from microfiche or microfilm \$0.50 per page*

*(c) plans and blueprints Actual cost to public body*

[para 27] The Public Body made the following submissions to support its decision to use the maximum amount of \$0.25 per page to estimate its fee for photocopying responsive records:

19. Alberta OIPC Order F2010-005 speaks to the nature of a fee estimate and states:

[para 16] Section 93(3) of the Act requires that the Public Body provide a fee estimate in advance of processing the request. Therefore, an estimate is a calculated guess at what it might cost to respond to an Applicant's access request. It is not the actual cost of processing the request. In Order F2004-002, the Adjudicator stated: "A fee estimate is simply that, an estimate. It is not an exact accounting of the time taken and the exact costs incurred." (Order F2004-002 at para 35).

20. As indicated above, the Public Body agrees that a fee estimate is a guess and acknowledges that labor costs may not be incorporated into the fee for producing a photocopy, as determined in Alberta Order F2013-10 (at paras 79-86) and discussed more recently in Alberta Order F2020-07 (at para 10). However, neither the *FOIP Act* nor the *Regulation* define "actual" costs and as such, it is not clear what factors the Public Body is to include in its calculation of actual costs.

21. The Public Body asserts that it does not have the capability of arriving at actual printing costs due to the complexities involved in such a determination. There are far too many variables to consider in such a calculation, that to break down all potential components involved in producing a printed copy of the records may not be reasonably possible.

22. In a recent order issued to the Regional Municipality of Wood Buffalo, the adjudicator acknowledged the Public Body's frustration with both this challenge and the fee provision in the *Act*. An excerpt from Alberta Order F2019-18 states:

[para 51] The Public Body's frustrations with the fee provisions in the Act are not unwarranted. In *Alberta (Information and Privacy Commissioner) v. Alberta (Freedom of Information and Protection of Privacy Adjudicator)*, 2011 ABCA 36, the Court of Appeal had the following to say regarding the complexity of the FOIP Act (and the Personal Information Protection Act, PIPA) (at para. 15):

Both FOIPPA and PIPA are complex pieces of legislation. Sections in each refer to other sections and when those sections are scrutinized they refer to yet more provisions. Each act is a web, or more accurately a maze, which makes them difficult to interpret. Their enactment has resulted in an entire new area of law requiring specialists who traverse their intricacies. To suggest that they are user unfriendly is an understatement.

[para 52] The provisions of the FOIP Act setting out fees for access requests were not at issue in that case; the Court's comments were about the Act in general. In my view, the fee provisions in the Act and Regulation are not exempt from this characterization.

23. Schedule 2 of the *FOIP Regulation* establishes the maximum fee amount which may be charged for producing a paper copy of a record as a photocopy or computer printout at \$0.25 per page. The Public Body assess [sic] fees based on a rate of \$0.25 per page for this service. This rate is applied to all access requests to maintain consistency when charging fees to applicants. The Public Body's fee rate does not exceed the maximum allowable fee under the *Regulation* and the paper copies provided to applicants are of a high quality print standard which include color.

24. In Alberta Order F2009-009, the adjudicator issued a decision in support of a Public Body's fee assessment at a rate of \$0.25 per page, determining "On review of the applicable provisions of the Act and Regulation, I find that the Public Body properly estimated the fees for services. Section 93(2) of the Act and section 12(2) of the Regulation limit the fees that may be charged when an applicant requests his or her own personal information – as here – to the cost of producing the copy. Item 3(a)(i) of Schedule 2 to the Regulation sets the maximum amount that may be charged for black and white photocopying at \$0.25 per page, and this is what the Public Body charged for the 427 pages (at para 29)." Thus, the Public Body believes the fee estimate is both reasonable and done in accordance with the *Act* and the *Regulations*.

[para 28] The Public Body has cited an Order of this Office from 2009 (Order F2009-009), where the adjudicator accepted the use of the maximum amount of \$0.25 per page by a public body as its estimated photocopying cost, as support for its decision to use \$0.25 per page as its estimated photocopying cost.

[para 29] The Public Body also selected certain paragraphs from Order F2019-18 to support its use of the maximum amount of \$0.25 per page set out in Schedule 2 for estimating its photocopying costs and charging applicants.

[para 30] I note that in Order F2019-18, as in this case, the public body argued that it could not calculate its actual costs for photocopying:

[para 50] The Public Body reiterates the impossibility of calculating actual costs in its rebuttal submission (at page 2, emphasis in original):

The Municipality can not calculate “actual costs” due to the above and probably many other cost factors we have yet to consider. **In fact the Municipality could not adhere to any Commissioner Order to charge the “actual costs” as again they are incalculable!**

[para 31] However, while the Public Body chose to replicate paragraphs 51 and 52 from Order F2019-18, it did not include the paragraphs which followed, in which the adjudicator rejected the public body’s arguments, a number of which were the same or similar to the arguments the Public Body raises in this inquiry. The adjudicator said:

[para 53] Adding to the complexity is the significant change in the interpretation of the fee provisions by this Office. Early Orders of this Office referred to the maximum fees in Schedule 2 as the fees public bodies can routinely charge. However, the Orders from this Office issued in the last eight or so years (since Order F2010-036), have consistently rejected that interpretation. The more recent Orders place a greater emphasis in section 93(6) against charging more than actual costs, and have scrutinized some of the maximum amounts set out in Schedule 2 in light of that prohibition. [my emphasis]

[para 54] In Order F2010-036, the adjudicator found that “[i]t is not open to a public body to charge the maximum amount for providing a service, if the public body’s actual costs for providing the service are lower than the maximum” (at para. 145). In Order F2011-015, the adjudicator reviewed the interpretation of similar provisions in the BC Act. She concluded (at paras. 39-40, 44-46):

... it does not take into account the prohibition against charging fees in excess of actual costs set out in section 93(6) of the FOIP Act. Clearly, Schedule 2 of the Regulation contains maximum amounts that may be charged. However, the maximum amount under the Regulation cannot be charged for a service unless a public body incurs the maximum amount as an actual cost in providing that service.

...

This point is made in Order F09-05, a decision of the British Columbia Office of the Information and Privacy Commissioner. As in Alberta, British Columbia’s freedom of information legislation contains provisions that require public bodies not to charge fees that exceed the actual costs of providing services to an applicant. The Adjudicator in that case said:

Having determined that FCT was a “commercial applicant”, the Law Society had then to charge FCT the “actual cost” of providing services. It could have charged less than the “actual cost”, but it could not charge more. The Law Society must, using appropriate factors, calculate the “actual cost” of making paper copies for disclosure to FCT.

The Adjudicator required the Law Society of British Columbia to calculate the fees based on actual costs, including actual photocopying costs.

...

The FOIP Act does not define “actual costs” and, for that reason, it is not entirely clear what considerations a public body is to include in its calculation of actual costs. The Regulation establishes only maximum amounts that may be charged for performing specific services. That this is so is evident from the opening words of Schedule 2, which state that “the amounts of the fees set out in this Schedule are the maximum amounts that can be charged.” Therefore, the figures in Schedule 2 are not in themselves “reasonable” estimates of actual costs, but maximum amounts that may be charged.

In my view, using the maximums to arrive at an estimate of the costs of processing an access request, rather than amounts that the public body believes will approximate its actual costs, is unreasonable. I say this because this practice takes into account an irrelevant consideration, i.e. the statutory maximum that may be charged, and ignores relevant ones, i.e. a public body’s costs.

In situations in which the maximums are used as estimates, if the actual costs turn out to be significantly lower than the maximums, this discrepancy could have the effect of dissuading an applicant from going ahead with the access request, even though the applicant would have proceeded had the estimates calculated the approximate actual cost. Such a result would be contrary to the purpose of the legislature in enacting the FOIP Act, and contrary to the clear intent of section 93(6).

[para 55] In BC Order F09-05 (cited above), the adjudicator also rejected the argument of the Law Society (which is a public body under the BC Act) that it was not possible to calculate the actual cost of making paper copies of records. She said:

I do not find persuasive the Law Society’s reasons for not calculating the “actual cost” of the paper copies it made. The costs of paper, toner and other items may indeed have fluctuated during the processing of this request (although the Law Society provided no evidence of this). I fail to see however why it would not be feasible for the Law Society, as part of its general request-processing responsibilities under FIPPA, to calculate the “actual cost” of making paper copies for use in its requests involving “commercial applicants”. I also note that the Law Society provided no evidence to show whether or not the 25¢ per page copying fee it charged was more than the “actual cost” of providing copies of the records to FCT.

[para 56] In Order F2011-015, the adjudicator acknowledged the lack of clarity in the Act regarding “actual costs” and what is to be included in that calculation. The Public Body has raised several fair questions regarding the necessity of approximating any “actual costs”. However, I disagree with the Public Body’s apparent solution: to ignore the existence of section 93(6) or the clearest interpretation of it, which has been consistently applied by this Office for eight years. [my emphasis]

[para 57] If public bodies find the fee provisions difficult to interpret and/or apply, they may consider requesting amendments to the fee provisions (in the Act and in the Regulation). Clearer fee provisions could provide greater certainty for public bodies and applicants alike. I note that the Ontario legislation provides a set fee for photocopies, without reference to charging only actual costs, which leaves little to no room for differing interpretations.

[para 58] In a letter dated January 16, 2019, I told the Public Body that other public bodies have calculated their actual costs for photocopying to be significantly lower than \$0.25/page. For example, in Order F2013-10, the public body determined its actual costs to be \$0.045 per page for photocopying, including paper, leasing costs and power (see para. 79). In Order F2012-16 the public body calculated a per-page cost of \$0.0635, based on the cost of paper and related supplies, as well as the rental fee for the photocopier (see para. 22). In Order F2013-54 the public body calculated a per-page cost of \$0.04685 for black and white copies, and \$0.2169 for colour copies (see para. 56). In that case, the applicant had provided a price list from Staples Canada indicating that organization charges \$0.03 for black and white copies and \$0.19 for colour copies (see para. 58).

[para 59] I asked the Public Body to explain why its actual costs for photocopying are significantly higher than the costs assessed by other public bodies. In its February 1, 2019 submission, the Public Body responded (emphasis in original):

We submit here that the phrase “any other items involved in photocopying” should be interpreted to mean items that are “necessary” in order for photocopying to happen (of course, these would be items over and above the consumable costs of paper & toner specifically acknowledged in those two Orders). It is not clear from the phrase “any other items involved in photocopying” whether other “cosmetic” or “value-added” costs (please see the table I below) can be included. This is even made the worse as the “Act does not define “actual costs” and, for that reason, it is not entirely clear what considerations a public body is to include in its calculation of actual costs” as admitted even at **para 44 of Order F2011-015**. However, since “**actual costs**” are what should be charged then it is our argument that even these “value-added” costs should be included and charged by public bodies along with the “necessary” costs as they are costs “actually” incurred by them and are not expressly prohibited by either the Act or the Regulation.

[para 61] The Public Body further states (emphasis in original):

Assuming that all the above items are good for “actual costs” that may be charged to a FOIP applicant, then the question arises; how does a public body calculate, in a consistently fair and accurate manner, specifically how much costs are attributable to the processing of an individual case? We are not sure how — and are not aware of any Commissioner’s Orders that have specifically addressed this aspect of calculating the “actual costs” in relation to incalculable or variable costs.

We acknowledge that as a public body we do have the onus or burden of proving that we have charged an applicant the “actual cost” of producing record. We contend, however, that that is not possible or practical to do! We

have therefore adopted a *standard of “Reasonableness”* in situations where actual costs are not calculable. We contend that a fee of \$0.25 is a reasonable charge for printing/photocopying service with respect to processing FOIP requests (please see the table 1 above). We charge a standard rate of 25 cents per page because it is reasonable and still the clearest basis for calculating printing/photocopying costs in a manner that is consistently fair and unbiased to every applicant and because the “actual costs are incalculable” based on the arguments we provided above.

With regard to the lower costs charged by other public bodies, we contend that the costs used by the other public bodies quoted in the Commissioner’s Orders were not “actual” costs but were simply “arbitrary estimates”. In those Orders it is fairly clear that the other public bodies did not calculate all of the applicable costs possible as laid out in our Table 1 above — or, for that matter, provided a reasonable “scientific” or logical formula used in arriving at their computation. What about the actual per page costs to transport and store the paper used for copying? What about the networking costs per page involved in sending print jobs to the printers (network cabling costs, network server/hardware costs, network maintenance costs)?

In those Orders mentioned above, the Commissioner’s Office merely “looked the other way” from the points raised here and did not challenge the public bodies to prove they used “actual costs” because their quoted costs were so much lower than the regulated 25 cents a page cost.

In summary, the Municipality is not challenging the Act’s requirement to charge “actual costs” but contends it’s impossible to 100% accurately determine all actual costs involved. The Municipality contends that any costs to provide photocopies or computer printouts that a public body comes up with is an “arbitrary cost” if they aren’t using the regulated \$0.25 cents a page.

[para 62] As noted in paragraph 58 above, the public bodies involved in the files resulting in Orders F2013-10, F2012-16 and F2013-54 explained the factors they took into consideration in estimating their costs for photocopying. Pembina Hills Regional Division No. 7 (F2013-10) included paper, leasing costs and power. Alberta Health Services (F2012-16) included paper and “other related supplies” and the cost of the photocopier rental fee. The Workers’ Compensation Board (F2013-54) included the cost of the paper, photocopier, toner, parts, maintenance, machine lease, occupancy costs for the photocopier room and power (see para. 55). The Public Body’s contention that these costs are arbitrary and were arrived at absent any logical formula seems inaccurate and unfair. In fact, these public bodies clearly factored in many of the items the Public Body has listed in its table of costs. In each case, the adjudicator accepted the costs estimated by the public body as ‘reasonable’.

[para 63] 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.

[para 64] The Public Body argues that it cannot comply with an order to charge fees based on actual costs (February 1, 2019, emphasis in original):

**If the Commissioner’s Office orders us to charge “actual costs”, the Municipality contends that we could not 100% fully comply with a Commissioner Order to charge “actual costs” and that whatever cost we could even calculate would truly not be 100% accurate to account for the impossible to calculate factors (the amount of toner droplets per page is just an obvious example).**

[para 65] The Public Body is not required to charge *the* actual costs for processing an access request. It is prohibited from charging *more than* the actual costs. While the latter undoubtedly requires a public body to estimate its actual costs (to ensure it is not over charging), the Public Body is permitted to omit incidental (or “value added”) cost items if they are “incalculable”. That is not a contravention of the Act. Further, omitting such incidental costs (such as the miniscule percentage of network cables that can be attributed to individual access requests) will help ensure that the cost arrived at is less than the actual cost.

[para 66] The Public Body argues that because the actual costs of producing a photocopy are “incalculable”, it is reasonable to simply charge applicants \$0.25 per page. It indicates that this approach is consistently fair and unbiased to every applicant. Regarding this last point, if the Public Body calculates an actual cost for photocopying and applies that to every access request, that approach would also be consistently fair and unbiased. I understand the Public Body’s point that different records will have different amounts of toner and therefore different costs associated. It seems likely that the cost difference in toner between a full page and partial page is a small fraction of a cent such that it may not affect the actual cost per page. Perhaps the Public Body could enquire to the company from whom it purchases or leases its equipment on this point. Perhaps the Public Body could simply calculate its costs based on a partial page rather than a full page (to ensure that the fees charged to applicants are less than or equal to the actual costs).

[para 67] In any event, there are options available to the Public Body that would allow it to charge fees and comply with section 93(6). Ignoring the prohibition in section 93 of the Act against charging more than actual costs, and instead charging the maximum allowable fee set out in Schedule 2, is not a reasonable alternative. In part because it contravenes the Act, and in part because by all accounts, \$0.25 per page is several times higher than an actual cost. It is 5.5 time higher than the actual costs of two public bodies discussed above (at paragraph 58) and 3.9 times higher than the third public body’s. It is also 2.3 times higher than the fee charged by a for-profit business. [my emphasis]

[para 68] 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.

[para 69] 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 32] In paragraph 53 of Order F2019-18, reproduced above, the adjudicator noted that "Early Orders of this Office referred to the maximum fees in Schedule 2 as the fees public bodies can routinely charge. However, the Orders from this Office issued in the last eight or so years (since Order F2010-036), have consistently rejected that interpretation."

[para 33] One of the Orders that rejected this interpretation is Order F2016-39.

[para 34] In Order F2016-39 the adjudicator considered whether the public body properly calculated the amount of fees payable in accordance with section 93 of the Act and Regulation. The adjudicator stated:

[para 8] In Orders F2012-06, F2012-16, F2013-10, F2013-27, and F2013-54, the Adjudicators followed the reasoning in Order F2011-015 and reduced the fees charged or estimated on the basis that the public bodies in those cases had not established that the fees reflected the public bodies' actual costs within the terms of section 93(6). In those orders, it was held that the schedule in the Regulation establishes the maximums that may be charged for services. However, if the actual costs to a public body are less than the statutory maximum, then the public body may not charge the statutory maximum.

[para 9] In addition to being restricted to charging amounts reflecting their actual costs of providing services, public bodies may only charge fees for providing services that a public body is authorized or required by the FOIP Act to provide. As an example, in Order F2013-35, the Adjudicator determined that fees could not be charged for obtaining a record responsive to an access request that was not in the custody or control of a public body. The public body in that case had obtained a record for the price of \$550 from the contractor that had created, and had custody and control over, the record. The Applicant requested review of the fees, and the Adjudicator disallowed the \$550 fee on the basis that the FOIP Act did not require or contemplate the Public Body's performing such a service or charging for it.

[para 10] I turn now to the question of whether the Public Body has demonstrated that it has properly calculated the fees for processing the Applicant's access request, bearing in mind that a public body may not charge for services not contemplated by the FOIP Act and must demonstrate that the fees reflect its actual costs for providing services.

[para 35] With respect to the photocopying costs charged by the public body, the adjudicator in Order F2016-39 made the following determination:

[para 31] The Public Body has not provided evidence to support the costs it charged for staff time and photocopying. While I accept that the hourly rate of the employees who searched for responsive records and prepared them was likely to be at least the statutory maximum, which is the rate the Public Body charged, there is no evidence before me that the \$.25 per page it charged the Applicant for photocopying reflected its actual costs for providing this service.

[para 32] As discussed above, previous orders of this office have held that a public body may charge only its actual costs for providing services. Previous orders have also taken notice that \$.25 per page is a rate that is likely to be in excess of a public body's actual costs for photocopying. In this case, the Public Body has not established that the costs to it for photocopying are properly reflected by the statutory maximum. I must therefore disallow its costs for photocopying, on the basis that it has submitted no evidence as to how it arrived at this fee.

This Order was upheld on judicial review.

[para 36] I further note that at paragraph 63 of Order F2019-18, the adjudicator made reference to Order F2013-27. Order F2013-27, which the Public Body did not refer to in its submissions, involved the Public Body.

[para 37] In Order F2013-27, the adjudicator had to determine whether the Public Body's fee estimate was reasonable and done in accordance with the Act and the regulations. As in the case before me, the Public Body had used the maximum amounts set out in Schedule 2 to prepare its fee estimate.

[para 38] In Order F2013-27 the adjudicator stated:

[para 15] The Public Body argues that "using the maximum amounts set out in Schedule 2 of the Regulation is a reasonable standard in preparing a fee estimate for the Applicant, as the Public Body wishes to state that a fee estimate is exactly that – an estimate."

[para 16] The Public Body further states in its submission:

In this case, the Public Body respectfully reminds the Adjudicator that the issue under consideration is whether the fee estimate was reasonable. In this case, it may be that the actual cost would be lower or higher. The issue of the actual cost is not under consideration at this time. If the estimate is reasonable and approximates what may be the actual cost, the Public Body would have satisfied its requirements in regard to the fee estimate.

[para 17] In Order F2010-005 the adjudicator make [sic] a comment regarding the inexact nature of a fee estimate, citing Order F2004-002:

Section 93(3) of the Act requires that the Public Body provide a fee estimate in advance of processing the request. Therefore, an estimate is a calculated guess at what it might cost to respond to an Applicant's access request. It is not the actual cost of processing the request. In Order F2004-002, the Adjudicator stated, "A fee estimate is simply that, an estimate. It is not an exact accounting of the time taken and the exact costs incurred."

(at para. 16)

[para 18] An estimate is helpful in a situation in which the exact value of a factor is unknown. For example, a public body may not know exactly how many pages will be given to an applicant before it determines what information needs to be severed. Or a public body may not know exactly how long it will take to prepare the records. Therefore the public body can only provide an estimate of the actual costs, until the request is processed. However, even before a request is processed, certain variables will be (or ought to be) known by a public body. As discussed below, the Public Body appears certain about the salaries of employees involved in processing the request so far, and has concluded that the maximum hourly rate provided in the Regulation is reasonable given the salaries of the employees involved. As I will discuss further below, a public body's cost per page for photocopying should also be known (or knowable) independent of the request.

[para 19] In Order F2011-015 the adjudicator stated the following:

Clearly, Schedule 2 of the Regulation contains maximum amounts that may be charged. However, the maximum amount under the Regulation cannot be charged for a service unless a public body incurs the maximum amount as an actual cost in providing that service. In the case of an estimate, the maximum amount cannot be charged unless a public body anticipates that it will likely incur costs reflecting the maximum amount.

(at para. 39)

[para 20] In that Order, the adjudicator addressed the argument that it is reasonable to use the maximum amounts in the Regulation to calculate a fee estimate:

The FOIP Act does not define "actual costs" and, for that reason, it is not entirely clear what considerations a public body is to include in its calculation of actual costs. The Regulation establishes only maximum amounts that may be charged for performing specific services. That this is so is evident from the opening words of Schedule 2, which state that "the amounts of the fees set out in this Schedule are the maximum amounts that can be charged." Therefore, the figures in Schedule 2 are not in themselves "reasonable" estimates of actual costs, but maximum amounts that may be charged.

In my view, using the maximums to arrive at an estimate of the costs of processing an access request, rather than amounts that the public body believes will approximate its actual costs, is unreasonable. I say this because this practice takes into account an irrelevant consideration, i.e. the statutory maximum that may be charged, and ignores relevant ones, i.e. a public body's costs.

In situations in which the maximums are used as estimates, if the actual costs turn out to be significantly lower than the maximums, this discrepancy could have the effect of dissuading an applicant from going ahead with the access request, even though the applicant would have proceeded had the estimates calculated the approximate actual cost. Such a result would be contrary to the purpose of the legislature in enacting the FOIP Act, and contrary to the clear intent of section 93(6).

(at paras. 44-46)

[para 21] I agree with the above reasoning, and the Public Body has not provided any reasons for finding that this analysis does not apply here.

[para 39] At paragraphs 40 – 52, the adjudicator considered the various arguments of the Public Body regarding what costs should or could be included in determining its actual costs for photocopying, and why it believed it was complying with the Act by using the maximum of the \$0.25 per page to calculate its estimate, and charge applicants to provide photocopies of responsive records.

[para 40] At paragraph 40, the adjudicator stated:

[para 40] In Order F2011-015 discussed above, the adjudicator determined that charging (or estimating) 25 cents per page for photocopying is unreasonable unless the public body can show that this reflects its actual costs (see paras. 47-51).

[para 41] At paragraph 41, the adjudicator noted that in its submissions, the Public Body disagreed with the adjudicator's reasoning in Order F2011-015 regarding the cost for photocopying. The adjudicator reproduced the Public Body's argument and concluded:

[para 43] I agree with the adjudicator in Order F2011-015, that the cost for photocopies must be based on the public body's actual costs, as stated in section 93(6) of the FOIP Act. A public body may charge 25 cents a page for copies of records if that reflects its actual costs.

[para 42] The adjudicator then went on to say the following in response to the Public Body's arguments (emphasis in original):

[para 46] The Public Body's submissions refer only to costs associated with photocopying and not printing records; however, as it argues that the costs for the latter are essentially the same as the costs for the former, I will consider its reasons for charging 25 cents per page for photocopying.

[para 47] The Applicant noted in his submission that a commercial business charges only \$0.08 per page for photocopying. The Public Body responds that if it charged \$0.08 per page instead of 25 cents per page, the difference would be only \$17 and that in the context of a \$215 fee estimate, this difference is reasonable because fee estimates are not *actual* fees. However, as I have discussed, a public body is required to charge actual costs for photocopying, so a fee estimate should reflect the Public

Body's actual costs for photocopying. The per-page cost for the Public Body to photocopy is a known (or knowable) factor; the number of pages is the estimate. I make the same finding for printing records from electronic records.

[para 48] The Public Body asserts that the comparison of costs with the private sector by the adjudicator in F2011-015 is misleading, but it does not provide any evidence to support this assertion or to provide a more appropriate comparator. The Public Body suggests that commercial entities provide some services at below-cost rates as "loss leaders" but does not offer any evidence that this happens in the photocopying business or that it has any relevance to the comparisons the adjudicator was making in F2011-015. The Public Body may instead have, for example, compared the photocopying (or printing) rates offered by businesses that offer *only* photocopying and related services such that it would not make sense to use low photocopy rates as a "loss leader." In any event, this discussion is not directly relevant to what the Public Body's actual costs are.

[para 49] The Public Body also states:

The order F2011-015 states that information such as costs of paper and toner would be in consideration. The Public Body suggests that other information such as power consumption, photocopier maintenance and servicing, and the approximate time and manpower skill, required to copy responsive records must also be considered in such calculations. These costs are not easily measurable.

[para 50] Regarding the estimation of actual costs in general, the adjudicator in Order F2011-015 stated:

In saying this, I do not mean that a public body must conduct a detailed analysis of each and every factor contributing to its actual costs every time it estimates fees. Rather, it is sufficient for a public body to approximate actual costs such as photocopying and the rates of employee time, once, and then incorporate these amounts into subsequent fee estimates. Provided that a public body can demonstrate with evidence or explanation that these approximations are reasonable, the fee estimate relying on them will likely also be found to be reasonable.

(at para. 51)

[para 51] I do not disagree with the Public Body that some of the per-page costs associated with photocopying (and printing), such as the cost of toner, may be challenging to measure (of course, the Public Body may exclude these costs altogether). However, since the issuance of Order F2011-015, other public bodies have calculated an actual cost for photocopying. For example, in Order F2013-10, the public body determined its actual costs to be \$0.045 per page for photocopying, including paper, leasing costs and power (see para. 79). In Order F2012-16 the public body calculated a per-page cost of \$0.0635, based on the cost of paper and related supplies, as well as the rental fee for the photocopier (see para. 22). Actual costs for printing would likely be calculated in a manner similar to actual costs for photocopying. [my emphasis]

[para 52] The Public Body also disagreed with the adjudicator's conclusion in Order F2013-10 that labour costs could not be incorporated into the fee for photocopying. The Public Body's objections to that Order are that the Public Body takes time to ensure that records provided in response to an access request are of a high quality. I do not disagree that the time and care taken by a public body in responding to an access request is valuable and worthwhile. However, as stated in Service Alberta's *FOIP Guidelines and Practices Manual* (the Policy Manual), fees for processing an access request are not intended to recover all of the costs associated with that process. The Policy Manual states the following on page 72 (my emphasis):

The *FOIP Act* allows public bodies to charge fees to **help offset the cost** of providing applicants with access to records.

The FOIP Act and Regulation set out which of the costs associated with processing an access request are to be passed on to the applicant. I agree with the adjudicator's interpretation in Order F2013-10, that labour costs associated with producing copies of records are not among the activities for which fees are assessed (see particularly paragraphs 79-86 of that Order). I do not accept the Public Body's rationale for charging 25 cents per page for photocopying or printing records. I will order the Public Body to calculate its actual costs for printing records. [my emphasis]

[para 43] The adjudicator issued the following Order to the Public Body:

[para 55] I order the Public Body to recalculate the fee estimate as follows:

...

- calculate the actual costs for printing records; and

...

[para 56] I order the Public Body to provide a new estimate to the Applicant of the total fees based on the foregoing.

[para 57] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

[para 44] In summary, the adjudicator informed the Public Body in Order F2013-27 that she did not accept the Public Body's rationale for charging \$0.25 cents per page for photocopying or printing records, and ordered the Public Body to calculate the actual costs for printing records and provide a new estimate to the applicant.

[para 45] There is no evidence before me that the Public Body requested a judicial review of Order F2013-27.

[para 46] The adjudicator ordered the Public Body to notify her, in writing, within 50 days of receiving a copy of the Order that it had complied with the Order. If it did so, and I have no evidence or reason to believe that it did not, this would mean that it

represented to the adjudicator that it had calculated the actual costs for printing records as required by the adjudicator in Order F2013-27.

[para 47] If this is the case, it is not clear to me how the Public Body can now take the position that it is unable to calculate its actual costs for photocopying, which as the adjudicator noted, would be the same as for printing records.

[para 48] The Public Body has not made any arguments or presented any evidence as to what its actual costs for photocopying are. It has said it cannot calculate them. It has said because it cannot calculate them it uses the maximum amount allowed under section 3 of Schedule 2, and that this is fair because this is what it charges all applicants. These arguments have been rejected by this Office in the prior Orders referenced above.

[para 49] As noted by the adjudicator in Order F2013-27, since the issuance of Order F2011-015, other public bodies have calculated an actual cost for photocopying. The adjudicator cited Order F2012-16, where the public body's calculation of \$0.0635 per page for photocopying was found to be reasonable (see paras. 22 and 34), and Order F2013-10, where the public body's calculation of \$0.045 per page for photocopying was found to be reasonable (see para. 79).

[para 50] I also note the following Orders as further examples where a public body's calculation of its actual costs for photocopying was found to be reasonable on review by this Office:

- Order F2012-16 where the public body's calculation of \$0.0635 per page for photocopying was found to be reasonable (see para. 22).
- Order F2013-10 where the public body's calculation of \$0.045 per page for photocopying was found to be reasonable (see para. 79).
- Order F2013-54 where the public body's calculation of \$0.034 for black and white copies, and \$0.20 for colour copies was found to be reasonable (see para. 59).
- Order F2014-05 where the public body's calculation of \$0.097 per page for photocopying was found to be reasonable (see paras. 46, 47 and 56).
- Order F2014-11 where the public body's calculation of \$0.12 per page for photocopying was found to be reasonable (see paras. 44 and 45).
- Order F2016-51 where the public body's calculation of \$0.097 per page for photocopying was found to be reasonable (see para. 24).
- Order F2018-55 where the public body's calculation of \$0.05 per page for photocopying was found to be reasonable (see para. 36).

[para 51] As noted by the adjudicator in Order F2020-07 at paragraph 25:

[para 25] I acknowledge that calculating "actual costs" may result in disparities 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 52] In summary, other public bodies have been able to calculate their actual costs for photocopying, which have been found to be reasonable by this Office.

[para 53] The aforementioned Orders, which have accepted certain cost components as being reasonable in determining the actual cost of photocopying, along with other Orders where cost components were found not to be reasonable in the calculation of the actual cost of photocopying, provide guidance to public bodies in calculating their actual costs of photocopying.

[para 54] In Order F2012-06 the adjudicator stated the following regarding section 93(1) and 93(6):

[para 183] Section 93(1), permits the head of a public body to require fees for services as provided for in the regulations, while section 93(6) prohibits a public body from charging fees in excess of the actual costs of providing services. Consequently, a public body must be in a position to calculate its actual costs for providing services if it intends to require payment of fees.

[para 55] In Order F2012-06, the adjudicator noted that section 72(3)(c) of the Act gives the Commissioner the authority to confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met. The adjudicator stated:

[para 218] Section 72 of the FOIP Act gives the Commissioner the authority to confirm or reduce a fee or to order a refund in appropriate circumstances. It states, in part:

*72(1) On completing an inquiry under section 69, the Commissioner must dispose of the issues by making an order under this section.*

...

*(3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:*

...

*(c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met...*

Section 72(3)(c) establishes that the Commissioner may reduce a fee or order a refund in appropriate circumstances. The provision sets out failure to meet a time limit as an example of a circumstance in which it may be appropriate to do so. However, the provision does not limit the circumstances in which it is appropriate to order a refund of fees.

[para 56] The adjudicator went on to state the following in Order F2012-06:

[para 219] As the inquiry relates to the Public Body's decision to charge fees, and its calculation of them, it is open to me to order a refund, if I consider it appropriate to do so.

[para 220] The manner in which the Public Body calculated the fees and the manner in which it severed information in this case had the effect of undermining a central purpose of the FOIP Act: the right of timely access to records in the custody or control of a Public Body. I say this because the Public Body withheld information for reasons that were not borne out by the records, and charged inflated costs for processing the access request. In saying this, I do not mean that every time a public body makes a decision that is not confirmed at an inquiry that a complete refund of fees must necessarily be ordered as a result. However, in this case, the amount of severing done, and the lack of justification for it, has resulted in the Applicant being deprived of her rights under the FOIP Act.

...

[para 223] While the Applicant has requested that the fees be waived on the basis that the records relate to the environment and are therefore a matter of public interest, within the terms of section 93(4)(b), I have decided that the circumstances are appropriate, within the terms of section 72(3)(c), for reducing the fees, which I consider would have been properly set at \$297, to zero, and ordering the Public Body to refund all fees it required the Applicant to pay that it has not already refunded. I make this finding on the basis that the manner in which the Public Body responded to the Applicant and charged fees, served to defeat the Applicant's right under the FOIP Act to timely access to the information she requested from the Public Body. In addition, I make this finding on the basis that when asked directly to explain its rationale for withholding information from the Applicant, the Public Body was unable to do so. While I accept that the Public Body did not do so intentionally, but rather as the result of inexperience, inexperience in processing access requests cannot be permitted to undermine the rights of a requestor under the FOIP Act. I will therefore order the Public Body to issue a complete refund to the Applicant of all fees she has paid to the Public Body in relation to this access request.

[para 57] In this case, the Public Body has not provided any evidence regarding its actual costs for photocopying to support its use of \$0.25 per page in its fee estimate. The Public Body has not provided any evidence to substantiate that the \$0.25 per page it has used as its estimate does not exceed the Public Body's actual costs for photocopying.

[para 58] The Public Body has not made any arguments that would persuade me to reach a different conclusion than the conclusion made by the adjudicator in Order F2013-27. I do not accept the Public Body's rationale for using \$0.25 per page to calculate its fee estimate for providing photocopies of responsive records to the Applicant.

[para 59] Section 72(3)(c) permits me to reduce the Public Body's fee if I consider it appropriate to do so.

[para 60] The arguments the Public Body has made in this inquiry to justify using the maximum of \$0.25 per page have been previously raised by the Public Body before the adjudicator in Order F2013-27, and these arguments were rejected by the adjudicator.

[para 61] The Public Body's letter of acknowledgment to the Applicant of March 15, 2017, wherein it stated:

Section 93 of the *FOIP Act* provides that copying fees may be charged for providing you with the information you requested. Copying fees will be charged in accordance with the amounts set out in section 12 of the FOIP Regulation. Photocopying fees will be charged at the rate of \$0.25 per page for paper records.

and its submissions in this inquiry, suggest to me that despite Order F2013-27 in which the adjudicator directly rejected the Public Body's arguments for using the maximum of \$0.25 per page for photocopying or printing records when it did not present any evidence that this reflected its actual costs for the service, and ordered the Public Body to calculate its actual costs for printing, the Public Body has continued to use the maximum amount of \$0.25 per page for photocopying in its fee estimates, and to charge applicants.

[para 62] As mentioned above, in Order F2016-39, which was upheld on judicial review, the adjudicator reached the following decision regarding the public body's use of \$0.25 per page for providing photocopies:

[para 32] . . . In this case, the Public Body has not established that the costs to it for photocopying are properly reflected by the statutory maximum. I must therefore disallow its costs for photocopying, on the basis that it has submitted no evidence as to how it arrived at this fee.

[para 63] Likewise, in the matter before me, the Public Body has not established that the costs to it for photocopying are properly reflected by the statutory maximum. It has not submitted any evidence to support that its use of \$0.25 per page does not exceed its actual cost for photocopying.

[para 64] Given the lack of evidence provided by the Public Body to support that its use of \$0.25 per page to provide photocopies of responsive records complies with the Act and the Regulation, I am unable to confirm the Public Body's fee estimate and am disallowing the Public Body's costs for photocopying and reducing the Public Body's fees for photocopying responsive records to zero.

[para 65] I note that although it was open to me to order the Public Body to recalculate its fee estimate for photocopying based on its actual costs, given that the Public Body had previously been ordered to calculate its actual costs for printing in Order F2013-27, and that it raised the same or similar arguments in this inquiry for using the maximum amount for photocopies set out in the Regulation that were rejected by the adjudicator in Order F2013-27, and have been rejected by this Office in other Orders referenced herein, I have determined that reducing the fees to zero is the appropriate remedy in the circumstances of this case.

[para 66] The Public Body must now process the Applicant's request for access to the information he identified in his e-mail of March 14, 2017 and the Form. The Public Body must provide the Applicant with a response which complies with the Act, which includes informing the Applicant if access to the records or to part of the records is granted or refused, and if access to the records or to part of the records is refused, the reasons for the refusal and the provision of the Act on which the refusal is based.

[para 67] I make the same recommendation to the Public Body in this case as the adjudicator did in Order F2019-18 at paragraph 69:

[para 69] 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 68] I agree with and would reiterate the comments of the adjudicator in Order F2019-18 at paragraph 57:

[para 57] If public bodies find the fee provisions difficult to interpret and/or apply, they may consider requesting amendments to the fee provisions (in the Act and in the Regulation). Clearer fee provisions could provide greater certainty for public bodies and applicants alike. I note that the Ontario legislation provides a set fee for photocopies, without reference to charging only actual costs, which leaves little to no room for differing interpretations.

**2. Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4)(a) of the Act (fees)?**

[para 69] Section 93(4)(a) permits the head a public body to excuse the applicant from paying all or part of a fee if, in the opinion of the head, the applicant cannot afford the payment or for any other reason it is fair to excuse payment.

[para 70] As I have decided to reduce the Public Body's fee for photocopying responsive records to zero, it is not necessary for me to decide whether the Applicant should be excused from paying all or part of the fee as provided by section 93(4)(a).

**IV. ORDER**

[para 71] I make this Order under section 72 of the Act.

[para 72] I reduce the Public Body's fees for photocopying responsive records to zero.

[para 73] I order the Public Body to perform its duties under the Act both to process and to provide a response to the Applicant's request for access to the information set out in his e-mail of March 14, 2017 and the Form.

[para 74] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

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Carmen Mann  
Adjudicator