



REVIEW REPORT 019-2024

Ministry of Government Relations

April 3, 2024

Summary:

The Applicant submitted an access to information request to the Ministry of Government Relations (Government Relations). Initially, Government Relations issued a fee estimate of \$12,190. The Applicant appealed to the Commissioner. Government Relations then issued a revised fee estimate of \$11,850.00. The Applicant was dissatisfied and requested the Commissioner to continue with his review. The Commissioner found that Government Relations' fee estimate for search was unreasonable but found that the fee estimate for preparation of records to be reasonable. He recommended that Government Relations adjust its fee estimate from \$11,850.00 to \$10,830.00. Government Relations had also asserted that FOIP did not apply to the requested records pursuant to subsection 3(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that FOIP complements the existing procedures under *The Municipalities Act*, *The Northern Municipalities Act*, and *The Cities Act* for access to the requested records pursuant to subsection 4(a) of FOIP. He recommended that Government Relations consider making financial statements and auditor's reports it receives from municipalities available to the public pursuant to section 65.1 of FOIP within 30 days of issuance of this Report. This could include publishing the records on Government Relations' website so the public may access such records.

I BACKGROUND

[1] On February 10, 2023, the Ministry of Government Relations (Government Relations) received the following access to information request for the years 2020 to 2021 from the Applicant:

Please provide all municipal financial statements and municipal auditor reports for the year 2020-2021.

[2] In a letter dated February 23, 2023, Government Relations issued a fee estimate of \$1,155.00 to the Applicant. The breakdown of the fee estimate was as follows:

	Type of Fee	Calculation of Fees	Total Amount of Fees
1	Time required to search for records	1 half hour x \$15.00/ half hour	\$15.00
2	Reviewing and preparing records	40 hours x \$15.00/half hour = \$1,200.00	\$1,200.00
3	Photocopies or computer printouts of Records	No photocopies or printouts, all copies are electronic.	\$0
5	LESS:	2 hours free x \$15.00/half hour	(\$60.00)
Total amount of fees required to process access request			\$1,155.00

[3] The Applicant provided my office with a copy of the records they had received for this particular access request. The Applicant received 737 .pdf files that totalled 23,660 pages on a USB flash drive. The Applicant indicated to my office that they believed they paid exactly what the fee estimate was for the records (\$1,155.00).

[4] Then, on November 6, 2023, the Applicant submitted another access request to Government Relations for the same information but for the year 2022:

Please provide all municipal financial statements and municipal auditor reports for 2022.

[5] In a letter dated November 30, 2023, Government Relations issued a fee estimate of \$12,190.00 to the Applicant. The breakdown of the fee estimate was as follows:

TYPE OF FEE	CALCULATION OF FEES	TOTAL AMOUNT OF FEES
Time required to search for records	2100 minutes x \$15.00/30 min	\$ 1,050.00
Time required to prepare records for disclosure	22,400 pages x 1 min/page x \$15.00/30 min	\$ 11,200.00
Less 2 hours free legislated time	2 hrs. free x \$15.00/30 min	\$ (60.00)
TOTAL AMOUNT OF FEES REQUIRED TO PROCESS REQUEST		\$ 12,190.00

[6] In an email dated December 11, 2023, the Applicant asked Government Relations the following questions:

1. Do you have the time it took to complete my previous request on this file? I believe I dealt with [Name], and the file name is GR11-22G.
2. In response to my previous second question you said “Reviewing records is done on a line-by-line basis for every single request received to ensure compliance with the legislation and transparency.” Can you explain a little more to how this applies here? These documents are already public documents and should be clean of anything that needs redactions before it gets sent to the ministry from the municipalities. I don't believe any documents from last year's request had any redactions either, throughout all of the documents.

Please also let me know if you have any ideas on reducing the request fees. I am looking for the documents, but understand the system you work in, and want to be as reasonable as possible.

[7] On the same day, Government Relations responded to the Applicant. It said:

...
No, unfortunately I do not. The cost estimate associated with GR11-22G was incorrectly analyzed, as you were charged a flat rate. We have since updated our cost estimate analysis processes to be in line with what the OIPC sets out, as [Name] discussed with you recently.

...
The reason it applies here is because you have applied for an access to information request, therefore we must follow the procedures associated with that process, which is to go through the documents line-by-line to ensure compliance with legislation and transparency. This is done for all FOI requests despite the nature of the request. Normally we do not receive FOI requests for public records.

Due to these being public documents, the way to reduce or eliminate fees altogether would be to contact the municipalities directly for this information.

[8] On January 31, 2024, the Applicant requested a review of the fee estimate by my office.

[9] Then, in an email dated February 14, 2024, Government Relations indicated to the Applicant it was reducing the fee estimate slightly from \$12,190.00 to \$11,850.00. It said:

It was determined that management statements that were not within the scope of the request were included in the original cost estimate we provided to you. We have

removed this from the cost estimate and have enclosed a copy of the revised GR16-2324G Cost Estimate Analysis form for your review.

[10] The revised fee estimate was as follows:

COST ESTIMATE ANALYSIS FOR LOCATING RESPONSIVE RECORDS							
PAPER RECORDS			ELECTRONIC RECORDS			Total Time (hrs.)	TOTAL COST
Estimate # of Records (Pages)	Time to Locate (min)	Cost to Locate (\$15/30 min)	Estimate # of Records (Pages)	Time to Locate (min)	Cost to Locate (\$15/30 min)		
0	0	\$ -	21,780	2,040	\$ 1,020.00	34	\$ 1,020.00
REVIEWING AND PREPARING RECORDS							
<i>It is estimated that it will take approximately 1 minute to review and prepare these records for disclosure.</i>		Estimated # of Pages	Time to Review/Prepare (min)	Cost to Review (\$15/30 min)	TOTAL COST		
		21,780	1	\$ 10,890.00	\$ 10,890.00		
PHOTOCOPYING AND OTHER							
Estimate Number of Pages to photocopy x \$0.25/page				\$ -	\$ -		
LEGISLATED 2 HOURS OF FREE TIME							
<i>Per the IPC legislated, two hours of free time are to be removed from the cost estimate</i>				Free time (min)	Cost of Free Time	TOTAL COST DEDUCTED	
				120	\$ (60.00)	\$ (60.00)	
TOTAL ESTIMATE OF COSTS						\$ 11,850.00	
DEPOSIT REQUIRED - 50% OF TOTAL ESTIMATE OF COSTS						\$ 5,925.00	

[11] On February 16, 2024, the Applicant indicated that they would still like to proceed with a review by my office.

[12] On February 21, 2024, my office notified both the Applicant and Government Relations that my office would be undertaking a review.

II RECORDS AT ISSUE

[13] At issue is the fee estimate issued on November 23, 2023 by Government Relations to the Applicant.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[14] Government Relations qualifies as a “government institution” as defined by subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, I find that I have jurisdiction to conduct this review.

2. Is the fee estimate issued by Government Relations reasonable?

[15] Subsection 9(2) of FOIP requires a government institution to provide a fee estimate where the cost of providing access to records exceeds the prescribed amount of \$100.00. This prescribed amount is found in subsection 7(1) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Furthermore, applicants are not required to pay any fees beyond what is originally estimated (*Guide to FOIP*, Chapter 3: “Access to Records”, Updated May 5, 2023 [*Guide to FOIP*, Ch. 3], p. 72).

[16] FOIP provides for reasonable cost recovery associated with providing individuals access to records. A “reasonable fee estimate” is one that is proportionate to the work required on the part of the government institution to respond efficiently and effectively to an applicant’s request. A fee estimate is equitable when it is fair and even-handed, that is, when it supports the principle that applicants should bear a reasonable portion of the cost of producing the information they are seeking, but not costs arising from administrative inefficiencies or poor records management practices (*Guide to FOIP*, Ch. 3), p. 72).

[17] There are generally three kinds of fees that can be included in a fee estimate:

- a. Fees for searching records;
- b. Fees for preparing records; and

c. Fees for reproducing records.

[18] Below is an analysis to determine if Government Relation's fee estimate is reasonable. As Government Relations did not include an estimate for reproduction, I will not include this in my analysis.

a. Fees for searching records

[19] In its revised fee estimate to the Applicant (dated February 14, 2024), Government Relations estimated 34 hours of search time for a total cost of \$1,020.00.

[20] Subsection 6(2) of the FOIP Regulations describes the fee formula government institutions are to apply when estimating a fee for searching or preparing records. Subsection 6(2) of the FOIP Regulations provides as follows:

6(2) Where time in excess of two hours is spent in searching for a record requested by an applicant or in preparing it for disclosure, a fee of \$15 for each half-hour or portion of a half-hour of that excess time is payable at the time when access is given.

[21] Page 74 of my office's *Guide to FOIP*, Ch. 3 provides that fees for search time consists of every half hour of manual search time required to locate and identify responsive records. For example:

- Staff time involved with searching for records.
- Examining file indices, file plans or listings of records either on paper or electronic.
- Pulling paper files/specific paper records out of files.
- Reading through files to determine whether records are responsive.

[22] Page 75 of my office's *Guide to FOIP*, Ch. 3, describes what search time **does not** include:

- Time spent to copy the records.
- Time spent going from office to office or off-site storage to look for records.

- Having someone review the results of the search.

[23] Page 75 of the *Guide to FOIP*, Ch. 3, provides the following general standards to estimate search time:

- It should take an experienced employee one minute to visually scan 12 pages of paper or electronic records to determine responsiveness.
- It should take an experienced employee five minutes to search one regular file drawer for responsive file folders.
- It should take three minutes to search one active email account and transfer the results to a separate folder or drive.

[24] In instances where the above does not accurately reflect the circumstances, the government institution should design a search strategy and test a representative sample of records for the time. The time can then be applied to the responsive records as a whole (*Guide to FOIP*, Ch. 3, p. 75).

[25] Where the search for responsive records exceeds two hours, the government institution can charge \$15.00 for every half hour in excess of two hours for search or preparation pursuant to subsection 6(2) of the FOIP Regulations (*Guide to FOIP*, Ch. 3, p. 75).

[26] In its revised fee estimate, Government Relations estimated it would take 2040 minutes for time to search for records. In its submission, Government Relations explained that the search fee in the fee estimate was based on a search that was already completed:

Search time, initially estimated at 35 hours, **was based on a thorough search** by the program area responsible for municipal finance, in order to locate relevant records and ensure their responsiveness to the request. Municipal financial statements and auditor's reports are received through individual emails sent to the ministry by each municipality, requiring the ministry to review individual emails for responsiveness. **The search produced** an estimated 22,400 pages worth of relevant records. To ensure due diligence, all access information requests received by the ministry are reviewed on a line-by-line basis to confirm compliance with the Act and to ensure that no personal information is released.

...

On February 7, 2024, your office notified the ministry that the Applicant had requested a review of the fee estimate and requested that the ministry give notice of whether the fee estimate would be revised or eliminated. In response, the ministry reexamined its search strategy and determined that management statements, which were included in the initial cost estimate, were not within the scope of the request. Omitting the management statements from the fee calculations reduced the search time by one hour (from 35 hours to 34) and reduced the number of pages requiring preparation by 620 (from 22,400 pages to 21,780). This reduced the overall cost estimate by 2.8%, to \$11,850.00. A revised fee estimate was sent to the Applicant via email on February 14, 2024.

[Emphasis added]

[27] In past reports, I have said that it is not reasonable to charge fees for work already completed before the applicant had agreed to pay the fee. The fee estimate should be a true estimate. Completing the entire search before an applicant has agreed to pay fees or has the opportunity to narrow the search is a potential waste of government time (see [Review Report 034-2019](#) at paragraph [19] and [Review Report 136-2022](#) at paragraph [21]).

[28] Similarly, since Government Relations has already completed the search before the Applicant agreed to pay the fee, I find that the fee estimate for search is unreasonable.

b. Fees for preparing records

[29] In its revised fee estimate, Government Relations estimated a total cost of \$10,890.00 for preparing records.

[30] As noted earlier, subsection 6(2) of the FOIP Regulations also describes the fee formula that government institutions are to apply when estimating a fee for preparing records. That fee formula is \$15.00 for every half hour of preparation that is in excess of two hours for search or preparation.

[31] Pages 75 to 76 of the *Guide to FOIP*, Ch. 3, provides that preparation includes time spent preparing the record for disclosure. This includes the anticipated amount of time spent

physically severing exempt information from records. However, preparation time does not include:

- Deciding whether to claim an exemption.
- Identifying records requiring severing.
- Identifying and preparing records requiring third party notice.
- Packaging records for shipment.
- Transporting records to the mailroom or arranging for courier service.
- Time spent by a computer compiling and printing information.
- Assembling information and proofing data.
- Photocopying.
- Preparing an index of records.

[32] Generally, it should take an experienced employee two minutes per page to physically sever records (*Guide to FOIP*, Ch. 3, p. 76).

[33] In this case, Government Relations has estimated one minute per page to physically sever records. It has estimated there to be 21,780 pages of records. At one minute per page, Government Relations is estimating it would take 21,780 minutes to prepare the records. At a rate of \$15.00 for every 30 minutes, its estimate should be \$10,890.00, which is the amount reflected in the revised fee estimate.

[34] Subsection 6(2) of the FOIP Regulations provides that government institutions can only charge fees for search and preparation where the time is in excess of two hours. I note that Government Relations accounted for this by subtracting \$60.00 for the cost of the first two hours \$60.00 (at a rate of \$15/30 minutes).

[35] Given the great number of pages responsive to the Applicant's access request and the fact that Government Relations estimated one minute per page (as opposed to two minutes per

page) to prepare the records, I find that Government Relation's fee estimate for the preparation of records is reasonable.

[36] In their submission, the Applicant asserted that the time taken to prepare records for release for their previous access request took a much shorter time than what is being estimated:

The time allocated for preparing the records is superfluous. In the case of last year's request GR11-22G, the cheque for the fee estimate was sent by mail on Feb. 27, 2023. The responsive records were received on March 21, 2023 – 15 business days from the date the cheque was sent. If the fee estimate for this year's request is accurate, the documents should not have been available for at least seven more working weeks. And that assumes an employee devoting their day to nothing but fulfilling this request.

[37] Government Relation's revised fee estimate regarding the preparation of time is just that. It is an estimate. If the Applicant chooses to pay a deposit and Government Relations proceeds to process the access request, then Government Relations should be tracking the actual time spent preparing the records. If it does indeed take a lot shorter time than the estimated time, then Government Relations should only charge the Applicant the actual time taken to prepare the records pursuant to subsection 7(2) of FOIP Regulations:

7(2) Where the amount of an estimate exceeds the actual amount of fees determined pursuant to section 6, the actual amount of fees is the amount payable by the applicant.

[38] Based on the above, Government Relations should eliminate its estimated cost for search from its revised fee estimate of February 14, 2024. In other words, I recommend that Government Relations adjust its fee estimate from \$11,850.00 to \$10,830.00.

3. Does FOIP apply to the responsive records?

[39] In its submission, Government Relations asserted that FOIP does not apply to all of the responsive records pursuant to subsections 3(1)(a) and (b) of FOIP. Subsections 3(1)(a) and (b) of FOIP provides:

3(1) This Act does not apply to:

(a) published material or material that is available for purchase by the public;

(b) material that is a matter of public record;

[40] Regarding subsection 3(1)(a) of FOIP, Government Relations asserted that the responsive records are “published” since municipalities must submit the records to the Minister of Government Relations. It said:

...the records that the Applicant has requested were created by individual municipalities and then submitted to the ministry. Under subsections 186(1) of *The Municipalities Act*; 208(1) of *The Northern Municipalities Act, 2010*; and 157(1) of *The Cities Act*, **all Saskatchewan municipalities are required to submit their financial statements and auditor’s reports to the Minister of Government Relations annually. The fact that the ministry holds copies of the specific records the Applicant is seeking is evidence that those records have been published.**

[Emphasis added]

[41] I disagree with Government Relations that municipalities providing records to the Minister of Government Relations makes the records “published”. “Published” means to make known to people in general...an advising of the public or making known or something to the public for a purpose (*Guide to FOIP*, Chapter 1, “Purposes and Scope of FOIP”, updated March 7, 2023 [*Guide to FOIP*, Ch. 1] p. 16). Therefore, I find that subsection 3(1)(a) of FOIP is not applicable in this case.

[42] Regarding subsection 3(1)(b) of FOIP, Government Relations asserted that the information is a “matter of public record”. It indicated that subsection 117(1)(b.1) of *The Municipalities Act*, subsection 133(1)(c) of *The Northern Municipalities Act, 2010*, and subsection 91(1)(b.1) of *The Cities Act*, requires “all municipalities in Saskatchewan to provide public access to their financial statements and auditor’s reports”. As noted in the background of this Report, Government Relations had told the Applicant that they could gain access to the requested records by contacting municipalities.

[43] The Applicant indicated that they have contacted all municipalities to get access to the records but only a small percentage responded. They said:

Municipalities are required to provide these financial statements upon request. However, when [Name of organization] asked all of the municipalities for data in 2019, only 35 per cent of them responded with the documents. This is not to be unexpected, as many, especially very small municipalities, lack the resources and knowledge to provide these documents effectively. However, this failure is still a failure to provide basic transparency that our database seeks to solve.

- [44] In past reports, such as [Review Report 306-2017](#) and [Review Report 192-2020, 193-2020](#), I have contemplated formal access to information requests under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) for records that individuals are entitled to under *The Municipalities Act*, *The Northern Municipalities Act*, and *The Cities Act*. I found that LA FOIP applied in those cases. I did not take the position that LA FOIP does not apply to the requested records pursuant to subsection 3(1)(b) of LA FOIP, which is the equivalent of subsection 3(1)(b) of FOIP. Instead, subsection 4(a) of LA FOIP provides that LA FOIP complements and does not replace existing procedures for access to information. Similarly, subsection 4(a) of FOIP provides that FOIP complements and does not replace existing procedures for access to information:

4 This Act:

(a) complements and does not replace existing procedures for access to government information or records;

- [45] In this case, I find that FOIP complements the existing procedures under *The Municipalities Act*, *The Northern Municipalities Act*, and *The Cities Act* for access to the requested records pursuant to section 4(a) of FOIP. I find that FOIP applies to the requested records. Also, in this particular case, we are dealing with records in the possession or control of a government institution, not a municipality.

- [46] I recommend that Government Relations consider making financial statements and auditor's reports it receives from municipalities available to the public pursuant to section 65.1 of FOIP within 30 days of issuance of this Report. This could include publishing such records on Government Relations' website so the public may access such records.

IV FINDINGS

- [47] I find that I have jurisdiction to conduct this review.
- [48] I find that the fee estimate for search is unreasonable.
- [49] I find that Government Relation's fee estimate for the preparation of records is reasonable.
- [50] I find that FOIP complements the existing procedures under *The Municipalities Act*, *The Northern Municipalities Act*, and *The Cities Act*, for access to the requested records pursuant to section 4(a) of FOIP.
- [51] I find that FOIP applies to the requested records.

V RECOMMENDATIONS

- [52] I recommend that Government Relations adjust its fee estimate from \$11,850.00 to \$10,830.00.
- [53] I recommend that Government Relations consider making financial statements and auditor's reports it receives from municipalities available to the public pursuant to section 65.1 of FOIP within 30 days of issuance of this Report. This could include publishing such records on Government Relation's website so the public may access such records.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of April, 2024.

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