PREPARING A COST ESTIMATE: FEES AND FEE ESTIMATES FOR ACCESS REQUESTS UNDER FOIP

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INTRODUCTION

The Freedom of Information and Protection of Privacy Act (the Act) provides for the collection of fees prior to access being given to records requested through the Act. This document provides information about the fees and the preparation of fee estimates required by the Act.

Readers should also consult Managing Fee Waiver Requests.

KEY POINTS

The following should be considered when preparing an estimate of fees for an access request:

- An individual is entitled to obtain access to records on payment of the prescribed fee;
- Fees are prescribed in *The Freedom of Information and Protection of Privacy Regulations* (the Regulations). They include fees for copies of records, time spent searching for or preparing records for disclosure (if the time exceeds two hours), and certain costs related to production of electronic records;
- An estimate of fees must be provided to the applicant if the fees exceed $100;
- The head may require a deposit of up to 50% of the total estimate before proceeding;
- If an estimate is provided, the 30 day clock stops until the applicant indicates that they wish to proceed and pays any required deposit;
- A fee estimate should include sufficient details to enable the applicant to understand the basis for the estimated fees;
- The head may waive fees in limited circumstances prescribed in the Regulations; and
- Always document rationale and methodology used to determine the fee estimate and provide those details to the applicant when sending an estimate.

THE ACT AND REGULATIONS

The Act

Section 9 of the Act sets out the basic rules for the collection of fees, including that:

- An applicant is entitled to obtain access to the requested records upon payment of the prescribed fee [s. 9(1)];

- Where the fees will be greater than the prescribed amount ($100.00), the head shall give the applicant reasonable estimate of the amount and the applicant shall not pay more than the estimated amount [s. 9(2)];
- The 30-day clock for responding to a request stops when an estimate is provided and does not restart until the applicant gives notice that the applicant wants to proceed and pays the deposit [s. 9(3)];
- The head may require a deposit of up to 50% of the estimated costs to be paid before any work begins [s. 9(4)]; and
- The head may waive payment of all or any part of the fees if one of the circumstances prescribed in the Regulations exists [s. 9(5)].

Section 9 of the Act must be read in conjunction with sections 6 through 9 the Regulations, as appropriate.

The Regulations

Section 6 of the Regulations sets out allowable fees, including:

- Fees for copies of records [s. 6(1)];
- Fees for searching for records or preparing records for disclosure can be charged only if the time exceeds two hours [s. 6(2)];
- Fees for search and retrieval of electronic data that is required to give access to a record [s. 6(3)].

Please refer to the Regulations for the actual fee schedule.

Section 7 of the Regulations establishes that:

- An estimate of fees must be given if fees will exceed $100 [s. 7(1)]; and
- An applicant pays the actual amount of the fees if that amount is less than the estimate of fees provided to the applicant [s. 7(2)].

Section 8 of the Regulations states that no fee is payable if access to a record is refused [s. 8(1)] and that, in such a case, any deposit paid by the applicant must be refunded [s. 8(2)].

Section 9 of the Regulations provides the circumstances in which a head may waive fees:

- Where payment of the fees would cause a substantial financial hardship for the applicant **and** the head is of the opinion that giving access to the records is in the public interest [s.9(1)(a)];
- The application involves the applicant's personal information [s. 9(1)(b)];
- Where the prescribed fee or actual cost is $100 or less [s. 9(1)(c)].

For the purpose of s. 9(1)(a) of the Regulations, s. 9(2) indicates circumstances that are included in "substantial financial hardship".

Please refer to Managing Fee Requests for additional information about fee waivers.

OPERATING PRINCIPLES OF THE INFORMATION AND PRIVACY COMMISSIONER

The Saskatchewan Information and Privacy Commissioner (Commissioner) has identified some operating principles to consider when calculating fees:

1. Fees should not be a deterrent to access: Fees should be reasonable, fair and at a level that does not discourage any …[applicant] from exercising their access rights…" [See IPC Report F-2005-005, paragraph 24]
2. Fees should encourage applicants to be reasonable: "…the fee regime should promote and encourage applicants to be reasonable and to cooperate with government institutions in defining and clarifying their access requests." [See IPC Report F-2005-005, paragraph 24]
3. Fees should be calculated the same for all applicants in order to promote fairness and consistency, "this is best achieved through establishment of internal guidelines that set out when and how fees will be applied and/or waived". [See Other Tests - Fees (s. 9 of FOIP/s. 9 of LA FOIP)] of the *IPC Guide to Exemptions for FOIP and LAFOIP*.

SEARCH STRATEGY

An important first step in ensuring search fees are appropriately estimated is to have a strategy in place for searching for responsive records. The search strategy, not the amount of time spent on a search, is most often the factor which will determine if an adequate search for records has been conducted.

A search strategy should be documented and retained by the government institution and may include factors such as:

- How the search will ensure that records in multiple formats (i.e. electronic, paper and other) are considered;
- How the determination to search within certain areas of the government institution was reached;
- How the search parameters were defined (i.e. specific time lines, specific types of records requested, etc.); and
- How it was determined that specific persons should search for the records or, alternatively, that the search was delegated.

The fee estimate provided to the applicant is based on the search strategy in accordance with the fees set out in the Regulations [s. 6(2)]. The physical search for records should not be conducted until the applicant has agreed to pay the fees.

FEES EXPLAINED

Fees for Copies of Records

Section 6(1) of the Regulations identifies the fees for copies of records:

- The fee for photocopies of paper records and computer printouts is $0.25 per page [s. 6(1)(a)(b)];
- The fee for electronic copies is the actual cost of the portable storage device provided to the applicant [s. 6(1)(b.1)];
- The fee for copies of materials in other formats (e.g. microfilm, microfiche, slides, audio and video cassettes, and floppy disks, when available) is the actual cost of copying the record [s. 6(1)(l)].

Please see Appendix A – Measurement Guidelines at the end of this document for tips on estimating numbers for copies of records.

Search and Preparation Fees

Subsection 6(2) of the Regulations prescribes the fees allowed for searching for and preparing a record for disclosure. The first two hours of searching for a record or preparing it for disclosure are at no cost to the applicant; a charge of $15 per half-hour (or portion thereof) to search for a record and/or prepare it for disclosure is allowed thereafter.

Fees for Searching

Searching for records includes activities such as:

- Reviewing file lists and keys to identify where records might exist;
- Examining files, boxes of files, file cabinets, etc. and reading through files to determine if they contain responsive records;
- Reviewing computer directories, email in-boxes, sent-boxes, etc. to determine if there are responsive records being stored electronically; and
- Any other activities associated with trying to locate responsive records.

Searching for Records

The Commissioner is of the view that, when searching through email to find responsive records, an employee should be able to scan approximately six emails (averaging two

pages in length) per minute. [See IPC Reports F-2005-005, paragraph 46 and F-2010-001, paragraph 41] Extra time may be required to search emails that contain attachments; this should be factored in to estimates.

The Commissioner has also indicated that an experienced employee should take generally one minute to visually scan 12 pages of paper or electronic records and five minutes to search one file drawer for responsive records. [See IPC Report 115-2016, paragraph 11].

Remember, these guidelines are only to determine if the records are responsive and not to determine if a record can or will be released.

Fees for Severing

Fees may be charged for the time spent physically severing responsive records. This does not include any time taken to determine if an exemption applies and how or if it will be used.

The IPC Guide to Exemptions for FOIP and LA FOIP (Other Tests - Fees (s. 9 of FOIP/s. 9 of LA FOIP) uses the standard that, on average, it should take approximately **two minutes to sever one page of a responsive record.** This will vary depending on the content of a page, but this standard may be adopted when calculating the time needed for severing responsive records.

When calculating fees for severing, particularly in situations where the severing is likely to be more time consuming, you may wish to conduct a random sample of the responsive records and determine how often, on average, minimal severing is required (at two minutes per page), extensive severing is required (at greater than two minutes per page) and no severing is required (at zero minutes per page). Apply your findings to the total number of pages that are responsive to the request. Remember to document how you arrived at your fee for severing.

Electronic Records

Subsection 6(3) of the Regulations provides for recovery of actual costs associated with the search for and retrieval of electronic data, where it is required to give access to a record. This does not apply to electronic records like e-mail messages and Word documents that are stored locally and can be routinely reproduced by using the "print" function of the associated program or can be provided in electronic form. Similarly, for requests involving information which is organized and stored in electronic applications, such as databases, this section does not apply to the standard reports generated by the application. Those types of records would be covered by s. 6(1).

Costs such as those that would be charged by an information technology company providing services to a government institution, or otherwise incurred as part of a search and retrieval process for electronic records, such as machinery and operator costs, should be considered under subsection 6(3).

Time spent searching email and electronic folders on commonly used hard drives or networks are more appropriately addressed under subsection 6(2) and can be calculated at $15 per half hour or portion of a half-hour in excess of two hours.

What Not to Include in an Estimate

The Act and Regulations provide for fees for "searching for a record" or "preparing it for disclosure". This has been interpreted to **not** include the following:

- Discussing the scope of a request with the applicant;
- Considering whether or not a particular exemption should apply;
- The intellectual act of reviewing a record to determine what should be severed. The physical act of severing can be included in the estimate;
- Identifying and preparing records requiring third party notice;
- Consulting with other staff, for example, about context and application of exemptions;
- Consulting with legal counsel (internal or external) or obtaining a legal opinion to comply with a request;
- Preparation of briefing materials related to the request;
- Travel time to retrieve records stored off site;
- Copying and packaging of records [fees for actual copies are covered in s. 6(1)];
- Preparing indexes or submissions in relation to a request; or
- Routine activities that would be necessary for responding to any inquiry, regardless of whether or not an access request is received (e.g. packaging the records for shipment, calling a courier, shipping costs, transferring records to and from a mailroom or offsite storage facility, etc.)

Please also refer to IPC Report F-2005-005 for the Commissioner's analysis of what should not be included when estimating fees to an applicant.

Important

Fees cannot be charged to the applicant when access to the record is refused. Further, if a deposit was paid by the applicant and access to the record(s) is refused in full, the deposit must be returned to the applicant.

For further information, see section 8 of the Regulations.

PREPARING A WRITTEN FEE ESTIMATE

The Act requires that a written estimate of fees be provided to an applicant where fees will be in excess of $100. [See s. 9(2) of the Act and s. 7 of the Regulations]

When to Give the Fee Estimate to the Applicant

The fee estimate should be prepared and sent to the applicant prior to commencing further work on responding to the request. Minimal work may need to be done in order to prepare an estimate, such as sampling records to determine what needs to be severed. However, it should be the least amount of work necessary to prepare a reasonable fee estimate.

Ideally, the fee estimate should be provided as soon as possible after it is known that one is required. When a fee estimate is required, it must be provided prior to the end of the 30-day response time or within any extensions of time made in accordance with section 12 of the Act.

Please note, the Commissioner has concluded that a fee estimate should be given before any substantial work has been done in responding to the request. In this way, a government institution will avoid considerable work if the applicant decides not to proceed with the request. [See IPC Report F-2005-005, paragraph 19]

The 30-day response time is suspended once notice of a fee estimate is given to an applicant and does not restart until the applicant notifies the head that the applicant wishes to proceed and pays any deposit required. [See s. 9(3) and (4) of the Act]

> Refer to Help with FOIP - Access Request Checklist for best practice timelines for processing an access request.

Include a Breakdown of the Estimate

It is a best practice to carefully document how fees were estimated and to provide the applicant with a detailed breakdown of those fees within the estimate they are given.

A breakdown of the estimate may be particularly helpful where estimated costs are significant. For example, knowing that searching electronic records may produce the same records as the paper record and can be located for a much smaller fee (or vice versa) may help the applicant narrow a request and thus reduce the cost.

A detailed fee estimate breakdown provides the applicant with enough information to consider if a narrowed request may satisfy them. Providing a fee estimate presents an opportunity for the applicant to work with the government institution to modify or narrow a request.

The breakdown of a fee estimate should separate fees for paper records from fees for electronic records and should show:

- Fees required to search for responsive records;
- Fees to prepare records for disclosure;
- Fees for the reproduction of records;
- Estimated number of copies of records and costs; and
- Other relevant information that may help the applicant understand the basis of the estimate.

Requesting a Deposit

Section 9(4) of the Act provides that the head may require a deposit of up to "one-half of the estimated amount before a search is commenced for the records for which access is sought." If a deposit is required, the fee estimate should identify the specific amount required.

The applicant should not be left with the impression that if the fees are paid, access to the record will be granted in full. The applicant should be informed in writing that exemptions may apply to the records, in which case information may be severed, or records may be withheld in their entirety, noting the applicant will not be charged for any records withheld in their entirety.

Addressing a Fee Waiver Request

When an applicant has requested a fee waiver, it is a best practice to issue a fee estimate (where one is required) and address the fee waiver request at the same time. For further information, please see Managing Fee Waiver Request.

Modifying Cost Estimates

Once issued, a cost estimate cannot be changed unilaterally by a government institution. If there is more work involved than was originally estimated, the costs over

and above the estimate cannot be charged. It is, therefore, important to ensure the fee estimate is as close as possible to the actual cost. [See s.9(2) of the Act]

The exception to this is when an applicant wants to change the scope of a request. In this case, the cost estimate should be modified accordingly.

The "Clock" - Estimate of Costs and the Response Time

Once a fee estimate is provided to the applicant, the 30-day clock stops until the applicant agrees to the fee estimate and pays the required deposit (up to 50% of the total estimate). The clock does not start ticking again until the fees have been agreed upon and, if necessary, the deposit paid. [See .9(3) and 9(4) of the Act]

Calculating the Final Fees

Once all work is complete on the file, the actual cost must be calculated to provide a final fee to the applicant before the records are released.

1. Calculate the number of copies made that are chargeable pursuant to s. 6(1) of the Regulations;
2. Calculate the actual search time allowable in s. 6(2) of the Regulations;
3. Calculate the actual preparation time allowable in s. 6(2) of the Regulations;
4. Calculate any other fees allowable pursuant to the Regulations.

The final fee cannot exceed what was provided to the applicant in the estimate. If the estimate was more than the actual cost or the actual cost was more than the estimate, the applicant always pays the lesser amount. [See s. 9(2) of the Act and s. 7(2) of the Regulations]

Finally, if a cost estimate has been issued and access to the entire record is refused because it is exempt from release or the record does not exist, no fees can be collected from the applicant. Further, if a deposit has been collected, it must be returned. [See s. 8 of the Regulations]

Collect Any Remaining Fees

When the record is ready for release, the applicant must be given notice pursuant to s. 7(2)(a) of the Act that access will be provided on payment of the remainder of the prescribed fee.

It is a best practice to collect any remaining fees before access to the record is provided. The 30 day deadline is satisfied once notice is given pursuant to s. 7(2); it is not

dependent upon collection of the remaining fee. Once the remaining fee is collected, provide access to the record.

Document Carefully

Be sure to document the rationale and methodology used to determine the fee estimate and provide those details to the applicant when sending an estimate. This detail is also important should the applicant request a review of the estimate by the Information and Privacy Commissioner.

Reviews by the Information and Privacy Commissioner

Section 49(1) of the Act provides the Commissioner with the authority to review fee estimates upon a request from an applicant in the event the applicant:

- is not satisfied that a reasonable fee estimate was provided [s.49(1)(a.1)];
- believes that all or part of the fee estimate should be waived pursuant to subsection 9(5) of the Act [s. 49(1)(a.2)].

The applicant must be informed of their right to request a review of a fee estimate. [See s. 7(3) of the Act]

Please review Model Letter number 4 (Estimate of Costs) for more information on fee estimates.

Additional Resources

- Recommendation Reports on fees and cost estimates from the Saskatchewan Information and Privacy Commissioner:
  - Report 152-2015
  - Report 115-2016
  - IPC Guide to Exemptions
- Access Request Checklist
- Managing Fee Waiver Request

APPENDIX A – MEASUREMENT GUIDELINES

The following are guidelines when considering measurements for the purposes of preparing a fee estimate.

Paper Measurements	
1 inch of paper	• Equal to approximately 200 pages (single-sided). There may be more pages if it is a mix of single-sided and double-sided pages.
Average file folder (1 inch thick)	• Approximately 200 sheets of single-sided paper.
Standard archive/ banker's box (1 cubic foot)	• Approximately 1,800 pages in legal-sized folders; approximately 2,200 pages in letter-sized folders. o This variance in number of pages is because of the ability to arrange more letter-sized folders than legal-sized folders in a box. o This does not take double-sided pages into account. • Consider how full each of the boxes are and adjust the estimate accordingly. o For example, if a box is half full of pages in legal-sized folders, estimate 900 pages for that box rather than 1,800 pages.
1 double-sided photocopy	• Is equal to 2 pages. • Estimates should be adjusted accordingly, depending on the approximate number of double-sided pages.

There is no direct correlation between pages and disk space occupied, so for records managed in an electronic format, estimating the number of pages is more complex. The size of an electronic file depends on a number of factors:

- the application used;
- the format and style of the document - such as whether it is in plain black and white text or contains full-colour images or graphics; and
- whether the document contains other systems data that does not translate into machine-readable information. The following table may be used to assist in estimating the equivalent number of printed pages in an electronic record.

DOCUMENT TYPE	AVERAGE NUMBER OF PAGES PER:		
	GB (Gigabyte)	MB (Megabyte)	KB (Kilobyte)
Microsoft Word	64,782	63	0.062
Microsoft Excel	165,791	161	0.157
Microsoft PowerPoint	17,552	17	0.0017
E-mail	100,099	97	0.095
Image	15,477	15	0.015