

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-015

October 6, 1999

ALBERTA ENVIRONMENT

Review Number 1480

I. BACKGROUND

[para 1.] On July 28, 1998, Alberta Environment, formerly known as Alberta Environmental Protection (the "Public Body") received the Applicant's continuing access request under the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Applicant asked for:

Sunpine Forest Products Annual Operating Plans including the general development plan, the preliminary and final harvest plans, the silviculture plans, the forest protection plan, the road plans and all amendments.

[para 2.] The Applicant and the Public Body agreed that the initial instalment for the continuing request would be July 27, 1998, and that the continuing request would contain quarterly instalments ending on July 27, 2000. The Applicant and the Public Body clarified that the July 27, 1998 initial instalment would include:

- *Sunpine Forest Products approved 1998 annual operating plan (AOP), and any approved amendments to the 1997 AOP following the April 15, 1998, submission to the Rocky Mountain House library, and*

- *The Request includes the approved general development plans, preliminary and final harvest plans, silviculture plans, forest protection plans and road plans related to the 1998 AOP, approved plans related to the 1997 AOP submitted following the April 15, 1998, submission to the Rocky Mountain House library, and any approved plans or amendments subsequently submitted to Alberta Environmental Protection.*

[para 3.] The Applicant also requested a fee waiver under section 87(4) of the Act.

[para 4.] On August 18, 1998, the Public Body provided the Applicant with a fee estimate of \$5,833.48, covering the two-year span of the continuing request. The Public Body further broke down that estimate by initial and quarterly instalments.

[para 5.] Of the total fee estimate, \$5,127.50 relates to the reproduction of large, detailed, hand-coloured maps. The Public Body said that those coloured maps cost approximately \$145 each to reproduce. However, the Public Body informed the Applicant that a black and white copy could be reproduced for approximately \$2.00 to \$5.00.

[para 6.] The Public Body asked the Applicant to provide the rationale for a fee waiver. On August 21, 1998, the Applicant outlined the reasons for the fee waiver under section 87(4)(b) of the Act (the record relates to a matter of public interest). On September 4, 1998, the Public Body informed the Applicant that it would not grant a fee waiver.

[para 7.] By letter received by my Office on September 16, 1998, the Applicant asked me to review the Public Body's decision to deny the request for the fee waiver. That letter also said:

In addition to the information I have already enclosed, I did offer to work with the Public Body to see if there was any way to reduce the cost of reproducing the maps.

No large maps were provided with Sunpine's 1996 AOP which I received as a result of a FOIPP request. Was that a mistake?

[para 8.] The latter question refers to a previous request by the Applicant that I review the Public Body's decision (Review Number 1313) to refuse a fee waiver on the Applicant's request for access to the 1996 Annual Operating Plan ("AOP") of Sunpine Forest Products Ltd. ("Sunpine"). On the day I was scheduled to hear that inquiry, the

Applicant and the Public Body decided to see whether they could come to some agreement about giving the Applicant access to the AOP. I adjourned the inquiry to facilitate the agreement, but did not participate in the agreement.

[para 9.] The agreement ultimately struck was between the Public Body and Sunpine. Sunpine agreed to put a copy of the AOP in the library at Rocky Mountain House (and four other libraries), annually, on a sign-out basis. Sunpine also agreed to put copies of amendments to the AOP in the library, quarterly (also on a sign-out basis). The agreement between the Public Body and Sunpine was oral. As a result of the agreement, the Applicant withdrew the request for review, and the inquiry did not proceed.

[para 10.] Mediation of the \$5,833.48 fee estimate in this case was authorized but was not successful. The matter was set down for an oral inquiry on May 5, 1999.

[para 11.] I received the Applicant's advance written submission on April 20, 1999, and the Public Body's advance written submission on April 26, 1999.

[para 12.] Before the inquiry, the following intervenors provided written submissions supporting a fee waiver for the Applicant, but those intervenors did not appear at the inquiry: (i) Mr. Lance White, MLA and Liberal Opposition Forestry Critic; and (ii) the Rocky Mountain Ecosystem Coalition.

[para 13.] The following intervenors appeared at the inquiry: (i) the Canadian Parks and Wilderness Society, whose submission supported a fee waiver for the Applicant (as well as making oral representations, that intervenor also provided its written submission at the inquiry); and (ii) the Alberta Forest Products Association, whose submission did not support a fee waiver for the Applicant.

[para 14.] At the conclusion of oral presentations at the inquiry, I asked the parties whether they could come to some agreement about the public availability of the records the Applicant requested, since the Applicant agreed that lack of public availability was why the records and a fee waiver were requested. If the parties could agree, I indicated it would not be necessary for me to issue an Order. I also said I would provide a Portfolio Officer to mediate, if the parties desired.

[para 15.] The parties agreed to further mediation with a Portfolio Officer. However, on June 22, 1999, the Portfolio Officer reported to my

legal counsel that mediation was not successful. Therefore, it became necessary that I issue this Order.

[para 16.] This Order proceeds on the basis of the Act as it existed before the amendments to the Act came into force on May 19, 1999.

II. RECORDS AT ISSUE

[para 17.] As the issue is one of a fee waiver under section 87(4)(b), the records are at issue in two ways: (i) what records make up the AOP, and (ii) whether the records relate to a matter of public interest.

III. ISSUES

[para 18.] I have summarized the issues for the inquiry, as follows:

A. Do the records relate to a matter of public interest, as provided by section 87(4)(b) of the Act?

B. If the records relate to a matter of public interest, should the Public Body's fee estimate be reduced, as provided by section 68(3)(c) of the Act?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Do the records relate to a matter of public interest, as provided by section 87(4)(b) of the Act?

1. General

[para 19.] Section 87(4)(b) reads:

87(4) The head of a public body, or the Commissioner at the request of an applicant, may excuse the applicant from paying all or part of a fee if, in the opinion of the head or the Commissioner, as the case may be,

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

[para 20.] In Order 99-012, I said that a public body must reasonably form an opinion about whether the records relate to a matter of public interest. In this case, I will be reviewing whether the Public Body reasonably formed its opinion that the records do not relate to a matter of public interest. However, before determining that matter, I must first decide what records make up the AOP, as there appears to be some confusion in that regard.

2. What records make up the AOP?

(a) The parties' positions

[para 21.] The Applicant believes that all the types of records listed in the second paragraph of the Applicant's request (the general development plans, preliminary and final harvest plans, silviculture plans, forest protection plans, and road plans), as well as the hand-coloured maps, are part of the AOP the Applicant asked for, as set out in the first paragraph of the Applicant's request. The Applicant maintains that only the amendments to the AOP would not be part of the AOP.

[para 22.] The Public Body initially argued that the various plans the Applicant listed are summarized in the AOP. The Public Body later clarified its argument by indicating that various plans would be included in the AOP, except the amendments. The Public Body also said that more detailed documents would be included in the various plans.

(b) What plans make up the AOP?

[para 23.] To determine what plans make up the AOP for Sunpine, I have reviewed the following documents the Public Body provided to me: the Forest Management Agreement ("FMA") between Sunpine and the Province of Alberta (the Sunpine FMA is Order-in-Council 408/92); Sunpine's Timber Harvest Planning and Operating Ground Rules; and Sunpine's 1998 Annual Operating Plan Summary Document.

[para 24.] I also reviewed a March 1998 preliminary harvest plan ("PHP"), a November 1998 final harvest plan ("FHP"), and a binder marked as Sunpine's 1999-2000 AOP.

[para 25.] Furthermore, on May 6, 1999, I attended at the Public Body's Edmonton office to view samples of records from several boxes of records that were responsive to the Applicant's request for access, including large hand-coloured maps.

[para 26.] The requirement that Sunpine file an AOP is contained in section 11(1) of Sunpine's FMA, which requires that Sunpine and the

Minister jointly develop a set of “ground rules” to provide guidelines for the preparation of AOPs, among other things. The ground rules are set out in Sunpine’s Timber Harvest Planning and Operating Ground Rules document (the “Ground Rules”), referred to above. The Ground Rules say that the AOP must cover operations for one year. However, an AOP must cover a two-year planning period, including identification of cutblocks to be harvested in the current operating year and cutblocks to be harvested during the next ensuing year. The Public Body says that the AOP is the legal authority for Sunpine to carry out harvesting (i.e., timber operations) and must be approved by the Public Body.

[para 27.] Page 7 of the Ground Rules states that an AOP will include the following: General Development Plan, Preliminary and Final Harvest Plans, Silviculture Plans, and Forest Protection Plans. Consequently, I find that all these plans make up the AOP.

(c) What maps make up the AOP?

[para 28.] The Ground Rules state generally that the AOP is to be accompanied by Alberta Phase 3 Forest Inventory Maps (including computer-based data and global positioning system (GPS) generated maps).

[para 29.] The Ground Rules set out the maps required under each of the various plans set out above. I found it necessary to refer to both the text of the Ground Rules and Appendix II of the Ground Rules to determine what maps are required, because there are discrepancies between the text and Appendix II.

[para 30.] The General Development Plan requires three kinds of maps:

(i) a 1:500,000 scale or larger map showing the harvest sequence by compartment, existing access roads and proposed main haul road development. Appendix II lists this as a 1:250,000 scale map, and says that this map must also show the general location of the previous and proposed harvest.

(ii) a 1:50,000 scale map for each compartment that is to be operated in. This map is listed in Appendix II, but not listed in the text. However, the 1999-2000 AOP includes these maps in 8½ by 11-inch format, at various scales. I note that these maps set out the general location of the previous year’s harvest (if any), the current year’s harvest and the proposed harvest for the next year.

(iii) the location assessment and a comparison of new and alternative road corridor locations based on terrain analysis at a 1:50,000 scale.

[para 31.] The Preliminary Harvest Plan (“PHP”) must be submitted for each cut plan area at a minimum of two years before logging operations begin. The PHP requires that a harvest design be shown on a map of 1:15,000 scale. There were no maps in a March 1998 PHP I reviewed. However, I did view one large digitized hand-coloured map for another PHP.

[para 32.] The Final Harvest Plan (“FHP”) requires detailed block plans to be submitted. Detailed block plans are to be prepared at a scale of 1:5000. Appendix II also requires “aerial photographs and GPS files of the previous year’s harvest areas (an annual cut control map of 1:15,000 scale for each compartment should accompany the photographs)”.

[para 33.] The Silviculture Plan says that the plan must conform to “circular R11 dated August 21, 1992”. The 1999-2000 AOP contains 8½ by 11-inch silviculture maps, which show the work completed for the 1998 year and the work proposed for the 1999 year. I assume that “circular R11” contains a requirement for those maps. The Ground Rules do not appear to contain a requirement for those maps.

[para 34.] The Forest Protection Plan says only that the plan will be submitted as part of the FHP. The 1999-2000 AOP contains a forest protection plan that does not appear to be part of any FHP. I reviewed a November 1998 FHP, but it did not contain a forest protection plan. There were no maps in either case. The Ground Rules do not appear to contain a requirement for any maps.

[para 35.] A November 1998 FHP I reviewed contained 8½ by 11-inch detailed block plan maps, which indicated a scale of “1:5000 (1mm = 5m)”. These were the only maps in the AOP that contained a measurement other than a scale. When I measured and then calculated the 1mm = 5m distance on one map, and compared that measurement with the number of hectares indicated, it was clear to me that the map in the FHP must have been reduced in size from a larger map.

[para 36.] The Ground Rules require that Sunpine submit all the foregoing maps as part of its AOP. Given my calculation of the scale (set out above), I conclude that the Ground Rules require that Sunpine submit large maps. There is also a requirement that year-to-year comparisons be shown. The Public Body informed me that the large maps would be used in the field for ease of reference, while the small maps would appear in the AOP.

[para 37.] Is there a requirement that any maps be coloured? I could find no such requirement in the Ground Rules. However, the Ground Rules require that maps contain comparisons, such as comparisons between the present year's harvest and the harvest proposed for the following year. I believe that Sunpine has chosen to show those comparisons by hand-colouring many of its larger maps. Occasionally, Sunpine has chosen to show those comparisons by coloured, printed 8½ by 11-inch maps in, for example, a FHP. I also note that Sunpine has included an 8½ by 11-inch coloured, printed map in its 1998 Annual Operating Plan Summary Document. In other maps, comparisons are shown merely by texture (light to darker dots or lines, for example).

[para 38.] I conclude that Sunpine is required to provide the Public Body with large maps as part of the AOP. I further conclude that all the maps, no matter what size, coloured or not, digitized or not, make up the AOP.

[para 39.] The Applicant maintains that, until the 1998 request, the Public Body never informed the Applicant that the large maps were available, and Sunpine never placed those maps in the library.

[para 40.] The Applicant withdrew the request that I review the Public Body's decision to refuse a fee waiver for the 1996 AOP. The Act does not permit me to resurrect that request for review. I am "functus", in that I have no further authority over that case. However, given my finding that the maps are part of the AOP, the Applicant may wish to reconsider what, if anything, to do about any maps that may be part of the 1996 AOP.

(d) Do the amendments to the AOP make up the AOP?

[para 41.] The Public Body says that there are two types of amendments to an AOP: forward planning amendments and field amendments. The forward planning amendments deal with such things as the next season's harvest, and the field amendments deal with things as they arise operationally. The Public Body says the amendments must be approved before the changes are implemented, and some of the amendments would involve large maps. Furthermore, it says the maps would change as a result of the amendments.

[para 42.] The Applicant complains that the 1998 amendments are still not publicly available, the maps are not available, and the harvesting season has passed.

[para 43.] The parties think that the amendments are not part of the AOP. The Public Body says that the amendments from one year might not be cumulated in the next year's AOP. However, the Public Body states that the next year's operations would change as a result of the previous year's amendments.

[para 44.] I reviewed a large hand-coloured PHP map for one compartment (forestry planning unit), and a small FHP map in a FHP document for that same compartment. The small map was not a duplicate of the larger map, and did not contain the same information, leading me to conclude that amendments had occurred from the time of the PHP to the time of the FHP. I believe that it would be difficult to determine what were the changes if the two maps were not available for comparison. Furthermore, I believe that Sunpine's operations would change as a result of any amendments.

[para 45.] Consequently, I believe that the amendments must be part of the AOP because they change the AOP, much in the same way as amendments to legislation are part of the legislation because they change the legislation. An amendment to an AOP must be complied with, just the same as an amendment to legislation. Therefore, I find that the approved amendments to the AOP also make up the AOP.

(e) Conclusion

[para 46.] I agree with the Public Body's statement that the AOP is a single document. I conclude that the AOP is made up of all the plans listed in the Applicant's request, as well as the large hand-coloured maps and the approved amendments to the AOP.

[para 47.] Having determined what records make up the AOP, I will now consider whether the Public Body reasonably formed its opinion that the AOP does not relate to a matter of public interest.

3. Did the Public Body reasonably form its opinion that the AOP does not relate to a matter of public interest?

[para 48.] The AOP relates to forestry, which relates to the environment. Does the AOP also relate to a matter of public interest?

[para 49.] In Order 96-002, I discussed the concept of "public interest" under section 87(4)(b). I said that the weight of public interest will depend on balancing the weights afforded "curiosity" verses "benefit" (when considering "interest"), and "broad" verses "narrow" (when considering "public"). Where an access request relates to a matter that is of interest in the sense of benefit, and the relevant public is broad, that

would be the most compelling case for a fee waiver. Where matter is of curiosity and the relevant public is narrow, that would not be a compelling case for a fee waiver. In the latter case, it would be important to respect the integrity of the legislated fee structure.

[para 50.] In Order 96-002, I then set out a non-exhaustive list of 13 criteria I believe are relevant to the issue of public interest under section 87(4)(b), as well as two principles to consider in applying the criteria.

[para 51.] The two principles are:

1. The Act was intended to foster open and transparent government, subject to the limits contained in the Act, and
2. The Act contains the principle that the user should pay.

[para 52.] The 13 criteria are:

1. Is the applicant motivated by commercial or other private interests?
2. Will members of the public, other than the applicant, benefit from disclosure? (This does not create a numbers game, however.)
3. Will the records contribute to the public understanding of an issue (that is, will they contribute to open and transparent government)?
4. Will disclosure add to public research on the operation of Government?
5. Has access been given to similar records at no cost?
6. Have there been persistent efforts by the applicant or others to obtain the records?
7. Would the records contribute to debate on or resolution of events of public interest?
8. Would the records be useful in clarifying public understanding of issues where Government has itself established that public understanding?
9. Do the records relate to a conflict between the applicant and the Government?

10. Should the public body have anticipated the need of the public to have the record?

11. How responsive has the public body been to the applicant's request? For example, were some records made available at no cost or did the public body help the applicant find other less expensive sources of information or did the public body help the applicant narrow the request so as to reduce costs?

12. Would the waiver of the fee shift an unreasonable burden of the cost from the applicant to the public body, such that there would be a significant interference with the operations of the public body, including other programs of the public body?

13. What is the probability that the applicant will disseminate the contents of the records?

[para 53.] The parties' main arguments can be summarized as follows.

[para 54.] The Applicant argues that, as an "environmental watchdog" [my words], the Applicant needs the information to enable the public to know what is being done to protect the environment and to enable the public to have input into the way the forests are managed so the environment is better protected. The Applicant argues that the 13 criteria have been met and weigh in the Applicant's favour.

[para 55.] The Public Body argues that the Applicant is a limited public. The Public Body also argues that, since the AOP, except the large maps, is already in the public domain via library access, there would be no incremental benefit in providing the Applicant with a personal copy of the AOP, at the public expense. The Public Body says that the Applicant must establish the incremental benefit of information not already in the public domain.

[para 56.] The Public Body therefore concludes that the AOP does not relate to a matter of public interest. The Public Body maintains that the cost of producing a copy of the AOP is high, and there is little corresponding public benefit.

[para 57.] This particular case requires that I carefully review the matter of public availability of the AOP, since that seems to be the "sticking point" between the Applicant and the Public Body when it comes to waiver of the fee. The Applicant said that the Applicant would ultimately withdraw the request for access to the AOP if there were some assurance that the AOP would be publicly available on a timely basis,

along with the amendments (quarterly). As to the large maps, the Applicant is not sure they are required until the Applicant sees them.

[para 58.] The Applicant's submission sets out the chronology of public availability of the AOP, which I have summarized below.

[para 59.] On February 5, 1996, the Applicant says the Applicant requested Sunpine's AOP for 1996, including the general development plan, the preliminary and final harvesting plans, the silviculture plan, the forest protection plan and a copy of the long term road plan for Sunpine's FMA. The Applicant received this information at no cost from the Public Body.

[para 60.] On February 10, 1997, the Applicant submitted a continuing request for Sunpine's AOP, including the plans set out above, and requested a fee waiver. The request for a fee waiver was denied. On June 2, 1997, the Applicant requested that I review the Public Body's decision to deny the fee waiver.

[para 61.] During the course of that inquiry on September 11, 1997, I asked the parties to try again to resolve the matter. The Public Body agreed to convince Sunpine to put a copy of the AOP in the library at Rocky Mountain House, on a sign-out basis, and to put amendments to the plan in the library quarterly, on a sign-out basis. Sunpine orally agreed to that arrangement and complied by putting a copy of the 1997 AOP in the library on a sign-out basis. The Applicant therefore withdrew the request for review. However, it was not until April 17, 1998 that Sunpine put a copy of the 1997 AOP amendments in the library on a sign-out basis.

[para 62.] In July 1998, Sunpine put a copy of the 1998 AOP in the library, but not on a sign-out basis. In neither case did Sunpine put a copy of the larger coloured maps in the library.

[para 63.] The Applicant believed that Sunpine was not living up to the terms of the agreement. Therefore, on July 24, 1998, the Applicant submitted a continuing request for the AOP and amendments to the Public Body. The Applicant's request for a fee waiver was denied, and the Applicant is before me once again as a result.

[para 64.] The Public Body argues that the Applicant should not get a fee waiver since both the AOP and other information about Sunpine's operations are already in the public domain, as follows:

- Sunpine has put the AOP in five libraries

- Sunpine’s summary of the AOP is available from Sunpine
- Sunpine holds yearly open houses
- Sunpine has a public advisory committee

[para 65.] Furthermore, the Public Body says the public can get information from its local offices or its head office in Edmonton. The Public Body also points to the public approval process needed for certain plans.

[para 66.] The Applicant says that the maps and 1998 amendments to the AOP are not in the library. The Applicant questions how much of the AOP is in the public domain, given that the Applicant has only a two-inch binder of materials for the AOP, and the Public Body said it found 10 boxes of materials that were responsive to the Applicant’s request.

[para 67.] I also note that, although PHPs and FHPs are part of the AOP, the Ground Rules state that they are not required to be submitted at the same time as the other plans required by the AOP. The Public Body has stated that those plans are often submitted under separate cover. When I reviewed the binder containing the 1999-2000 AOP, that document clearly stated that three PHPs or FHPs would be submitted under separate cover when they were approved.

[para 68.] The fact that PHPs and FHPs can be submitted separately from the rest of the AOP is significant, as it raises the question as to whether Sunpine has put only part of the AOP into the public domain (i.e., libraries).

[para 69.] The Applicant’s evidence is that Sunpine has put the following materials in the Rocky Mountain House library on only three occasions: (i) a binder containing the 1997 AOP; (ii) the 1997 amendments to the 1997 AOP, on April 17, 1998; and (iii) the 1998 AOP, in July 1998. Therefore, I find it unlikely that Sunpine put any of the PHPs or FHPs in the library, such as a March 1998 PHP received by the Public Body on May 7, 1998, and a November 1998 FHP received by the Public Body on February 5, 1999.

[para 70.] The Applicant’s evidence is also that, at Sunpine’s last open house, the AOP was not available and only a few maps were available. The Applicant says that Sunpine chooses who is on its advisory committee. The Applicant is not on that committee, and Sunpine refuses to meet with the Applicant.

[para 71.] I have read Sunpine's 23-page 1998 Annual Operating Plan Summary Document. I agree that it is merely an overview document that contains little detailed information.

[para 72.] The Public Body says that Sunpine intends to put the 1999-2000 AOP and amendments on Sunpine's website. The Applicant said that this would be welcomed, but the Applicant does not have any faith in Sunpine's ability to keep to its agreement. Therefore, the Applicant wants the public interest issue decided this time.

[para 73.] As to the large maps not being in the public domain, the Public Body thinks that the small maps in the AOP are duplicates of the larger maps. However, the Public Body subsequently said that it would have to compare the smaller and larger maps. I conclude that the Public Body does not know whether all the larger maps have been reproduced as smaller maps in the AOP. From my examination of the plans and the maps, I conclude that some large maps have been duplicated as smaller maps, but not all the large maps.

[para 74.] I have found that PHPs and FHPs submitted under separate cover from the AOP contain maps that are not in the public domain, as previously discussed.

[para 75.] Furthermore, I reviewed a large hand-coloured PHP map for one compartment, and a small FHP map in a FHP document for that same compartment. The small map was not a duplicate of the larger map.

[para 76.] I conclude that not all of the maps are in the public domain.

[para 77.] As to the Public Body's other arguments against the fee waiver, I do not accept that the Applicant should be considered a limited public. I accept that (i) the Applicant serves a public education function, (ii) people rely on the Applicant to review the information, (iii) the Applicant shares the information with others, (iv) the Applicant does follow-up, (v) the Applicant meets with forestry officials bi-monthly, and (vi) the Applicant uses the AOP to keep informed of the issues. The Public Body did not disagree with the Applicant's claims. In fact, the Public Body agreed that the Applicant would find the information contained in the AOP extremely valuable.

[para 78.] Consequently, I believe that the Applicant will disseminate the contents of the records, and that members of the public other than the Applicant (environmental groups such as the intervenors) will benefit from disclosure.

[para 79.] I also accept that the Applicant serves an environmental watchdog function and is well known in that role. The Applicant showed a number of slides detailing the kinds of forestry issues the Applicant monitors. The Applicant's watchdog function has special significance, given the cutbacks to the Public Body's monitoring ability.

[para 80.] Considering the Applicant's education function and environmental watchdog function in particular, I do not believe that waiving the fee would shift an unreasonable burden of the cost from the Applicant to the Public Body.

[para 81.] Furthermore, the fact that only the Applicant has requested the AOP from the Public Body is not determinative of the public interest issue. The Applicant provided a folder of newspaper articles to show the level of public interest in forestry practices.

[para 82.] As to other criteria for public interest, I also find it significant that the Applicant is not motivated by commercial or private interests, and the records do not relate to a conflict between the Applicant and the Government.

[para 83.] Therefore, on balance, in this particular case, I find that the AOP relates to a matter of public interest. Therefore, the Public Body did not reasonably form its opinion to the contrary.

ISSUE B: If the records relate to a matter of public interest, should the Public Body's fee estimate be reduced, as provided by section 68(3)(c) of the Act?

[para 84.] Section 68 is my order-making power under the Act.

[para 85.] Section 68(3)(c) reads:

68(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.

[para 86.] The reference in section 68(3) to "any other matter" in this case is the request for review of the Public Body's decision to deny a fee waiver.

[para 87.] I acknowledge that this case is unusual, in that the Applicant is asking that I waive the fee for the entire continuing request up to July 27, 2000, which includes records that have not yet been produced (such as the 2000-2001 AOP).

[para 88.] However, in this case, I have decided to reduce the fee estimate to nil because of one overriding factor: the Public Body has what appears to be an unenforceable agreement with Sunpine as to making the AOP publicly available on a timely basis, including the large maps and the approved amendments. In my view, the Public Body should not be relying on a third party, such as Sunpine, to make those records publicly available, to determine the time at which they will be available, or to determine what records will be made available.

[para 89.] I would have been less inclined to reduce the fee to nil (particularly for the large hand-coloured maps) if the Public Body itself had made the AOP publicly available, including the large maps and approved amendments. I believe that transparency requires the Public Body to make those records publicly available, as they are plans that require the Public Body's approval before Sunpine may proceed with its forestry operations.

[para 90.] I would consider those records to be publicly available if they were accessible in the Public Body's own regional offices, its Edmonton office, libraries or on its website. Although I have no authority to order the Public Body to make the records publicly available in those ways, I am nevertheless sending a clear message to the Public Body about what it needs to do.

V. ORDER

[para 91.] I make the following Order under section 68(3)(c) of the Act.

[para 92.] I order the Public Body to reduce the fee estimate of \$5,833.48 to nil.

[para 93.] I further order the Public Body to notify me in writing, within 45 days of being given a copy of this Order, that the Public Body has complied with this Order.

Robert C. Clark
Information and Privacy Commissioner