ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2007-017

January 21, 2008

CAPITAL HEALTH

Case File Number 3473

Office URL: http://www.oipc.ab.ca

Summary: The Applicant, a journalist with The Edmonton Journal, made an access request to Capital Health under the *Freedom of Information and Protection of Privacy Act*. The Applicant requested access to information regarding public complaints, public health inspections and statistical data regarding restaurant inspections.

Capital Health initially estimated the fees for service to be in excess of $140,000. After consultations between the Applicant and Capital Health, Capital Health issued a revised estimate of $1,240. The Applicant subsequently requested a fee waiver pursuant to section 93(4)(b) on the basis that the records related to a matter of public interest. Capital Health did not grant the fee waiver.

The Applicant requested a review of Capital Health's decision. The Applicant also alleged that Capital Health did not fulfill its duty to assist under section 10 and did not respond within the time limits set out in section 11 of the Act.

The Commissioner held that the requested records related to a matter of public interest and fell within section 93(4)(b) of the Act. The Commissioner ordered the fee to be reduced to zero. The Commissioner also held that Capital Health did not fulfill its duty to assist the Applicant under section 10 of the Act. The Commissioner found that Capital Health failed to properly clarify the Applicant's access request before issuing its fee estimate and did not properly respond to the Applicant's request for information. The Commissioner also found that Capital Health did not respond to the Applicant within the

30 days set out in section 11 nor did Capital Health properly extend the time to respond to the request under section 14 of the Act.

Legislation Cited: AB: *Freedom of Information and Protection of Privacy Act,* R.S.A. 2000, c. F-25, ss. 10, 11, 14, 72, 93(4)(b); *Freedom of Information and Protection of Privacy Regulation* A/R 200/95, s.13(1).

Orders Cited: AB: 96-002, 99-011, 2000-008, 2000-011, 2001-023, F2005-022, F2006-032, Adjudication Order #2; **BC**: 03-19.

I. BACKGROUND

[para 1] On May 13, 2005, the Applicant, a journalist with the Edmonton Journal made an access request to Capital Health (the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Applicant requested access to records related to the health and safety of restaurants in the capital region including records regarding public complaints, public health inspections and statistical data regarding restaurant inspections. The Applicant also requested that all fees in excess of the $25 application fee be waived pursuant to section 93(4) of the Act.

[para 2] The access request was for information from January 1, 2002 to May 13, 2005.

[para 3] On June 2, 2005, the Public Body responded to the request. The Public Body informed the Applicant that there were approximately 300,000 to 400,000 records responsive to the access request and estimated the fee to be in excess of $144,000. The Public Body also stated that it required further information before it could respond to the Applicant's fee waiver request.

[para 4] After consultation between the parties, the Applicant subsequently clarified the request and, on October 3, 2005, the Public Body wrote to the Applicant with a revised fee estimate of $1240.

[para 5] The Public Body did not grant the fee waiver.

[para 6] On November 1, 2005, the Applicant requested a review of the Public Body's decision. The matter was set down for a written inquiry.

[para 7] The Public Body and the Applicant each submitted an initial and a rebuttal submission.

II. ISSUES

[para 8] The issues in this inquiry are as follows:

1. Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act?

2. Did the Public Body comply with section 11 of the Act (time limit for responding)?

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

III. DISCUSSION

1. Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act?

[para 9] Section 10(1) reads:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

A. Clarification of request

[para 10] The Applicant states that the Public Body failed to clarify the Applicant's access request prior to issuing the first fee estimate. The Applicant states that the Public Body issued a high fee estimate in order to deter the Applicant from pursuing the records.

[para 11] The Public Body states that the fee estimate was provided in good faith and reflected the time and effort it would take to respond to the access request.

[para 12] In Order 99-011, the former Commissioner held that a public body had a duty to engage in ongoing discussions and clarification leading up to a formal fee estimate. I find that the Public Body did not fulfill this duty. The Public Body responded to the Applicant's request by issuing a fee estimate that identified 300,000 to 400,000 responsive records and a corresponding fee of over $144,000. The vast number of the records identified by the Public Body and the corresponding fee should have signaled to the Public Body that clarification of the request was required. The Public Body should have contacted the Applicant prior to the issuance of the fee estimate in order to determine whether she would like to narrow her request. I am not suggesting that a public body is required to seek clarification every time there are a large number of records responsive to an access request. However, in this case the unusually large volume of responsive records made it apparent that clarification was required.

B. Failure to respond openly, accurately and completely

i. Public Body's response to the Applicant's informal request

[para 13] The Applicant states that the Public Body did not respond accurately to her informal request for information. The Applicant states that when she asked the Public Body for information regarding the health and safety of restaurants, the Public Body claimed that it did not have a database which contained information responsive to her request. The Applicant states that this assertion was later proven to be incorrect.

[para 14] In Order 99-011, the former Commissioner held that a public body's duty to assist under section 10(1) is triggered by an access request. A duty to assist under section 10(1) does not arise prior to an access request. Given the foregoing, I find that the Public Body's response to the Applicant's informal request should not be reviewed as part of the Public Body's duty to assist under section 10.

ii. Public Body's response to the Applicant's access request for database information

[para 15] The Applicant states that the Public Body did not inform the Applicant about the existence of its Environmental Health TMS database which contained information responsive to the Applicant's access request. In the Applicant's access request, the Applicant requested access to "statistical data regarding restaurant inspections" and asked that this information be provided in "electronic database form". The Applicant states that although the Public Body responded to the access request by acknowledging the Applicant's request for the electronic database information, it did not state whether it had custody or control of information responsive to that request.

[para 16] The Public Body states that it did not fail in its duty to assist. The Public Body states that it did not inform the Applicant about the existence of the Environmental Health TMS database because the database contained information about all of the Public Body's inspection information and orders including all types of public health orders and other records related to public health inspections. The Public Body states that it did not possess a separate database responsive to the Applicant's access request.

[para 17] I find that the Public Body's failure to inform the Applicant of its Environmental Health TMS database was a breach of its duty to respond to the Applicant "openly, accurately and completely" under section 10(1). The Applicant's access request clearly requested access to statistical records regarding restaurant inspections in "electronic database form". The Public Body had a duty to inform the Applicant of its Environmental Health TMS database which contained information responsive to that request. Whether the Environmental Health TMS database contained additional information is irrelevant. To find otherwise would allow a public body to avoid its obligations under the Act simply by maintaining more than one type of information within a single database.

[para 18] The Applicant also states that the Public Body failed in its duty to assist by initially refusing to provide the database information to the Applicant on the basis that the electronic information could not be exported into MS Excel or MS Access.

[para 19] Section 10(2) states that a public body must create a record for an applicant if the record can be created from a record that is in electronic form using its normal computer hardware and software and technical expertise and creating the record would not unreasonably interfere with the operations of the public body. Section 10(2) reads:

> *10(2) The head of a public body must create a record for an applicant if*
>
> *(a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and*
>
> *(b) creating the record would not unreasonably interfere with the operations of the public body.*

[para 20] I find that the Public Body's initial refusal to create the electronic database records for the Applicant was in breach of section 10(2). The Public Body had the ability to create, and eventually did create, those records. There is no evidence before me that the Public Body used resources over and above its normal computer software and hardware and its technical expertise in order to create those records. There is also no evidence that the Public Body's creation of those records unreasonably interfered with its operations.

iii. Public Body's failure to include the Premise ID field within the database record layout

[para 21] On June 22, 2005, the Public Body received a letter from the Applicant requesting access to the record layout for the Environmental Health TMS database. On July 21, 2005, the Public Body responded to this request by providing the Applicant with a portion of the record layout. The Public Body did not include the "Premise ID field" within that layout.

[para 22] The Public Body states that it did not include the Premise ID field in the record layout because it believed that it would not have been helpful to the Applicant. The Public Body states that the Premise ID number was not a reliable method to track inspections relating to a particular premise. The Public Body states that the Premise ID number would change when a new permit was issued, for example, following a change of ownership.

[para 23] I find that the Public Body's failure to include the Premise ID field in the record layout was in breach of its duty to respond to the Applicant openly, accurately and completely under section 10. In coming to my conclusion, I took into account the

history of the communication between the parties. In these communications, the Applicant makes a broad request for access to the record layout. For example, in the Applicant's June 22, 2005 letter, the Applicant stated

> " *I would like to request a record layout of the database so I can understand what fields are included*."

[para 24] The Applicant verbally requested the same in a telephone message that she left for the Public Body on July 13, 2005. This is evidenced by the Applicant's July 23, 2005 letter to the Public Body, where the Applicant refers to that telephone message

> " *In my telephone message on July 13, I said that while I respect that the database itself is proprietary, the information contained in the database is public property and the record layout should be released. Moreover, it is nearly impossible for me to list the information that I hope to get without any knowledge of what the database contains*".

[para 25] Both of these communications suggest that the Applicant had requested a complete record layout.

iv. Public Body's decision to withhold the remaining portions of the record layout/"code book"

[para 26] The Public Body continues to withhold portions of the record layout/"code book" that correspond to the Environmental Health TMS database. The Public Body states that it cannot provide the Applicant with these remaining portions of the record layout / "code book" because this information is subject to a proprietary licensing agreement.

[para 27] Whether the Applicant is entitled to the remaining portion of the record layout / "code book" is not simply an issue of whether the Public Body has fulfilled its duty to assist under section 10. The Public Body argues that the remaining portion of the record layout/ "code book" falls under proprietary licensing agreements. As such, whether the Applicant is granted access to the information will depend, in large part, on whether the Public Body or, the company that supplies the software and database programs under a licensing agreement, have custody or control of the record layout/ "code book" pursuant to section 4 of the Act. Each of the section 4 criteria must be addressed in order to come to a determination regarding this issue. As section 4 was not identified in the inquiry notice and I have not received submissions regarding the application of this section, I will not make a decision regarding this issue in this inquiry.

C. Public Body's alleged communications with the Applicant's employer

[para 28] The Applicant states that the Public Body contacted her employer on two occasions in order to discourage her from proceeding with the access request and/or inquiry. The Applicant states the Public Body contacted the Edmonton Journal's City

Editor on May 17, 2005 and the Edmonton Journal's Editor-in-Chief on April 3, 2007. The Applicant states that she was not consulted or notified that these telephone calls would be made. The Applicant states that these communications were a breach of section 10 of the Act.

[para 29] The Public Body states that it has been unable to find any information regarding the May 17, 2005 call. However, the Public Body acknowledges that, on April 3, 2007, its Senior Vice-President of Public Affairs contacted the Edmonton Journal's Editor-in-Chief. The Public Body states that the purpose of her call was not to dissuade the Edmonton Journal from proceeding with the inquiry or to interfere with the process. The Public Body states that the call was made to better understand the issues and if possible, resolve them in a less formal manner than through an inquiry.

[para 30] The Public Body's steps to bypass the Applicant and contact her employer on at least one occasion raise questions as to whether the disclosure of the Applicant's name and other information regarding the Applicant's access request and/or pending inquiry to the Applicant's employer was in breach of Part II of the Act. Relevant to this issue is the question of whether the Applicant made the access request in her personal capacity or on behalf of her employer. However, the parties have provided very little information and no evidence regarding the nature of the alleged communications on May 17, 2005 and on April 3, 2007. Furthermore, Part II of the Act was not identified as an issue in this inquiry and the parties have not made submissions regarding the application of this part of the Act. Given the foregoing, I will not make a decision regarding this issue in this inquiry.

2. Did the Public Body comply with section 11 of the Act (time limit for responding)?

[para 31] Section 11 establishes time limits for a public body to respond to an access request. It reads:

> *11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless*
>
> *(a) that time limit is extended under section 14, or*
>
> *(b) the request has been transferred under section 15 to another public body.*
>
> *(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.*

[para 32] Section 12 outlines what must be included in a response under section 11. It reads:

> *12(1) In a response under section 11, the applicant must be told*

(a) whether access to the record or part of it is granted or refused,

(b) if access to the record or part of it is granted, where, when and how access will be given, and

(c) if access to the record or to part of it is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.

[para 33] Section 14 describes situations in which the time limit under section 11 may be extended. It reads:

14(1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if

(a) the applicant does not give enough detail to enable the public body to identify a requested record,

(b) a large number of records are requested or must be searched and responding within the period set out in section 11 would unreasonably interfere with the operations of the public body,

(c) more time is needed to consult with a third party or another public body before deciding whether to grant access to a record, or

(d) a third party asks for a review under section 65(2) or 77(3).

(2) The head of a public body may, with the Commissioner's permission, extend the time for responding to a request if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other.

(3) Despite subsection (1), where the head of a public body is considering giving access to a record to which section 30 applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of section 31.

(4) If the time for responding to a request is extended under subsection (1), (2) or (3), the head of the public body must tell the applicant

(a) the reason for the extension,

(b) when a response can be expected, and

(c) that the applicant may make a complaint to the Commissioner or to an adjudicator, as the case may be, about the extension.

A. Section 11

[para 34] Section 11 requires a public body to make every reasonable effort to respond to an applicant within 30 days after receiving the access request. However, section 13(1) of the *Freedom of Information and Protection of Privacy Regulation* A/R 200/95 provides that once the fee estimate is provided to an applicant, the 30 day requirement under section 11 is suspended until the applicant agrees to pay the fee and provide the required deposit.

[para 35] I find that the Public Body did not respond to the Applicant within the 30 days required by section 11. The Public Body received the Applicant's access request on May 13, 2005 and responded with a fee estimate on June 2, 2005. The Applicant subsequently accepted and paid the fee on March 21, 2006. Given the foregoing, the 30 day time-limit would have expired on March 31, 2006. The Public Body did not respond to the Applicant, pursuant to the requirements of section 12, before that date. I find that the Public Body did not fulfill the requirements of section 12 until April 25, 2006.

[para 36] I note that on March 28, 2006 the Public Body wrote to the Applicant in regard to her access request. However, in that letter the Public Body did not include all of the information required by section 12 of the Act. For example, the Public Body did not inform the Applicant of what part of the request would be refused and the reasons for the refusal.

[para 37] Notwithstanding the Public Body's failure to meet the 30 day time limit, section 11 states that if a Public Body made a reasonable effort to meet the deadline, it will not breach that section.

[para 38] After a review of all of the information before me, I do not find that there is sufficient evidence to conclude that the Public Body made a reasonable effort to meet the deadline. For example, there is very little information regarding what steps the Public Body took to respond to the Applicant's access request during the time period between the issuance of the fee estimate and the expiry of the 30 day deadline. Although the Public Body sent a letter to the Applicant on March 28, 2006, acknowledging the Applicant's fee payment, the Public Body did not state in that letter whether it had taken any other steps, following the receipt of the fee from the Applicant, to respond to the access request. To the contrary, the wording of that letter suggests that, as of that March

28, 2006, which was only two days before the March 30, 2006 deadline, it had not yet advised the responsible program area that the Applicant had requested the database information be provided in MS access format. Given the foregoing, I do not find that there is sufficient evidence to conclude that the Public Body made a reasonable effort to respond to the access request within the 30 day time limit.

B. Section 14

[para 39] Section 14 states that a public body may extend the time to respond to a request by up to an additional 30 days or for a longer period with the Commissioner's permission and if one of the section 14(1) criteria are met. Section 14(4) also outlines what a public body must tell an applicant when it extends the time. Section 14(4) states that if a public body makes a time extension, a public body must tell an applicant (a) the reason for the extension, (b) when a response can be expected, and (c) that the applicant may make a complaint to the Information and Privacy Commissioner or to an adjudicator, as the case may be, about the extension.

[para 40] On March 28, 2006, the Public Body wrote to the Applicant informing the Applicant that it would require additional time to respond to the access request and that it would respond to the request by April 11, 2006. In that letter, the Public Body did not, however, specify the reason for the time extension and did not inform the Applicant that she could make a complaint to the Information and Privacy Commissioner about this extension.

[para 41] On April 11, 2006, the Public Body informed the Applicant that it required an additional seven days to respond to the access request. In that letter the Public Body informed the Applicant of the reason for the time extension, but did not inform the Applicant that she could make a complaint to the Information and Privacy Commissioner about the extension.

[para 42] Given the foregoing, I find that the Public Body did not properly extend the time to respond under section 14.

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

[para 43] The Applicant requests a fee waiver on the basis that the records relate to a matter of public interest under section 93(4)(b). Section 93(4)(b) reads:

> *93(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,*
>
> …
>
> *(b) the record relates to a matter of public interest, including the environment or public health or safety.*

[para 44] In Order 2001-023, the former Commissioner held that an applicant and a public body share the burden of proof under this section. In that Order the former Commissioner said:

> … Section 87(4)(b) [now section 93(4)(b)] does not ask that a particular party bear the burden of proving a public interest in the record. Rather, it requires the head of a public body to form a proper opinion about whether the record itself relates to a matter of public interest, and then decide whether to excuse the applicant from paying all or part of a fee. An applicant could fail to independently establish a public interest in the records sought, but the head of a public body could nonetheless look to all of the relevant facts and circumstances, the principles and objects of the Act, and exercise his or her discretion to find a public interest in the records under section 87(4)(b) [now section 93(4)(b)].

[para 45] In Order 96-002, the former Commissioner also established two overriding principles and 13 non-exhaustive criteria to help assess whether records relate to a matter of public interest in the context of a fee waiver. 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 seeking records should pay. In Adjudication Order #2, Justice McMahon added "accountable" to the first principle, revising it to read "to foster open, transparent and accountable government."

[para 46] The 13 criteria identified in Order 96-002 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?

3. Will the records contribute to the public understanding of an issue (that is, 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 the 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 public need to have the record?

11. How responsive has the Public Body been to the Applicant's request? Were some records made available at no cost, or did the Public Body help the Applicant to find less expensive sources of information, or assist in narrowing 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 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 record?

[para 47] I note that Order F2006-032 referred to a revised set of public interest fee waiver criteria. However, as this inquiry was set down and the inquiry notice issued before the public release of Order F2006-032, I will decide the public interest issue before me on the basis of the original 13 criteria.

1. Is the Applicant motivated by commercial or other private interests?

[para 48] The Applicant states that although she is employed by a for-profit newspaper, her role as a journalist in making information available to the public is what motivated her interest in the records.

[para 49] The Public Body states that although there is a public interest component to the information at issue, the Applicant also has a private commercial interest in obtaining access to the records and will receive some commercial benefit from publishing the information.

[para 50] I acknowledge that the Applicant is employed by a for-profit newspaper and that the newspaper received some commercial benefit from publishing the information. However, I do not find that the Applicant's primary purpose in making the request as a member of the print media was to advance a commercial or a private interest. Simply because a journalist makes an access request for information that is subsequently published in a for-profit publication does not mean that the primary purpose of the request is private and not public. I must also consider the important role the media plays in obtaining information and making it available to the public in the pursuit of government accountability (Adjudication Order #2, Order F2005-022, B.C. Order 03-19).

[para 51] I find that this criterion weighs in favour of a finding that the records relate to a matter of public interest.

2. Will members of the public, other than the Applicant, benefit from disclosure?

[para 52] The Applicant states that the public benefitted from the disclosure. The Applicant states that by providing the public with restaurant inspection information in the form of an online database she gave the public the ability to search for the inspection records of various restaurants. The Applicant also states that there was and, continues to be, an immense public demand for this information. The Applicant provided statistics regarding the number of individuals that have visited and, continue to, visit the website. The Applicant states that she also received numerous calls, letters and e-mails from the public thanking the newspaper for providing this information.

[para 53] I accept the Applicant's submission and find that this criterion is fulfilled. I find that this criterion weighs in favour of a finding that the records relate to a matter of public interest.

3. Will the records contribute to the public understanding of an issue (that is, contribute to open and transparent government)?

[para 54] The Applicant states that the records contributed to a public understanding of how the Public Body's inspection system operated. The Applicant states that the information, which was subsequently put into a searchable online database, provided the public with a detailed analysis of the inspection system that was easy to access in electronic form. The Applicant states that although it was previously possible for a member of the public to access specific paper records regarding one particular restaurant, the electronic information gave the public a broad, detailed analysis that a member of the public could not otherwise realistically accomplish through individual access requests. The Applicant also states the information was used to produce a three-part series that detailed how the Public Body's inspection system operated including its strengths and weaknesses.

[para 55] I accept the Applicant's submission and find that this criterion is fulfilled. I find that this criterion weighs in favour of a finding that the records relate to a matter of public interest.

4. Will disclosure add to public research on the operation of government?

[para 56] The Applicant states that the disclosure of the information has added to public research on the operation of government by providing the public with information regarding restaurant inspections.

[para 57] I accept the Applicant's submission and find that this criterion is fulfilled. I find that this criterion weighs in favour of a finding that the records relate to a matter of public interest.

5. Has access been given to similar records at no cost?

[para 58] The Applicant states that public bodies in other North American jurisdictions have provided newspapers with similar information at no charge. The Applicant cites the Toronto Star and The Hamilton Spectator as two examples of newspapers that received similar information at no charge from a public body.

[para 59] I accept the Applicant's submission and find that this criterion is fulfilled. I find that this criterion weighs in favour of a finding that the records relate to a matter of public interest.

6. Have there been persistent efforts by the Applicant or others to obtain the records?

[para 60] I find that the Applicant made persistent efforts to obtain the records at issue and pursued the records for over a year. Furthermore, I accept that these persistent efforts were related to a public interest in the information. I find that this criterion is fulfilled and weighs in favour of a finding that the records relate to a matter of public interest.

7. Would the records contribute to debate on or resolution of events of public interest?

[para 61] The Applicant states that the records contributed to a debate regarding the merits of different types of restaurant inspection disclosure systems. The Applicant states that following the receipt of the information, the Edmonton Journal published a story about different types of restaurant inspection disclosure systems.

[para 62] I accept the Applicant's submission. I find that records contributed to a debate regarding the different types of restaurant inspection disclosure systems. I find that this criterion is fulfilled and weighs in favour of a finding that the records relate to a matter of public interest.

8. Would the records be useful in clarifying the public understanding of issues where government has itself established that public understanding?

[para 63] Neither the Applicant nor the Public Body addressed this criterion in their submissions. Furthermore, there is no evidence to suggest that this criterion is fulfilled.

[para 64] I find that this criterion does not weigh either in favour or against a finding that the records relate to a matter of public interest.

9. Do the records relate to a conflict between the Applicant and the government?

[para 65] The Applicant states that the records do not relate to a conflict between the Applicant and the government. The Public Body did not make a submission regarding this criterion. There is also no evidence to suggest that the records relate to such a conflict.

[para 66] Given the foregoing, I find that the records do not relate to a conflict between the Applicant and the government. I find that this criterion weighs in favour of a finding that the records relate to a matter of public interest.

10. Should the Public Body have anticipated the public need to have the record?

[para 67] Neither the Applicant nor the Public Body specifically addressed this criterion in their submissions. However, the subject matter of the records and the immense interest by the public in the information after it was published on the Edmonton Journal's website, strongly suggests that the Public Body should have anticipated the public need to have the record. I find that this criterion is fulfilled and weighs in favour of a finding that the records relate to a matter of public interest.

11. How responsive has the Public Body been to the Applicant's request? Were some records made available at no cost, or did the Public Body help the Applicant to find less expensive sources of information, or assist in narrowing the request so as to reduce costs?

[para 68] I do not find that this criterion is fulfilled. As previously mentioned, the Public Body failed to clarify the Applicant's access request before issuing its fee estimate and failed to inform the Applicant of the existence of the Environmental Health TMS database which contained information responsive to the Applicant's access request. The Public Body also failed to include the Premise ID field within the database record layout which was provided to the Applicant and I have found that the Public Body's initial refusal to create an electronic database record for the Applicant was in breach of section 10(2). Furthermore, the Public Body failed to meet the 30 day time-limit under section 11 and did not properly extend the time to respond under section 14.

[para 69] Given the foregoing, I find that this criterion is not fulfilled.

[para 70] In the Public Body's submission, the Public Body stated that it assisted the Applicant in narrowing her request and consulted extensively with the Applicant. The Public Body also states that its responsiveness to the Applicant is shown in its willingness to provide the Applicant with the information in an electronic database format. The Public Body states that it was not required to provide the Applicant with the information in an electronic format as the information was already available in paper form.

[para 71] I acknowledge that the Public Body assisted the Applicant in narrowing her request and consulted extensively with the Applicant in order to respond to her request. During these consultations, the Public Body agreed to provide the Applicant with up-to-date information as opposed to information that predated the date of the original access request. The Public Body also agreed to change the format of the information provided to the Applicant from MS Excel to MS Access and agreed to provide the Applicant with definitions for various acronyms found within the database. I do not, however, find that the Public Body's assistance and willingness to consult with the Applicant is sufficient to fulfill the requirements of this criterion given the Public Body's failure to assist the Applicant in other respects.

[para 72] I also do not agree with the Public Body's assertion that it was not required to provide the Applicant with information in electronic form. As previously mentioned, section 10(2) of the Act requires a Public Body to create a record for an applicant if the record can be created from a record that is in electronic form using its normal computer hardware and software and technical expertise and creating the record would not unreasonably interfere with the operations of the Public Body. There is no evidence before me that, in creating the electronic database, the Public Body used resources over and above its normal computer hardware and software and technical expertise or that creating the record unreasonably interfered with its operations.

[para 73] I find that this criterion is not fulfilled and weighs in favour of a finding that the records relate to a matter of public interest.

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 significant interference with the operations of the Public Body, including other programs of the Public Body?

[para 74] The Public Body states that a fee waiver would unreasonably shift the 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.

[para 75] The Applicant states that a fee waiver would not shift an unreasonable burden of cost from the Applicant to the Public Body given the Public Body's overall operating budget.

[para 76] The fee at issue amounts to $1,240. On the basis of the information before me, I do not accept that a fee waiver would significantly interfere with the operations of the Public Body. I find that this criterion weighs in favour of a finding that the records relate to a matter of public interest.

13. What is the probability that the Applicant will disseminate the contents of the record?

[para 77] The Applicant has disseminated the contents of the records to the public via a public website and numerous articles which were published in the Edmonton Journal.

[para 78] Given the foregoing, I find that this criterion is fulfilled and weighs in favour of a finding that the records relate to a matter of public interest.

Conclusion

[para 79] After weighing all of the above criteria, I find that the records provided to the Applicant in response to her access request relate to a matter of public interest and fall within section 93(4)(b) of the Act. I have considered the extent to which the fee should be reduced. In the circumstances, I find that the fee should be reduced from $1,240 to zero.

IV. ORDER

[para 80] I make the following Order under section 72 of the Act.

[para 81] I find that the Public Body did not fulfill its duty to assist under section 10 of the Act. I find that the Public Body failed to properly clarify the Applicant's access request before issuing a fee estimate and did not respond to the Applicant's request for information in an open, accurate and complete manner.

[para 82] I find that the Public Body did not make every reasonable effort to respond to the Applicant within the 30 days as required by section 11 and did not properly extend the time to respond to the request under section 14 of the Act.

[para 83] I find that the records provided to the Applicant in response to her access request relate to a matter of public interest under section 93(4)(b) of the Act. I find that the fee should be reduced from $1,240 to zero. I order the Public Body to refund $1,240 to the Applicant. I order the Public Body to notify me within 50 days of receiving a copy of this Order that it has complied with the Order.

Frank Work, Q.C.
Information and Privacy Commissioner