

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2013-54

December 24, 2013

WORKERS' COMPENSATION BOARD

Case File Number F6280

Office URL: www.oipc.ab.ca

Summary: An individual made an access request to the Workers' Compensation Board (the Public Body) for records relating to him and his claim with the Public Body. The Public Body provided a fee estimate of \$955.00 for the request. The Applicant requested a fee waiver from the Public Body. The Public Body considered the fee waiver both on grounds that the records relate to a matter of public interest (section 93(4)(b)) and on the grounds that the Applicant could not afford the fees (section 93(4)(a)). It denied the Applicant's request for a fee waiver on both grounds, and the Applicant sought a review of that decision by this office.

The Adjudicator determined that the Applicant did not provide sufficient evidence that he could not afford to pay the fee assessed by the Public Body. The Adjudicator also determined that the Applicant did not provide sufficient evidence to show that the records relate to a matter of public interest such that the fees should be waived.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 72, 93, *Freedom of Information and Protection of Privacy Regulation*, Alta Reg. 186/2008, ss. 12, 13, and the Schedule, *Workers' Compensation Act*, R.S.A. 2000, c. W-15, ss. 147.

Authorities Cited: AB: Orders 96-002, 2001-015, 2001-023, 2001-042, F2006-032, F2007-023, F2009-034, F2009-039, F2011-015, F2013-10, F2013-43.

I. BACKGROUND

[para 1] By letter dated February 1, 2012, an individual made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to the Workers' Compensation Board (the Public Body) for records relating to him and his claim, specifically:

... please disclose the following file evidences:

1. Copy of Case Managers and WCB staff NOTES from 2009 to present, and
2. Copy of the Office of Appeals Advisors, and
3. Copy Senior Management and Alberta Ombudsmen exchange correspondents which creating the Government Relations File copy.

[para 2] The Public Body provided a fee estimate of \$955.00 for processing the request (letter dated February 29, 2012). The Applicant requested a fee waiver from the Public Body. The Public Body considered the fee waiver both on grounds that the records relate to a matter of public interest (section 93(4)(b)) and on the grounds that the Applicant could not afford the fees (section 93(4)(a)). It denied the Applicant's request for a fee waiver on both grounds and the Applicant sought a review of that decision by this office.

II. RECORDS AT ISSUE

[para 3] As the issue relates to a fee waiver, there are no records at issue.

III. ISSUES

[para 4] The issue in this inquiry, as set out in the Notice of Inquiry, is:

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

IV. DISCUSSION OF ISSUES

Preliminary Issue

[para 5] The Applicant raised concerns about the phrasing of the issue at inquiry. He is concerned that the issue was defined by the Public Body, and that it does not accurately reflect his concerns. The Applicant states that his issue is that he should receive the information he requested, free of charge. In other words, he is concerned not only with the fees but also whether the Public Body will be providing the requested records. The Applicant provided lengthy arguments and evidence to support his position that he should be provided with all of the records he requested from the Public Body.

[para 6] The process in the FOIP Act and Regulation permits a public body to estimate the fees for providing access to records; if the fees exceed the prescribed amount in section 12 of the Regulation, the public body must provide the applicant with an estimate of the total amount *before* the public body begins processing the request (section 93(3)). As the Applicant requested a fee waiver upon receiving the estimate and the Public Body declined to waive the fee, the issue at inquiry is whether the fee should be waived. Therefore, at this time the Public Body has quite properly not yet processed the request or made any decisions as to what records it will provide the Applicant. I cannot review a decision that the Public Body has not made; therefore, the issue of what records the Public Body ought to provide to the Applicant in response to his access request will not be decided in this inquiry.

[para 7] The Applicant has requested that I order the Public Body to provide him with the records he has requested. However, the Public Body's decision not to waive the assessed fees is *not* a decision not to provide access to the records; it is only a decision not to provide access *free of charge*. The process under the Act does not require the Public Body to inform the Applicant of its decision regarding access to the requested records until the fees are waived or paid.

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

[para 8] Section 93 of the Act states in part:

93(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

...

(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or

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

...

[para 9] The Commissioner's jurisdiction to review decisions regarding fee waivers was described in Order F2007-023:

When deciding whether a public body has properly refused to grant a fee waiver, the decision-maker must look at all of the circumstances, information and evidence that exists at the time when the Public Body denied the fee waiver and also at the time of the inquiry (Order 2001-042 (para 19)). A decision-maker may consider all information and evidence at the inquiry, even if that information and

evidence was not available to the public body at the time it made its fee waiver decision.

Section 72 of FOIP does not merely authorize the decision-maker to confirm a public body's decision or to require a public body to reconsider its own decision. Section 72(3)(c) of FOIP gives decision-makers the authority to render their own decision about whether to waive all or part of the fee or to order a refund. Under section 72(3)(c), the decision-maker has the authority to hear the case "de novo" as a new proceeding and to make a "fresh decision" (Order F2007-020 (para 30), OIPC External Adjudication Order #2 (May 24, 2002) Justice McMahon (para 45), Order 2001-023 (para 32)).

I must review a public body's decision on a case-by-case basis, and consider all of the information before me. Therefore, if I reach a different conclusion than a public body and find that a fee should be reduced or completely waived, I may make a "fresh decision" and substitute my own decision for the public body's decision. However, if I reach the conclusion that a public body properly applied section 93(4) when denying a fee waiver, I may confirm that decision.

Section 93(4)(a) – inability to pay

[para 10] Where an applicant requests a fee waiver on the basis that he or she is unable to pay the fee, the burden of proof rests with the applicant to show that he or she is unable to pay. This is because the applicant is in a better position to provide evidence of his financial circumstances (see Orders 96-002, 2001-015, 2001-023).

[para 11] Former Commissioner Clark stated in Order 2001-023 (at para. 39):

An applicant cannot refuse to provide information to a public body to justify a fee waiver under section 87(4)(a), and then expect me to waive the fee under that provision. That refusal is a relevant circumstance for me to consider in refusing to waive the fee under section 87(4)(a).

[para 12] A letter from the Public Body to the Applicant dated February 29, 2012, included instructions for requesting a fee waiver on the basis of an inability to pay. Those instructions ask an applicant to provide:

...detailed financial information that accurately demonstrates your household income and expenses. When preparing this document, you must include the income and expenses of **all individuals** (names and relationships of these individuals are not required) **who contribute financially to your household.** The decision to waive fee is based on the information you provide. If you do not provide sufficient evidence to support your request, the fee waiver may be denied.

If you request a fee waiver, the personal information you provide will only be used by the FOIP Office to determine your eligibility for a fee waiver. The information will be retained on the FOIP Office's administrative file created for this FOIP request, for the time period set out in our records retention schedule. As this is your personal information, we will only disclose this information to you or your designated representative.

[para 13] In response to this letter, and subsequent letters requesting the same information, the Applicant wrote to the Public Body (letter dated May 2, 2012), stating

... it is illegal for the WCB – and the WCB has no authority to ask - and/or force any individuals to disclosing financial information to the WCB administration – and/or collect any personal and/or any financial information including about myself if the information are not related to work accident – and/or my family members – and/or my financial supporters who are contributing to my daily living – and/or collect any information about my spouse.

[para 14] As explained above, if an applicant requests a fee waiver under the FOIP Act, the applicant must provide some evidence of his financial situation to the public body making the determination. The Applicant is correct to point out that the Public Body cannot require that information; however, if he does not provide it, then the Public Body does not have a basis on which to find that the Applicant is unable to pay the assessed fees.

[para 15] Similarly, the Applicant can refuse to provide evidence in this inquiry as to his financial status (the Applicant has not refused, but has also not provided any evidence). However, that means that I have no basis for finding that the fees for access should be waived because the Applicant cannot afford to pay.

Section 93(4)(a) – other reasons it is fair to waive the fee

[para 16] Section 93(4)(a) provides that fees may be waived if an applicant is unable to pay the fee or for any other reason it is fair to excuse the payment.

[para 17] I am cognizant of the fact that the Applicant is clearly quite concerned about providing his (or his family's) financial information to the Public Body, despite assurances from the Public Body regarding its limited use of that information. Although I do not find the Applicant's concerns to be objectively reasonable (i.e. I do not doubt that the Public Body would use the information only for the purpose of making a decision regarding the fee waiver request, as it states) the Applicant may be concerned that the Public Body will use the evidence of his financial status against him in making a determination about his claim. The Applicant's distrust of the Public Body (whether warranted or not) is apparent, and may be preventing him from providing evidence to support his claim that he is unable to pay the estimated fees.

[para 18] However, the requirement to provide some financial information to a public body is reasonable when requesting a fee waiver because of an inability to pay fees. A public body must consider relevant and appropriate factors when deciding whether a fee waiver will be granted; the financial status of the applicant is clearly relevant. While I understand the Applicant's reluctance to provide financial information to the Public Body is based on real concerns about his claim, I have no evidence upon which to find that his concerns are objectively reasonable. Therefore I find that this circumstance does not weigh in favour if granting a fee waiver on the basis of fairness.

[para 19] The Applicant argues that the Public Body's own policy is to provide claimants with their information free of charge. It seems possible that the Applicant is arguing that this policy of the Public Body is not being fairly applied; in other words, the Public Body is not following this policy in his case.

[para 20] The Public Body does not disagree with the Applicant's assertion that the Applicant has a right to a copy of his claim file free of charge, according to section 147(3) of the *Workers' Compensation Act*, and the Public Body's own policy.

[para 21] Section 147(3) of the *Workers' Compensation Act* (WCA) states

147(3) Notwithstanding subsections (1) and (2) and section 34(4), where a matter is being reviewed or appealed under section 46 or 120,

(a) the worker, or the worker's personal representative or dependent in the case of the death or incapacity of the worker, or the agent of any of them, and

(b) the employer of the employer's agent

are entitled to examine all information in the Board's files that is relevant to the issue under review or appeal, and those persons shall not use or release that information for any purpose except for the purpose of pursuing the review or appeal.

[para 22] WCB Policy 01-02 Part II, Application 1 – General states:

The WCB does not charge:

- workers for the first copy of claim-file documents
- employers for the first copy of employer-account or claim-file documents

The WCB may charge for all other documents, including:

- requests for copies of administrative documents or computerized records irrelevant to decision making
- additional copies of previously released documents
- disclosure under FOIP as set out in Schedule 2 of the *FOIP Regulation*

[para 23] The Public Body states that the Applicant had previously expressed concerns to the Public Body that he had not received all of the documents from his claim file. As a result the Public Body's FOIP office confirmed with the Access to Information area (which is responsible for providing workers with copies of claim files) that the Applicant had received all documents from his claim file up to February 2012 (which is when the Applicant made his access request). The Public Body also confirms that the Applicant continues to be able to access more recent information on his claim file.

[para 24] In Order F2009-039, the adjudicator further clarified (at paras. 52-53):

If an applicant has already received information or created it, but requests it as part of an access request and also requests a fee waiver in relation to this request, the applicant should establish either that the applicant did not receive these records, or no longer has them. Otherwise, a decision maker may find that the circumstances are inappropriate for granting a fee waiver, given that the applicant already possesses the information requested.

[para 25] The Public Body states that the Applicant has received his claim file from the Public Body under its routine process and the Applicant has not stated otherwise. By letter dated September 12, 2013, I asked the Applicant the following:

Can you please tell me whether you have ever received a copy of your claim file from the Public Body? If you have received a copy in the past, please tell me why you are asking for another copy and why this additional copy should be provided for free.

[para 26] The Applicant stated in reply

Yes, on several occasions I have received an updated copy of the *Generic File Records* created and hold [sic] at the WCB. I believe that the file records which the WCB has disclosed to me was/is incomplete for conspiracy reason [sic] and abuse in Public Office and the Monopolistic absolute power and obvious unfair and unjust adjudication of my claim and hiding of the deliberate created errors and obvious denial of the compensation entitlements.

To the date of this Inquiry I have never received any documents and file records from the WCB Financial Department, from the WCB Medical Department, from the WCB Legal Department, from the WCB Government Relations Department, from the WCB Board of Directors records, from the WCB financial and benefits calculations and payments department, ... and I have never received any of the file records from the other departments at the WCB as listed by the WCB FOIP letters...

[para 27] The Applicant seems to believe that the Public Body's policy of providing a copy of a claim file free of charge applies to all information about the individual in the Public Body's custody and control (in addition to what he has been provided as part of his claim file). The Public Body states that many of the records responsive to the Applicant's FOIP request would not be part of his claim file because they are not relevant to the claim appeal process. These include records generated by the e-CO system, duplicates of the claim file documents, and records generated from external inquiries or legal actions taken by the Applicant (I presume that "external" inquiries are those that are not directly related to the injury claim). The Public Body has provided me with policy documents outlining how Public Body employees are to determine what information is relevant to claim files. The fact that the Applicant has received his claim file without charge, in accordance with the Public Body's policy, is a circumstance weighing against waiving the fee for producing a copy in response to a FOIP request.

[para 28] I accept the Public Body’s explanation that many of the records requested by the Applicant may not be relevant to his injury claim and for that reason would not be included in his claim file. Therefore, these records are *not* records that the Public Body is obliged – by the WCA or its policies – to provide to the Applicant free of charge. They are also not records that the Applicant has previously been provided free of charge. I will therefore consider whether there are other circumstances such that it is fair to waive the fee associated with these other records.

[para 29] In Order F2009-039 the adjudicator surveyed past orders of this office with regard to other circumstances in which it is appropriate to waive fees. She stated:

Previous orders of this office have considered the following circumstances appropriate for granting a fee waiver:

- In Order F2007-016, the Adjudicator determined that it was appropriate to waive fees because the Applicant, who had limited financial resources, had taken steps to narrow her request, had requested her personal information, and had unsuccessfully attempted to obtain the information she sought in other ways.
- In Order 2001-042, the Commissioner decided that it would be appropriate to excuse an applicant from paying fees as it would have the effect of ending protracted and longstanding issues between the public body and the applicant.
- In Order F2006-001, the Adjudicator determined that a combination of an applicant’s circumstances, and the unfairness and improper exercise of discretion on behalf of the public body in that case made the circumstances appropriate for granting a fee waiver.
- In Order F2003-023, the Adjudicator determined that it was appropriate to grant a fee waiver as the public body in that case had lost the information requested by an applicant.
- Order F2007-020 held that the delay in processing the applicant’s access request was a circumstance that weighed in favor of granting a fee waiver.
- Order 99-027 notes that “misconduct in responding to an applicant” could be a reason to waive fees on the ground of fairness.

[para 30] More recently, in Order F2013-43, it was found to be appropriate to waive fees where a Minister publicly made disparaging comments about an applicant, which could be viewed as a deterrent to others to exercise their right of access under the Act.

[para 31] The Public Body states that it attempted to work with the Applicant to narrow his request in order to reduce the fees. It provides me with the following examples of the options it provided the Applicant to reduce the fees:

1. Part of the Applicant’s request was for a record of payments made on his claim file. The Public Body states that it offered the Applicant two options for this

information: he could have a computer screen printout of each payment, which would be subject to fees, or a “detailed cost run report”, which contains the same information but can be provided free of charge to claimants.

2. Approximately 1490 pages of records from the Legal Services area were copies of documents from the Applicant’s claim file, which had been provided to the Applicant previously. The Public Body offered to omit these duplicates from the responsive records.
3. The Applicant could choose to omit screen prints from the Public Body’s e-CO system, and a claim history form, which contain information already provided to the Applicant in his claim file, but in a different format. (The Public Body provided me with a sample of an e-CO printout and the claim history; the e-CO printout is basically a screenshot of the program into which claim information is entered, and the claim history appears to be similar to an audit log report for the system.)

[para 32] The Public Body also states that it provided the Applicant with several opportunities to provide financial information to support his claim that he was unable to afford fees. In its letter to the Applicant denying his request for a fee waiver, the Public Body included the a copy of the cost run report, along with a two-page sample of the screen printout of each payment, so that the Applicant could compare the information provided in the report (which was given to him for free) with the information in the screen printout (for which there would be a charge).

[para 33] One of the circumstances in which a fee waiver was found to be appropriate is when it would end “protracted and longstanding issues between the public body and the applicant” (Order 2001-042, cited above). The Public Body cites Order F2007-023, in which the adjudicator found that even in circumstances such as those in Order 2001-042, the Applicant has the burden of proof to show that the fees should be waived (at para. 40). The Public Body also states that the dispute between the Applicant and Public Body in this case – concerning the Applicant’s injury claim – would not be furthered by the disclosure of the requested records.

[para 34] The Applicant states

I would like to ask the Alberta Court for Judicial Review and the legal /Court interpretation of the laws and the legislations to clarify the WCB and Appeals Commission Jurisdictions and responsibility and correct the errors with determination which the documents on my WCB file are original – which are re-write by the WCB staff with different language and terminology , and which documents and file records and legislations should used in the compensation decision process to determinate the compensation entitlements/benefits/services under the WCA (Act).

[para 35] It is clear from the Applicant’s submissions that he is concerned that there may be information in the custody or control of the Public Body that is not on his claim file but which would affect his claim (or appeal) if it were on his claim file. He seems to

believe that the Public Body is hiding information relevant to its determination of his injury claim in files other than his claim file. However, I have no reason to expect that providing the Applicant with the requested information free of charge will have the effect of ending the longstanding dispute between the Applicant and Public Body. The Applicant is specifically requesting the information so that he can take further action with respect to his injury claim, which is his right to do. Therefore I do not think that the factor outlined in Order 2001-042 applies in this case.

[para 36] The Public Body states that it properly exercised its discretion not to waive the fees and that its actions were reasonable because it made every effort to assist the Applicant in reducing the fees, it provided some information free of charge, and it provided the Applicant with several opportunities to provide financial information to support his argument that he could not afford the fees.

[para 37] In my view, the Public Body was diligent in working with the Applicant to reduce the fees associated with his request. It provided a free alternative to the claim payment records requested by the Applicant, along with samples of the requested formats, so that the Applicant could compare those records to information he already had. The Applicant has not stated why he continues to request certain formats, why the free format for the claim payment information was not acceptable, or whether the e-CO printout and claim history contained information that was not already in his claim file.

[para 38] I find there are no other reasons for which fees should be waived under section 93(4)(a).

Section 93(4)(b) – record relates to a matter of public interest

[para 39] In Order F2006-032 the Adjudicator set out a non-exhaustive list of criteria for determining whether to grant a fee waiver in the public interest (these criteria are a revised version of thirteen criteria set out in Order 96-002):

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it? The following may be relevant:
 - Have others besides the applicant sought or expressed an interest in the records?
 - Are there other indicators that the public has or would have an interest in the records?
2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public? The following may be relevant:
 - Do the records relate to a conflict between the applicant and government?
 - What is the likelihood the applicant will disseminate the contents of the records?

3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government? The following may be relevant:

- Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?
- Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?
- Will the records shed light on an activity of the Government of Alberta or a public body that have been called into question?

[para 40] In Order F2009-034 the adjudicator summarized the “public interest” issue as follows:

As noted by the Public Body, the requested records should be of significant importance in order for the cost of processing the access request to be passed on to taxpayers (Order 2000-011 at para. 52). Fee waivers on the basis of public interest are to be granted only when there is something about the records that clearly makes it important to bring them to the public’s attention or into the public realm (Order F2006-032 at para. 39). It is not sufficient for there to be some marginal benefit or interest in the record; there should be a compelling case for a finding of public interest (Order F2007-024 at para. 47).

[para 41] The Applicant provided minimal argument on the issue of public interest. He argues that “it is important for me and the justice system to have access and obtain the entire WCB file records created and storage under my name at the WCB access to information and the FOIP WCB department.” The Applicant states that he intends to seek a judicial review of decisions regarding his WCB claim.

[para 42] The Public Body argues that the Applicant is requesting his own personal information and that the Applicant has not expressed his interest in the records or a fee waiver in terms of the matter being of public interest.

[para 43] I agree that the Applicant’s arguments are focused on pursuing his own injury claim. He does not argue that the Public Body’s allegedly improper actions and decisions regarding his claim are systemic or that the public would have an interest in the matter. The records that outline the Public Body’s decisions (i.e. the records in his claim file) have already been provided to the Applicant.

[para 44] I find that the records requested by the Applicant do not meet the test for records relating to a matter of the public interest within the terms of section 93(4)(b) of the Act.

Are the fees assessed by the Public Body appropriate?

[para 45] Section 72(3)(c) of the FOIP Act permits me to reduce fees where circumstances warrant.

[para 46] In one of the letters from the Public Body to the Applicant, dated February 29, 2012 (provided to me by the Public Body in its submission), the Public Body has calculated the fee for providing 3820 pages of records to be \$955.00, based on a rate of \$0.25/page for photocopying (which is the only fee relevant to a request for personal information under section 12 of the FOIP Regulation).

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

[para 48] The Applicant also questioned the fee for photocopying, stating

... the WCB is disobeying the WCA (Act) legislations [sic] and instead of free of charge access to the file records the WCB is making profit to have access to the file records and charging \$0.25 per copy per page – where I use to pay \$0.05 and now is \$0.07 at the Staples.

[para 49] By letter dated September 12, 2013, I asked the Public Body to tell me how the cost per page for photocopying was calculated and for evidence regarding the Public Body's actual costs for making photocopies. The Applicant was also permitted to respond to my questions.

[para 50] The Public Body responded that the fee of \$0.25 per page for photocopies is in keeping with the accepted practice for public bodies in Alberta, and with Schedule 2 of the FOIP Regulation, which provides the \$0.25 maximum amount chargeable for photocopies.

[para 51] Section 93(6) of the Act states that the fees charged for services under the Act cannot exceed the actual costs of services. The Public Body argues:

According to the Merriam-Webster dictionary, the definition of “actual” means to be precise, and not merely possible or imagined. In this vein, the WCB submits that the “actual” cost of photocopying a record goes beyond the physical cost to produce it.

Order F2013-10 does note [para 86] that a public body improperly estimated the photocopying fees when it included rates of employee time, but also that a public body could charge for photocopying at a rate of up to 25 cents per page if “... its material costs, overhead or disbursements actually reflect that amount.”

To suggest that there is not a cost related to the fact that there is an actual person involved in the production of the photocopies, whose time and effort is being utilized, in an environment (with overhead costs) that houses the machines and individuals, would seem to suggest that what is being requested is not the precise cost, but merely a “possible” amount, that is not, then, based in actual fact.

Accordingly, the WCB submits that the cost of \$.25 per page does reflect our actual cost.

[para 52] The Public Body's argument seems to be that if a cost can be characterized as an actual cost, it may be charged to an applicant. However, the only reference to actual costs in the FOIP Act and Regulation is section 93(6), which prohibits fees *above* actual costs. The Regulation provides further guidance regarding which services may be included in assessing fees. In other words, the Act does not necessarily permit a public body to charge a fee for every cost to the public body that can be characterized as an actual cost.

[para 53] Further, the adjudicator in Order F2013-10 did not find that there is no cost associated with "an actual person involved in the production of the photocopies." Rather, the adjudicator determined that the services provided in the Regulation for which fees may be charged do not include costs associated with that labour. He stated:

In my view, labour costs may not be included in a public body's charge for photocopying. While other items set out in the Schedule to the Regulation are expressed as an hourly rate, the cost for producing a paper copy of a record is not. This suggests to me that the charge to make photocopies is intended to account only for the physical or material costs. I also note that it is very inconsistent, and therefore contrary to the intent of the Schedule, for a public body to charge a maximum of \$27.00 per hour for other services, yet charge \$50.00 per hour for photocopying.

[para 54] I agree with the adjudicator's interpretation in Order F2013-10, that labour costs associated with producing copies of records are not among the activities for which fees may be assessed. Accordingly, I do not accept the Public Body's rationale for charging 25 cents per page for photocopying records.

[para 55] The Public Body provided the following breakdown of costs associated with photocopying records:

Paper: \$0.00884 per page
Photocopier cost
 Black and white (cost for machine, toner, parts, maintenance, and lease):
 \$0.0249 per page
 Colour Copy (cost for machine, toner, parts, maintenance, and lease):
 \$0.195 per page
Occupancy Costs (for photocopier room): \$0.0004555 per page
Power to run photocopier: \$0.00023 per page
Staff cost to process copies: \$0.0126638 per page

Total (black and white): \$0.04685 per page
Total (colour copies): \$0.2169 per page

[para 56] The Public Body further stated:

These costs are based on processing 3600 pages per hour, which is only an estimate. The calculation of processing 3600 pages per hour is lower than what

the actual amount of time would be, as you would also have to factor in the time to sort, staple, and organize the pages once categorized.

[para 57] I understand that the Public Body can only estimate the time taken per page for photocopying. In my view, 3600 pages per hour (one page per second) is reasonable. It is not clear to me why organizing the photocopies would affect this time, as those activities seem to be caught under preparing and handling the record for disclosure (section 13(1)(e) of the Regulation), which is calculated on a per hour basis (and is not a service for which fees may be charged when processing a request for personal information).

[para 58] Omitting the fee associated with staff costs, the remaining costs for producing black and white photocopies appear to be reasonable (although the Applicant has provided me with a price list from Staples Canada, which indicates that it charges \$0.03 for black and white copies and \$0.19 for colour copies). The Public Body has stated that the request has not yet been processed so it is not known whether any colour copies are required. It seems reasonable that at \$0.17 difference between colour and black and white photocopies, only those records that must be in colour would be copied in colour, especially for large requests. (The Public Body estimates 3820 responsive pages for the Applicant's request; the difference in costs between colour and black and white copies would amount to \$649.40, which is a significant amount).

[para 59] The Public Body's calculations excluding staff costs come to \$0.034 for black and white copies, and \$0.20 for colour copies. This seems to be a reasonable rate for the Public Body to use in estimating and charging fees for services.

[para 60] The Applicant has questioned why the Public Body can charge for the cost of equipment, electricity, labour and facilities when the cost to manage his injury claim is already paid by the employers (presumably the Applicant is referring to WCB premiums). As noted above, the Applicant has chosen to make an access request for information over and above his claim file (which has already been provided to him by the Public Body, free of charge). Therefore, the fees associated with access requests under the FOIP Act apply.

V. ORDER

[para 61] I make this Order under section 72 of the Act.

[para 62] I uphold the Public Body's decision not to waive the fees for access.

[para 63] I order the Public Body to recalculate the fee estimate using the amount for providing photocopies as calculated in paragraph 59.

[para 64] I order the Public Body to provide a new estimate to the Applicant of the total fees based on the foregoing.

[para 65] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator