

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2014-03

January 21, 2014

ALBERTA ENERGY

Case File Numbers F6344, F6383

Office URL: www.oipc.ab.ca

Summary: The Applicant, who is a representative of the Wildrose Party, requested records under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) from Alberta Energy (the Public Body) relating to the creation of the Critical Transmission Review Committee (CTRC) and its mandate. The Applicant also made a request for records relating to the drafting of the CTRC's report entitled, "Powering Our Economy".

The Public Body located responsive records and required the Applicant to pay fees for the records. The Applicant asked to be excused from paying the fees on the basis that the records related to a matter of public interest. The Public Body denied the request for a fee waiver.

The Adjudicator decided that the records relate to a matter of a public interest. She also determined that it was appropriate in the circumstances to reduce the fees to zero. The Adjudicator ordered the Public Body to refund the fees it had charged in relation to one access request, and to begin processing the Applicant's second request.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 72, 93

Authorities Cited: AB: Orders 2000-008, F2003-011, F2006-032, F2013-10

I. BACKGROUND

[para 1] The Applicant, who is a representative of the Wildrose Party, requested records under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) from Alberta Energy (the Public Body) relating to the creation of the Critical Transmission Review Committee (CTRC) and its mandate. The CTRC is a committee that was struck by the Government of Alberta to review the issue of north-south transmission lines. The Applicant also requested all records relating to the drafting of a report by the CTRC entitled: “*Powering Our Economy*”.

[para 2] The Public Body located responsive records. The Public Body estimated the fees for responding to his access request for records relating to the creation of the committee to be \$1226.92. The Applicant narrowed the scope of his access request to exclude duplicate records and the Public Body reduced its fee estimate to \$538.44. This access request has not been processed (case file F6383).

[para 3] The Public Body estimated the fees for responding to the access request for records relating to the drafting of the report to be \$502.55. Once the Applicant paid a deposit, the Public Body processed the request. The Public Body recalculated the total fees once it processed the access request and reduced them to \$441.18 (case file F6344) .

[para 4] The Applicant requested that the Public Body excuse the fees under section 93(4) of the FOIP Act on the basis that the records relate to a matter of public interest.

[para 5] The Public Body denied the Applicant’s requests. The Applicant requested review by the Commissioner of the Public Body’s decisions to refuse to excuse the fees.

[para 6] The Commissioner authorized a mediator to investigate and try to settle the matter. As this process was unsuccessful, the matter was scheduled for a written inquiry.

II. ISSUES

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

Issue B: If the Applicant should not be excused from paying all or part of a fee, did the Public Body properly estimate the amount of fees in accordance with section 93 of the Act and the Regulation?

III. DISCUSSION OF ISSUES

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

[para 7] Section 93 of the FOIP Act authorizes the head of a public body to require an applicant to pay fees. Section 93(4) of this provision authorizes the head of a public body to excuse an applicant from paying all or part of a fee in certain circumstances. Section 93 states:

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.

(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

(3) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fee before providing the services.

(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.

(4.1) If an applicant has, under subsection (3.1), requested the head of a public body to excuse the applicant from paying all or part of a fee, the head must give written notice of the head's decision to grant or refuse the request to the applicant within 30 days after receiving the request.

(5) If the head of a public body refuses an applicant's request under subsection (3.1), the notice referred to in subsection (4.1) must state that the applicant may ask for a review under Part 5.

(6) The fees referred to in subsection (1) must not exceed the actual costs of the services.

[para 8] In Order F2006-032, the Director of Adjudicator set out a set of factors and questions to be considered when determining whether fees should be excused on the basis that a matter relates to the public interest. She said:

The first set of criteria (numbers 1 to 3) is relevant to decide if a record "relates to a matter of public interest":

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?

The following additional factors may be relevant to decide if a waiver is warranted on grounds of fairness:

1. If others have asked for similar records, have they been given at no cost?
2. Would the waiver of the fee significantly interfere with the operations of the public body, including other programs of the public body?
3. Are there other less expensive sources of the information?
4. Is the request as narrow as possible?
5. Has the public body helped the applicant to define his request?

[para 9] The Applicant set out in his request for an inquiry the basis for his view that the records relate to a matter of public interest. He stated:

I request an inquiry in regards to file #F6344 and #F6383. I believe the public body and the investigation conducted by the OIPC led to an inappropriate denial of our public interest fee waiver request.

The Critical Transmission Review Committee is of undoubted public interest in my opinion. The committee was formed due to public outrage at the process of selecting new transmission lines. As the CBC reported, "Controversy over the proposed power lines has been swirling for years."

The CTRC, upon creation, invited dozens of stakeholder groups including municipalities, universities, the Alberta Chambers of Commerce, and others[...]

As proof of public mobilization due to the power line issue, Responsible Electricity Transmission for Albertans was created. The membership is over 9200 and is only three years old.

[...]

I would add a fairness argument for excusing the fees. While there were numerous records, there was little information contained in the records. It would be unfair to pay for records that showed little or no information.

As guided by the public interest criteria listed in Order F2006-032, I believe our request for a fee waiver does in fact meet the three criteria outlined. First, our request for records will contribute to the public understanding of a matter or issue that is of concern to the public. The transmission line issue has been of public interest since the introduction of Bill 50. Since Bill 50, the government has undone the more unpopular elements of Bill 50 with The Electric Utilities Amendment Act (also known as Bill 8) because it “removes this authority and requires all future transmission infrastructure projects to go through a full needs assessment process before the Alberta Utilities Commission.” Grassroots organizations like RETA have also been created in response. The amount of public dollars involved should also be a relevant factor. Two of the lines have been estimated to cost \$3 billion. I would further add that the integrity of the report created by the CTRC has been questioned, with some calling it a “whitewash”.

The Applicant supplied articles from the Winnipeg Free Press and the CBC to support his statements.

[para 10] In his submissions to the Public Body, the Applicant stated:

It is clearly in the public interest that an opposition party gain access to the necessary records to determine whether there was any interference from the government or other interested actors in the committee’s report. Requesting the drafts of the report was the best initial means we could think of to do this.

[para 11] In turn, the Public Body argues that the records requested by the Applicant do not relate to a matter of public interest. It states:

It is ADOE’s [Alberta Department of Energy] position that the applicant’s stated public interest is actually a private interest and not a significant public interest and therefore does not constitute a matter of public interest. ADOE submits that the Applicant’s record access request, which amounts to a forensic audit of the CTRC’s drafting of the report, would be of marginal benefit or interest to the public.

Moreover, even if this were to be seen as a matter of public interest, the records he is requesting would not inform the public interest. The Applicant has asked for all records related to the drafting of the Critical Transmission Review Committee report titled, “Powering Our Economy”.

Furthermore, the ADOE submits that the Applicant did not provide sufficient evidence to show a public interest in the records he requested, and thus ADOE is not able to exercise its discretion under s. 93(4)(b) to grant the fee waiver.

The Applicant in the Attachment to their Request for Inquiry dated December 20, 2012, stated that the “The Critical Transmission Review Committee is of undoubted public interest in my opinion.” Further, the Applicant then questions the integrity of the CTRC and the validity of the process used by the CTRC in drafting its recommendations, and holds these concerns out as an

issue of public interest, justifying a waiver of the fee assessed to the Applicant in providing documents requested by the Applicant.

The ADOE submits, however, that the Applicant has failed to identify an issue of sufficient public interest that would justify a waiver of the fee and passing the burden of payment on to the taxpayer. Moreover, even if the alleged concerns about the integrity and the process used by the CTRC are a matter of public interest that justifies considering a waiver of the fees, this public interest does not relate to the records the Applicant is requesting and the requested records would not in any case “clear the air” concerning the Applicant’s allegations. Applying the framework from Order F2006-032 of this case shows that a waiver of the fees is not justified given these circumstances [...]

[para 12] I turn now to the application of the factors set out in Order F2006-032.

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?

[para 13] As set out above, the Applicant requested records relating to the creation of the CTRC and records relating to the drafting of a report by the CTRC entitled: “*Powering Our Economy*”.

[para 14] “*Powering the Economy*”, which is posted on the Public Body’s website, explains the mandate of the CTRC in preparing the report in the following terms:

In December 2011, the Alberta Government struck a committee to review the issue of critical north-south transmission lines. Specifically, the committee was charged with examining the reasonableness of the Alberta Electric System Operator forecasts, its selection of High Voltage Direct Current (HVDC) technology, and the timing of any required north-south transmission reinforcement.

The Alberta Government also requested that industry and community stakeholders be consulted on the need for changes to Cabinet powers for critical transmission infrastructure projects detailed in the *Electric Statutes Amendment Act, 2009* (formerly Bill 50).

[para 15] The Government of Alberta prepared and published a response to this report, entitled: “*Investing in our economy: north-south corridor transmission reinforcement: Alberta response to the Critical Transmission Review Committee Report*”. This response document is posted on the Public Body’s website. The response document indicates that the Government of Alberta reviewed and accepted each of the recommendations of the CTRC. These recommendations included a proposal for legislative amendment and options to mitigate transmission rate increases to consumers.

[para 16] The Applicant submitted media articles that are critical of the conclusions and recommendations that are contained in “*Powering the Economy*”. For example, a letter published in the Winnipeg Free Press dated December 17, 2012, written by an economist at the Fraser Institute, states:

In spite of the availability of lower-cost alternatives, the committee agreed with the operators’ proposal, the Redford government accepted the committee’s recommendation, and AltaLink and ATCO Electric are now in the throes of planning to commence construction.

Unfortunately, the committee's recommendation was not based on careful analysis. In fact, the recommended construction will result in overbuilding transmission lines at considerable and unnecessary expense to Alberta electricity consumers. For this reason, further work should be put on hold until a cost-effective solution is identified.

[para 17] It appears that the purpose of the CTRC report was to make recommendations that would potentially result in legislative amendment, the construction of power lines, and rate changes to energy consumers. These recommendations affect all Albertans, given their potential impact on legal structure, land use, the environment, and the costs of energy to users. That the Government of Alberta accepted and implemented the CTRC's recommendations as set out in the report highlights the public impact of the report.

[para 18] The articles submitted by the Applicant establish that there is public debate regarding the CTRC's conclusions and recommendations.

[para 19] The Public Body argues the following:

The Applicant in this case has made allegations of improprieties by the CTRC. However, the Applicant has failed to provide an indication that any such impropriety actually occurred. Rather, the Applicant relies on an article by the CBC, which states a lawyer representing a group, which does not agree with the CTRC's report, claimed that the report was a "whitewash". The ADOE submits the Applicant fails [to] show however, that this is proof that impropriety occurred within the CTRC.

The Applicant further goes on to state that there was a great deal of secrecy and innuendo around Bill 50, but provides no concrete examples of any such subterfuge, and fails to make a connection between the alleged subterfuge, and any of the alleged improprieties attributed to the CTRC and more importantly, how this links to the requested records.

The Applicant has failed to provide sufficient evidence that the public interest "issue" he has raised, namely allegations of impropriety against the CTRC, are supported by evidence or are part of a real and legitimate public concern. On this basis, the Applicant has failed to satisfy the conditions required to justify a waiver of fees assessed for producing documents under the [Applicant's] FOIP request.

[para 20] The Applicant does challenge the integrity and independence of the CTRC report. He uses the word "improprieties" in his fee waiver request to the Public Body and it appears from the context provided by his other arguments in that request, that the Applicant was concerned that the CTRC report may not have been impartial. However, the Applicant's primary concern, which he expressed in his request for an inquiry, and the concern reflected in the newspaper articles he reproduced in support of his request, is that the CTRC report may be incomplete, in the sense that alternative courses of action may not have been adequately addressed. Given the importance of the subject matter to Albertans, (the use of land for transmission lines, the delivery of energy to Albertans, and the costs of energy) and given that the Government of Alberta has adopted the recommendations from the CTRC report, the Applicant believes that it is in the public interest to ensure that the CTRC report adequately addressed the issues the CTRC was struck to address. He has therefore requested records relating to the creation of the CTRC

and its mandate, and records relating to the creation of the report in order to generate debate regarding the conclusions of the CTRC.

[para 21] In my view, any records responsive to the Applicant's access request will serve to inform public debate regarding the conclusions reached by the CTRC and the recommendations it made. The request for records regarding the creation and mandate of the CTRC will inform public debate as to the scope of the CTRC's mandate i.e. the extent of its discretion to research and evaluate alternative courses of action other than those recommended in its report. The request for records relating to the creation of the report will inform public debate as this will allow the public to know the extent to which the CTRC researched and evaluated the options it presented in its report. It will also enable the public to know whether the CTRC considered other courses of action. Given that the CTRC report resulted in amendment to legislation and the construction of power lines, and could possibly have the result of affecting rates paid by consumers, I find that the CTRC report is a matter of public interest and that the records requested by the Applicant would contribute to the public's understanding of whether the CTRC report adequately addressed the issues the CTRC was struck to address, and whether striking the CTRC was an appropriate mechanism to address the issues that were put before it. Therefore, I find that the first criterion listed in Order F2006-032 is met in this case. I note that impropriety need not be shown or demonstrated for this criterion to be met.

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?

[para 22] In his request to the Public Body for a fee waiver, the Applicant indicated that his purpose in obtaining the information was the fact that he is a representative of the official opposition. He stated:

Should there be any improprieties uncovered, the Official Opposition caucus would certainly make the government accountable.

[para 23] The Public Body does not challenge the Applicant's position that he is seeking the records to further the interests of the Official Opposition, as opposed to private interests. Rather, the Public Body argues that there is no evidence before me that the Applicant intends to disseminate the information. It states:

The Applicant's comments on this point are ambiguous at best. Even if the chance of dissemination was relatively high, such a determination in this case would not be useful as a public interest has not been established. The Applicant stated in his Request for Inquiry, in the context of disclosure of the requested records, that "should there be any improprieties uncovered, the Official Opposition Caucus would certainly make the government accountable". This statement is not an assurance that the records disclosed would ever be disclosed to the public, because:

1. There is no assurance the Applicant or the Wildrose Caucus would take any steps to inform the public.
2. It will be the Applicant and the Wildrose Caucus that would decide what amount to "an impropriety" and they may choose to release only information related to what they find to be

impropriety. The ADOE argues that any sincere promise to disseminate the released records would involve disclosing the entirety of the records to public scrutiny.

3. Further, the Applicant has not stated what would happen if no “impropriety” were discovered, and provides only cursory assurance in their Request for Inquiry dated December 20, 2012 that they made their request with the intent of general dissemination.

On the Applicant’s Request for Inquiry, the Applicant changed their position, stating “we made the request with the intent of general dissemination”. However, this position is not supported by any description of how the records would be disseminated for public review, and is inconsistent with what was stated in the Applicant’s prior Request for Review. Further, it is worth noting that the ADOE is not attempting to stop the dissemination of records it should disclose as a result of the Applicant’s request. Rather, the ADOE submits that it is not appropriate to waive these fees where the dissemination of such records is at best uncertain.

ADOE submits that this factor is at best neutral, but ADOE submits that on the balance it appears to weigh against a finding that the records relate to a matter in the public interest.

[para 24] I am satisfied that the Applicant is not seeking the records to further his own private interests, but seeks to obtain the records so that the official opposition may hold the government to account should the records establish that there is reason to do so. The Applicant is not in a position to state categorically whether the records will be disclosed publicly or not, given that he has not yet been given access to the records he requested regarding the creation of the CTTC and its mandate. However, at the very least, the records will be made available to the Wildrose Party for its use in debate in its capacity as Alberta’s official opposition.

[para 25] In my view, the issue of whether an applicant intends to disseminate information is not in itself a factor weighing for or against disclosure, but is a question that it may be necessary (but not always) to ask when determining whether disclosure would serve a private or public interest, and the evidence regarding the requestor’s intent in obtaining the information is ambiguous or unclear. For example, if a requestor seeks to obtain information for personal gain, the requestor may intend to keep the information for his or her benefit; however, a requestor who seeks information for public benefit may have the intent of making the information publicly available in some way if it serves a public benefit.

[para 26] A requestor may use information to further the public interest, without disseminating the entirety of the information. For example, the requestor could review the information in order to make effective arguments in relation to a matter of public interest. The requestor might not necessarily disseminate all of the information in such a case, but it could not be said that the requestor was not using the information to further a matter of public interest.

[para 27] The Applicant seeks the information in this case to ensure that the Official Opposition may review the information and hold the government to account if it decides that the information it has requested justifies doing so. An applicant need not make assurances that all the records will be made public to meet the requirements of the second factor; the applicant need only have a purpose, in requesting the records, that furthers the public interest. As the Applicant’s purpose in obtaining the records is to shed light on a

matter that I have found to be a matter of public interest, I find that the Applicant is motivated by public concern, rather than private interests, for the purposes of the second factor.

If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government?

[para 28] The records the Applicant has requested are about the process by which the Government of Alberta made decisions regarding transmission lines and legislative amendment. The question becomes whether the records will contribute to open, transparent, and accountable government.

[para 29] The Public Body argues:

Do the records contain information that will show how the Government of Alberta or a public body reached a decision?

The records requested may contain information about how the CTRC reached the conclusions provided in its report. However, given that the consultation process was public, with submissions accessible through the Internet, and held in public forums.[*sic*] It is therefore uncertain that these records would provide any further insight into how the CTRC reached its decisions.

Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?

As per the above, the Applicant argues the records requested might be desirable for the purposes of subjecting the activities of the CTRC to public scrutiny. However, what is very uncertain is whether these records could contribute any further to this cause, given that a large part of the CTRC's process is already publicly available, and the uncertainty that these records will be publicly disseminated on disclosure.

Will the records shed light on an activity of the Government of Alberta or a public body that have been called into question?

The CTRC report was drafted based upon the public submissions, available on a public website, as well as presentations that were held in open forums. In fact, one of the directives and deliverables of the CTRC was to make the discussions public. Whether disclosure of these records would shed any further light on an activity of the government is therefore very uncertain.

Further, the Applicant's claim that there is secrecy and innuendo surrounding Bill 50 is only opinion, without support by facts. The CTRC initiative is simply an activity that is related to Bill 50, and such arguments do not speak to the scope of the Applicant's request. There is only a minimal correlation between the allegations of subterfuge with respect to Bill 50 and the argument for consideration for a fee waiver on the basis of public interest.

[para 30] As noted above, the Applicant seeks the records to obtain information about the way the Government reviewed the need for transmission lines in the province and made legislative changes. If the Applicant obtains the records that are the subject of request for review F6383, the Applicant will learn more about the processes by which the CTRC was established, and the extent to which the CTRC was independent. The records

the Applicant has requested regarding the creation of the report shed light on the way in which the CTRC arrived at its conclusions and recommendations.

[para 31] The Public Body acknowledges that the requested records may provide more information as to how the CTRC arrived at its conclusions; however, it argues that the fact that public consultation formed part of the process by which the CTRC's conclusions and recommendations were developed creates uncertainty as to whether the records requested by the Applicant would shed *additional* light on the process. I disagree that the public consultation aspect of the process creates such uncertainty. If it had been the case that the CTRC simply adopted the public submissions it received as its own conclusions then that argument could possibly be made. However, the CTRC report itself indicates it received submissions that expressed views that were contrary to the conclusions at which it ultimately arrived. In my view, the requested records will serve to provide more information about how the CTRC arrived at its conclusions and recommendations than is currently publicly available.

[para 32] The requested records would also be desirable for the purpose of subjecting the activities of the Public Body to public scrutiny. In this case, the activities in question are decisions to build transmission lines across the province, decisions that may affect consumer energy rates, and decisions to amend legislation. As the records will provide more information about how these decisions were made, the requested records will serve to subject the actions of the Public Body to public scrutiny.

[para 33] As noted above, the Applicant submitted newspaper articles critical of the CTRC's conclusions and recommendations. The CTRC report itself acknowledges that it received the views of individuals who were opposed to the creation of a north-south transmission line as part of its consultation process. The Applicant is not seeking public scrutiny of acts of subterfuge, as the Public Body suggests, but of the process by which the CTRC made recommendations that affect all Albertans. I find that there is sufficient evidence before me to find that the conclusions of the CTRC have been called into question to some degree, and that the records will shed light on those conclusions. I note, furthermore, that it is not necessary that all the criteria listed in Order F2006-032 be met in order to find that a matter is of public interest, and that impropriety need not necessarily be suggested or shown to make a matter of interest to the public.

[para 34] For the purposes of the third part of the test, I find that the requested records are about a process by which the government made a decision, and that the records will enable the Applicant and the opposition to learn more information about that process. As a result, the requested records contain information that will serve to promote the principle of open, transparent, and accountable government.

[para 35] As I find that all three factors in the test set out in Order F2006-032 are met, it follows that I find that the records relate to a matter of public interest. I turn now to the question of whether the Applicant should be excused from paying all or part of the fees.

Should the Applicant be excused from paying all or part of the fees?

[para 36] The Applicant seeks to have all the fees excused. The Public Body asks that in the event I find that the records do relate to a matter of public interest, that I return the matter to the Public Body “for a proper exercise of discretion regarding the fee waiver”.

[para 37] I note that in Order F2003-011, former Commissioner Work excused payment of all the fees associated with processing records where he found the public interest engaged by the topic of the access request.

[para 38] In Order F2013-10, the Adjudicator decided that the Applicant should be excused from paying half the costs of processing the access request. He said:

I find that not all of the records requested by the Applicant relate to the matter of public interest established by him. I have explained that there is a public interest in knowing the details of the alleged misconduct of the former Superintendent, whether and when the Public Body became aware of it, and the manner in which the Public Body dealt with it. However, only a portion of the requested records, which I estimate to be 50%, will contain the foregoing information. I suspect that much of the requested correspondence, although it may be connected or tangential to the matters raised by the Applicant, will not really shed any light on the former Superintendent’s alleged misconduct or the Public Body response to it. I suspect that there will be a lot of relatively mundane or insignificant correspondence.

[para 39] I agree with the Adjudicator’s reasoning in Order F2013-10. In my view, it is necessary to consider whether all the records that have been requested would serve to shed light on the matter that has been found to be in the public interest when deciding the extent to which the fees should be excused. If only some of the records would shed light on the matter in question, then the fees should be excused only in relation to those records.

[para 40] In this case, the evidence supplied by the Public Body at Tab P of its submissions establishes that the Applicant narrowed his access request at the suggestion of the Public Body so as to exclude records that would be duplicative or only tangentially related to his access request. I am satisfied that the Applicant narrowed his requests so that only those records that would shed light on the process by which the CTRC arrived at its conclusions, and the process by which the CTRC and its mandate were established, would be responsive.

[para 41] Another question relevant to the issue of whether fees should be reduced in whole or in part, is whether the information is already publicly available. If the same information, or similar information that could serve the Applicant’s purposes, is already publicly available at a lesser cost, then it may not be justifiable to reduce the fees, even though the records address a matter of public interest. In this case, the final CTRC report itself is publicly available, but the information the Applicant is seeking does not appear to be so. Certainly, the Public Body has not pointed to information that has been made publicly available that would be responsive to the Applicant’s access request and would

serve to shed light on the matters the Applicant argues should become the subject of public debate.

[para 42] As I find that all the records responsive to the Applicant's access request are likely to shed light on a matter of public interest, and as I find that making an access request appears to be the only way by which the Applicant may gain access to the information, I have decided that the fees should be reduced to zero.

[para 43] If the decision to refuse a fee waiver becomes the subject of an inquiry, the Commissioner or her designate may, under section 72(3)(c) of the Act, confirm or reduce a fee. This means that the Commissioner or her designate may not only determine whether a public body properly exercised its discretion, but may also render a new decision. This point is made in order 2000-008, in which the hearing officer, writing on behalf of former Commissioner Clark, said:

In most cases, where the Commissioner notes a deficiency, he would order the public body to reconsider its decision. However, the remedy in section 68(3)(c) [now 72(3)(c)] of the Act, which allows the Commissioner to substitute his decision for that of the head of the public body under section 87(4) [now 93(4)], remained unchanged after the May 19, 1999 amendment. Section 68(3)(c) states:

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;

Consequently, I conclude that the Commissioner or his designate may still make a "fresh decision" on fees under section 87(4). The words in the appropriate circumstances can be interpreted very broadly to give the Commissioner a great deal of discretion when deciding to confirm or reduce a fee or order a refund. This would include, but is not restricted to, situations where new evidence is presented by an applicant at an inquiry that was not available to the public body at the time of its decision regarding the fee waiver.

[para 44] Order 2000-008, and subsequent orders of this office addressing fees, conclude that the Commissioner has the authority to make a fresh decision regarding the fees to be required under section 93.

[para 45] In this case, I have decided that it is appropriate to exercise my authority under section 72(3)(c) and to make a fresh decision to reduce the fees to zero, as all the evidence before me supports doing so. I say this because the records that are, or will be, responsive to both access requests, will serve to shed light on a matter I have found to be of public interest. This case is distinguishable from Order F2013-10 in that *all* the records responsive to the Applicant's access requests do or will relate directly to the matter of public interest. As discussed above, the records that are the subject of case file F6383 will reveal something about the processes by which the CTRC was established, and the extent to which the CTRC was independent. The records the Applicant requested in relation to case file F6344 regarding the creation of the report shed light on the way in which the CTRC arrived at its conclusions and recommendations. Any records responsive to the access requests will serve to shed light on the process by which the Government of

Alberta reviewed the need for transmission lines in the province and the need to make legislative changes.

[para 46] Given that I find that it is appropriate to waive *all* the fees relating to the two access requests, there is no room for the further exercise of discretion by the Public Body and I will not return the matter of fee waiver to it for reconsideration.

Issue B: If the Applicant should not be excused from paying all or part of a fee, did the Public Body properly estimate the amount of fees in accordance with section 93 of the Act and the Regulation?

[para 47] I have already found that the Applicant should be excused from paying all of the fees, above. As a result, it is unnecessary to address this question. However, if I am wrong that the Applicant should be excused from paying all the fees, it would be necessary for me to answer this question before the fees required by the Public Body could be confirmed.

IV. ORDER

[para 48] I make this Order under section 72 of the Act.

[para 49] I reduce the fees for processing the Applicant's access requests to zero, and order the Public Body to refund the fees the Applicant has already paid in relation to request for inquiry F6344. The Public Body must begin processing the records relating to request for inquiry F6383 and provide any responsive records to the Applicant without charge.

[para 50] I 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.

Teresa Cunningham
Adjudicator