

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2014-11

February 14, 2014

TOWN OF PONOKA

Case File Number F6324

Office URL: www.oipc.ab.ca

Summary: An individual made a request to the Town of Ponoka (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for records relating to a local improvement tax on 38th Street in the Town. The Public Body provided records, as well as written answers to questions posed by the Applicant in his request.

The Applicant requested review by this Office of the adequacy of the Public Body's search for responsive records. The Applicant also requested a waiver of the fees the Public Body has charged under section 93 of the Act.

The Applicant argued that more responsive records ought to exist. The Public Body stated that it conducted a thorough search for records, and also requested records from the contractor who worked on the project. The Adjudicator found that the Public Body had conducted an adequate search for records.

The Applicant argued that the fees for his request ought to be waived in the public interest. The Public Body argued that the records related to a private dispute between the Applicant and the Public Body. The Adjudicator found that the records responsive to the Applicant's request do not relate to a matter of public interest.

The Adjudicator upheld some of the fees charged by the Public Body, but ordered the Public Body to refund part of the fees relating to photocopying costs, the time taken to prepare the records, and costs associated with obtaining records from the contractor.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10, 55, 72, 93, *Freedom of Information and Protection of Privacy Regulation*, Alta Reg. 186/2008, s. 14, Schedule 2, *Municipal Government Act*, R.S.A. 2000, c. M-26, ss. 394, 395.

Authorities Cited: AB: Orders 96-002, 97-06, F2002-014, F2006-032, F2007-029, F2009-017, F2009-034, F2012-16, F2013-10.

Other Source Cited: *FOIP Bulletin* (Number 1/Revised March 2009); Access and Privacy, Service Alberta.

I. BACKGROUND

[para 1] An individual made a request dated April 10, 2012 to the Town of Ponoka (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for records relating to a local improvement tax on 38th Street in the Town. The Public Body responded to the Applicant on June 13, 2012, providing records, as well as written answers to questions posed by the Applicant in his request.

[para 2] On July 16, 2012, the Applicant requested review by this Office of the adequacy of the Public Body's search for responsive records. The Applicant also requested a waiver of the fees the Public Body has charged under section 93 of the Act.

[para 3] The Commissioner authorized a portfolio officer to investigate and attempt to settle the matter; however, this was not successful in resolving the issues, and the matter was set down for inquiry.

II. ISSUES

[para 4] The issues in this inquiry, as set out in the Notice of Inquiry, dated October 15, 2013, are:

1. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?
2. Did the Public Body properly calculate the fees for services?
3. Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?

I will consider the issues in the following order:

- 1. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?**

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

3. Did the Public Body properly calculate the fees for services?

III. DISCUSSION OF ISSUES

Preliminary issue – scope of inquiry

[para 5] In his initial submission, the Applicant directed several questions to the Public Body regarding various construction projects to which the Applicant's request related. In his rebuttal submission, the Applicant asked why the Public Body had not addressed these questions in its submission. The issues in this inquiry are whether the Public Body met its obligations under section 10 of the FOIP Act when it responded to the Applicant's access request, whether the fees for the request should be waived, and whether the fees were properly calculated. This is not a forum for the Applicant to ask for further information from the Public Body.

Preliminary issue – section 55(1)

[para 6] In its initial submission the Public Body requested authority to disregard requests from the Applicant's representative, under section 55(1) of the FOIP Act. Public bodies can request the Commissioner to authorize the public body to disregard an access request under section 55(1) of the Act. However, the Public Body appears not to have done this when it received the Applicant's request and the Public Body has clearly already responded to the request at issue. Further, authority to disregard a request must be granted by the Commissioner; I do not have the delegated authority to authorize the Public Body to disregard a request. If the Applicant's representative makes an access request to the Public Body in the future that the Public Body believes is repetitious or systematic (section 55(1)(a)) or frivolous or vexatious (section 55(1)(b)) the Public Body may ask the Commissioner at that time for authority to disregard that request.

1. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

[para 7] Section 10(1) of the Act states:

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.

[para 8] The duty to assist includes responding openly, accurately and completely, as well as conducting an adequate search. The Public Body bears the burden of proof with respect to its obligations under section 10(1), as it is in the best position to describe the steps taken to assist the Applicant (see Order 97-006, at para. 7).

[para 9] There are two components of an adequate search:

- a) Every reasonable effort must be made to search for the actual record requested; and
- b) The applicant must be informed in a timely fashion about what has been done. (See Order F2009-017, at para. 53)

[para 10] In Order F2007-029, the Commissioner described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records:

In general, evidence as to the adequacy of a search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted - for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

[para 11] The Public Body provided an affidavit sworn by the employee of the Public Body who was responsible for planning the search for responsive records. The employee explained the different steps taken to respond to the Applicant's request, including a planning meeting to determine what type of records might be responsive to the request, and where these records would be located. The search included looking through records in the Public Body's physical storage locations, searching electronic records, talking with other Public Body employees who may have direct knowledge of information related to the request, and identifying records that might be provided by third parties. The employee also stated that she was tasked with conducting the search because she is responsible for conducting cost calculations for the local improvement project and she has knowledge of the Public Body's record-keeping system.

[para 12] With respect to physical files, the employee states that she searched all relevant files in the Public Body's possession; she states:

I reviewed every heading, and flipped through every folder with headings indicating possible relevance to the "Local Improvement", "Qualicare Subdivision", "42 Avenue", or "38 Street". Specifically I searched:

- a. The Town's main storage room located in the basement of Town Hall. I looked through each cabinet for any references to the Request;
- b. All of the files in [the former Director of Engineering and Development]'s former office including a particular review of the tabs on every file for any reference relevant to the request;

- c. All of the binders of materials which I compiled in the course of my duties related to the Local Improvement;
- d. The Town's accounting records and Local Improvement records;
- e. Capital accounts payable files. Relevant invoices were pulled out for disclosure; and
- f. Utilities system records to determine if water connections for specific properties were installed.

[para 13] Electronic databases, emails and documents were searched with the following keywords: "Local Improvement", "Qualicare", "Descon Engineering", "38 Street", "42 Avenue", as well as the names of relevant property owners.

[para 14] The employee also states in the affidavit that this process was repeated upon receipt of additional questions from the Applicant.

[para 15] The employee states that several questions posed by the Applicant in his request cannot be answered (and presumably responsive records cannot be found) because in some cases the answers or records do not exist. For example, the Applicant's request included the Local Improvement Plan of the Public Body for the relevant project. The Public Body states in its submissions that this Plan consists of a number of separate documents and letters, which have all been disclosed to the Applicant. The Applicant argues that these records do not meet the requirements of a Local Improvement Plan under the *Municipal Government Act* (MGA). In the affidavit, the Public Body employee states "[the Applicant] has continued to insist that he be provided with a copy of the Local Improvement Plan based on what appears to be his assumption that the documents he was provided couldn't possibly be what he was looking for."

[para 16] The Public Body has provided me with a copy of the documents that comprise the Local Improvement Plan. It appears to me that the various documents address the requirements of a local improvement plan under sections 394 and 395 of the MGA (although I do not presume to make a decision as to whether the Public Body has complied with the MGA). The Applicant has not provided evidence, beyond his assertion that the records provided to him do not meet the requirements of the MGA, to give me reason to believe that the Public Body has additional records responsive to this part of the Applicant's request. I accept that the records provided to the Applicant satisfy his request for the local improvement plan.

[para 17] The Applicant has argued that various other records relating to the improvement projects should exist. He argues that there are discrepancies between the actual work done for the projects and information in the records provided to him, as well as discrepancies between the work done and costs charged to the residents of the area. It may be that there are discrepancies in the records and information provided, or that the records provided by the Public Body are not as clear, complete, or accurate as the Applicant desires. However, this does not necessarily indicate that the Public Body has failed to provide all relevant records to the Applicant. Having reviewed the records and other information provided by the Public Body to the Applicant, as well as the submissions of both parties, I do not believe that the Public Body has failed to search for

or locate responsive records. I find that the Public Body conducted an adequate search for records, as required by section 10(1).

[para 18] I also find that the Public Body responded openly, accurately and completely to the Applicant. The Public Body provided, along with the responsive records, an explanation of the records. The Public Body also answered questions posed by the Applicant (although the FOIP Act does not require this).

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

[para 19] The Applicant requested a fee waiver, stating that the records relate to a matter of public interest (section 93(4)(b)).

[para 20] 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.

...

Do the records relate to a matter of public interest?

[para 21] In Order 96-002, former Commissioner Clark stated two general principles that apply in determining whether to grant a fee waiver in the public interest (at p. 16):

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

[para 22] 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 23] 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).

Will the records contribute to the public understanding of a matter or issue that is of concern to the public?

[para 24] The Public Body states that the records provided to the Applicant have been made available to the public through public proceedings, previous requests of the Applicant, public meetings and follow-up communications from the Public Body, as well as public statements made by the Applicant’s representative. The Public Body also states:

It is also clear that the current request is connected to the relationship between [the Applicant’s representative] and the Town, which has been ongoing for a considerable period of time...

Based on an examination of the Requests and overall conduct of [the Applicant’s representative] over the years, the Town submits that it is clear [the Applicant’s

representative] is motivated by personal interest and does not qualify under the Act for a waiver of fees.

[para 25] The Applicant states that “the information we have acquired reveals deliberate mismanagement in this entire matter.” I note that the Applicant has made previous access requests to the Public Body for records relating to the local improvement project, and has received records in response to those requests. The Applicant seems to argue that previous access requests reveal costs associated with the local improvement that should not have been charged to residents. Records provided to me by the parties indicate that the Public Body agreed to refund some costs that had been charged to residents for the local improvement. The Applicant’s concerns regarding costs associated with the local improvement therefore seem to have some validity.

[para 26] The Public Body argues that while some of the Applicant’s concerns may qualify as being in the public interest, “based on the repetitive and systematic nature of [The Applicant’s representative]’s conduct, and the frivolous nature of many of his questions [The Applicant’s representative] has brought his conduct outside of the ‘public interest’ as contemplated under the Act and is therefore liable for the fees assessed by the Town.”

[para 27] I do not agree that the fact that the Applicant (or his representative) has made repeated requests for information related to the improvement project necessarily means that the records responsive to this request do not relate to a matter of public interest. If each successive request elicited more information, each request may be in the public interest (assuming the records related to a matter of public interest).

[para 28] In this case, the Public Body states that the Applicant (with his representative) has made at least one prior request for information about the local improvement project. The Applicant’s representative seems to have made multiple requests of his own, and has also sent the Public Body many letters containing various questions about the project. The Applicant and his representative appear to be part of a group of residents of the Town who are concerned with the cost of the local improvement project. The Applicant provided me with three letters from other residents in support of his fee waiver request.

[para 29] The Public Body has provided me with previous correspondence it has sent to the Applicant or his representative, transcripts of meetings with residents and the town council regarding the local improvement project costs, decisions of two Local Assessment Review Board hearings (one of which involved the Applicant and his representative) regarding the project, as well as an appeal of an Assessment Review Board under the MGA. It is clear that the local improvement project has been a concern for several residents of the area for several years.

[para 30] Many of the items of the Applicant’s access request are related to information that the Public Body has previously provided to the Applicant, his representative, or the public more generally. Some items involve only the Applicant (for example, he requested documentation regarding a water connection to his home). Some

items do not appear to be related to the local improvement project (for example, a request for documentation showing how many fire hydrants were required but not installed in another subdivision in 1989). Other items are for specific invoices from contractors and costs involved with certain parts of the local improvement project.

[para 31] The Applicant's submissions make it clear that the Applicant disagrees with the manner in which the Public Body determined what costs associated with the project would be paid by the residents as part of the local improvement. While I can understand the Applicant's (and other residents') concern about the improvement project, from the submissions and the records themselves, I cannot see how the records responsive to this request would contribute to the public understanding of the issue. The Applicant states that records received in response to past requests have shown \$200,000.00 worth of "overcharges"; he also states

Through our FOIP request and the Town's response June 13, 2012, we have uncovered a systematic attempt to cheat 38th St. property owners on this local improvement. We still do not have all the information but from what we have obtained it appears that there is a scam on every item.

[para 32] However, I cannot see from the submissions or records evidence of cheating or "scams" as the Applicant claims. Further, it seems to me that the information requested by the Applicant in the current request has already been provided to the Applicant or otherwise addressed by the Public Body (i.e. the Public Body has searched and told the Applicant that the requested record does not exist). Although the Applicant has provided many details about various costs and charges relating to parts of the project, as well as information about materials used (or not used) for the project, he has not provided me with an explanation of how the records responsive to his request would contribute to the public understanding of the issues surrounding the local improvement plan. I find that this factor weighs against a fee waiver in the public interest.

Is the applicant motivated by private or public interests?

[para 33] The Public Body argues that the Applicant's representative is motivated by his own private interests. I agree that the Applicant's (or his representative's) allegations of corruption and "scams" indicates a personal element to his requests. However, there is also a public aspect, as the concerns about the costs of the project affect not only the Applicant but also other residents of his neighbourhood. It is clear from the submissions that several residents have concerns about the cost of the project, and I have no doubt that the Applicant would share the information he obtained with these other residents. I find that this weighs in favour of a fee waiver in the public interest.

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

[para 34] An applicant must present convincing evidence or arguments that a concern exists or likely exists (Order F2006-032, at para. 26).

[para 35] I have discussed above the matters that have led up to the Applicant's request. It may be that the Applicant's original request, which he states "uncovered" costs that the Public Body later acknowledged ought not to have been borne by the residents of the neighbourhood, related to a matter of public interest. However, in my view, this does not mean that any subsequent request relating to that same project is a matter of public interest. I do not have sufficient reasons to conclude that the records responsive to this current request will show how the Public Body reached particular decisions relating to the project or will shed light on the activities of the Public Body. I find that this factor weighs against a fee waiver in the public interest.

[para 36] The Applicant has not satisfied me that the requested records are a matter of public interest such that the cost of processing his request should be passed on to taxpayers. Therefore I confirm the Public Body's decision to refuse to grant the Applicant a fee waiver.

3. Did the Public Body properly calculate the fees for services?

[para 37] The Public Body had estimated fees of \$588.00 for responding to the Applicant's request. By letter dated May 8, 2012, it asked the Applicant to pay half of this amount, as permitted by section 14(1) of the FOIP Regulation. The Applicant chose to pay the full amount on May 10, 2012. No further fees were assessed, and none of the fees were refunded.

[para 38] The employee of the Public Body who was responsible for planning the search for responsive records filled out Access Request Processing Summary forms for each item of the request (which were provided with her affidavit); these forms include information about where the employee searched for records, what records were found, and how long the search took.

Was the time taken to search for, locate, and prepare records reasonable?

[para 39] The employee states in her affidavit that the search for records (detailed above) took approximately 20 hours. However, 8.5 hours of search time was charged to the Applicant. Having reviewed that Access Request Processing Summary forms, I am satisfied that the time taken to search for each item is reasonable.

[para 40] The Public Body also charged for 3 hours for preparing and handling the records for disclosure. In both cases the Public Body charged the maximum rate allowable under Schedule 2 of the FOIP Regulation (\$27/hr). By letter dated January 27, 2014, I asked the Public Body to explain why it charged this rate. I also asked what activities were involved in preparing and handling the records for disclosure. The Public Body responded by letter dated February 10, 2014. It stated that preparing the records included copying records, organizing, and placing the pages into a binder.

[para 41] Schedule 2 of the FOIP Regulation permits a public body to charge a fee for photocopying records, on a per-page basis. In Order F2013-10, the adjudicator confirmed

that labour costs cannot be incorporated into the fee for photocopying (see paras. 79-86). It is also not appropriate to incorporate the time taken to photocopy into the time taken to prepare the records. I note that FOIP Bulletin #1, prepared by Service Alberta, states “Preparing and handling a record for disclosure does not include the time taken to produce a copy of the records for the applicant.” Although this publication is not binding on me, it is consistent with the reasons given above for concluding that the time taken to photocopy records is not a service for which a fee can be charged.

[para 42] Past orders of this office have included activities such as severing (but not reviewing), inserting the relevant exception where information is severed, collating etc. as activities for which fees may be charged under “preparing and handling.” Organizing the records and placing the records into a binder are activities that fall under “preparing and handling.” However, the Public Body has stated that it provided only 45 pages of records to the Applicant; as the Public Body cannot charge for the time taken to copy the records, it is not reasonable to charge for three hours of work to organize 45 pages of records and place them into a binder. In my view, 0.5 hours is a more reasonable amount of time to perform this task. I will order the Public Body to reduce the fee charged to the Applicant accordingly.

Do the fees reflect the Public Body’s actual costs?

[para 43] The Public Body charge the Applicant the maximum \$27/hr for searching for, locating and preparing records. The Public Body states that this is below its actual costs, as the salary ranges for the individuals who performed these functions are \$35-\$45/hr and \$27-\$30/hr. I agree that it was reasonable for the Public Body to charge the maximum amount for these services.

[para 44] The Public Body states that it charged the Applicant \$25 for photocopying records. However, the Public Body has also stated that it provided 45 pages of records to the Applicant. This amounts to \$0.56 per page, which far exceeds even the maximum allowable charge under Schedule 2 of the Act. I asked the Public Body to calculate its actual costs for photocopying. The Public Body responded that:

As part of its photocopy machine lease agreement, the Town pays its supplier \$0.08/page. The cost of paper, toner, and electricity are not included in that amount. The Town estimates its actual cost for photocopying to be \$0.12/page.

[para 45] This is a high amount in comparison to some public bodies; for example, in Order F2013-10, the public body determined its actual costs to be \$0.045 per page for photocopying, including paper, leasing costs and power (see para. 79). In Order F2012-16 the public body calculated a per-page cost of \$0.0635, based on the cost of paper and related supplies, as well as the rental fee for the photocopier (see para. 22). However, I accept the Public Body’s estimate as reasonable, given the rate it pays its photocopier supplier. Using this per page cost, the photocopy fees come to \$5.40 for 45 pages of records. I will order the Public Body to refund the money to the Applicant, accordingly.

[para 46] The Public Body charged \$50 for 11 pages of drawings (plans). These drawings had been printed by the contractor, who had charged the Public Body \$50 for doing so. The Public Body argues:

It was necessary to incur this charge in responding to the Applicant's request, since the size and format of the drawings requires specialized printing equipment which the Town does not possess.

[para 47] I understand the Public Body to be saying that it may have had its own copies of these drawings, but it did not have the capacity to make copies for the Applicant; therefore, it asked the contractor to print copies. The drawings appear to be plans for the project; Item 3 of Schedule 2 of the FOIP Regulation permits a public body to charge the actual cost for providing copies of plans or blueprints. Although this seems to be a high cost for 11 pages of drawings, I accept the Public Body's assertion that it did not have the capacity to make its own copies of these records.

Costs charged by the contractor to search for records

[para 48] The Public Body states that its Director of Engineering and Development is no longer employed with the Public Body and so the Public Body could not answer some of the Applicant's questions. The Public Body therefore decided to request information from the contractor who worked on the project. The contractor provided information and records at a cost of \$787.50 to the Public Body. \$50 of this cost was for printing pre-design and as-built drawings, discussed above.

[para 49] Although the Public Body did not provide me with the total cost assessed for the Applicant's request, it states that the total fees charged to the Applicant include the 8.5 hours for search time, 3 hours for preparing the records, \$25 for photocopying and \$50 for the drawings from the contractor; this comes to \$385.50. The Public Body also states that the costs charged to the Applicant include the amount charged by the contractor to provide information to the Public Body; however, the Public Body does not intend to request further fees from the Applicant to cover that entire cost. As the Applicant has paid \$588.00, the cost for the contractor's search passed on to the Applicant is \$202.50.

[para 50] The FOIP Act permits an applicant to request records in the custody or control of a public body. "Custody" refers to the physical possession of the records. In Order F2002-014, former Commissioner Work found that the word "control" refers to the authority of a public body to manage, even partially, what is done with a record. He further stated that the right to demand possession of a record or to authorize or forbid access to a record indicates that a public body has control of that record.

[para 51] In this case, the Public Body clearly did not have possession of the information provided by the contractor. By letter dated January 27, 2014, I asked the Public Body the following:

Please also tell me if, under the terms of the contract or otherwise, the contractor was obligated to provide the Public Body with a copy of the information requested by the Public Body? Would any of this information in the contractor's possession have been in the Public Body's control?

[para 52] The Public Body responded that the contractor was not obliged to provide the requested information to the Public Body. Based on the Public Body's statements, I conclude that the records provided by the contractor were initially neither in the Public Body's custody nor its control.

[para 53] The Public Body states that "the Town considers it was necessary to pay for the Contractor's services in order to fully respond to the Applicant's Request." Although it is commendable that the Public Body sought to provide as much information to the Applicant as possible, the records provided by the contractor were not subject to the FOIP Act. A public body may only charge the fees as set out in the FOIP Regulation for responding to a request under the FOIP Act; these fees only apply to records in the public body's custody or control. The Regulation does not address, or permit charges for, amounts a Public Body must pay in order to *obtain* custody and control of records.

[para 54] The Public Body could have offered to obtain the records from the contractor at the Applicant's expense, outside of the FOIP Act. Unfortunately, in this case the Applicant did not have an opportunity to decide whether he would be willing to pay for records from the contractor; he believed he was paying to obtain records in the custody or control of the Public Body.

[para 55] I find that the cost incurred by the Public Body to obtain the records from the contractor cannot be passed on to the Applicant by the Public Body. That said, the Public Body may charge the appropriate fee to photocopy the records for the Applicant that it had obtained.

[para 56] I have found that the 8.5 hours charged for searching for and locating records was reasonable, and that a reasonable amount of time to prepare the records for disclosure, as described by the Public Body, is 0.5 hours. I have accepted the Public Body's cost of \$0.12/page for photocopying, as well as the \$50 cost for printing the drawings. The total fee for the Applicant's request is $9\text{hr} \times \$27/\text{hr} + \$0.12 \times 45 + \$50 = \298.40 . I will therefore order the Public Body to refund the difference between this amount and what the Applicant paid the Public Body ($\$588.00 - \$298.40 = 289.60$).

IV. ORDER

[para 57] I make this Order under section 72 of the Act.

[para 58] I find that the Public Body met its duty to assist the Applicant.

[para 59] I find that the Applicant should not be excused from paying the fee based on public interest. Therefore I confirm the Public Body's decision to refuse to grant the Applicant a fee waiver.

[para 60] I order the Public Body to refund \$289.60 of the fees paid by the Applicant, per paragraph 56.

[para 61] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator