ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-40

October 11, 2016

ALBERTA ENERGY

Case File Number F8713

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Summary: The Applicant, who is an investigative journalist with the CBC, made an access request to Alberta Energy (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). She requested records "related to all audits performed by independent accounting firms, assessing bioenergy emissions."

The Public Body assessed fees of $519 and denied the requested fee waiver.

The Adjudicator reviewed the fees that had been assessed. She disallowed the labour costs the Public Body had charged for scanning records on the basis that the Fee Schedule in the Freedom of Information and Protection of Privacy Regulation (the Regulation) does not permit a public body to charge labour costs for producing copies of records. She also disallowed a fee that the Public Body had charged for putting the records into chronological order, as the Applicant had not requested that it do so. The Adjudicator was unable to confirm that the Public Body's fees for severing information from the records were properly calculated based on the evidence before her, as it appeared that the Public Body had included the costs of reviewing records in the amount calculated. Finally, the Adjudicator found that she was unable to confirm the hourly rate the Public Body had used in its calculation of its search costs, as it indicated that this number was "inclusive" of benefits, but it did not explain how it had arrived at this number.

The Adjudicator decided that it was appropriate to grant a fee waiver in the public interest, as the records would contribute to the public understanding as to whether the Public Body has corrected the deficiencies noted by the Auditor General in two different reports, and whether the bioenergy program is serving to reduce emissions, and therefore, whether it is spending public money on this program appropriately. The Adjudicator determined that in all the circumstances, it was appropriate to waive the fees and she ordered the Public Body to refund the fees.

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 A.R. 56/2009 section 11, Fee Schedule

Authorities Cited: AB: Orders 2000-008, F2006-032, F2010-004, F2010-036, F2013-10, F2013-10, F2013-27 **BC:** Order 01-24

I. BACKGROUND

[para 1] The Applicant, who is an investigative journalist, made an access request under the FOIP Act on behalf of the Canadian Broadcasting Corporation (CBC) to the Public Body. In her access request, she stated:

> I am seeking all records […] related to all audits performed by independent accounting firms, assessing bioenergy emissions.
>
> I have attached a newspaper article mentioning one such audit for your reference. To clarify, my requests includes – but is not limited to – the audit findings, as well as all related communications.

[para 2] The Applicant attached an article dated July 11, 2013 from the Calgary Herald entitled "Biofuel incentives questioned; Programs may have increased emissions". The article detailed a report of Alberta's Auditor General regarding the government's biofuel incentive program. The article states:

> "There is a risk that the department has awarded, and will continue to award, grants to facilities that generate more emissions on a life cycle basis than producers of nonrenewable energy products," the auditor general states in his report, which was released on Tuesday. "Without an assessment of the environmental impact of these projects, the department cannot know if the projects contribute to Alberta's climate change strategy. The environmental cost of some projects may exceed their benefits. "
>
> The report also raised concerns that the department didn't require grant recipients to report their emission reductions, didn't specify how emissions should be measured, and didn't retain the reasons why it recommended some projects be approved over others.

[para 3] The Applicant requested a fee waiver on the basis that the records she requested relate to a matter of public interest.

[para 4] The Public Body denied the Applicant's request for a fee waiver. It required the Applicant to pay $519 in fees. It charged 4 hours at a rate of $24 per hour for

searching for records, 15 hours at $27 per hour for preparing records, $8 for providing a flash drive and $10 for postage and shipping.

[para 5] The Applicant paid the fees, but requested that the Commissioner review the Public Body's decision to deny a fee waiver.

[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.

[para 7] Once I reviewed the initial submissions of the parties, I asked the Public Body to provide a breakdown and explanation of the time it took to locate records and to prepare them.

II. ISSUES

Issue A: Did the Public Body properly calculate the amount of the fees payable in accordance with section 93 of the Act and the Regulation?

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

III. DISCUSSION OF ISSUES

[para 8] Section 93 of the FOIP Act authorizes public bodies to charge fees. It 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 9] Section 93(1) of the FOIP Act authorizes a public body to require the payment of fees as provided in the Regulation. However, section 93(6) prohibits a public body from requiring fees in excess of the actual costs of the services for which it requires the payment of fees. The Fee Schedule in the Regulation sets out the services for which a public body may require fees to be paid and the maximum amounts that may be charged for providing these services.

[para 10] The Fee Schedule authorizes fees to be charged "for searching for, locating and retrieving a record" at a maximum rate of $6.75 per ¼ hour, and fees "for preparing and handling a record for disclosure" at a maximum rate of $6.75 per ¼ hour." A public body may also charge the actual costs to it "for producing a copy of a record by any process or in any medium or format not listed in sections 3 to 5 above".

[para 11] Section 11 of the Regulation explains when the fees in the Fee Schedule are to be applied, and prohibits fees from being charged for reviewing records.

> *11(1) This section applies to a request for access to a record that is not a record of the personal information of the applicant.*
>
> *(2) An applicant is required to pay*
>
> > *(a) an initial fee of $25 when a non-continuing request is made, or*
> >
> > *(b) an initial fee of $50 when a continuing request is made.*
>
> *(3) Processing of a request will not commence until the initial fee has been paid.*

> *(4) In addition to the initial fee, fees in accordance with Schedule 2 may be charged if the amount of the fees, as estimated by the public body to which the request has been made, exceeds $150.*
>
> *(5) Where the amount estimated exceeds $150, the total amount is to be charged.*
>
> *(6) A fee may not be charged for the time spent in reviewing a record*. [my emphasis]

[para 12] In Order F2010-036, I interpreted section 11(6) of the Regulation in the following way:

> In my view, section 11(6) likely reflects a concern that reviewing records may take significantly more or less time depending on the nature of the access request, the nature of the records, and the identity of the reviewer. Some records may take more time to review, while some reviewers may take longer to review records than others. As including time spent reviewing records could vary dramatically between reviewers, and potentially be viewed as arbitrary, it may be that cabinet decided to preclude public bodies from charging fees for reviewing records for that reason.
>
> The Policy Manual distinguishes the time spent making decisions about severing from the act of severing itself. In my view, deciding what to sever from a record, by reading the record to assess its contents, cannot be meaningful separated from the process of reviewing records. In order to sever information from a record, one must review the information it contains to determine whether what is being severed is consistent with the decision to sever. This in itself is reviewing, as set out in section 11(6) of the Regulation.
>
> Although the Public Body has not explained what contributed to the need to take 21 hours to prepare records for disclosure, I infer that it likely included time spent reviewing records in order to determine what to sever from them in the total. I draw this inference, as the actual time needed to remove records and to redact names, as was done in this case, and to handle the records prior to shipping them to the Applicant, would reasonably be expected to take significantly less time than 21 hours. As a result, it appears that the Public Body included the time spent reviewing records to decide what to redact from them, when it calculated the fees for preparing and handling the records.
>
> In my view, the time spent redacting information from the records, if one does not count the time spent reviewing the information in the records, would be reasonably expected to take significantly less time than 21 hours. In addition, the Public Body has not explained what activities were included in preparing and handling records, or how the time was distributed for these activities. I am therefore unable to confirm the fees charged by the Public Body.

[para 13] In its supplementary submissions, the Public Body addressed my questions regarding the activities it had included as "records preparation time" and the amount of time it had spent in each activity. It also addressed my questions regarding the amount of time it had spent searching for records.

[para 14] It explained the search it conducted in the following terms:

> The search, locating and retrieving time as reported by the business units was 11.05 hours for

1349 pages of records. Specifically, Communications reported 30 minutes to conduct their search and locate 17 pages of records that were copied for the FOIP Unit, and the Electricity and Sustainable Energy Division reported 5 hours of search time to locate 1332 pages of records that were copied for the FOIP Unit. The remaining business units within Alberta Energy reported a search time totaling 5.75 hours, however no responsive records were located and the FOIP Unit did not charge the Applicant for the 5.75 hours.

The charge rate for the search component of the FOIP Request was $24.00 per hour which is less than the maximum amount permitted to be charged for search time under Schedule 2 of the *Freedom of Information and Protection of Privacy Regulation* (the "Regulation).

The charged search rate of $24.00 per hour was established by taking the lowest salary (inclusive of benefits) that is paid to an employee of Alberta Energy, which is less than the maximum allowable of $27.00 per hour. The majority of Alberta Energy employees are paid more than $24.00 per hour, as the actual costs to Alberta Energy for search time are far greater than what is charged to the Applicant especially considering that Divisional Advisors, Managers, Assistant Directors and Directors are required to conduct searches and are paid significantly more than $24.00 per hour.

The Applicant requested to have duplicates and email strings removed from the records on September 16, 2014 (refer to Exhibit" A" to this Supplemental Submission), which was after the business units had already completed their search of the records. As a result of the Applicant's request, the file was reduced to 385 pages and the records search time was reduced to 4 hours, charged at $24.00 per hour. This reflects the final fee charged to the Applicant of $96.00 for search time.

[para 15] The Public Body explained the time it charged the Applicant for preparing records as follows:

The redacting process was fairly substantial in this FOIP Request and required great focus to ensure consistency and accurate redaction of information identified to be exempted. There were 172 pages containing redacted portions of information. 207 pages fully disclosed, and 6 pages fully redacted (section 27 of the Act). The sections of the Act applied were 16(l)(a)(ii)(b)(c)(iii), 17(1)(4)(g)(i)(ii), 24(1)(a)(b) and 27(l)(a)(b)(ii)(c)(ii).

In the opinion of the FOIP Unit, this FOIP Request in particular was significantly more difficult to prepare and handle than an average FOIP request because of the nature of the records and the vast number of third party business information and other exemptions under the Act that were required to be applied. As explained in Alberta Energy's Initial Submission, the records consist of audits to Schedule "A" forms provided by producers of the BPCP and are highly technical in nature and contain substantial amounts of third party business information from producers as well as PWC. In the FOIP Unit's experience, this FOIP Request required significantly more redactions than any other average FOIP request with similar numbers of records.

The preparation and handling time included the following activities:

Removing duplicate records from the original 1349 pages as discussed with the Applicant, organizing the records in chronological order, and preparing for scanning - 5 hours

Scanning the records is required in the preparation of records to allow the public body to sever information from a record, while allowing an applicant access to the remainder of the record. Using software to apply redactions streamlines the process, enables the redaction time to be reduced and provides a reader-friendly format for the Applicant.

The scanning process was also required to respond to the Applicant's request to receive the records in electronic format – 1/2 hour;

Formatting the records (adding page numbers, headers and footers) - 1/2 hour;

Redaction of information - 8 hours. This was a significantly large task based on the volume of third party information and other exemptions under the Act which were identified as necessary to be applied to the information. This process included:

a. In Adobe, locate the information identified to be redacted, using Adobe tools, select the information for redaction through drawing a box around the information (word, phrase, line, paragraph or page);

b. Type, stamp or copy the relevant section(s) of the Act in the right band margin; and
c. When necessary search for other instances of identical information and select the information by drawing a box around it and type, stamp or copy the relevant section(s) of the Act in the right hand margin.

This exercise is repeated several times on many pages resulting in a few hundred redaction processes included in the records.

Preparing and loading on a flash drive the response letter, exemption listing, section references of the Act and final release package for the Applicant -1 hour.

[para 16] The Public Body stated in its surrebuttal:

The Applicant alleges that it was improper for Alberta Energy to charge fees for removing duplicate records, organizing the records in chronological order, and preparing the records for scanning. The Applicant further argues that it was inappropriate to levy fees for *5* hours of preparation and handling time related to these tasks.

Alberta Energy is duty bound under the Act to take reasonable measures to assist an applicant Section 10(1) of the Act requires the head of a public body to make "every reasonable effort to assist applicants and respond to each applicant openly, accurately, and completely." To avoid breaching this legal duty, the public body is required to prepare a comprehensive documentary record in a manner and form that complies with the applicant's request and furthers the intention of the Act.

The preparation and handling fees charged by Alberta Energy were assessed in line with Alberta Energy's section 10(1) duty to assist the Applicant. The Applicant ultimately requested that the records resulting from her FOIP Request be disclosed and provided on a USB flash drive. To appropriately aid the Applicant and fulfill its duties under the Act, Alberta Energy made reasonable efforts to compile, present, and arrange the records in a way that allowed Alberta Energy to provide a user-friendly format ensuring completeness and which enables the Applicant to conveniently review the records.

The removal of duplicate records is necessary in every FOIP request received by the FOIP Unit where an applicant has requested the removal of duplicates and actually reduces the amount of work and fees charged to an applicant overall, and is not considered "additional work" caused by an applicant, as the Applicant alleges. The business units within Alberta Energy are tasked to search for and retrieve responsive documents regardless of duplication in order to ensure that all responsive records are provided to the Applicant, and that none are discarded as duplicates by a business unit prior to sending the records to the FOIP Unit for processing. Removal of duplicate records can only be done after all records have been received by the FOIP Unit.

> To avoid the accidental exclusion of documents, resulting in an applicant receiving an incomplete record, all documents supplied by the business units […] must be processed by the FOIP Unit. This task cannot be delegated to the business units, as the process of discarding duplicate records is time consuming as Alberta Energy must ensure that no records are incorrectly excluded. This process is time intensive but unavoidable to ensure the Applicant receives all of her responsive records.
>
> Alberta Energy did not assess excessive fees to the Applicant. The 5 hour preparation and handling fees charged to the Applicant were far less than the actual time required to complete this work by the FOIP Unit. Alberta Energy, in an effort to be reasonable, fair, to ensure the fees would not present a barrier to the Applicant in exercising her right to access information, and to assist the Applicant, significantly reduced the actual time it took to complete this task – which was closer to 15 hours - down to the 5 hours charged.

[para 17] The Applicant argues, in response:

> On pg. 3 of its supplementary submission, the public body says the preparation and handling time for the records included:
>
> "Removing duplicate records from the original 1349 pages as discussed with the applicant, organizing the records in chronological order, and preparing for scanning - 5 hours."
>
> It is my understanding the public body cannot charge preparation and handling fees for documents that were not responsive to my request, and which I did not receive. In fact, one of the main reasons an applicant will eliminate duplicate records and incomplete email strings is to reduce processing fees and time, and it is what I did in this case.
>
> While I appreciate Alberta Energy's efforts to provide the documents in chronological order, this was not a requirement of the public body under the Act. I was not aware I was paying for this service, nor was I ever asked if I would like to receive the records in chronological order.
>
> The public body says the redaction process "required great focus" and "was significantly more difficult to prepare and handle than an average FOIP request because of the nature of the records and the vast number of third party business information and other exemptions under the Act that were required to be applied."
>
> With respect, these audits were uniform in both information and presentation. Once the public body had determined the information that needed to be redacted on one audit - and the reasons behind those redactions - it essentially had a road map for how to redact all of the audits.
>
> As the public body states, less than half of the responsive records had to be redacted at all; 207 pages were fully disclosed and so therefore required no severing.

I turn now to the question of whether the Public Body calculated the fees in accordance with the requirements of the FOIP Act and Regulation.

Fees for searching

[para 18] The Public Body has charged the Applicant for 4 hours spent searching for records at a rate of $24 per hour "inclusive of benefits".

[para 19] The Public Body does not describe the benefits that were included in this calculation so that I could be satisfied that they are properly included in the Public

Body's costs for searching for records responsive to the Applicant's access request. Moreover, the Public Body has not explained the process by which it arrived at the $24 per hour figure. While it is open to me to require further particulars from the Public Body as to how it arrived at the $24 per hour figure, given that I find below that it is appropriate to waive the fees in the public interest, I have decided there is no benefit to doing so.

[para 20] While I find that the time the Public Body charged for searching appears to be reasonable, and I would also find it reasonable had it charged for time spent searching for duplicates, and for time spent searching for records where no responsive records were located, assuming it provided evidence that the places it searched were likely repositories of responsive records, I am unable, on the evidence before me, to confirm the rate it charged for searching for records.

Fees for Scanning, Preparing for Scanning, Loading Records on a Flash Drive

[para 21] In Order F2013-10, the Adjudicator rejected the argument that a public body may include its labour costs for producing a record. He reviewed the Fee Schedule and 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.
>
> Moreover, in the case of many access requests, it would not take much time to photocopy records, in any event. Once the records have been prepared and handled for disclosure – which includes severing and collating the pages, and which are services for which a public body can charge – it would normally just be a matter of feeding the bundle into a photocopying machine and making the copy for the applicant in a matter of minutes. If it takes a more significant amount of time, it is my view that the public body must bear the associated labour costs. My interpretation is reinforced by the fact that item 3 of the Schedule to the Regulation authorizes a charge "per page", again without any reference to time, which is comparable to the references to "$5.00 per disk" and "$2.00 per slide" in item 4 of the Schedule. For instance, even if it took a Public Body a lengthy amount of time to download material from a variety of places onto a computer disk, it can only charge a maximum of $5.00, which small amount is surely not intended to cover any of the labour costs. I conclude that the authorized charges in relation to producing a copy of a record – in whatever format or medium – may account for the costs to create the physical or material object only.

[para 22] In Order F2013-27, the Adjudicator applied the reasoning of the Adjudicator in Order F2013-10. She stated:

> The Public Body also disagreed with the adjudicator's conclusion in Order F2013-10 that labour costs could not be incorporated into the fee for photocopying. The Public Body's objections to that Order are that the Public Body takes time to ensure that records provided in response to an access request are of a high quality. I do not disagree that the time and care taken by a public body in responding to an access request is valuable and worthwhile. However, as stated in

> Service Alberta's *FOIP Guidelines and Practices Manual* (the Policy Manual), fees for processing an access request are not intended to recover all of the costs associated with that process. The Policy Manual states the following on page 72 (my emphasis):
>
> > The *FOIP Act* allows public bodies to charge fees to help offset the cost of providing applicants with access to records.
>
> The FOIP Act and Regulation set out which of the costs associated with processing an access request are to be passed on to the applicant. 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 are assessed (see particularly paragraphs 79-86 of that Order). I do not accept the Public Body's rationale for charging 25 cents per page for photocopying or printing records. I will order the Public Body to calculate its actual costs for printing records.

[para 23] The Adjudicator in that case also found that scanning records in order to apply severing software is not a service to an applicant for which fees may be charged. She said:

> The Public Body also indicates that the time needed to scan the records includes time taken to compare the paper copy with the electronic copy to ensure accuracy and quality.
>
> In my view, scanning records in order to use severing software is an internal process of the Public Body, not dissimilar to creating working copies of records when processing a request.
>
> The BC Information and Privacy Commissioner's office has drawn a distinction between the activities performed for the applicant and the activities that are performed as part of the public body's own internal processes. The adjudicator in Order F09-05 considered fees for creating working copies of records:
>
> > I accept that it will generally be preferable for public bodies to work with copies of records rather than originals. I do not however consider that a public body is providing a "service" to an applicant under s. 75(1) or s. 7 of the Regulation when it makes working copies of records. Rather it is doing so because of a choice to preserve its original records, as well as part of its routine responsibilities under FIPPA. It was not in my view appropriate for the Law Society to charge FCT a per-page fee for making working copies of records. It may only charge FCT for copies of records made for disclosure to FCT.
> > (at para. 28)
>
> The appropriateness of charging an applicant for creating working copies of responsive records has not been addressed in past orders of this office. I agree with the reasoning in the BC order cited above, that it is inappropriate to charge an applicant for creating working copies of records. Similarly, I conclude that the Public Body cannot charge the Applicant fees for the time taken to scan paper copies of the records requested by the Applicant to create electronic copies for the Public Body's severing process. (This reasoning may not apply in every case where a public body scans records – for example, where a public body scans records in order to provide electronic records at the request of an applicant).

[para 24] I agree with the reasoning of the Adjudicators in Orders F2013-10 and F2013-27. Moreover, I agree with the Adjudicator that a public body may not charge fees for its internal processes. I therefore find that scanning records, or preparing records to be scanned, in order to sever them is not a service that can be included in the costs of preparing and handling records for disclosure.

[para 25] Line 6 of the Fee Schedule authorizes a public body to charge its actual costs for producing a record by any process or any medium not otherwise referred to in the Fee Schedule. While this provision allows a public body to charge its actual costs for producing a copy of a record, "actual costs" in this context refers to the cost of creating the physical or material copy only. Line 6 is clearly intended as a "catch all" to include copies that are made of records not specifically listed in sections 3 – 5, for which only the costs of making the physical record are included, exclusive of the labour involved in doing so. There is nothing in Line 6 to suggest that Cabinet intended to expand the types of fees that may be charged in relation to records not listed in sections 3 – 5, such that a public body may charge its labour costs for records falling within line 6, when it cannot for any of the other types of records it might produce from different media.

[para 26] In addition, Line 6 of the Fee Schedule refers to the costs of "producing a copy of a record *by any process or in any medium*" [my emphasis]. In my view, the fees to which provision refers are those relating to the process followed or the medium. In this case, the cost for the flash drive, which the Public Body billed at $8.00, is the total amount that can be billed for scanning copies of records to put them on a flash drive or preparing them for scanning.

Organizing Records in Chronological Order

[para 27] I am also unable to agree with the Public Body that it may include its costs of putting the records in chronological order as a fee for preparing the records. Had it informed the Applicant that it intended to do so and explained the costs that would be associated with doing so, then, arguably, organizing the records in this way could be construed as a service, if she agreed to the Public Body's proposal. As set out in section 93, a public body may charge fees for services, but not for activities that are not services. The Applicant did not request that the records be placed in chronological order, and it is not clearly the case that the Public Body's decision to organize them in this way would provide a service to the Applicant. While it may be helpful in some instances to put information in chronological order, in many cases, it may not assist the applicant at all or contribute to the significance of the records for the applicant. Potentially, if the applicant were more interested in the subject matter of the records, or the source of the records (i.e. the branch of government that produced them), changing the order of the records from the order in which they were originally received from different program areas into chronological order might detract from the applicant's purpose in making the access request.

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Fees for removing duplicate records

[para 28] The Public Body indicates that the time spent for searching for responsive records originally included the time spent for searching for duplicate records and came to 5.3 hours (11.05 hours – 5.75 hours spent searching for records without locating any). However, once the Applicant requested that it remove duplicates from the records in order to reduce the costs of processing the access request, the number of records was

reduced from 1349 pages to 385 pages and the Public Body reduced the time charged for searching to 4 hours at a rate of $24.00 per hour.

[para 29] The Public Body then charged fees for removing the duplicate records under the category of "preparing and handling the records for disclosure". It does not state how much time was spent removing duplicates, but combines the time spent in this activity with the time spent organizing records in chronological order and preparing them for scanning, for a total of five hours charged at a rate of $27.00 per hour.

[para 30] I have already disallowed the fees charged by the Public Body for putting the records into chronological order and scanning them. As the Public Body did not provide a breakdown of the time spent conducting these activities, I am unable to say how much time was spent removing duplicate records at the Applicant's request and I am unable to confirm the fees it charged with regard to the five hours it states was spent putting the records into chronological order, preparing them for scanning, and removing duplicates. Again, it is open to me to ask the Public Body for further particulars regarding the amount of time it spent removing duplicates; however, I have elected not to do so in this case, as I decide below that the fees should be waived in the public interest.

Severing Records

[para 31] As discussed above, the Regulation prohibits a public body from charging fees for time spent reviewing records. The Public Body asserts that no time was charged for the time it spent reviewing the records.

[para 32] As noted above, "reviewing" was interpreted in Order F2010-036 as encompassing making decisions about what to sever from a record, by reading the record to locate and / or assess the information it contains. This order also notes that in order to sever information from a record, one must review the information it contains to determine whether what is being severed is consistent with the decision to sever and that this activity is itself reviewing, within the terms of section 11(6) of the Regulation.

[para 33] From its explanation of its severing process, and the length of time it spent severing the records (8 hours) I am unable to exclude the possibility that the Public Body included time spent reviewing the records i.e. reading the records and making the decision as to what to sever from them and under what provision, in its calculation of the time spent preparing the records for disclosure.

[para 34] As quoted above, the Public Body's described its redaction process in the following way:

> a. In Adobe, locate the information identified to be redacted, using Adobe tools, select the information for redaction through drawing a box around the information (word, phrase, line, paragraph or page);
> b. Type, stamp or copy the relevant section(s) of the Act in the right hand margin; and
> c. When necessary search for other instances of identical information and select the information by drawing a box around it and type, stamp or copy the relevant section(s) of the Act in the right hand margin.

> This exercise is repealed several times on many pages resulting in a few hundred redaction processes included in the records. [my emphasis]

In its surrebuttal, the Public Body explains:

> It would be negligent of Alberta Energy to simply use one record as a model or "road map" for the next. Alberta Energy has a statutory obligation to exempt from disclosure commercially sensitive third-party information as detailed in section 16 of the Act. Redaction of third-party business information is part of the compromise between public transparency and commercial privacy which requires a high standard of care to maintain confidence in the system. Adopting the Applicant's logic would have been irresponsible of Alberta Energy and would likely result a breach of section 16 of the Act.

[para 35] The process the Public Body describes involves locating and identifying information to be removed, and making responsible decisions as to the severing of third party information to ensure confidence in the system, in addition to severing the information. This process, as it has been described, cannot be meaningfully distinguished from reviewing the records, as it appears that the process for which the Public Body has charged fees involves reviewing the records to locate information and make redactions, and to make decisions about what to redact, in addition to redacting information.

[para 36] As discussed in previous orders, a public body may charge only for the time spent removing or deleting information from a record. In other words, once a public body has decided what to remove from the record and selected this information using software, according to past orders, it may charge for the time to delete this information and to indicate what provision the information is severed. Using software as the Public Body does, this process should take seconds per redaction, and should not come to 8 hours, even to sever 385 pages of records.

[para 37] A public body may not charge for the time spent reading the record and making decisions about what to remove or under what provision, as this constitutes "reviewing" within the terms of section 11(6) of the Regulation. However, from its description of the activities for which the Public Body charged the Applicant, and the amount of time charged for severing, it appears that the Public Body may have included a charge for reviewing the records in addition to severing them. As it did not provide samples of its severing for my review, or document the time spent removing information and noting the provision of the Act it had applied, I am unable to determine the extent to which it would be authorized to charge for redacting information from the records on the evidence before me.

[para 38] Again, it is open to me to ask for further evidence of the activities involved in redacting information from the records in order to determine the appropriate amount that may be charged for fees. As I have decided that the fees should be waived in the public interest, I have elected not to do so. In the event my decision to exercise my discretion in favour of granting a fee waiver is unreasonable, it would be necessary to obtain further evidence from the Public Body regarding the time spent redacting information from the records.

Formatting the Records and Adding Page Numbers

[para 39] The Public Body states that a half hour was spent formatting the records, which included adding headers and footers and page numbers to the records. It calculated this fee using a rate of $27 per hour, the maximum in the Regulation. In my view, this charge is reasonable.

Conclusion

[para 40] To summarize, I am unable to confirm that any of the fees the Public Body has calculated, but for the $8.00 it charged for the flash stick and the $13.50 it charged for formatting the records for disclosure by adding page numbers, headers and footers. I am therefore in a position to confirm only that the Public Body was authorized to require payment of $21.50 in fees.

[para 41] As I find below that the Applicant is entitled to a fee waiver in the public interest in any event, I have decided not to ask the Public Body for further evidence and particulars to support its fee calculations.

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

[para 42] Section 93(4) (reproduced above) authorizes the head of a public body to excuse an applicant from paying all or part of a fee, if, in the opinion of the head, the record relates to a matter of public interest.

[para 43] In Order F2006-032, the Director of Adjudication 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 44] I turn now to the question of whether the records the Applicant has requested relate 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?

[para 45] In this case, the Applicant has requested the audits to explore the issue raised by the Auditor General that the Public Body lacked means for measuring whether a program on which it had spent millions of dollars was meeting its objectives. The Auditor General brought this issue to the attention of the Legislature on two occasions. Further, it was discussed in the media.

[para 46] In its initial submissions, the Public Body made the following concession:

> At most, the records would shed light only on whether a producer was quantifying and measuring [its] GHG emissions correctly in accordance with Schedule "A" and Alberta Energy's methodology – essentially whether the producer completed the form accurately and to verify whether the emissions as a result of bioenergy production is lower than that of the corresponding fossil fuel it is displacing.

[para 47] The Applicant argues:

> First of all, while it may be true that the amount of grant money a producer received was predicated on its bioenergy production and not its avoided GHG emissions, the fact remains that in order to be eligible for any grant money at all, a producer had to provide that they were under a certain emissions threshold. That threshold had to be less than the emissions produced by traditional fossil fuels.

> The audit records I requested and received compared the successful grant applicants' reported emissions reduction with their actual emissions reduction. This work, therefore, was – by the public body's own admission – not only directly related to the producers' avoided emissions, it was directly related to whether these producers should have received any money at all under this program.

[para 48] I understand the Applicant to say that the records she received do in fact shed light on the question of whether the Public Body's program resulted in a reduction in emissions and whether the participating producers were entitled to participate in the program. In essence, she argues that the records shed light on the government's handling of the bioenergy credit program. Moreover, the Public Body also acknowledges that the records shed light on these issues.

[para 49] The Applicant provided several media articles regarding the Auditor General's report. One article, published in the Edmonton Journal on November 3, 2012, states:

> Alberta paid out $42 million in the last fiscal year to a half-dozen companies to encourage bioenergy production, but five failed to file mandatory annual reports and the sixth submitted information showing it had not met program requirements.
>
> Without timely receipt and review of the reports, the energy department may lack the documentation it needs to assess whether objectives of the bioenergy producer credit program are being met, Auditor General Merwan Saher warned on Thursday.
>
> The program had a budget of $46 million in 2011-12, with essentially $42 million left unaccounted for.

The records the Applicant has requested are audits that resulted from the Public Body's implementation of the Auditor General's recommendations.

[para 50] A report entitled "Energy – Alberta's Bioenergy Grant Programs Follow-Up" prepared by the Auditor General, which the Public Body provided in its initialsubmissions, states:

> The department's guidelines require grant recipients to annually demonstrate that the bioenergy products they produced had lower emissions than those from comparable non-renewable energy products. The guidelines require that grant recipients calculate emissions on a lifecycle basis.
>
> […]
>
> In 2013 the department implemented processes to ensure that grant recipients comply with its requirement to annually demonstrate that their products result in lower lifecycle emissions than those from comparable non-renewable energy products. Our testing found these processes to be effective.

The foregoing report is from July 2014.

[para 51] The Auditor General was satisfied that the Public Body had implemented processes that would enable it to ensure compliance with its annual reporting requirements, which would, in turn, ensure that the Public Body could assess the

suitability of grant recipients for the grant program. The Applicant has requested records generated by the new process in order to report on the effectiveness of the grant program and the Public Body's handling of public funds in relation to this program.

[para 52] The Public Body argues in its surrebuttal:

> What must be examined are the records themselves - whether they relate to a matter of public interest. The Applicant cannot expand the wording of section 93(4)(b) to provide for a fee waiver if the *FOIP request* is a matter of public interest. The public interest analysis is only in respect of the records. [emphasis in original]
>
> While it may be true that a FOIP request and the resulting records from the request are both of public interest, section 93(4)(b) only provides for a fee waiver if the *records* are a matter of public interest. As reiterated in Orders 96-002 at paragraph 2l and F2013-43 at paragraph 30, section 93(4)(b) states that an applicant may be excused from paying a fee if the record relates to a matter of public interest. Consequently, the nature of the applicant (i.e. public interest group, media, Member of the Legislative Assembly) and the use to which the record is intended to be put are not direct considerations.
>
> The Applicant has made several arguments as to why her FOIP Request is a matter of public interest, but has failed to establish that *the records* relate to a matter of public interest. [emphasis in original]
>
> The records, as described in paragraphs 55 to 59 of Alberta Energy's Initial Submission, are audits to Schedule "A" forms submitted by producers in the BPCP as part of their annual reporting obligations. The records do not relate to a matter of public interest, and the Applicant's arguments regarding her FOIP request and the request being in the public interest cannot be given weight in the analysis of a fee waiver under section 93(4)(b) as the legislation only provides a fee waiver based on the contents of the record. The analysis must be done on the contents of the records, not on the nature and context of the FOIP request.

[para 53] I understand the Public Body to argue that only the content of each record is relevant to the determination to be made under section 93(4), and not the context created by the Applicant's reasons for requesting the records and the nature of the public interest raised by the Applicant.

[para 54] I recognize that there are circumstances in which an applicant may raise a matter of public interest and then request records that appear to be entirely unrelated to that interest. (See Order F2010-004 at paragraph 7). However, I disagree that the context created by an applicant's access request and supporting evidence is irrelevant to the question of whether records *relate* to a matter of public interest.

[para 55] A record in and of itself will not necessarily state that it is about a particular matter of public interest, or be created to explore such a matter. However, that does not mean that it will not contain information or data that *relates* to such a matter.

[para 56] Acknowledging the difficulty in determining when records can be said to relate to a matter of "public interest", both the Alberta and the British Columbia Offices of the Information and Privacy Commissioner have developed tests for determining when records relate to a matter of public interest. Alberta's test is set out in Order F2006-032

and reproduced above. British Columbia's test is set out in British Columbia Order 01-24. It requires the public body to do the following when it receives a request for a fee waiver in the public interest:

> 1. The head of the Ministry must examine the requested records and decide whether they relate to a matter of public interest (a matter of public interest may be an environmental or public health or safety matter, but matters of public interest are not restricted to those kinds of matters). The following factors should be considered in making this decision:
>
> (a) has the subject of the records been a matter of recent public debate?;
> (b) does the subject of the records relate directly to the environment, public health or safety?;
> (c) could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
>
> > (i) disclosing an environmental concern or a public health or safety concern?;
> > (ii) contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue?; or
> > (iii) contributing to public understanding of, or debate on, an important policy, law, program or service?;
>
> (d) do the records disclose how the Ministry is allocating financial or other resources?
>
> 2. If the head of a Ministry, as a result of the analysis outlined in paragraph 1, decides the records relate to a matter of public interest, the head must still decide whether the applicant should be excused from paying all or part of the estimated fee. In making this decision, the head should focus on who the applicant is and on the purpose for which the applicant made the request. The following factors should be considered in doing this:
>
> (a) is the applicant's primary purpose for making the request to use or disseminate the information in a way that can reasonably be expected to benefit the public or is the primary purpose to serve a private interest?
>
> (b) is the applicant able to disseminate the information to the public?
>
> It should be emphasized here that the references in para. 1, above, to the environment and public health or safety do not exhaust the scope of what may be a matter of public interest.

[para 57] The tests set out in Alberta Order 2006-032 and British Columbia Order 01-24 are very similar. However, Part 1 of British Columbia's test also assists a decision maker to answer the question as to whether the public interest is affected or benefitted by the subject matter of records when the public is not aware of the issue.

[para 58] In my view, the factors described in Part 1 of British Columbia's test assist a decision maker to answer the questions posed by Part 1 of Alberta's test.

[para 59] I note from the exhibits the Applicant provided for the inquiry that the Auditor General reported that the Public Body was not requiring sufficient documentation to enable it to determine whether the recipients of its bioenergy producer credit program (BPCP) were in fact reducing emissions, which was the ultimate object of the program and the purpose for providing grants to grant recipients. This matter was also debated in the media and in the Legislature. In other words, the Auditor General raised

the concern that the Public Body was spending millions of dollars on the BPCP without any way of determining whether this program was effective.

[para 60] The Applicant requested the audits of successful grant recipients, which contain information about their reported emissions, for the purpose of determining whether the information in these records demonstrates the effectiveness of the BPCP and whether grant recipients should have received grants.

[para 61] In my view, the records requested by the Applicant engage all four factors set out in the British Columbia test. The records relate to a matter that was the subject of public debate, and the subject matter of the records relates directly to the environment, as it contains information about emission thresholds and emissions reduction. Further, dissemination of the records can reasonably be expected to yield a public benefit by contributing to public understanding of, or debate on, an important program and disclose how the Public Body has allocated financial resources, in the sense that the records explain what kinds of projects have received grants under the BPCP.

[para 62] Turning to the question posed by the Alberta test, I find that the contents of the records will contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is, or would be, of concern to the public. If, as the Public Body argues, the purpose of the records the Applicant requested "was to ensure that the numbers and calculations provided by the producers on their GHG emissions estimates were accurate and that the producers were filling out the Schedule "A" form accurately and complying with the grant requirements", then this purpose does serve the public interest in that it informs the public that the Public Body is disbursing grant money appropriately. If the records reveal that producers are meeting the requirements of the program and that the Public Body disbursed grant money appropriately, the records relate to a matter of public interest to the same extent that they would if they demonstrated the opposite. To put the point differently, the contents of the records will contribute to the public understanding as to whether the Public Body has corrected the deficiencies noted by Auditor General in two different reports, and whether the program is serving to reduce emissions, and therefore, whether it is spending public money on this program appropriately.

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?

[para 63] The Applicant is an investigative journalist with the CBC. From her submissions, I conclude that her intention in making the access request is to disseminate the information she has received in an article that will address all the arguments and issues she has raised in the inquiry.

[para 64] The Public Body concedes that the Applicant is not motivated by private interests. However, it argues that the records she has requested will not shed light on any of the issues she has raised. It also suggests that if it were the case that the records did shed light on these issues, she would already have disseminated the information.

[para 65] As discussed above, the Public Body acknowledged that the records establish whether the producer completed the form accurately and verify whether the emissions as a result of bioenergy production is lower than that of the corresponding fossil fuel it is displacing. As these two outcomes are matters of public interest within the terms of Order F2006-032, I reject its argument that disclosing the records will not serve the public interest.

[para 66] Further, an applicant need not publish the records in their original form in order to use or disseminate the information they contain for public benefit to meet the requirements of this part of the test. Rather, a journalist, such as the Applicant, may research the issues, check facts, and gather additional information regarding the matter before publishing an article about it.

[para 67] The fact that the Applicant has not yet completed an article about the records does not mean that she will not do so. I accept that researching articles and verifying facts is not necessarily an immediate process.

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

[para 68] The Public Body argues that the records are not about the process or functioning of government. It states:

> The records are not about the process or functioning of government, nor do they shed light on the effectiveness of the BPCP. At most, they shed light on the effectiveness of a producer in filling out its Schedule "A" to the Annual Report correctly. This is not a matter of public interest.
>
> The records do not contribute to open, transparent and accountable government. At most they shed some light on the accountability of a producer to Alberta Energy under the BPCP by way of proper completion of Schedule "A" to its Annual Report and perhaps the outcome of Alberta Energy's acceptance of the Auditor General's recommendation to ensure that Schedule "A" was being completed by producers as a requirement of the producers' respective Grant Agreement and the BPCP.
>
> The records do not contain information that will show how the government as a whole or Alberta Energy reached or will reach a decision. Nor do they serve to subject the activities of the government or Alberta Energy to scrutiny. The records are verifications of how accurately a producer under the BPCP completed its Schedule "A" form. They do not contain information that demonstrates how well the BPCP is operating, nor does it contain information measuring GHG emissions reductions. At most it illustrates that the producer is in fact producing bioenergy as a requirement to continue to receive grant money under the BPCP. This is not a matter of public interest.
>
> Although the Applicant is correct in her statements about the Auditor General's criticisms and recommendations to Alberta Energy regarding the BPCP, the records at issue do not shed light on those criticisms in any substantial way other than illustrating that Alberta Energy did in fact act on the Auditor General's recommendation to have producers complete and submit Schedule "A" forms to the Annual Reports. The records do little more than show that a producer's GHG emissions were properly quantified in the Schedule "A" form, which then illustrates that a

> producer is in fact producing bioenergy as required in order to receive grant money. Again, the records do not contain information comparing GHG emissions reductions, they do not relate to a matter of public interest, and any reasonable taxpaying Albertan would not expect to bear the cost of Alberta Energy's processing of the Applicant's FOIP request of these records.

[para 69] The Applicant responds:

> […] it is in the public interest to know that in the two years after the auditor general last criticized Alberta Energy for its lack of controls over its bioenergy program, the public body only conducted audits of seven BPCP grant recipients, representing nine of the 28 grants awarded under this program.
>
> The public body said last year that reviews are planned for the remaining facilities but since March 2016 has now passed, the grant recipients have already received their full grants, despite the fact that information they provided the government about both their emissions reductions and bioenergy production may not have been entirely accurate.
>
> Alberta Energy has attempted to argue that the information in the records cannot be used for any comparative purposes. That is not true. The fact that there is not a comparison against non-renewable resources does [not] negate the fact the records' information could be compared with emissions reductions for similar projects in other jurisdictions, or with emissions for facilities' projects that use non-renewable energy sources.

[para 70] I agree with the Applicant that the records contain information that contributes to an understanding of the process or functioning of government. While the records are prepared by producers, the records are prepared in response to criteria established by government as a prerequisite to further funding. Prior to the Auditor General's report, government did not require completion of these questions as a prerequisite for receiving grant money.

[para 71] The question becomes whether the completion of the Schedule "A" form by seven companies fully addresses the concerns raised by the Auditor General, and whether the Public Body has sufficient safeguards to ensure that it is not spending money intended to reduce emissions, on projects that do not have this effect. Whether the answers to these questions are "yes" or "no", the records will shed light on the effectiveness of the BPCP, a program operated by the Public Body.

[para 72] It appears likely that taxpayers may be affected by the grants the Public Body has given to producers under the BPCP, which the Auditor General approximated at $200,000,000 from 2008 until March 31, 2012 and that there is a public interest in knowing whether there are appropriate measures in place to determine whether the program is meeting the objectives for which grants were given.

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

[para 73] 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 74] 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 75] In this case, the evidence supplied by the parties establishes that the Applicant requested that the Public Body not provide her with duplicate records, thereby saving the Public Body time spent reviewing these records, for which it cannot charge fees. I am satisfied that the Applicant narrowed her request to encompass only information that would contain information that would shed light on the question of whether grant recipients were compliant with BPCP requirements and whether BPCP grant money was properly spent.

[para 76] 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 relate to a matter of public interest. In this case, the audits in the custody or control of the Public Body are the only sources of the information the Applicant has requested.

[para 77] 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 78] 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 79] 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 80] 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 responsive to the access request 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 relate directly to the matter of public interest. As discussed above, the records that are the subject of the applicant's access request will cast light on whether the grant recipients are compliant with BPCP requirements and whether BPCP grants are given appropriately and meet the objectives and criteria of this program.

IV. ORDER

[para 81] I make this order under section 72 of the Act.

[para 82] I order the Public Body to refund to the Applicant the fees it required her to pay in relation to the access request.

[para 83] 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 this order.

_____

Teresa Cunningham
Adjudicator