

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-55

October 1, 2018

ALBERTA LABOUR

Case File Number 001023

Office URL: www.oipc.ab.ca

Summary: The Applicant requested a fee waiver for records relating to an investigation report authored by a particular OHS officer. The Public Body provided a fee estimate of \$290.25; the final fees were \$304.25. The Applicant paid the fees, and also requested a waiver of the fees on the basis that the records relate to a matter of public interest. The Public Body refused this request.

The Applicant requested a review of the Public Body's decision regarding the fee waiver, and subsequently an inquiry. The Commissioner agreed to hold the inquiry, adding the issue of whether the fees were properly calculated.

The Adjudicator found that the records do not relate to a matter of public interest such that a fee waiver would be warranted.

The Adjudicator found that the Public Body did not provide satisfactory reasons for some of the fees charged to the Applicant. The Adjudicator therefore ordered a refund of some of 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*, Alberta Regulation 186/2008, ss. 13, 14, Schedule 2.

Authorities Cited: **AB:** Orders 96-002, F2006-032, F2007-023, F2009-034, F2011-015, F2012-16, F2013-10, F2013-27, F2016-51.

I. BACKGROUND

[para 1] The Applicant made an access request to Alberta Labour (the Public Body) for “all records and investigation report OHS [officer X] made, OHS 025359715E8 for the time frame of December 9, 2014 – February 2015.”

[para 2] The Public Body provided a fee estimate of \$290.25; the final fee was \$304.25. The Applicant paid the fees, and also requested a waiver of the fees on the basis that the records relate to a matter of public interest. The Public Body refused this request.

[para 3] The Applicant requested a review of the Public Body’s decision regarding the fee waiver, and subsequently an inquiry. The Commissioner agreed to hold the inquiry, adding the issue of whether the fees were properly calculated, in the event the Public Body’s decision regarding the waiver is upheld.

II. RECORDS AT ISSUE

[para 4] As the issue relates to a fee waiver, there are no records at issue.

III. ISSUES

[para 5] The issues in this inquiry, as set out in the Notice of Inquiry, dated February 23, 2018, are:

1. Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?
2. Did the Public Body properly calculate the amount of fees in accordance with sections 93(1) and 93(6) of the Act, and the Regulation?

IV. DISCUSSION OF ISSUES

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

[para 6] Section 93 of the Act states in part:

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

...

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

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

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

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

...

[para 7] The Commissioner's jurisdiction to review decisions regarding fee waivers was described in Order F2007-023 (at paras. 23-25):

When deciding whether a public body has properly refused to grant a fee waiver, the decision-maker must look at all of the circumstances, information and evidence that exists at the time when the Public Body denied the fee waiver and also at the time of the inquiry (Order 2001-042 (para 19)). A decision-maker may consider all information and evidence at the inquiry, even if that information and evidence was not available to the public body at the time it made its fee waiver decision.

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

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

[para 8] 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? (At para. 43)

[para 9] In Order F2009-034 the adjudicator summarized the “public interest” issue as follows (at para. 73):

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

[para 10] The Applicant argues that the requested information is of public interest. He argues that the test for a fee waiver in the public interest should be that the applicant “need only prove that there is a causal connection to the areas that allow a fee waiver, safety, health environment, or in the public’s interest” (rebuttal submission).

[para 11] The Applicant’s letter to the Public Body requesting a fee waiver indicates that the requested records show that necessary maintenance was not performed on cranes used by a named company. The Applicant states that not performing this maintenance could result in serious damage to the environment and individuals. In his request for review to this Office, the Applicant also argues that this represents an imminent danger to the public, and that the public would benefit from being informed about these safety issues. With his request for inquiry, the Applicant provided some of the responsive records, which indicate that the Applicant’s employer received an order from Occupational Health and Safety for taking disciplinary action against the Applicant for refusing to operate unsafe equipment (crane).

[para 12] The Public Body argues that the responsive records relate to the OHS review of the disciplinary action taken against the Applicant. It states that the records do not contain information regarding the safe operation of the cranes more generally. Rather, it characterizes the records as being of a personal nature that “is not being the interest or concern of Albertans” (initial submission).

[para 13] The Applicant disagrees with this characterization of the records because the records show that he complained about the safe operations of the cranes (rebuttal submission).

[para 14] For the reasons that follow, I find that the Applicant has not met his burden to show that there is a public interest in the records such that the fees should be waived. The Applicant suggests that the test for public interest should merely ask if there is a “causal connection” between the records and one of the matters of public interest listed in section 93(4). It is not clear what the Applicant means by “causal connection” but the current test cited above does require a

connection between the records and a matter of public interest. In my view, that test continues to be appropriate, and I will adopt it for this inquiry.

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 15] Revealing that the Applicant complained about the improper maintenance of the cranes cannot be equated with information about the unsafe operations of cranes such that the public would have an interest in the records. The Applicant's arguments that this improper maintenance could lead to cranes tipping, and potentially causing mass casualties, explosions, and environmental damage depending on the location of the cranes is speculative. More importantly, the records do not seem to speak to any of these possibilities.

[para 16] This factor does not weigh in favour of finding a public interest in the records.

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 17] The responsive records related to a finding by OHS regarding actions by the Applicant's former employer against the Applicant; this indicates more of a personal interest in the records. The purpose of asking whether there is a conflict between the Applicant and Public Body is to help determine if the Applicant is seeking the records to in relation to that conflict, rather than for a broader, public purpose. In this case, there does not appear to be a conflict between the Applicant and the Public Body (or government more broadly), although the records may relate to a conflict between the Applicant and his former employer.

[para 18] The Applicant states that he would disclose these records to the public in order to raise awareness. That said, the Public Body states that the records were provided to the Applicant on June 30, 2015 and the Applicant has not provided any indication that he has made any of them public to date.

[para 19] Given the above this factor neither weighs in favour of, nor against, finding a public interest in the records.

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

[para 20] With his request for review, the Applicant states that "a broad segment of the general public would benefit by becoming better informed on educated on these safety issues and how Alberta OHS operations are failing the public is gross misconduct by OHS". He also notes that OHS did not send him a report on the conclusion of its investigation (presumably into his former employer).

[para 21] From the description of the records provided by both parties and the pages provided by the Applicant, it is not at all clear that the responsive records relate to how the government

functions. They show that OHS conducted a review based on a complaint made by the Applicant, but there is no indication that the records are desirable for the purpose of subjecting OHS to public scrutiny. The Applicant refers to gross misconduct of OHS, but it is not clear what actions he is calling into question.

[para 22] This factor does not weigh in favour of finding a public interest in the records.

Conclusion regarding the fee waiver in the public interest

[para 23] I find that the Applicant has not provided any compelling reasons to find that the records relate to a matter of public interest such that the fees should be waived.

2. Did the Public Body properly calculate the amount of fees in accordance with sections 93(1) and 93(6) of the Act, and the Regulation?

[para 24] I must determine if, based on the information before me, the Public Body's fees are reasonable and done in accordance with the FOIP Act and regulations.

[para 25] The following sections of the *Freedom of Information and Protection of Privacy Regulation* ("FOIP Regulations") are relevant in this inquiry.

13(1) An estimate provided under section 93(3) of the Act must set out, as applicable,

...

(d) the cost to produce a copy of the record,

(e) the time and cost for preparing and handling the record for disclosure,

...

(g) the cost of shipping the record or a copy of the record.

...

(4) An applicant has up to 20 days to accept the fee estimate or to modify the request to change the amount of fees assessed.

14(1) Processing of a request ceases once a notice of estimate has been forwarded to an applicant and recommences immediately on the receipt of an agreement to pay the fee, and on the receipt

(a) of at least 50% of any estimated fee that exceeds \$150,

...

(4) Fees, other than an initial fee, or any part of those fees will be refunded if the amount paid is higher than the actual fees required to be paid.

[para 26] The Public Body noted that Schedule 2 of the FOIP Regulation sets out the maximum amounts that can be charged to applicants. It also states that the Applicant "was charged fees as set out by the Schedule 2 Fees Schedule" (initial submission, page 5). The worksheet setting out the fees for the Applicant's request show that the Applicant was charged

the maximum amount set out in Schedule 2 for all relevant fees. The Public Body also noted that “the final amount charged was also modified/reduced due to an internal inconsistency in the calculation of fees within Labour FOIP Office at that time. The final fees owing were adjusted down for the applicant” (initial submission at page 5). The Public Body did not provide any further details regarding this ‘internal inconsistency’.

[para 27] In Order F2011-015 the adjudicator stated the following (at para. 39):

Clearly, Schedule 2 of the Regulation contains maximum amounts that may be charged. However, the maximum amount under the Regulation cannot be charged for a service unless a public body incurs the maximum amount as an actual cost in providing that service. In the case of an estimate, the maximum amount cannot be charged unless a public body anticipates that it will likely incur costs reflecting the maximum amount.

[para 28] In that Order, the adjudicator addressed the argument that it is reasonable to use the maximum amounts in the Regulation to calculate a fee estimate (at paras. 44-46):

The FOIP Act does not define “actual costs” and, for that reason, it is not entirely clear what considerations a public body is to include in its calculation of actual costs. The Regulation establishes only maximum amounts that may be *charged* for performing specific services. That this is so is evident from the opening words of Schedule 2, which state that “the amounts of the fees set out in this Schedule are the maximum amounts that can be charged.” Therefore, the figures in Schedule 2 are not in themselves “reasonable” estimates of actual costs, but maximum amounts that may be charged.

In my view, using the maximums to arrive at an estimate of the costs of processing an access request, rather than amounts that the public body believes will approximate its actual costs, is unreasonable. I say this because this practice takes into account an irrelevant consideration, i.e. the statutory maximum that may be charged, and ignores relevant ones, i.e. a public body’s costs.

In situations in which the maximums are used as estimates, if the actual costs turn out to be significantly lower than the maximums, this discrepancy could have the effect of dissuading an applicant from going ahead with the access request, even though the applicant would have proceeded had the estimates calculated the approximate actual cost. Such a result would be contrary to the purpose of the legislature in enacting the FOIP Act, and contrary to the clear intent of section 93(6).

[para 29] I agree with the above reasoning, and the Public Body has not provided any reasons for finding that this analysis does not apply here. By letter dated June 27, 2018, I asked the Public Body several questions regarding its fee assessment. I asked the Public Body how it calculated the actual cost per page for photocopying, noting that at \$0.25/page it is much higher than the cost calculated by other public bodies (For example, in Order F2013-10, the public body determined its actual costs to be \$0.045/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)).

[para 30] I also asked the Public Body how it calculated \$27/hour as its actual costs for searching, locating, preparing and handling records. I requested the salary range for the employees that performed these functions.

[para 31] I asked the Public Body what activities were included in calculating the time spent searching for records; specifically, why it took 6 hours to locate and retrieve the records.

[para 32] Under “preparing and handling records”, the Public Body’s fee worksheet indicates that it estimated for 5.75 hours total, including 2.25 hours for “working copy @ 3pgs/minute”, “severing @ 2 minutes/page” and “packaging Applicant copy @ .5 hr/pkg”. The fees actually charged to the Applicant reduced the total time for these activities to 2 hours, without a breakdown. I asked:

Does the cost for “working copy” indicate the time taken to make working copies of records? If not, please explain what it is referring to. If so, please see Order F2013-27, at paras 32-34, wherein it was found that it was inappropriate to charge an applicant to make working copies of records at issue. Please explain whether this analysis applies in this case. If not, why not?

How did the Public Body calculate 2 minutes per page for severing? In Order F2010-036, the adjudicator found that fees can be charged only the time spent physically severing information from the records; time spent reviewing (i.e. reading and assessing) records cannot be charged (see paras. 151-154). In Order F2011-015, the adjudicator found that 2 minutes per page for physically severing information was excessive. She concluded that a more reasonable amount of time would be 5 seconds per page, based on a review of the records at issue in that case.

Please explain why it took 2 minutes per page to physically sever information from the records at issue (excluding time taken to review and/or assess the information in the records).

The above amounts were included only in the “estimated” column of the worksheet. The “actual” amount of time for preparing and handling is 2 hours. It is not clear what the 2 hours includes. Given the precedents discussed above, it seems possible that the 2 hours remains too high, even though it is a reduction from the 5.75 hours that were initially estimated. Please clarify what the 2 hours includes and how the Public Body reached that number.

[para 33] The Public Body’s response to my questions states:

Today, Alberta Labour FOIP office calculates the fee estimate differently. Attached is a copy of the fee estimate should the request be received today. The actual fees would calculate to \$190.24 to be paid by the applicant.

[para 34] The new fee estimate shows the photocopying costs at \$0.05/page, the hourly rate for locating and retrieving records at \$24.00/hr and the rate for preparing and handling the records at \$27.00/hr. With these changes, the photocopying costs are reduced from \$88.25 to \$17.65 (for 353 pages), the locating/retrieving costs are reduced from \$162.00 to \$144.00 (for 6 hours), and the preparing/handling costs are reduced from \$54.00 to \$28.59 (this appears to be based on \$0.08/pg or 10.8 seconds per page at \$27/hr)).

[para 35] It is not clear to me what the Public Body means by stating what the fees *would be* if the access request were made today. The Public Body did not provide any rationale to support the fees that *were* charged to the Applicant (other than the 6 hours taken to locate records, which I will discuss below). I asked the Public Body for further information to support the fees that *were* charged to the Applicant, but the Public Body did not address my concerns for the most part. Therefore, I cannot conclude that the fees were entirely reasonable. I will address the fees for photocopying, locating and retrieving records, and preparing and handling records, in turn.

Photocopying costs

[para 36] The Public Body initially charged \$0.25/page for photocopying. I asked the Public Body if this reflected its actual costs, per the cited precedents of this Office. The Public Body said only that the amount it *now* charges for photocopying is \$0.05/page. I assume that this latter charge reflects its actual costs; it is consistent with the actual costs of other public bodies (see para. 29 of this Order). Therefore, I will order the Public Body to refund the difference between what the Applicant paid (\$88.25) and the amount based on the new photocopying costs (\$17.65).

Locating and Retrieving records

[para 37] The Public Body assessed the fees for locating and retrieving records at \$27.00/hr for 6 hours of work. The Public Body's response to my questions provided a rationale for the 6 hours, but noted that it would now charge an hourly rate of \$24.00 for that work. The Public Body did not say how it calculated that hourly rate. I have reviewed the few pages of responsive records provided by the Applicant; it appears that at least some non-administrative staff (including the OHS officer that authored the report requested by the Applicant) would have been involved in the search, especially the search of emails. It may be that \$24.00/hr is a rough estimate based on administrative and non-administrative staff being involved in a search for records. Given that the records themselves indicate that staff with an hourly wage higher than \$24.00 were likely involved in the search to some extent, this hourly rate seems reasonable.

[para 38] However, the Public Body's rationale for charging for 6 hours of work is not. The Public Body's explanation states:

The searching and locating of the requested records did take the program area 6 hours to complete and send the records to the FOIP office. The program area noted in the search response form that the time was spent locating all the records, photocopying, notes, binder, call records, CMIS assignments details, transferring all to a CD. The records consisted of hardcopy records (binders, officer note books, call records) and electronic records (emails, CMIS reports) that required locating, copying and converting to a PDF format.

[para 39] The actions above include searching, photocopying, converting to PDF and transferring to a CD. Only the search is an action that can be charged for under "locating and retrieving" records. The reference to photocopying, converting and transferring records seems to be associated with making working copies of the records at issue. I say this because the records at issue I have indicated that the Public Body used software to sever the records (rather than a

marker), and there is no indication in the fees that the Public Body provided a CD to the Applicant; only paper copies of records.

[para 40] In my letter to the Public Body, I referred to Order F2013-27, in which I concluded that it was inappropriate to charge an applicant to make working copies of records at issue. I said (at paras. 33-34):

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 41] The Public Body's response to my questions did not address this issue. As the Public Body has not provided any reason that the analysis in Order F2013-27 does not apply in this case, I adopt the same here. I find that the Public Body cannot charge the Applicant for the time to make working copies. The Public Body may only charge for the time actually spent *looking for and retrieving* the records (this includes reviewing the records to determine if they are, in fact, responsive, per Order F2016-51 at para. 21). Once responsive records have been retrieved, the clock essentially stops on the costs associated with locating and retrieving records. The Public Body cannot further charge for photocopying, converting or transferring records under this heading.

[para 42] It may be that the reference to photocopying in the Public Body's response to my letter was to indicate that the Public Body charged the Applicant for labour associated with making his copy of the records. In Order F2013-10, the adjudicator rejected this cost. He said (at paras 81-82):

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 43] I agree with this analysis. If the Public Body’s reference to photocopying in the hourly rate charged for locating and retrieving records was meant to account for the time taken to photocopy the Applicant’s records, this is not a cost that can be passed to the Applicant.

[para 44] Other than the above, the Public Body has not given me much information about how long the search for records might have taken. 353 pages of responsive records were located. Six hours accounts for locating the records, photocopying them, converting them to PDF and transferring them to a CD. Since only ‘locating and retrieving’ can be included in the fee, I am left to guess how many of the 6 hours was spent performing those tasks. I know from the few pages of records I have that the OHS officer had to search their email account and notebooks. I have no information about the Public Body’s filing system, or how long it would have taken to locate the various reports, binders, call records etc. Based on the fact that there are several different types of records that were located, as well as the number of records, it seems reasonable to assign half of the 6 hours to locating and retrieving (for which the Applicant can be charged), and half to copying, converting and transferring (for which the Applicant cannot be charged).

[para 45] I will order the Public Body to refund the difference between what it charged the Applicant for locating and retrieving records (\$162.00), and \$72.00 (3 hours x \$24.00/hr).

Preparing and handling records

[para 46] In the Public Body initial fee estimate, it calculated the time to prepare and handle records as follows:

Preparation & Handling [total]	5.75	\$27.00/hr	\$155.25
Working copy @ 3pgs/minute	2.25		

Severing @ 2 3.50
minutes/page

Packaging Applicant 0.00
copy

[para 47] Regarding the actual costs, the PB determined that due to “an internal inconsistency in the calculation of fees”, the final fees were decreased. The actual fees charged to the Applicant for preparing and handling the records was 2 hours. There is no breakdown for how that 2 hours was apportioned.

[para 48] I have already discussed that fees cannot be charged for making working copies of records. Regarding the 2 minutes per page to sever records, I noted in my letter to the Public Body that past Orders of this Office have found that fees can only be charged for physically severing the information, and not for reviewing the records to determine what information can be severed. As such, 2 minutes per page was found to be excessive. In Order F2011-015 the adjudicator determined that 5 seconds per page was more reasonable, given the particular records in that case. In its response to my questions, the Public Body did not explain why the Applicant was charged for 2 minutes per page to sever in this case.

[para 49] The Public Body’s response to my letter indicates that the 2 minutes per page calculation is no longer used. The Public Body’s new calculations show for the estimated 405 pages of records the fee for preparing and handling would have been \$32.81. For the actual number of records (353) the fee would have been \$28.59 for preparing and handling. These are based on the hourly rate of \$27.00/hr. At an hourly rate of \$27/hr, the Public Body would have to assign 10.8 seconds per page to reach an amount of \$32.81 for 405 pages and \$28.59 for 353 pages. The pages provided to me by the Applicant have some information severed; having reviewed those pages, I think 10.8 seconds per page is a reasonable amount of time for preparation/handling, including severing (although it is an odd figure).

[para 50] That said, the Public Body’s initial fee estimate assigned only 3.5 hours to sever the records, at 2 minutes per page. If the Public Body estimated that it had to sever each of the estimated 405 pages, that would come to 13.5 hours, rather than 3.5. To reach a total of 3.5 hours, only 105 of the pages would need to be severed. So it appears that the Public Body’s initial estimate assumed that only 105 pages would require severing. That was only an estimate and I do not have any information regarding how many of the 353 responsive pages were actually severed. However, the Public Body’s response to my letter seems to be based on a current fee chart, while the initial estimate seems to have taken into account the actual records responsive to the request. In other words, not every record in every request will require severing or other ‘preparation or handling’. It may be that most or all of the records responsive to a request can be disclosed as-is (or none of the page can be disclosed). In such a case, there is no reason to charge for 10.8 seconds to prepare or handle such a record, especially as the labour involved in making the copy for the applicant cannot be charged to the applicant. All that is to say, if the Public Body originally estimated that 105 of 405 pages would need to be severed, it is reasonable to conclude that not all of the responsive records needed severing. I don’t know

whether the Public Body's response to my letter accounted for this; it seems to assume that each page would require some 'preparation and handling'. While it is true that tasks other than severing can be charged to an applicant under that heading, the Public Body's initial fee estimate and actual fees charged to the Applicant do not seem to include any other tasks (other than making working copies, which cannot be charged for). For example, the Public Body assigned no time to package the Applicant's copy of the records.

[para 51] If the Public Body initially estimated that approximately 25% of the responsive records would require severing, that seems to be a good estimate to continue to use now. In its response to my letter, the Public Body did not explain why it apportioned 10.8 seconds to each page of records (or indeed, whether it did. I calculated 10.8 seconds based on the figures given by the Public Body, but there may be another explanation that was not provided). If 10.8 seconds per page is apportioned to 25% of the 353 responsive pages at \$27.00/hr, that comes to \$7.15 for preparing and handling. Absent explanations from the Public Body as to how the fees for preparing and handling the 353 pages of records responsive to the Applicant's request should be calculated using its new fees, I find that this is a reasonable amount.

[para 52] I will order the Public Body to refund the difference between what it charged the Applicant for preparing and handling the records (\$54.00) and \$7.15.

V. ORDER

[para 53] I make this Order under section 72 of the Act.

[para 54] 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 55] I order the Public Body to refund the difference between the fees paid by the Applicant and the calculations in this Order, per paragraphs 36, 45 and 52.

[para 56] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator