



Fee Estimates

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INTRODUCTION

The *Freedom of Information and Protection of Privacy Act* (the FOIP Act) provides that the right of access to records in the custody or under the control of a public body is subject to the payment of any required fee. The fee structure is based on three guiding principles:

- The applicant should bear a portion of the cost associated with providing the information requested;
- The fees should be reasonable, fair and at a level that would not present a barrier to applicants in exercising their right to access information; and
- The fee structure should encourage applicants to be specific and reasonable when wording their requests for access.

Schedule 2 of the FOIP Regulation sets out the services that a public body may charge for when processing a request for access and the maximum fees that may be charged for each service.

This Bulletin provides an overview of the fee structure, and explains when a fee estimate is required, what services a public body can charge for, how to prepare a fee estimate, the effect of the estimate on time lines, and processes for payment of deposits and fees.

This publication is intended to supplement the information on assessing fees in Chapter 3 of *FOIP Guidelines and Practices*, produced by Access and Privacy, Service Alberta.

Publications produced by Access and Privacy, Service Alberta, cited in this Bulletin are available on the FOIP website at foip.alberta.ca. Decisions, practice notes and publications issued by the Office of the Information and Privacy Commissioner of Alberta may be found on the OIPC website at www.oipc.ab.ca.

THE FEE STRUCTURE

The fee structure differentiates between

- requests for access to general records, and
- requests for an applicant's own personal information,

and between

- one-time requests and
- continuing requests.

If a request is for access to a record other than the applicant's own personal information, the applicant is required to pay an initial fee of \$25 for a one-time request, or \$50 for a continuing request, before the public body commences processing the request. Applicants are not required to pay an initial fee when requesting access to their own personal information.

For general access requests, fees in addition to the initial fee may be charged if the cost of processing the request is estimated to exceed \$150 (FOIP Regulation, **section 11(4)**). For a request for an applicant's own personal information, a public body may assess fees only for producing a copy of the record, and then only if the costs are estimated to exceed \$10 (FOIP Regulation, **section 12(2)**). When the fees exceed either \$150 (for a general request) or \$10 (for a request for personal information), the full amount is charged to the applicant.

Where a *portion* of a request is a request for the applicant's own personal information, that portion of the request must be treated in accordance with the regulations governing personal information (*IPC Order F2007-010*).

Schedule 2 of the FOIP Regulation lists the services for which an applicant may be charged and the maximum amount that can be charged for that service. These are as follows:

- searching for, locating and retrieving records;
- computer processing and programming;
- producing a copy of a record;
- preparing and handling a record for disclosure;

- shipping records to the applicant; and
- supervising examination of records by an applicant.

Public bodies cannot charge fees for providing a service that is not listed in **Schedule 2**. The following are some activities that should not be included in estimating or calculating fees for processing a request:

- costs associated with producing the fee estimate;
- staff time to walk from one area to another to find responsive records, or to drive to an off-site storage area to retrieve records;
- packaging and shipping records to the FOIP office from another office of the public body;
- time spent by experienced staff reviewing the results of a search conducted by junior staff;
- time spent filing records removed from a file for review or copying;
- copying records for staff who need a working copy, for consultations with other public bodies, or for a third party notification process;
- time spent reviewing records to determine whether an exception to disclosure should be applied;
- time spent consulting with public body staff or other public bodies regarding the application of the Act;
- transporting a package to the mailroom or arranging courier services.

A public body has the discretion to decide whether to charge a fee for any service provided in the processing of the request (FOIP Act, **section 93(1)**), except the initial fee for general access requests.

If an applicant is required to pay fees, the public body must give the applicant an estimate of the total fee before providing any of the services in **Schedule 2** (FOIP Act, **section 93(3)**; *IPC Order 99-011*). The purpose of this provision is to give the applicant an opportunity to decide whether to proceed with the request, modify the request, request a waiver of the fees, or withdraw the request. Providing an estimate ensures that there is no financial commitment on the part of the applicant until he or she understands the

likely extent of the commitment. It also ensures that the public body does not take on the administrative obligations of processing the request until the applicant has agreed to the fees.

If no fee estimate is required (because the public body has decided not to charge fees or the fees would be lower than \$150 for a general request or \$10 for a request for personal information), the public body can commence processing the request immediately.

THE FEE ESTIMATE – PRELIMINARIES

The main factors affecting fees are the location of the records, the volume and format of records, and the amount of severing required. The assessment of fees is likely to be most accurate when the applicant's request is clearly defined and the following circumstances apply:

- the records are located in just one or a few files (simplifying estimation of the time required to search for, locate and retrieve records);
- the volume of records is small (allowing for a simple calculation of the number of copies required);
- the records are in standard paper formats (incurring a single, standard cost per copy);
- applying exceptions to disclosure is likely to be consistent across the records (facilitating estimation of the time required for preparing the records for disclosure).

In cases involving a small number of records, a public body may quickly decide that no fee estimate is required because no fees can be charged (the fees do not reach the threshold of \$150 or \$10, as applicable).

Public bodies may find it helpful, in cases where a request is similar in scope to a recent request, to check what fee estimate was issued for the earlier request.

In cases where the scope of a request is broad or unclear, an estimate is likely to be more approximate than for a clearly defined request. This is especially the case if one or more of the following circumstances apply:

- the records are located in many offices or program areas, or are distributed across a range of different files;
- the volume of records is large (e.g. they cover a long time period);
- the format of the records varies (including, e.g. a mix of paper and electronic records, or a mix of large-scale diagrams or plans, photographs, and colour images);
- the time required to sever records will vary widely (with little time required for certain reports, but a considerable amount of time for records containing, e.g. third party business information, confidential advice).

The most critical aspect of the process in these cases is to clarify the scope of the request. With respect to requests for a large number of records, the Commissioner has said that when the likely number of responsive records is very large, a public body should recognize that clarification of the request is required (*IPC Order F2007-017*).

Applicants may not be aware of the kinds of records a public body has or how those records are managed. It may be beneficial to contact the applicant to discuss the request and what records are likely to be considered responsive. Prior to contacting the applicant, it may also be beneficial to talk to knowledgeable staff regarding the types of records associated with the request. (For further information on clarifying requests, refer to Chapter 3 of *FOIP Guidelines and Practices*.)

It is important for the public body to issue the fee estimate early in the processing of the request. If excessive time is taken to prepare the fee estimate, the public body may find it difficult to process the request within the time limit.

If an applicant is reluctant to clarify a request, the public body must issue a fee estimate on the basis of the information it has. Once a fee estimate is given to the applicant, processing of the request stops until the applicant agrees to the fee and pays a deposit of 50% of the estimated fee (Regulation, **section 14(1)**). If the applicant requests a fee waiver or asks the Information and Privacy Commissioner to review

the appropriateness of the fees, processing does not resume until that matter is decided.

PREPARING A FEE ESTIMATE

Once it has been determined that a fee estimate is required, the public body must determine what services in **Schedule 2** will be needed to process the request and estimate the cost for each of those services.

A public body should attempt to assess as accurately as possible the nature and extent of records responsive to a request and the amount of work involved in processing the request. However, there will be times when the work involved in performing a complete initial review of the records will be substantial. If there are many responsive files, it may be unreasonably onerous to provide an estimate of preparation time based on an examination of each individual file, and the time involved in counting pages for copying purposes could be excessive.

In such cases, a good approach is to sample files at appropriate intervals and base an estimate on the processing of these sample files in relation to the number of files involved.

The fees listed in **Schedule 2** are the maximum amounts that can be charged to an applicant. For certain services, the maximum fee is a set amount. For other services, the maximum fee is the actual cost to the public body. The term *actual cost* is the cost paid by the public body for a specific service.

Searching for, locating and retrieving records

Records in the custody or under the control of a public body may be managed in a paper or electronic format or some combination of the two. To estimate the time for searching, locating and retrieving records, staff in the public body will need to

- estimate the time to locate the requested records, taking into consideration how and where the records are stored and maintained (e.g. active, semi-active and inactive records; working files; records to be filed; diaries; staff offices; filing cabinets; computers; contractors); and

- for microfiche collections, multi-subject files or ledger-sized binders of computer sheets, estimate the time to examine the file and identify records responsive to the applicant's request.

Staff should document the basis for the estimate (e.g. where the records are stored, how the records are managed).

Producing a record from an electronic record

Under **section 10** of the FOIP Act, if a record exists in electronic form a public body is obliged to create a record from that electronic record at the request of an applicant if

- the public body can create the record using its normal computer hardware and software and technical expertise, and
- creating the record would not unreasonably interfere with the operations of the public body.

This does not apply to records (e.g. e-mail messages, Word documents) that are stored electronically and where a copy of the record is retrieved by pressing the print button.

Public bodies commonly organize and store information needed for the administration of their programs in electronic applications, such as databases. These databases are generally programmed to generate standard reports. If an applicant requests a non-standard report, development of a computer program and computer processing may be needed to create the requested record. The public body may also need to verify the completeness and accuracy of the record generated (especially if personal information is involved).

To estimate the computer time for creating the record, the public body may need to do a trial run on a representative sample of the database, determine the time it would take to generate the record and then use this to estimate the cost for the larger database. The results of any trial run and associated costs should be kept to demonstrate the steps involved, the time taken and how the total fee estimated relates to the cost of producing the sample.

When creating the record, the public body is entitled to use the technical expertise and resources available to it at the time. As long as the public body is using a reasonable process to generate the record, the public body is under no obligation to change its process at the request of an applicant (*IPC Orders 99-014 and F2002-005*).

Public bodies should discuss requests to create electronic records with their IT service providers and ask them to assist in estimating the associated costs. The IT staff are probably in the best position to determine what computer programming and processing would be required to generate the requested record.

Producing a copy of a record from paper or other media

The cost of producing a copy of a record will depend on the record format and size, the number of pages and the technology required to produce the copy. When searching for, locating and retrieving records, staff should record information about the format and volume of the records to assist in the development of the fee estimate.

For paper records, the following common standard may be used for estimating the number of pages:

- 1 inch of records is approximately 200 pages (single-sided).
- One archive or banker's box (1 cubic foot) holds approximately 1,800 pages in legal-sized folders or 2,200 pages in letter-sized folders.

Schedule 2 sets a maximum fee for photocopies and computer printouts (black and white up to 8½" x 14") of 25 cents "per page." If the record is double-sided, a public body can charge for copying each side, that is, for two pages.

For records managed in an electronic format, estimating the number of pages is more complex. There is no direct correlation between pages and disk space occupied. The size of an electronic file depends on the application, whether the document is plain black and white text or contains full-colour images or graphics, or some combination of these, and whether the document contains other system data that

do not translate into machine-readable information. The following table may be used to calculate a crude estimate of the number of pages of printed record.

DOCUMENT TYPE	AVERAGE PAGES PER		
	GB ¹	MB	KB
Microsoft Word	64,782	63	0.062
E-mail	100,099	97	0.095
Microsoft Excel	165,791	161	0.157
Microsoft PowerPoint	17,552	17	0.017
Image	15,477	15	0.015

A fee estimate should not include copying fees for a record or multiple pages of a record that will almost certainly be completely severed, such as privileged records relating to current litigation (see *IPC Order 99-027* on charging for copies of blank pages).

When the public body and an applicant agree to produce a copy of a record in a format other than one of those listed in **sections 3, 4 and 5 of Schedule 2** of the FOIP Regulation, the public body can charge the applicant the actual cost (**Schedule 2, section 6**). A public body is under no obligation to produce a record in a format that is not listed in **Schedule 2**.

Preparing and handling a record for disclosure

The estimate may include fees for the following services involved in preparing and handling a record for disclosure:

- severing the portions of the record that are excepted from disclosure, by, for example,
 - applying removable white tape to cover the excepted portions of the record;
 - selecting portions of the record to be severed using redaction software (e.g. Adobe Acrobat Professional); or
 - marking up the text for automatic deletion by a photocopier with severing features; and

- inserting the section of the Act applied and, if necessary, “best available copy.”

The Ontario Information and Privacy Commissioner established two minutes per page as a reasonable time for severing records where only a few severances per page are being made. The Alberta Information and Privacy Commissioner endorsed this guideline as a reasonable estimate of the time involved in severing (*IPC Order 99-011*).

Preparing and handling a record for disclosure does not include the time taken to produce a copy of the records for the applicant.

To estimate the number of pages that may require severing, the public body will need to consider the nature of the records responsive to the request, the exceptions to disclosure that may apply and the extent of severing. A public body may find it helpful to have a checklist applicable to its operational records to assist staff in assessing what severing is likely to be needed. For example:

- Do the records consist of draft legislation or bylaws?
- Is the matter before Cabinet (or the governing body of the public body)?
- Are the records subject to legal privilege?
- Do the records relate to an ongoing investigation or prosecution?
- Do the records contain primarily personal information of an individual other than the applicant?
- Do the records concern current negotiations or a pending decision?
- How old are the records?

To obtain a reasonable estimate of the costs associated with preparing and handling a record for disclosure, the public body may need to examine a representative sample of the records. The percentage of pages requiring severing in the sample would be used to estimate the total number of pages that may require severing. The “two minutes per page” guideline would be applied to estimate the cost of preparing and handling a record for disclosure.

When applicants ask to view the original records, preparing the records for viewing may require removing pages of a record from a file and replacing them with a severed copy or blank pages. A processing time of 7.25 hours for 4 feet of records is a reasonable estimate in cases where about one third of the records have to be removed and replaced (*IPC Order 99-011*).

Supervising examination of original records

The time needed by an applicant to view original records will depend on the applicant’s speed and attention to the records. There are no standards for estimating supervision time, but a reasonable estimate is one 7.25 hour day for an applicant to review 1 cubic foot of records (equivalent to a storage carton that holds either letter or legal folders). This is an average that is sometimes used in the archival community to estimate the time to complete a page-by-page subject search.¹

Shipping

Shipping charges may be incurred when copies of records are sent to the applicant directly or are shipped to a local office for review or pick-up by the applicant. The shipping charges, which may not exceed the actual cost of shipping, should be estimated on the basis of the method of shipping to be used. If the cost is based on the weight or volume of records, the estimate should relate directly to the number of pages or the number of items in other media (e.g. CDs) being shipped to the applicant.

Where more than one suitable method of shipping is available, the choice should be agreed upon by the public body and the applicant.

FEE ESTIMATES FOR CONTINUING REQUESTS

An applicant may make a request that continues to have effect for a specified period of up to two years (FOIP Act, **section 9(1)**). Once the public body and applicant have agreed on a schedule of dates on which the request will be reactivated during this time, the

¹ Source: United States National Archives and Records Administration.

public body must provide the applicant with an estimate of

- the total fees payable over the course of the continuing request (Regulation, **section 13(3)**), and
- the fees for each scheduled instalment of the request

before providing the services in **Schedule 2**.

Processing of the request stops until the applicant agrees to pay the total fee and provides a deposit of 50% of the estimate applicable to the first instalment. The balance for that instalment must be paid at the time the records are released to the applicant. Since each instalment of a continuing request is viewed as a new request, the processing of any subsequent instalment starts only on receipt of 50% of the estimated fees applicable to the processing of that instalment.

The following table is an example of how fees for a continuing request with a total estimated fee of \$2000 were handled (*IPC Order 97-019*).

SCHEDULED RECEIPT DATE FOR EACH INSTALLATION	ESTIMATED FEES FOR EACH INSTALMENT	DEPOSIT REQUIRED BEFORE PROCESSING BEGINS	BALANCE PAYABLE AT TIME OF DELIVERY
May 23, 1996	\$500	\$250	\$250
Sept. 23, 1996	\$100	None	\$100
Jan. 23, 1997	\$300	\$150	\$150
May 23, 1997	\$450	\$225	\$225
Sept. 23, 1997	\$50	None	\$50
Jan. 23, 1998	\$600	\$300	\$300

NOTIFYING THE APPLICANT OF THE FEE ESTIMATE

If fees are associated with processing a request, the public body may have several discussions with the applicant to assist in refining the scope of the request prior to issuing the fee estimate. The public body should document the communications with the applicant regarding changes to the scope of the request. If the wording of the request changes in the

course of discussions, the public body should formally advise the applicant of the wording on which the fee estimate is based.

When an applicant is required to pay fees, the public body must provide the applicant with an estimate of the total fee and a detailed breakdown of the services to be provided in processing the request and the estimated fees for each service (Regulation, **section 13(1)**). The fee estimate should not include fees for producing copies of records for the applicant that are not subject to the FOIP Act (*IPC Order F2003-001*). The public body should advise the applicant that he or she will be informed if the fees are going to be significantly higher than the estimate before the public body provides any further service.

An applicant has the right to request a review of the reasonableness of the fee estimate. Should this happen, the public body has the burden of establishing the reasonableness of the fee estimate. The public body should keep documentation necessary to demonstrate what factors and considerations went into the calculation of the fee.

The purpose of the fee estimate is to provide the applicant with a reasonable understanding of the costs that may be incurred in providing access to the requested records. Although there is no legal obligation to do so, the public body should also consider advising the applicant if records are likely to be withheld in their entirety (e.g. because they are subject to legal privilege or relate to open investigations). Otherwise, the applicant may assume that the records will be released upon payment of the required fee. The fee estimate should provide sufficient information to enable the applicant to make an informed decision regarding how to proceed with the request.

The applicant has up to 20 days to accept the fee estimate and to pay a 50% deposit of the estimated fee, or to modify the scope of the request to reduce the fees, to request a waiver of the fees, or withdraw the request. (For further information on fee waivers, see FOIP Bulletin No. 2: *Fee Waivers*, produced by the Access and Privacy, Service Alberta.

Upon receipt of the deposit, the public body should acknowledge the receipt of the monies and advise the

applicant of the new date by which the public body will respond to their request.

See **Model Letter E** in *FOIP Guidelines and Practices*, Appendix 3, for an example of a fee estimate letter.

If the applicant does not respond to a fee estimate, the public body should send a follow-up letter advising that the request is deemed abandoned (FOIP Act, **section 8(1)**).

FINAL PAYMENT OF FEES AND RELEASE OF RECORDS

The fee estimate is just that – a fair and reasonable estimation of the costs involved in processing a request. In many cases, the fee estimate will change as the scope of the request is refined and the specific records of interest are identified. If the total cost of processing the request is higher than the fee estimate, the public body will require the applicant to pay the higher cost unless, in the opinion of the head, there are compelling reasons for not doing so.

Once the processing of the request is complete and the head of the public body has made a decision as to what records will be disclosed to the applicant, the public body must determine the actual costs incurred in processing the request and compare the fees that may be charged against the fees estimated.

If the actual fees are either less than \$150 for general access requests or \$10 for personal information requests, the public body must issue

a refund of the deposit and release the records to applicant.

If fees are owing, the public body should advise the applicant of the balance owing and provide a detailed explanation of how the fees were arrived at. Records are not released to the applicant until the balance of the fees owing is paid.

When the total processing cost is less than the deposit already paid by the applicant (but is still greater than the \$150 or \$10 threshold, as applicable), the public body must refund the difference between the deposit paid and the fees actually payable by the applicant.

To develop expertise in producing estimates and to refine estimating processes, it is helpful to check final costs against original estimates. This experience can be applied to future requests.

EFFECT ON FEES OF AN ORDER TO DISCLOSE ADDITIONAL RECORDS

In *Order 2007-013*, a public body argued that, if the Commissioner ordered the disclosure of additional records, the applicant should pay additional fees. The Commissioner found that the public body had already charged and received payment for the processing of the request. He determined that the Act and the Regulation do not permit a public body to charge additional fees if it improperly applied exclusions and exceptions and was therefore required by Order to provide further information to the applicant.

Currency

This Bulletin takes into consideration decisions issued by the Office of the Information and Privacy Commissioner of Alberta up to December 31, 2008.

Purpose

FOIP Bulletins are intended to provide FOIP Coordinators with more detailed information for interpreting the *Freedom of Information and Protection of Privacy Act*. They supply information concerning procedures and practices to assist in the effective and consistent implementation of the FOIP Act across public bodies. FOIP Bulletins are not a substitute for legal advice.

Further Information

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