

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2016-0050

CITY OF WINNIPEG WINNIPEG POLICE SERVICE

ACCESS COMPLAINT: FEE ESTIMATE

**PROVISIONS CONSIDERED: 82(1), 82(2)
ACCESS AND PRIVACY REGULATION 64/98: 4, 6 and 8(1)**

REPORT ISSUED ON OCTOBER 18, 2016

SUMMARY: The complainant requested access to a listing from the Winnipeg Police Service of all mobile photo enforcement locations/codes, along with the number of tickets issued at each location for a one year period. The Winnipeg Police Service issued a fee estimate for the cost of external computer programming and data processing for responding to a portion of the request. A complaint was made to the ombudsman disputing the estimated fees, as the complainant believed that the requested data was readily accessible to the Winnipeg Police Service. The ombudsman found that the Estimate of Costs for computer programming and data processing by an external provider was reasonable. The ombudsman also found that the Estimate of Costs was prepared in accordance with the Act and the regulation.

THE COMPLAINT

On December 17, 2015, the City of Winnipeg, Winnipeg Police Service (WPS or the public body) received the complainant's request for access to the following information under the Freedom of Information and Protection of Privacy Act (FIPPA):

I request the listing of all mobile photo enforcement locations/codes as well as number of tickets issued in each location for the period January 1, 2014 and December 31, 2014.

The WPS provided the applicant with an Estimate of Costs, dated January 22, 2016, for responding to his request.

On February 3, 2016, the ombudsman received a complaint about the fee estimate. The complainant believed that the WPS already reported the requested data, or similar data, on an annual basis to the Manitoba government, and felt that the information should be readily accessible to the WPS. Therefore, the complainant disputed the fee estimate for external computer programming and data processing.

POSITION OF THE CITY OF WINNIPEG, WINNIPEG POLICE SERVICE

After extending the time for response, the WPS sent the complainant a letter, along with a fee estimate, on January 22, 2016. In the letter, the WPS explained that fees are payable for processing the second part of the complainant's request, as well as a nominal charge for a compact disc/digital video disc to contain the information. The fee estimate supplied by the public body reflected the cost for an external service provider to process the data about the number of tickets issued in each mobile photo enforcement location. The fees for the external computer programming and data processing were \$200.00, which reflected four hours of work at the actual cost of \$50.00 per hour.

Our office asked the WPS to explain why it would be more cost effective for an external service provider to perform this work, rather than the WPS utilizing their own internal mechanism to access data. We also asked the WPS to explain how it had determined its fee estimate, and to provide any documentation supporting the estimate. In its response to our office, the WPS explained that it had also estimated the cost of completing the required work internally. The WPS estimated that it would need to retrieve data for each of the numerous mobile photo enforcement locations and then compile the information into a spreadsheet. Due to the number of locations to be analyzed, the WPS estimated spending a total time of between 16 hours and 24 hours to complete the task. Given this, the potential total cost of internal work related to the complainant's request was estimated to be \$720.00. The public body further identified that this estimate of internal work did not include time dedicated to severing information that was subject to exceptions to disclosure under FIPPA.

The WPS advised our office that in order to fulfill its duty to assist the applicant under section 9 of FIPPA, it explored whether an external entity could provide the information sought by the complainant less expensively than WPS internal staff. For this reason, the public body sought an estimate from the service provider who was already contracted by the WPS for the Photo Enforcement Program. The WPS advised that while the provider did not normally generate the type of data requested by the complainant, the provider would be able to "design a unique query" to obtain the data requested. This functionality was not available through the interface used by the WPS internal staff. The public body provided written confirmation from the external service provider that the actual fees to provide the service would be \$200.00 (four hours multiplied by \$50 per hour). The WPS further explained that it did not anticipate the need to apply severing to the records generated by the external service provider, which made this option even more cost effective in comparison to the alternative.

ANALYSIS OF ISSUES AND FINDINGS

Was the Winnipeg Police Service's Estimate of Costs calculated in accordance with FIPPA?

A public body may charge fees for certain activities that will be involved in responding to a request, and where a fee will be charged, the public body is required to issue an Estimate of Costs to the applicant as described in the following provisions of FIPPA:

Fees

82(1) The head of a public body may require an applicant to pay to the public body fees for making an application, and for search, preparation, copying and delivery services as provided for in the regulations.

Estimate of fees

82(2) If an applicant is required to pay fees under subsection (1) other than an application fee, the head of a public body shall give the applicant an estimate of the total fee before providing the services.

The Access and Privacy Regulation (the regulation) clarifies that an applicant is to pay fees to the public body when the public body reasonably expects that the search and preparation time involved in responding to the application will exceed two hours, or when computer programming or data processing fees will be incurred, and in these cases, the public body is to issue an Estimate of Costs. The relevant provisions of the regulation are as follows:

Search and preparation fee

4(1) An applicant shall pay a search and preparation fee to the public body whenever the public body estimates that search and preparation related to the application will take more than two hours.

4(2) The fee payable for search and preparation is \$15.00 for each half-hour in excess of two hours.

4(3) When calculating search and preparation time, a public body shall include time spent in severing any relevant record under subsection 7(2) of the Act, but shall not include time spent

(a) in connection with transferring an application to another public body under section 16 of the Act;

(b) preparing an estimate of fees under section 7;

(c) reviewing any relevant record to determine whether any of the exceptions to disclosure apply, prior to any severing of the record;

(d) copying a record supplied to the applicant; or

(e) preparing an explanation of a record under subsection 14(2) of the Act.

Computer programming and data processing fees

6 *When a public body needs to use computer programming or incurs data processing costs in responding to an application, the applicant shall pay to the public body*

(a) \$10.00 for each fifteen minutes of internal programming or data processing; or

(b) the actual cost of external programming or data processing incurred by the public body.

Estimate of fees

8(1) *In accordance with subsection 82(2) of the Act, a public body shall give an applicant an estimate of fees in Form 2 of Schedule A when it reasonably considers that, in responding to the request,*

(a) search and preparation is likely to take longer than two hours; or

(b) computer programming or data processing fees will be incurred.

We considered the complainant's assertion that information similar to the requested data should have been already available to the WPS. The complainant provided our office with a copy of an agreement between the City of Winnipeg and the Manitoba government regarding the conditions of authority respecting image capturing enforcement systems. The complainant's position was that the WPS was already required to provide the information contained in his FIPPA request to the Manitoba government according to those conditions of authority. Two of the relevant conditions include the requirement that the City of Winnipeg include the locations of photo enforcement units, as well as the number of photo enforcement offences, in an annual report to the province.

Our office reviewed the WPS Photo Enforcement Program Annual Report (available online) for 2014 (the time period consistent with the complainant's FIPPA request) with an eye to determining whether information similar to that requested by the complainant was included in the report. We found that while the WPS does report on both the locations of the mobile photo enforcement units, as well as the number of tickets issued by the program, it does so in general terms and aggregate form. For example, the locations of the mobile units are noted as school zones, playground zones, and construction zones (and the locations are noted as being restricted by legislation). The number of mobile photo radar offences is noted for the entire year (93,116 for 2014), but the total number of offences is not correlated with specific locations of mobile photo enforcement units as requested by the complainant in the second part of his request. We therefore concluded that the information is not captured in the manner expected by the complainant. Further, when asked by our office, the WPS identified that the requested data was not readily available.

As we determined that the requested data was not already reported by the WPS in the form anticipated by the complainant, we then reviewed whether it was more cost effective for the work to be completed internally, rather than externally as identified in the fee estimate. Although clause 6(b) of the regulation allows public bodies to assess fees for the actual costs of external computer programming and data processing, public bodies also have the option of assessing fees for work performed internally under subsection clause 6(a) of the regulation. Where both options exist, but one is less costly, it stands to reason that the less costly method will be employed, and

will be reflected on the Estimate of Costs. In this case, the WPS stated that “in an effort to significantly reduce the fees payable to the applicant...” he was provided with an Estimate of Costs for work to be completed by the external service provider. The WPS provided an Estimate of Costs for \$200.00 for the actual cost of computer programming and data processing by an external service provider.

As mentioned above, the WPS estimated that if the work were completed internally, it would take between 16 and 24 hours to compile the information. Depending on the circumstances, this time could potentially be categorized as “search and preparation” (at \$15 per 30 minutes), rather than “computer programming and data processing” (at \$10 per 15 minutes), so the fee estimate for internal work could be between \$480.00 ($\$15 \times 960/30$) to \$720.00 ($\$15 \times 1440/30$). Given that the WPS advised that this estimate may have increased when including internal severing time (which is preparation time that is chargeable under FIPPA), as well as the fact that the quote from the external service provider was \$280.00 less than the WPS’s lowest estimate of internal work, our office found that the use of an external service provider was reasonable and appropriate.

As our office determined that it was reasonable for the WPS to utilize an external service provider to compile responsive records, we then reviewed the calculation of time estimated by the WPS for the chargeable activities to ensure that it was appropriate under FIPPA. The Winnipeg Police Service assessed fees for external computer programming and data processing. We were advised that the items for which fees were assessed would consist of the development of a computer query to generate raw text data. This data would then be imported into an excel spreadsheet. These activities can best be described as computer programming and data processing, within the meaning of the regulation. The above costs are chargeable under clause 6(b) of the regulation, which specifies that applicants shall pay the actual cost of external computer programming and data processing.

Given the above, our office found that the Estimate of Costs for the computer programming and data processing by the external service provider was authorized under FIPPA and reasonably required in the circumstances.

CONCLUSION

Based on the ombudsman’s finding, the complaint is not supported.

October 18, 2016
Manitoba Ombudsman