

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2016-0249

CITY OF WINNIPEG – WINNIPEG TRANSIT

ACCESS COMPLAINT: FEE ESTIMATE

PROVISIONS CONSIDERED: 82(1)(2), 64/98

REPORT ISSUED ON NOVEMBER 10, 2016

SUMMARY: The complainant made a request for access to information under the Freedom of Information and Protection of Privacy Act (FIPPA or the Act) to the City of Winnipeg – Winnipeg Transit (the city) for records pertaining to a human rights complaint made against the City of Winnipeg regarding the absence of a discount for senior citizens using Handi-Transit. The city determined that fees would be payable for responding to this request and issued an Estimate of Costs. On receiving a complaint about the estimate, our office investigated and found that the time allowed for search and preparation of the responsive records (including severing) was reasonable and the fees as set out in the Estimate of Costs provided to the complainant were calculated correctly. The complaint was not supported.

COMPLAINT

On June 27, 2016 the City of Winnipeg – Winnipeg Transit (the city) received the complainant's request for the following information made under the Freedom of Information and Protection of Privacy Act (FIPPA or the Act):

All records from the last 18 months relating to a human rights complaint against the City of Winnipeg regarding the absence of a discount for senior citizens using Handi-Transit. This includes (but is not limited to) records related to a current settlement agreement and any records relating to a proposed refund for senior citizens who did not get discounted fair [sic].

The city determined that fees would be payable for responding to this request and on July 20, 2016 it issued an Estimate of Costs for responding to this request in the amount of \$750.00. A complaint concerning this estimate was received in our office on August 16, 2016.

POSITION OF THE COMPLAINANT

In communication to our office, the complainant explained that he believed the city's estimate of costs for responding to his access request to be exorbitant and unreasonable. It was his view that the information requested was concerning a matter of public interest and that, if the fees requested by the city were not reduced or eliminated, he would be prevented from gaining access to this information. The complainant believed that, if the ombudsman found that a fee was not authorized, the city would be required to provide him with the information he had requested.

Our office explained to the complainant that under subsection 82(5) of FIPPA, the head of a public body may, on the applicant making a request, waive the payment of all or part of a fee in accordance with the Access and Privacy Regulation. Our office understood that the complainant did not wish to make a request for a fee waiver.

POSITION OF THE CITY OF WINNIPEG

The city provided the complainant with a letter along with its Estimate of Costs, which explained how the fee estimate had been calculated. The city explained that records from three departments (Winnipeg Transit, Corporate Support Services and Legal Services) had been searched. Records responsive to the complainant's access request were estimated to be as follows:

Winnipeg Transit - approximately 330 pages
Corporate Support Services - approximately 10 pages
Legal Services - approximately 250 pages

In its letter, the city explained to the complainant that this breakdown was provided to assist the complainant in narrowing his request (in order to reduce the fees payable), if he chose. The city also explained that it expected that the records identified would be subject to severing as a significant portion contained information that appeared to be subject to the exception to access allowed under FIPPA for information that is subject to solicitor-client privilege. The city expressed the view that the records identified may also contain information that is subject to other exceptions under FIPPA.

On receiving the complaint about its Estimate of Costs, our office asked the city for more information about how the fee estimate had been calculated. The city responded, explaining that it had consulted Manitoba Ombudsman's practice note, *Preparing Fee Estimates under FIPPA*, when preparing the fee estimate. After identifying those departments most likely to hold records responsive to the complainant's request, the city consulted with the departmental FIPPA coordinators who identified staff who were familiar with the subject of the request and those staff persons assisted with record identification and the estimates of the volume of records.

The city advised our office that it had consulted with the departments named to determine whether there were any records identified that could be released without compromising either the ongoing proceedings or the privacy of the individuals involved. However, due to the nature of the records as relating to complaints from individuals and the fact that the city was currently in negotiations to resolve those complaints, the city determined that each record would have to be reviewed prior to release and it was not possible to easily identify records that could be released without review.

The city explained that, while not all records were reviewed, a sample was examined to determine the level of severing which might be required before release. The city noted that, where responsive records were identified, moderate to heavy severing was anticipated.

ANALYSIS OF ISSUES AND FINDINGS

Was the City of Winnipeg's fee estimate calculated in accordance with FIPPA? Is the time estimate for search and preparation of the records reasonable?

Under FIPPA, a public body may require an applicant to pay a fee for search, preparation, copying and delivery services related to an access to information request as provided for in the *Access and Privacy Regulation* (the regulation). If an applicant is required to pay fees, a public body must issue an estimate of the fees payable. The relevant provisions of FIPPA read:

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 regulation sets out how fees are to be calculated. Following are the requirements placed on the public body with respect to the search and preparation of responsive records, the fees associated with processing an access request and the calculation of the estimate:

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 section 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.*

Copying fees

5(1) *An applicant who is given a copy of a record shall pay the following copying fees to the public body:*

- (a) 20 cents for each page for paper copies made by a photocopier or computer printer;*
- (b) 50 cents for each page for paper copies made from a micro printer;*
- (c) actual costs for any other method of providing copies.*

5(2) *Despite subsection (1), an applicant requesting copies of his or her own personal information is not required to pay a copying fee if the total copying fee payable is less than \$10.00.*

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

8(2) *After receiving an estimate of fees, an applicant who still wishes to proceed with the application shall sign and return a copy of Form 2 of Schedule A to the public body along with payment of the estimated fees.*

8(3) *The estimate of fees is binding on the public body, and if the actual cost of search and preparation or computer programming or data processing is less than the estimate, the public body shall refund the difference to the applicant.*

8(4) *In addition, a public body shall refund the amount of estimated fees paid by an applicant if access to every record the applicant has requested is refused.*

When investigating a complaint concerning a fee estimate, our office will contact the public body and request more information as to how the Estimate of Costs was calculated (i.e. the volume of records to be searched and any severing which may be required). In this instance, the city responded to our office with detailed representations describing the calculation of the estimate including a copy of the city's tracking action log for the complainant's access request and copies of communications with the city departments determined to be holding relevant records. We were also provided with a copy of the city's fee calculation spreadsheet.

The city explained that, following the receipt of information from the relevant departments it estimated that total search and preparation time (including time for severing) would be 27 hours. Allowing two free hours as required under the legislation, the time estimated was 25 hours at \$15.00 for each half-hour for a total fee of \$750.00. The city explained that the most significant amount of time included in the fee estimate for search and preparation was time allowed for severing information subject to exceptions to access prior to release. As noted previously, the city explained that, while not all records were reviewed, a sample was examined to determine the level of severing which might be required before release. The city noted that, where responsive records were identified, moderate to heavy severing was anticipated.

According to information provided by the city there were estimated to be approximately 590 pages which would require severing at two minutes per page for a total of 19.6 hours. The city employed the two minutes per page severing guideline referenced in a report issued by the Office of the Saskatchewan Information and Privacy Commissioner.¹ The figure of two minutes per page is also consistent with that proposed by the Office of the Information and Privacy Commissioner of Ontario in its *Guidelines for Government Institutions* with regard to fees, fee estimates and fee waivers. Our office notes that complainants are often not aware that time would be allowed for severing when calculating a fee estimate.

Our office considered the city's representations with regard to search times, the identification of the responsive records and the amount of time allowed for severing. Our office considers the amount of time to search for and identify records responsive to the complainant's request to be reasonable. We also considered the city's representations regarding the amount of time required to sever the record and our office concluded that the time allowed for severing of 2 minutes per page was reasonable in view of the fact that the records include information likely to be subject to the exception allowed for solicitor-client privilege under clause 27(1)(a) of FIPPA as well as a number of other exceptions under the Act. Our office also reviewed the city's figures and calculated the fees payable in view of the requirements of subsection 4(2) of the regulation. Our office concluded that the fees payable as set out in the Estimate of Costs issued to the complainant were calculated correctly.

Our office notes that, under subsection 8(3), if the actual cost of search and preparation is less than the estimate, the public body shall refund the difference to the access applicant. It is, therefore, incumbent on the city to keep an accurate accounting of the actual time required to search for and sever records prior to release and to provide a refund if required.

In our view the city met its duty to assist under section 9 of FIPPA, which requires that a public body shall make every reasonable effort to assist an applicant including a cover letter which explains how a fee estimate was calculated. Our office believes that the city provided the complainant with sufficient information in order to modify his request to reduce the fees payable if he had wished to do so.

¹ Review Report 135-2015 and 136-2015. Found at http://www.oipc.sk.ca/Reports/Reviews/FOIP/2015/135-2015_136-2015.pdf on November 4, 2016.

CONCLUSIONS AND FINDINGS

The ombudsman found that the time allowed for search and preparation of the responsive record (including severing) was reasonable and the fees as set out in the Estimate of Costs provided to the complainant on July 20, 2016 were calculated correctly.

Based upon the ombudsman's findings, the complaint is not supported.

Manitoba Ombudsman
November 10, 2016