

MANITOBA OMBUDSMAN PRACTICE NOTE

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PREPARING FEE ESTIMATES UNDER THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)

OVERVIEW OF FEES UNDER FIPPA

The right of access under FIPPA is subject to the payment of any fee required by the Access and Privacy Regulation (subsection 7(3)).

The regulation sets out the following types of fees:

- search and preparation in excess of two hours (subsection 4(1) of the regulation)
- copying fees (section 5 of the regulation)
- computer programming or data processing fees (section 6 of the regulation)
- actual cost of special courier delivery, if used (clause 7(c) of the regulation)

FEE ESTIMATES

A fee estimate must be provided to an applicant when a public body, in responding to a request, determines that:

- search and preparation is likely to take longer than two hours, or
- computer programming or data processing fees will be incurred

A public body is required to give the applicant an estimate of the total fee before providing the services (subsection 82(2)). The estimate must be provided on the prescribed Estimate of Costs form, Form 2 of Schedule A of the regulation (subsection 8(1) of the regulation).

It is a good practice to send a cover letter with the Estimate of Costs form. A sample letter is available on Manitoba Sport, Culture and Heritage's FIPPA website located at www.gov.mb.ca/chc/fippa/public_bodies/resources/model_letters_index.html. The cover letter could also provide an applicant with an explanation of how the costs were determined.

SEARCH AND PREPARATION FEES

An Estimate of Costs should be prepared as soon as a public body believes that search and preparation related to the application will take more than two hours. The fee payable for search and preparation is \$15.00 for each half-hour in excess of the first two hours, which are at no cost to the applicant (subsection 4(2) of the regulation).

The activities for which search and preparation fees may be charged are not specified in FIPPA.

Activities that are Not Chargeable

Subsection 4(3) of the regulation states that a fee estimate cannot include time spent on the following activities:

- transferring an application to another public body
- preparing a fee estimate
- reviewing the responsive records to determine whether any exceptions to disclosure apply, prior to any severing of the records
- copying records supplied to the applicant
- preparing an explanation of the records under subsection 14(2)

Additionally, time is not chargeable for consulting about the request within or outside of the public body, including consulting with legal counsel for the public body.

Activities that are Chargeable

In our opinion, time is chargeable for the following search and preparation activities:

Search to locate requested records:

- reviewing file lists or systems to determine the location of responsive records
- gathering records or retrieving records from storage
- examining files to locate responsive records

Preparation of responsive records:

- copying the original records to have a working copy or copies
- severing the records by obscuring the excepted information and noting the specific provisions on the severed records

COMPUTER PROGRAMMING OR DATA PROCESSING FEES

The Estimate of Costs form is also used when a public body needs to use computer programming or incurs data processing costs in responding to an application. Section 6 of the regulation sets out the amount of these fees, as follows:

- \$10.00 for each fifteen minutes of internal programming or data processing
- the actual cost of external programming or data processing incurred by the public body.

In some instances, data processing or computer programming may be required to produce the requested information. This could involve, for example, the inputting of data into an electronic database, creating an electronic record of information, manipulation of information stored in a computer database or writing a computer program so that the particular information requested can be retrieved.

TIPS FOR ESTIMATING TIME

- Ensure that only chargeable activities are included in the estimate.
- Determine the best approach to calculate how much time may be needed (this will need to be determined on a case-by-case basis).
- Whenever possible, estimate time based on a sample of the records.

- A timed trial can be conducted on a sample of the records by timing the chargeable activities for that sample, and then multiplying the time according to the volume of records.
- Document how the fee estimate was calculated in order to be able to respond to any questions from the applicant or a complaint investigated by the ombudsman.

DEALING WITH FEE ESTIMATES

When an estimate is given to an applicant, the time within which the public body is required to respond under subsection 11(1) is suspended until the applicant notifies the head that he or she wishes to proceed with the application (subsection 82(4)). An applicant has up to 30 days from the day the estimate is given to indicate if it is accepted or to modify the request to change the amount of the fees (subsection 82(3)).

An applicant who wishes to proceed with the application must sign and return a copy of the Estimate of Costs form to the public body along with payment of the estimated fees (subsection 8(2) of the regulation). When a public body receives this, the time limit for responding is reactivated and a response must be provided within the remaining time. For example, if the fee estimate was issued on day 15 of the 30-day time limit, the public body would have the remaining 15 days to provide a response, unless the time limit for responding is extended under section 15 of the act.

If an applicant modifies the request to change the amount of the fees, it may be helpful to either ask the applicant to put the modified request in writing or write to the applicant to confirm the wording of the modified request. A revised Estimate of Costs for the modified request should be provided to the applicant.

Additional fees cannot be charged for search and preparation, computer programming or data processing in the event that the actual time is greater than the estimated time. If the actual cost of search and preparation, computer programming or data processing is less than the estimate, a public body must refund the difference to the applicant (subsection 8(3) of the regulation). Also, if access to every record the applicant has requested is refused, a public body must refund the amount of estimated fees paid by an applicant (subsection 8(4) of the regulation).

An applicant has up to 60 days after being notified of the public body's decision concerning the fee estimate to make a complaint to the ombudsman. If an applicant has questions or concerns about a fee estimate, it is preferred that the applicant contact the public body first, before making a complaint to the ombudsman. The public body could explain the basis of the estimate directly to the applicant and would generally be able to advise the applicant how modifications to the request could reduce the estimate.