

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2002-005

July 30, 2002

COUNTY OF THORHILD No.7

Review Number 2245

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant submitted a formal request for information to the County of Thorhild No. 7 (the “Public Body”). Before performing all of the services requested by the Applicant, the Public Body responded by providing some of the information requested as well as a fee estimate for the remaining information. The Applicant disagreed with the fee estimate, the information being offered and disputed the record keeping procedures of the Public Body. The Applicant asked this Office to intervene. The Adjudicator found that the fee estimate, the assistance provided, and the record keeping practices of the Public Body were all in accordance with the *Freedom of Information and Protection of Privacy Act* (the “Act”) and Regulations. The Adjudicator observed that the decision did not prevent the Applicant from making a direct request to the Public Body, asking the Public Body to excuse all or part of the fees.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1) [previously section 9(1)], 10(2) [previously section 9(2)], 93(3) [previously section 87(3)], 93(4) [previously section 87(4)]; *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95, ss.10(6), 12(1) and Schedule 2.

Orders Cited: AB: Orders 99-014, 2000-021, 2001-016 and 2001-033.

I. BACKGROUND

[para 1] On June 26, 2001, the Applicant submitted a formal request for information and paid a fee of \$25 to the Public Body as follows:

1. A copy of the former administrator of the County of Thorhild's employment contract and his severance package with the County of Thorhild.
2. A copy of the new administrator's employment contract and resume.
3. A copy of the Economic Development accounts payable for the years 1996 to 1999.
4. A copy of the 1996 County financial statement.
5. A copy of the itemized councillor time sheets and expense claims for the year 2000.

[para 2] On July 26, 2001, the Public Body responded to the Applicant by providing the following:

1. Information about the former administrator's annual salary and documentary evidence of payment for past service.
2. A copy of the new administrator's contract and resume.
3. A copy of the 1996 County financial statement.
4. An estimate (\$1296) for the accounts payable information.
5. A request to pay one half of the \$1296 estimate (\$648).
6. An estimate (\$216) for the councillor expenses information.
7. A request to pay one half of the \$216 estimate (\$108).

[para 3] On August 5, 2001, the Applicant requested that the Office of the Information and Privacy Commissioner review the July 26, 2001 response of the Public Body.

[para 4] The Applicant believed the Public Body was denying access to the specific non-personal information in that:

1. The former administrator's complete "original" contract of employment and severance package were not released.
2. The new administrator's contract had the "references" segment blacked out.
3. The councillors' expense claims had portions that were blacked out.
4. The Applicant also questioned the fee estimate for the economic development accounts payable, believing the fee should be waived so as to promote public scrutiny.

[para 5] Mediation was authorized but did not resolve all of the issues. The matter proceeded to written inquiry. Both parties submitted written briefs, which were

exchanged between the parties. After both parties had an opportunity to review the briefs, follow up rebuttal briefs were submitted.

[para 6] The revised *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, F-25 came into force on January 1, 2002. Most of the section numbers of the Act changed but not the substance of the sections. Consequently, in this Order, I have set out the new section numbers. The previous section numbers appear in square brackets after the new section numbers.

II. RECORDS AT ISSUE

[para 7] As this inquiry primarily concerns a calculation of fees, the duty to assist and to create records, there are no records directly at issue.

III. ISSUES

[para 8] There are three issues:

- A. Did the Public Body properly estimate the fees for services?
- B. Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely as required by section 10(1) of the Act [previously section 9(1)]?
- C. Does section 10(2) of the Act [previously section 9(2)] require the Public Body to create a record for the Applicant?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body properly estimate the fees for services?

[para 9] On July 26, 2001, the Public Body provided the Applicant with a fee estimate for copies of the Economic Development accounts payable and councillor expense claims/time sheets. The Public Body advised the Applicant that the report providing detailed amounts and payees or expenses related to the Economic Development account of the Public Body for the years 1996-1999 could not be readily produced with the existing computer system of the Public Body. The initial and revised fee estimate of the Public Body was based on existing capabilities and exceeded \$150.

[para 10] The Applicant disagreed with the fee estimates and argued that the printing of the Economic Development account could be done with software such as Microsoft Great Plain Dynamics for a total cost below \$150. Further, the Applicant did not accept the detailed explanation of the record keeping and accounting procedures provided in an Affidavit by the Controller of the Public Body. The Affidavit supported and detailed the fee estimate of the Public Body.

[para 11] A Public Body's fee estimate is to be made in accordance with section 93(3) of the Act [previously section 87(3)] and section 12(1) of the Regulations, which read:

93(3) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fee before providing the services.

12(1) An estimate provided under section 93(3) of the Act must set out

(a) the time and cost required

(i) to search, locate and retrieve the record;

(ii) to prepare the record for disclosure;

(a.1) the cost of copying the record;

(b) the cost of computer time involved in locating and copying a record or, if necessary, re-programming to create a new record; ...

[para 12] The components of the Public Body fee estimate read:

The reviews of Councillors' [sic] expense claims for 2000 (itemized).

Due to privacy issues, all of the Councillor's (sic) records must be reviewed, copied and some third party personal information items blacked out and/or reviewed by legal counsel before release. The time estimated for this process is 8 hours @ 6.75/1/4 hour = \$216.

Requests for economic development accounts payable for the years 1996, 1997, 1998 and 1999.

Due to privacy issues and the manner of maintaining the records, plus the age of these records, a substantial commitment of staff time to retrieve the information and prepare the records for release is necessary. The estimate for retrieval and preparation is 48 hours @ 6.75 per/ 1/4 hour = \$1296.00.

[para 13] After mediation the Public Body revised the fee estimate. The components of the revised fee estimate read:

County of Thorhild No. 7
Cost of FOIP Request
Invoice Retrieval, Copying and Severing

Councillor Timesheets for the year 2000

Retrieval, review and severing-15 minutes @ \$6.25 per 15minute period
Photocopying (5 councillors x 12 timesheets/year @ \$0.25 cents/page)
\$6.25+\$15.00 = \$21.25

Previous County Manager-Employment Severance Agreements

Retrieval, review, severing 15 minutes @ \$6.25 per 15 minute period
Photocopying (10 pages (est.) @ \$0.25 cents/page) \$6.25+\$2.50 = \$8.75

Strawboard Invoices 1996-2001

Option 1:

All invoices (estimated number 340)

Retrieval @ 4 minutes per invoice @ \$6.25 per 15 minute period

Photocopying (340 invoices @ \$0.25 cents/copy)

\$566.57+\$85.00 = \$651.67

Option 2:

Significant Invoices only (Invoices over \$1000.00-estimated number of 105)

Retrieval @ 4 minutes per invoice @ \$6.25 per 15 minute period

Photocopying (105 invoices @ \$ 0.25 cents per page)

\$175.00+\$26.25 = \$201.25

Total Cost Option 1= \$681.67 (Applicable GST Not Included)

Total Cost Option 2=\$231.25 (Applicable GST Not Included)

[para 14] Schedule 2 of the Regulations sets out the fees for service and includes fees for the time and cost required to locate, retrieve and prepare a record, copy or ship a record and associated costs.

[para 15] The Schedule sets out maximum amounts that applicants may be charged. Items 1, 3 and 6(a) of the Schedule are relevant to the fee estimate of the Public Body.

[para 16] Schedule 2 items 1, 3 and 6(a) read as follows:

<i>1. For locating and retrieving a record</i>	<i>\$6.75 per ¼ hr.</i>
<i>3. For preparing and handling a record for disclosure</i>	<i>\$6.75 per ¼ hr.</i>
<i>6. For copying a record:</i>	
<i> (a) photocopies, hard copy laser print and computer printouts....</i>	<i>\$0.25</i>

[para 17] The fee estimate provided by the Public Body and explained by the Affidavit of the Public Body was calculated and prepared in accordance with the Act and Regulations. It is my understanding that the Public Body is aware of the application of section 10(6) of the Regulations that does not allow a fee to be charged for “reviewing” a record and that “reviewing”, in the context of the estimate of the Public Body, represents the time spent severing. Therefore, I find that the Public Body properly estimated the fees for services.

ISSUE B: Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely as required by section 10(1) of the Act [previously section 9(1)]?

[para 18] Section 10(1) of the Act [previously section 9(1)] reads:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 19] The Public Body, by its own admission, accepted the request of the Applicant as straightforward. The Public Body says it made every effort, evidenced by the correspondence provided by the Public Body and by the information in the Affidavit of the Public Body, to respond in a manner that was open, accurate, complete and reasonable for the circumstances. The Applicant disagreed with the Public Body's response and fee estimates, believing them to be unrealistic and the information being offered as "not likely" to contain the information the Applicant was seeking.

[para 20] The Applicant argued that the Public Body failed to respond to the request in accordance with section 10(1) [previously section 9(1)]. The Public Body denied that it was in contravention of section 10(1) of the Act [previously section 9(1)] and provided affidavit evidence in support of its contention.

[para 21] The Affidavit of the Controller for the Public Body clearly explains the information gathering, record keeping and tracking processes, none of which can be said to be out of the ordinary for this type of public body. There is no evidence provided by the Applicant to contradict the position that the Public Body acted in a reasonable manner that was open, accurate and complete. I conclude that the Public Body lived up to its duties under section 10(1): see Order 2000-021, para. 68 and Order 2001-016, paras. 20 and 30.

[para 22] I note that my decision in no way precludes the Applicant, if the Applicant can meet the criteria of section 93(4) of the Act [previously section 87(4)], to utilize that section, which reads:

93(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.

ISSUE C: Does section 10(2) of the Act [previously section 9(2)] require the Public Body to create a record for the Applicant?

[para 23] Section 10(2) of the Act [previously section 9(2)] reads:

10(2) The head of a public body must create a record for an applicant if

- (a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and*
- (b) creating the record would not unreasonably interfere with the operations of the public body.*

[para 24] The Public Body has provided evidence supported by the Affidavit of the Controller for the Public Body that, prior to 1998, the Public Body did not electronically maintain the data found in the General Ledger and the Accounts Payable. The Public Body further explained to the Applicant that, prior to 1998, the Public Body did not have a single database or a software program. The invoices were also not electronically stored.

[para 25] The Applicant did not accept the explanations of the Public Body. As I previously mentioned, the Applicant believed the Public Body should be using more current software favoured by the Applicant. However, as stated in Order 99-014, para. 20, “as long as a public body is using a reasonable process to generate records, there is no obligation on a public body to change its process simply because an applicant believes a faster more efficient method to complete the task may exist”.

[para 26] Section 10(2) [previously section 9(2)] does not impose a duty upon the public body to create records where they do not exist in a format the Applicant desires: see Order 2001-033. I conclude that the Public Body is not required to create records in the format requested by the Applicant

IV. ORDER

[para 27] I make this Order under section 72 of the Act [previously section 68].

[para 28] I find that the Public Body properly estimated the fees for service.

[para 29] I find that the Public Body responded to the Applicant openly, accurately and completely as required by section 10(1) of the Act [previously section 9(1)].

[para 30] I find that section 10(2) of the Act [previously section 9(2)] does not require the Public Body to create records in the format requested by the Applicant.

Dave Bell
Adjudicator