

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2013-27

September 11, 2013

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F6145

Office URL: www.oipc.ab.ca

Summary: An individual made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Solicitor General and Public Safety (now Justice and Solicitor General) (the Public Body) for “a copy of the winning vendors response to the RFP #-RFP-11-AB-SGPS-INVT-01 as well as the documentation why this response won the [RFP].” On March 21, 2012, the Public Body provided a fee estimate of \$384.25 for approximately 100 pages of records.

The Applicant requested a review by the Commissioner of the manner in which the Public Body calculated the fee estimate.

The Adjudicator found that in most instances, the Public Body did not justify its use of the maximum fees allowable to calculate its fee estimate. The Adjudicator also found that the Public Body did not properly calculate the fees for searching for, locating, and retrieving records; preparing records for disclosure; or the costs for producing a record.

The Adjudicator ordered the Public Body to recalculate the estimated fees for the Applicant’s access request.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 72, 93; *Freedom of Information and Protection of Privacy Regulation*, Alta Reg. 186/2008, ss. 11, 13, and the Schedule.

Authorities Cited: AB: Orders F2004-002, F2010-005, F2011-015, F2012-16, F2013-10; **BC:** Order F09-05.

Other Sources Cited: Access and Privacy Branch, Alberta Government Services. *Freedom of Information and Protection of Privacy Guidelines and Practices 2009*. Edmonton: Government of Alberta, 2009.

I. BACKGROUND

[para 1] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Solicitor General and Public Safety (now Justice and Solicitor General) (the Public Body) for “a copy of the winning vendors response to the RFP #-RFP-11-AB-SGPS-INVT-01 as well as the documentation why this response won the [RFP].” On March 21, 2012, the Public Body provided a fee estimate of \$384.25 for approximately 100 pages of records.

[para 2] The Applicant requested review by the Commissioner of the manner in which the Public Body calculated the fee estimate.

[para 3] The Commissioner authorized mediation. As a result of mediation the Public Body provided the Applicant with a revised fee estimate; however, as the Applicant continued to object to the fees, the matter was scheduled for a written inquiry.

[para 4] In his initial submission, the Applicant states that during or after the mediation process, he had asked the Public Body questions about the revised fee estimate provided to him; the Public Body did not answer his questions but directed him back to the portfolio officer handling the mediation process. The Applicant raised as an issue the fact that the Public Body failed to properly address his questions. An inquiry is not an appeal of a portfolio officer’s findings or a review of the mediation/investigation process; it is a *de novo* (or new) process. Therefore I will not consider whether the Public Body did or did not respond to the Applicant’s questions. That said, the questions posed by the Applicant raise the same issues as will be discussed in relation to the fee estimate.

II. RECORDS AT ISSUE

[para 5] As the issue relates to the Public Body’s fee estimate, there are no records at issue.

III. ISSUES

[para 6] The issue in this inquiry, as set out in the Notice of Inquiry, dated January 4, 2013, is:

Did the Public Body properly estimate the fees for services?

IV. DISCUSSION OF ISSUES

[para 7] According to its March 21, 2012 letter to the Applicant, the Public Body had initially calculated the fees as follows:

Searching for, locating and retrieving records – Approximately 6 hours @ \$6.75 per ¼ hour	\$162.00
Preparing and handling records for disclosure – Approximately 200 pages @ 2minutes/page @ \$6.75 per ¼ hour	\$182.25
Producing a paper copy of a record Approximately 100 pages @ \$0.25 per page	\$25.00
Shipping a copy of the records	\$15.00
TOTAL FEE ESTIMATE	\$384.25

[para 8] During mediation, the Public Body agreed to revise the fee estimate, and provided the following calculation to the Applicant by letter dated May 11, 2012 (changes in bold):

Searching for, locating and retrieving records – Approximately 3 hours @ \$6.75 per ¼ hour	\$81.00
Preparing and handling records for disclosure – Approximately 100 pages @ 2minutes/page @ \$6.75 per ¼ hour	\$94.50
Producing a paper copy of a record Approximately 100 pages @ \$0.25 per page	\$25.00
Shipping a copy of the records	\$15.00
TOTAL FEE ESTIMATE	\$215.50

[para 9] The Public Body provided me with an affidavit sworn by the Public Body FOIP Advisor who processed the Applicant's request (the Advisor). The Advisor states that once he reviewed the request and determined that it should be subject to fees for services, he contacted three program areas in the Public Body to search for responsive records. These program areas provided approximately 200 pages of responsive records and took approximately 6 hours to search for, locate and retrieve the records. The Advisor used these numbers to prepare the fee estimate of \$384.25.

[para 10] In its initial fee estimate, the Public Body had charged for preparing and handling 200 pages of records but for photocopying only 100 pages. In the second estimate, the Public Body estimates preparing and handling fees for only 100 pages of records. The time estimated for searching for records also halved, from six to three hours.

[para 11] Section 93 of the Act authorizes a public body to charge fees for processing an access request. That provision states in part:

93(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

...

(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

(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.

...

(6) The fees referred to in subsection (1) must not exceed the actual costs of the services.

[para 12] The following sections of the *Freedom of Information and Protection of Privacy Regulation* (“FOIP Regulations”) are relevant in this inquiry.

13(1) An estimate provided under section 93(3) of the Act must set out, as applicable,

...

(d) the cost to produce a copy of the record,

(e) the time and cost for preparing and handling the record for disclosure,

...

(g) the cost of shipping the record or a copy of the record.

...

(4) An applicant has up to 20 days to accept the fee estimate or to modify the request to change the amount of fees assessed.

14(1) Processing of a request ceases once a notice of estimate has been forwarded to an applicant and recommences immediately on the receipt of an agreement to pay the fee, and on the receipt

(a) of at least 50% of any estimated fee that exceeds \$150,

...

(4) Fees, other than an initial fee, or any part of those fees will be refunded if the amount paid is higher than the actual fees required to be paid.

[para 13] I must determine if, based on the information before me, the Public Body’s estimate is reasonable and done in accordance with the FOIP Act and regulations.

Using maximum costs to estimate fees

[para 14] The Public Body provided me with information about its general process for preparing fee estimates. It states that a FOIP Advisor takes the following factors into consideration in finalizing a fee estimate:

- a) The number of responsive records likely to be released to an applicant,
- b) The number of responsive records likely to be withheld from an applicant,
- c) The time estimated to search and secure the records,
- d) The time estimated to prepare and redact the records for disclosure to an applicant,
- e) The approximate cost to ship the records to an applicant, and
- f) The fee schedule outlined in Schedule 2 of the [FOIP] Regulation.

[para 15] The Public Body argues that “using the maximum amounts set out in Schedule 2 of the Regulation is a reasonable standard in preparing a fee estimate for the Applicant, as the Public Body wishes to state that a fee estimate is exactly that – an estimate.”

[para 16] The Public Body further states in its submission:

In this case, the Public Body respectfully reminds the Adjudicator that the issue under consideration is whether the fee estimate was reasonable. In this case, it may be that the actual cost would be lower or higher. The issue of the actual cost is not under consideration at this time. If the estimate is reasonable and approximates what may be the actual cost, the Public Body would have satisfied its requirements in regard to the fee estimate.

[para 17] In Order F2010-005 the adjudicator make a comment regarding the inexact nature of a fee estimate, citing Order F2004-002:

Section 93(3) of the Act requires that the Public Body provide a fee estimate in advance of processing the request. Therefore, an estimate is a calculated guess at what it might cost to respond to an Applicant’s access request. It is not the actual cost of processing the request. In Order F2004-002, the Adjudicator stated, “A fee estimate is simply that, an estimate. It is not an exact accounting of the time taken and the exact costs incurred.”

(at para. 16)

[para 18] An estimate is helpful in a situation in which the exact value of a factor is unknown. For example, a public body may not know exactly how many pages will be given to an applicant before it determines what information needs to be severed. Or a public body may not know exactly how long it will take to prepare the records. Therefore the public body can only provide an estimate of the actual costs, until the request is processed. However, even before a request is processed, certain variables will be (or ought to be) known by a public body. As discussed below, the Public Body appears certain about the salaries of employees involved in processing the request so far, and has

concluded that the maximum hourly rate provided in the Regulation is reasonable given the salaries of the employees involved. As I will discuss further below, a public body's cost per page for photocopying should also be known (or knowable) independent of the request.

[para 19] In Order F2011-015 the adjudicator stated the following:

Clearly, Schedule 2 of the Regulation contains maximum amounts that may be charged. However, the maximum amount under the Regulation cannot be charged for a service unless a public body incurs the maximum amount as an actual cost in providing that service. In the case of an estimate, the maximum amount cannot be charged unless a public body anticipates that it will likely incur costs reflecting the maximum amount.

(at para. 39)

[para 20] In that Order, the adjudicator addressed the argument that it is reasonable to use the maximum amounts in the Regulation to calculate a fee estimate:

The FOIP Act does not define "actual costs" and, for that reason, it is not entirely clear what considerations a public body is to include in its calculation of actual costs. The Regulation establishes only maximum amounts that may be *charged* for performing specific services. That this is so is evident from the opening words of Schedule 2, which state that "the amounts of the fees set out in this Schedule are the maximum amounts that can be charged." Therefore, the figures in Schedule 2 are not in themselves "reasonable" estimates of actual costs, but maximum amounts that may be charged.

In my view, using the maximums to arrive at an estimate of the costs of processing an access request, rather than amounts that the public body believes will approximate its actual costs, is unreasonable. I say this because this practice takes into account an irrelevant consideration, i.e. the statutory maximum that may be charged, and ignores relevant ones, i.e. a public body's costs.

In situations in which the maximums are used as estimates, if the actual costs turn out to be significantly lower than the maximums, this discrepancy could have the effect of dissuading an applicant from going ahead with the access request, even though the applicant would have proceeded had the estimates calculated the approximate actual cost. Such a result would be contrary to the purpose of the legislature in enacting the FOIP Act, and contrary to the clear intent of section 93(6).

(at paras. 44-46)

[para 21] I agree with the above reasoning, and the Public Body has not provided any reasons for finding that this analysis does not apply here.

Searching for, locating and retrieving records

[para 22] With respect to the hourly amount charged for searching for, locating and retrieving records, the Public Body states that the maximum amount allowed in the

Regulation (\$6.75 per quarter hour, or \$27/hr) is less than the salary of the employees engaged in searching for the records. It states that one employee is classified at an AS4 level with a minimum salary of \$21.84/hr and another employee is classified at a PS3 level with a minimum salary of \$33.39/hr. The Public Body further states that

it is reasonable that the combined salaries of the two positions far exceeds the \$27.00 per hour maximum permitted to be charged under the Regulation and therefore, justifies the use of the maximum in the case of this fee estimate for service. It should be noted that the search for records is usually done by program area employees who have other work requirements. This impacts the overall productivity of the program area. There is no reasonable method to measure these types of costs associated with decreased productivity.

[para 23] Regarding the salaries, it is unclear why the Public Body is considering the *combined* salary of the two employees. If the Public Body is charging for three hours of search time, presumably the AS4 employee would account for a portion of the three hour and the PS3 employee would account for the remaining portion of time; in other words, the \$21.84/hr minimum salary is relevant for the AS4 portion and the \$33.39/hr minimum salary is relevant for the remaining portion. The Public Body may charge up to \$27/hr for the time taken by employees earning that amount or more. However, the Public Body cannot charge the maximum hourly rate for the time spent by the employee earning \$21.84/hr. If, for example, each employee took 1.5 hours to search for records, the fee for the three hours would be \$73.26 (1.5 x \$21.84/hr + 1.5 x \$27/hr). I will order the Public Body to recalculate the fees for searching for, locating and retrieving records based on the time apportioned to each of the two employees.

[para 24] By letter dated May 14, 2013 I asked the Public Body to provide me with further explanation regarding the three hours charged for searching, locating and retrieving the records, and why three different program areas were asked to conduct the search.

[para 25] The Public Body stated that the FOIP Advisor required one hour to identify the Public Body program areas that may have responsive records, and to draft an email requesting those program areas to search for the requested records. Two of the three program areas responded that they had retrieved records, and each took one hour to search for and retrieve the records. The third program area did not have responsive records.

[para 26] It is my view that determining which program areas to contact, and instructing those program areas as to the parameters for the search, are integral factors in ensuring a thorough and efficient search process. Therefore it is appropriate to include this time when assessing the fees for conducting the search for records.

[para 27] With respect to requesting searches by three program areas, the Public Body explained that the Financial Operations and Procurement Branch was contacted because they are involved in contracting and procurement (to which the Applicant's request appears to relate). The Solicitor General Staff College was contacted because the RFP

relates to the provision of training for peace officers at the college, and the Law Enforcement Oversight Branch was contacted because it oversees peace officers.

[para 28] The Public Body also provided me with a copy of the responsive records *in camera*; having reviewed those records, and the Public Body's response to my questions, I am satisfied that three hours is a reasonable amount of time for searching for, locating and retrieving the responsive records. I also agree that it was reasonable to contact each of the three program areas in order for the Public Body to ensure it obtained all responsive records.

Preparing records for disclosure

[para 29] Past orders of this office have included activities such as severing (but not reviewing), inserting the relevant exception where information is severed, collating etc. as activities for which fees may be charged under "preparing and handling."

[para 30] In Order F2011-015, the adjudicator found that estimating 2 minutes per page for preparing records is unreasonable without evidence to justify that amount of time (see para. 25). However, the Public Body estimated a time of two minutes per page to prepare the records, stating

As the Public Body FOIP Unit converts all hard copy paper documentation into a PDF format, this process would take the bulk of the two minute per page standard as staff must not only scan the document into PDF format, but compare both the original paper version and electronic version for quality and accuracy. Of course, the time to sever any responsive records takes time as well and in many cases, may take more time than handling a paper version of the record. Severing occurs electronically and requires an Advisor to select the appropriate text or other information, highlight and insert the proper FOIP Act sections relied upon for the information severed.

[para 31] The Public Body also indicates that the time needed to scan the records includes time taken to compare the paper copy with the electronic copy to ensure accuracy and quality.

[para 32] In my view, scanning records in order to use severing software is an internal process of the Public Body, not dissimilar to creating working copies of records when processing a request.

[para 33] The BC Information and Privacy Commissioner's office has drawn a distinction between the activities performed for the applicant and the activities that are performed as part of the public body's own internal processes. The adjudicator in Order F09-05 considered fees for creating working copies of records:

I accept that it will generally be preferable for public bodies to work with copies of records rather than originals. I do not however consider that a public body is providing a "service" to an applicant under s. 75(1) or s. 7 of the Regulation when it makes working copies of records. Rather it is doing so because of a

choice to preserve its original records, as well as part of its routine responsibilities under FIPPA. It was not in my view appropriate for the Law Society to charge FCT a per-page fee for making working copies of records. It may only charge FCT for copies of records made for disclosure to FCT.

(at para. 28)

[para 34] The appropriateness of charging an applicant for creating working copies of responsive records has not been addressed in past orders of this office. I agree with the reasoning in the BC order cited above, that it is inappropriate to charge an applicant for creating working copies of records. Similarly, I conclude that the Public Body cannot charge the Applicant fees for the time taken to scan paper copies of the records requested by the Applicant to create electronic copies for the Public Body's severing process. (This reasoning may not apply in every case where a public body scans records – for example, where a public body scans records in order to provide electronic records at the request of an applicant).

Severing information

[para 35] Section 11(6) of the FOIP Regulation specifically states that a public body may not charge for reviewing records. However, past orders of this office have stated that public bodies may charge fees for the physical severing of information in a record.

[para 36] The Public Body has explained the severing process in its submissions. It states that severing electronically “may take more time than handling a paper version of the record.” I imagine that the electronic process offers other efficiencies, such as the creation of fewer paper copies of the records (redacting a paper copy would usually require two copies of the record to be made; the electronic process may require only one, or none if the applicant is able to accept an electronic version of the record). The Public Body is not required to process a request in a particular way (for example, by redacting a paper copy) simply because this process may be slightly faster.

[para 37] The Public Body describes the electronic process as “select[ing] the appropriate text or other information, highlight[ing] and insert[ing] the proper FOIP Act sections relied upon for the information severed.”

[para 38] I do not have any indication of how much information may be severed from the responsive records, nor do I know how much of the two minutes per page was taken up with severing (as the Public Body argued that scanning the information takes up the bulk of that time). However, two minutes per page to perform the steps outlined by the Public Body seems somewhat high. I will order the Public Body to recalculate its costs for preparing and handling the records for disclosure by omitting the time taken to scan the paper records and by estimating a reasonable amount of time to physically redact the excepted information in the responsive records. The Public Body may want to take a representative sample of the responsive records and sever out information it intends to withhold (if any) to determine an average amount of time required per page.

[para 39] With respect to the hourly rate associated with preparing and handling the records, the Public Body also charged the maximum rate. It explained that one PS4 employee would be responsible for the relevant functions, at a minimum salary of \$35.81/hr. I agree that the maximum rate is reasonable for this charge.

Producing a copy

[para 40] In Order F2011-015 discussed above, the adjudicator determined that charging (or estimating) 25 cents per page for photocopying is unreasonable unless the public body can show that this reflects its actual costs (see paras. 47-51).

[para 41] In its submissions, the Public Body has disagreed with the adjudicator's reasoning in F2011-015 regarding the cost for photocopying. It states

In regard to photocopy costs, the Public Body's fee estimate stated 25 cents per page... It is noted, however, that in Order F2011-015, the Adjudicator advised that fee estimates should be based on actual costs. The Adjudicator also states that:

In my experience... a rate of 25 cents per page for photocopying is consistent with a commercial rate for photocopying, and may not necessarily reflect the actual cost of making photocopies, given that commercial rates are often calculated so that the service providers may make a profit. (para. 48, Order F2011-015).

The Adjudicator provides no evidence to support why her experience has determined that this rate [25 cents per page] is reflective of a commercial rate, nor that it contains an amount greater than the actual costs to a commercial entity for the purposes of profit.

It is the position of the Public Body that the comparison of costs to commercial entities is incorrect and misleading. Many commercial entities provide services at or below cost, in order to accomplish other purposes. These other purposes could include the requirement to stay competitive with competing companies, or as a means of attracting consumers in order to increase sales in other more profitable areas of the commercial entity.

...

[I]t is the position of the Public Body that the maximum fee charge[d] as outlined in the Regulation was not determined by comparison to a commercial rate, but rather the intent was to provide an estimated cost reflective of the purposes and intent of the legislation. The purposes include providing requested information in a format that ensures the highest quality and accuracy of copies, in a timely manner. The maximum amount was determined to limit the actual cost a public body could charge, rather than to establish the actual cost.

[para 42] More recently, in Order F2013-10, the adjudicator confirmed that labour costs cannot be incorporated into the fee for photocopying (see paras. 79-86). In response to this Order the Public Body states:

However, the Public Body respectfully asserts that there is a labour cost component that needs to be considered in creating a record for an applicant. As

stated in the Public Body's initial submission to this inquiry, "a public body has the legislative responsibility to not only ensure the accuracy and quality of the record, but to improve the quality if feasible. The staff providing photocopying services must maintain a high level of review of the photocopied material to ensure that the applicant receives the best quality copy available. The level of skill required throughout the processing of an access request, including the photocopying, is much greater than required commercially." [p.11, Public Body Initial Submission], and therefore such labour costs need to be reflected in any fee estimate for service.

If a public body cannot include labour costs in its photocopy fee calculations, as stated in Order F2013-10, then the Public Body asserts that such costs would be incorporated elsewhere in the fee estimate.

[para 43] I agree with the adjudicator in Order F2011-015, that the cost for photocopies must be based on the public body's actual costs, as stated in section 93(6) of the FOIP Act. A public body may charge 25 cents a page for copies of records if that reflects its actual costs.

[para 44] As the Public Body told me that it scans the paper records, I was unclear why the records would also have to be photocopied. In my May 14, 2013 letter I asked the Public Body the following question:

The Public Body has stated that it photopies the responsive records. It is not clear to me why the Public Body would have to both scan the paper records and photocopy them. Can the Public Body print the electronic version of the records (the PDF version) after the records had been severed? If the Public Body does in fact do this, is a photocopy also required? If not, what are the actual costs associated with printing the electronic file (as opposed to photocopying the paper records)?

[para 45] The Public Body responded as follows:

At the time the Applicant submitted his request to the Public Body (March 2012), the Public Body processed and produced responsive records packages to applicants by photocopying original paper records. The Public Body changed its process in June 2012 to electronic processing by scanning original paper records using Adobe Acrobat and subsequent printing of responsive records packages to applicants.

Had the Applicant chosen to accept the initial fee estimate at the time, the Public Body would have provided a photocopied responsive records package. However, as the issue has been before the Commissioner, upon final resolution of the fee estimate issue, the Public Body will process the Applicant's request via the electronic processing method by printing the responsive records package.

Although photocopies are not now required, the Public Body maintains that the costs associated with printing the responsive records package would be essentially the same. The Public Body prints electronic records from Adobe Acrobat. The costs under Section 3(a)(i) and 3(a)(ii) in Schedule 2 of the FOIP Regulation include both "photocopies and computer printouts."

[para 46] The Public Body's submissions refer only to costs associated with photocopying and not printing records; however, as it argues that the costs for the latter are essentially the same as the costs for the former, I will consider its reasons for charging 25 cents per page for photocopying.

[para 47] The Applicant noted in his submission that a commercial business charges only \$0.08 per page for photocopying. The Public Body responds that if it charged \$0.08 per page instead of 25 cents per page, the difference would be only \$17 and that in the context of a \$215 fee estimate, this difference is reasonable because fee estimates are not *actual* fees. However, as I have discussed, a public body is required to charge actual costs for photocopying, so a fee estimate should reflect the Public Body's actual costs for photocopying. The per-page cost for the Public Body to photocopy is a known (or knowable) factor; the number of pages is the estimate. I make the same finding for printing records from electronic records.

[para 48] The Public Body asserts that the comparison of costs with the private sector by the adjudicator in F2011-015 is misleading, but it does not provide any evidence to support this assertion or to provide a more appropriate comparator. The Public Body suggests that commercial entities provide some services at below-cost rates as "loss leaders" but does not offer any evidence that this happens in the photocopying business or that it has any relevance to the comparisons the adjudicator was making in F2011-015. The Public Body may instead have, for example, compared the photocopying (or printing) rates offered by businesses that offer *only* photocopying and related services such that it would not make sense to use low photocopy rates as a "loss leader." In any event, this discussion is not directly relevant to what the Public Body's actual costs are.

[para 49] The Public Body also states:

The order F2011-015 states that information such as costs of paper and toner would be in consideration. The Public Body suggests that other information such as power consumption, photocopier maintenance and servicing, and the approximate time and manpower skill, required to copy responsive records must also be considered in such calculations. These costs are not easily measurable.

[para 50] Regarding the estimation of actual costs in general, the adjudicator in Order F2011-015 stated:

In saying this, I do not mean that a public body must conduct a detailed analysis of each and every factor contributing to its actual costs every time it estimates fees. Rather, it is sufficient for a public body to approximate actual costs such as photocopying and the rates of employee time, once, and then incorporate these amounts into subsequent fee estimates. Provided that a public body can demonstrate with evidence or explanation that these approximations are reasonable, the fee estimate relying on them will likely also be found to be reasonable.

(at para. 51)

[para 51] I do not disagree with the Public Body that some of the per-page costs associated with photocopying (and printing), such as the cost of toner, may be challenging to measure (of course, the Public Body may exclude these costs altogether). However, since the issuance of Order F2011-015, other public bodies have calculated an actual cost for photocopying. For example, in Order F2013-10, the public body determined its actual costs to be \$0.045 per page for photocopying, including paper, leasing costs and power (see para. 79). In Order F2012-16 the public body calculated a per-page cost of \$0.0635, based on the cost of paper and related supplies, as well as the rental fee for the photocopier (see para. 22). Actual costs for printing would likely be calculated in a manner similar to actual costs for photocopying.

[para 52] The Public Body also disagreed with the adjudicator's conclusion in Order F2013-10 that labour costs could not be incorporated into the fee for photocopying. The Public Body's objections to that Order are that the Public Body takes time to ensure that records provided in response to an access request are of a high quality. I do not disagree that the time and care taken by a public body in responding to an access request is valuable and worthwhile. However, as stated in Service Alberta's *FOIP Guidelines and Practices Manual* (the Policy Manual), fees for processing an access request are not intended to recover all of the costs associated with that process. The Policy Manual states the following on page 72 (my emphasis):

The *FOIP Act* allows public bodies to charge fees to **help offset the cost** of providing applicants with access to records.

The FOIP Act and Regulation set out which of the costs associated with processing an access request are to be passed on to the applicant. I agree with the adjudicator's interpretation in Order F2013-10, that labour costs associated with producing copies of records are not among the activities for which fees are assessed (see particularly paragraphs 79-86 of that Order). I do not accept the Public Body's rationale for charging 25 cents per page for photocopying or printing records. I will order the Public Body to calculate its actual costs for printing records.

Shipping

[para 53] Item 9 of Schedule 2 of the FOIP Regulation permits a public body to charge an applicant the actual cost of shipping a record. In this case, the Applicant has stated that there is no need for the Public Body to charge him \$15.00 for shipping the responsive records as he is willing to pick them up. That amount can therefore be removed from the fee estimate.

V. ORDER

[para 54] I make this Order under section 72 of the Act.

[para 55] I order the Public Body to recalculate the fee estimate as follows:

- recalculate fees for searching for, locating and retrieving records based on the time taken by the relevant employees, per paragraph 22;
- recalculate the fees for preparing the records for disclosure by omitting time estimated for scanning the records and recalculating the estimated time required to sever information, per paragraph 37;
- calculate the actual costs for printing records; and
- remove the amount charged for shipping the records.

[para 56] I order the Public Body to provide a new estimate to the Applicant of the total fees based on the foregoing.

[para 57] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator