

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2020-18

July 21, 2020

ALBERTA ENERGY

Case File Number 001093

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Alberta Energy (the Public Body) for records related to curriculum development involving Inside Education. The request specified “all records related to any collaboration with Inside Education to review, develop, and distribute curriculum/teaching materials. It also includes, but is not limited to, all inter-departmental communications related to this curriculum.” The Applicant requested a fee waiver with the access request, on the grounds that the records relate to a matter of public interest (section 93(4)(b)).

The Public Body located responsive records but did not grant a fee waiver. The Applicant paid the fee assessed by the Public Body and received the responsive records (with exceptions applied to some information). The Applicant again requested a fee waiver in relation to that request, arguing that the records were a matter of public interest. The Public Body denied the request.

The Applicant requested a review of the Public Body’s decision regarding the fee waiver, and subsequently an inquiry.

The Adjudicator found that the Applicant had shown that some of the responsive records related to a matter of public interest; but not all of the records appeared to. The Adjudicator had not been provided with a copy of the responsive records to ascertain how many records related to a matter of public interest.

The Adjudicator determined that in the circumstances it was appropriate to waive 25% of the fees for the Applicant's request, and ordered the Public Body to refund the Applicant that amount.

Statutes Cited: AB: Designation and Transfer of Responsibility Regulation (AR 80/2012), s. 5, Energy Grants Regulation (Alta Reg. 103/2003), *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 72, 93, *School Act*, R.S.A. 2000, c. s-3, s. 39,

Authorities Cited: AB: Orders 96-002, 2001-023, F2006-032, F2007-023, F2009-034, F2013-10, F2016-39, F2020-19

Cases Cited: *Alberta Energy Regulator v. Information and Privacy Commissioner and Jennie Russell*, Alberta Court of Queen's Bench oral decision, February 21, 2018 (Court File Number 1601 15874)

I. BACKGROUND

[para 1] The Applicant made an access request dated June 12, 2014 to Alberta Energy (the Public Body) for records related to curriculum development involving Inside Education. The request specified "all records related to any collaboration with Inside Education to review, develop, and distribute curriculum/teaching materials. It also includes, but is not limited to, all inter-departmental communications related to this curriculum." The Applicant requested a fee waiver with the access request, on the grounds that the records relate to a matter of public interest (section 93(4)(b)).

[para 2] The Public Body located responsive records but did not grant a fee waiver. The Applicant paid the fee assessed by the Public Body and received the responsive records (with exceptions applied to some information) in December 2014. The Applicant again requested a fee waiver in relation to that request in March 2015, arguing that the records were a matter of public interest. By letter dated April 9, 2015, the Public Body denied the request.

[para 3] The Applicant requested a review of the Public Body's decision regarding the fee waiver, and subsequently an inquiry.

[para 4] The Applicant had made a similar request to the Public Body for records relating to all communications between the department and anyone representing Inside Education. The Applicant states that she made two similar requests in order to avoid the Public Body having to process one large request. The Applicant requested a fee waiver regarding that other request. That request was also denied by the Public Body and is the subject of Order F2020-19.

[para 5] I do not have a copy of the records that were provided to the Applicant in response to her request. In the Notice of Inquiry, the parties were invited to provide any records at issue they thought to be relevant to this inquiry. The Applicant provided a few pages of records that were responsive to her similar request (subject of Order F2020-19).

[para 6] The Public Body states responsive records were provided in two batches (112 pages and 177 pages). It describes the records as follows (initial submission at para. 49):

- i. Emails requesting Alberta Energy representatives make appearances at Inside Education's events, including a teacher professional development program in Lac La Biche, the Generate Youth Energy Literacy Summit, and online seminars which included a virtual town-hall on Alberta's Oil Sands industry, and student leadership training.
- ii. The 2013 grant request made by Inside Education to Alberta Energy, and emails relating to providing and executing the grant.
- iii. A briefing note to the Assistant Deputy Minister regarding grant funding to Inside Education.
- iv. Inside Education's Grant Descriptions and Energy Education Program Summaries for 2010 to 2012, and Program Proposals for 2008 and 2009.
- v. A grant approval request, acknowledgment and information for a 2005 Electricity Ecotour.
- vi. A report by Inside Education to Alberta Energy regarding the Energy Education Forum, February and March 2004. Inside Education led a forum, consulting with educators, to review current Alberta school curriculum.

II. RECORDS AT ISSUE

[para 7] As the issue relates to a fee waiver, there are no records at issue.

III. ISSUES

[para 8] The issue in this inquiry, as set out in the Notice of Inquiry, dated September 28, 2017, is:

Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?

IV. DISCUSSION OF ISSUES

Preliminary issue – scope of inquiry

[para 9] In her rebuttal submission, the Applicant questioned how the Public Body assessed the fees it charged for her access request. In its rebuttal, the Public Body notes this new concern but did not address it, as it is not set out as an issue in the Notice of Inquiry.

[para 10] The fees associated with this access request had been assessed, charged, and paid by the time the Applicant submitted her request for review to this Office. The request for review raised only the Public Body's response to the Applicant's request for a fee waiver. Following the mediation, the Applicant's request for inquiry again raised only the Public Body's response to her fee waiver request.

[para 11] A rebuttal submission is too late in the process to raise a new issue. As such, I have not added it to this inquiry.

[para 12] The Applicant has also indicated in her submissions that the Public Body made its decision regarding her fee waiver request in bad faith. She states that “[i]t is telling that the public body denied by fee-waiver request only 6 days – less than a week – after I submitted my request, and before Alberta Energy had even completed its fee estimate for the requested records, even though its estimate was completed within 30 days of the initial fee-waiver request” (rebuttal submission at page 4). It is not clear why the Applicant finds this problematic; it seems logical for the Public Body to decide first whether fees should be waived before assessing what the fees would be. If the fees are waived, they needn’t be assessed.

[para 13] The Applicant also objects that the Assistant Deputy Minister who made the recommendations regarding whether to waive fees was directly involved in the Public Body’s decision to provide grant funding to Inside Education. It is not entirely clear whether the Applicant is alleging bias on the part of the Public Body or the ADM in particular. It is not unusual for an ADM to be involved in several areas; I do not see a conflict that could be relevant to whether the fees for the Applicant’s request should be waived.

[para 14] Whether the Applicant is arguing that the Public Body’s decision was made hastily, or for improper reasons, I can substitute my decision for that of the Public Body regarding her fee waiver request.

Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?

[para 15] Section 93 of the Act 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.

...

[para 16] The Commissioner’s jurisdiction to review decisions regarding fee waivers was described in Order F2007-023 (at paras. 23-25):

When deciding whether a public body has properly refused to grant a fee waiver, the decision-maker must look at all of the circumstances, information and evidence that exists at the time when the Public Body denied the fee waiver and also at the time of the inquiry (Order 2001-042 (para 19)). A decision-maker may consider all information and evidence at the inquiry, even if that information and evidence was not available to the public body at the time it made its fee waiver decision.

Section 72 of FOIP does not merely authorize the decision-maker to confirm a public body's decision or to require a public body to reconsider its own decision. Section 72(3)(c) of FOIP gives decision-makers the authority to render their own decision about whether to waive all or part of the fee or to order a refund. Under section 72(3)(c), the decision-maker has the authority to hear the case "de novo" as a new proceeding and to make a "fresh decision" (Order F2007-020 (para 30), OIPC External Adjudication Order #2 (May 24, 2002) Justice McMahon (para 45), Order 2001-023 (para 32)).

I must review a public body's decision on a case-by-case basis, and consider all of the information before me. Therefore, if I reach a different conclusion than a public body and find that a fee should be reduced or completely waived, I may make a "fresh decision" and substitute my own decision for the public body's decision. However, if I reach the conclusion that a public body properly applied section 93(4) when denying a fee waiver, I may confirm that decision.

[para 17] In Order F2006-032 the Adjudicator set out a non-exhaustive list of criteria for determining whether to grant a fee waiver in the public interest (these criteria are a revised version of thirteen criteria set out in Order 96-002):

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it? The following may be relevant:
 - Have others besides the applicant sought or expressed an interest in the records?
 - Are there other indicators that the public has or would have an interest in the records?
2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public? The following may be relevant:
 - Do the records relate to a conflict between the applicant and government?
 - What is the likelihood the applicant will disseminate the contents of the records?
3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government? The following may be relevant:
 - Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?
 - Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?
 - Will the records shed light on an activity of the Government of Alberta or a public body that have been called into question? (At para. 43)

[para 18] In Order F2009-034 the adjudicator summarized the "public interest" issue as follows (at para. 73):

As noted by the Public Body, the requested records should be of significant importance in order for the cost of processing the access request to be passed on to taxpayers (Order 2000-011 at para. 52). Fee waivers on the basis of public interest are to be granted only when there is something about the records that clearly makes it important to bring them to the public's attention or into the public realm (Order F2006-032 at para. 39). It is not sufficient for there to be some marginal benefit or interest in the record; there should be a compelling case for a finding of public interest (Order F2007-024 at para. 47).

Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?

[para 19] The Applicant argues that the requested information is of public interest. She states that Inside Education is a non-profit group that is largely funded by the oil and gas industry that provides energy-related curriculum to Alberta public schools. In her request for review, the Applicant states “[i]t is patently obvious that a FOIP request abo that curriculum taught to children at Alberta’s taxpayer-funded schools is in the public interest.”

[para 20] In her initial submission, the Applicant states that the topic of the records came to her attention via a media story. She provided a copy of the story discussing Alberta Education’s inclusion of oil companies in a school curriculum redesign working group. That article cited concern raised by various groups: Ibrahim, Mariam, (2014, Mar 12). Curriculum overhaul criticized; Oil industry too involved in redesign: NDP, environmentalists. *The Edmonton Journal*, p. A3.

[para 21] The Applicant further states (at page 5):

On April 9, 2014 - less than a week before I filed my FOIP request - the NDP tabled a petition in the legislature calling on Alberta Education to remove oil and gas companies from having any input in the curriculum redesign.

[para 22] She says that the petition received more than 26,000 signatures.

[para 23] While the Edmonton Journal story and petition did not involve Inside Education, the Applicant argues that the records she requested are in the public interest because of the concern about influence of outside organizations in curriculum.

[para 24] The Public Body states that it does not have input into the development of school curriculum in Alberta, nor does Inside Education. It states that Inside Education provides resources and programs to teachers and students, and that it is not mandatory for schools to attend or use these programs.

[para 25] The Public Body states (initial submission at para. 76):

The Applicant has cited only one person, in one article, that was critical of Inside Education's activities, and that critique did not involve interactions with Alberta Energy. The appropriate parties to request records relating to curriculum or programs offered in or to public schools may be Alberta Education, and are most certainly Alberta's school boards, but is not Alberta Energy.

[para 26] The Public Body further states that the records do not relate to input that oil and gas companies may have in Alberta curriculum. It states (at para. 78):

One may argue that since Inside Education is partly funded by natural resource companies, that those companies might use or influence Inside Education to present favourable materials and programs, or try to use it to influence curriculum in Alberta. This is perhaps a concern of note. However, the Applicant has presented no evidence that this is the case, Alberta Energy is unlikely to have records of this nature, and the records released give no indication of such a state of affairs.

[para 27] In Order F2016-39, the adjudicator concluded (at para. 45):

In concluding that the records at issue would inform a matter that is or would be of interest or concern to the public, I do not need to decide that the Public Body's practice on which the records would shed light is necessarily one that all members of the public would regard as problematic in some way or as worthy of debate. It is enough that in a situation such as the present, which involves the practices of a public body, that there be a reasonable likelihood that some significant sector of the public would wish to know about the matter or debate the merits of the practices. I believe on the basis of the facts outlined, that there is such a likelihood in the present case.

[para 28] In this case, the Applicant has presented evidence to show that the public, or a segment of the public, is interested in the involvement of oil and gas companies in school curriculum. Inside Education receives significant funding from such companies, and uses those funds, in part, to develop curriculum for use by Alberta schools. The records, as described by the Public Body, relate to grant funding from the Public Body to Inside Education, for these teaching programs.

[para 29] I would agree that there is a general public interest in input from the energy sector in public education – whether via mandatory curriculum or voluntary programs offered to schools. The Applicant has shown a public interest in energy companies having direct input into school curriculum. While the Public Body does not have direct input into school curriculum, it provides grant funding to an organization that creates energy-related curriculum for schools, and that is supported by energy companies. In my view, this is sufficient to show that the public would have an interest in this topic.

[para 30] To the extent that the responsive records appear to provide details about what programs Inside Education requested and received funding for, the records contribute to the public understanding of this topic.

Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public?

[para 31] The Applicant received the requested records in December 2014. In the request for review (dated June 8, 2015) and her initial submission (October 26, 2017), the Applicant states:

What is the likelihood the applicant will disseminate the contents of the records? Obviously, we intend to publish and broadcast this information widely. CBC has the largest network in Canada and we expect this information would be distributed nationally.

[para 32] By letter dated May 12, 2020, I noted that it had been several years since the Applicant received the responsive records, and since she had made her submissions to the inquiry. I asked whether, in this time, the Applicant has distributed or made public any information from the records.

[para 33] The Applicant responded that she has not yet disseminated the information, as it is part of a larger project still underway. She also argued that her interest in the records remains professional, rather than personal, and that she should not be held to a timeline to disseminate information in the records. She said (response received June 2, 2020):

I sought these records, through my job, on behalf of the public. I did not make this request, pay the money the public body charged, and go through two appeals out of my own idle interest.

As I have said before, any attempt by the public body, or an adjudicator, to try to impose a timeline for dissemination of the records would be both arbitrary and inherently unfair, and would not hold up to any sort of scrutiny on appeal. I do not work according to the public body's or any adjudicator's timetable.

[para 34] Waiving fees in the public interest means transferring the cost to the public because the disclosure of the records is in the public interest (as opposed to transferring the cost on the basis of the applicant's inability to pay the cost). To ask the public to bear the burden of the cost on the basis of public interest in the records, the public should receive some benefit to the records being disclosed to the Applicant. This benefit is primarily from the distribution of the information in the records to the public by the applicant, in some fashion.

[para 35] This distribution needn't be a story from an established media outlet; nor need it be disclosure of the records in full. An applicant may discuss the information on social media, websites, community newsletters, community or town hall meetings, and so on.

[para 36] The information needn't have already been disseminated by the Applicant in order to meet this part of the test. Applicants are permitted to request a fee waiver in the public interest prior to paying the assessed fees, and therefore, prior to receiving responsive records. This is necessary, as some applicants cannot afford to pay the fees and request a refund later. The timing of such a fee waiver request would be nonsensical if applicants had to show that they made public information from the records.

[para 37] Further, I agree with the Applicant that if she intends to use the information in a publication that takes time to create (such as an in-depth story), she cannot be expected to publish the information in the records before she has time to complete the publication. In Order F2016-39, the Adjudicator considered a fee waiver request of a journalist who intended to write a story including the information in the requested records. The adjudicator found (at para. 50):

In my view, the Applicant has established that her purpose for obtaining the records is to contribute to public debate regarding a matter that is of public interest. I do not consider the fact

that the Applicant has not yet published the article to detract from her stated purpose in obtaining the records. I accept that researching an article of this nature takes time and may require obtaining information from more than one source.

[para 38] This decision was upheld on judicial review (*Alberta Energy Regulator v. Information and Privacy Commissioner and Jennie Russell*, Alberta Court of Queen's Bench oral decision, February 21, 2018 (Court File Number 1601 15874)).

[para 39] Order F2016-39 does not specify the date the applicant received responsive records; however, it is clear from the Order that the request was still being clarified in May 2014. The Order was issued in October 2016. Therefore, somewhere around two years had elapsed between the time the applicant received responsive records and the Order regarding the fee waiver request.

[para 40] There is no clear timeline past which this factor weighs against finding the applicant ought to receive a fee waiver in the public interest. However, I disagree that a consideration of the amount of time that has passed since the Applicant received the records is arbitrary or unfair. My decision must include the evidence before me at this time. At this point, the Applicant has had the records for over five years and the public has not received a benefit from the Applicant's access request in that time.

[para 41] That said, I don't doubt the Applicant's intention to publish a story; her submissions and supporting evidence supports her argument that her story encompasses several different angles on the issues.

[para 42] In my view, this factor weighs in favour of a fee waiver, but the passage of time gives this factor notably less weight.

If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government?

[para 43] The sub-components of this factor are:

Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?

- Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?
- Will the records shed light on an activity of the Government of Alberta or a public body that have been called into question?

[para 44] In her request for review and initial submission, the Applicant states that the records relate to Inside Education's influence on education and whether it is appropriate. She states that the public has a right to know who influences the design of Alberta curriculum and the process by which it is done.

[para 45] In its initial submission, the Public Body states that responsibility for Alberta school curriculum development lies with the Minister of Education, under section 39 of the *School Act* and section 5(1) of the Designation and Transfer of Responsibility Regulation (AR 80/2012). School boards may also develop curriculum under the *School Act*. The Public Body does not have responsibility or authority to develop curriculum.

[para 46] In response to the Public Body's argument that Inside Education's programs are not a mandatory part of Alberta's curriculum, the Applicant argues that it is irrelevant whether Inside Education's programs are mandatory as they are taught to thousands of students in the province. I agree; Inside Education's website states that it "visited" over 32,000 students in 2019¹. Even if the programs funded by the Public Body are voluntary, they appear to be used by a significant number of schools.

[para 47] The Applicant states that the records show a close working relationship between the Public Body and Inside Education. She argues that the Public Body knows what Inside Education "wishes to teach children" and provides grant funding on the basis of its approval that curriculum (rebuttal submission, at page 4).

[para 48] In her rebuttal submission, the Applicant argues that the Public Body did not give Inside Education "carte blanche" with respect to the grant funding; therefore, the Public Body had indirect input into its curriculum (at page 2). The Public Body agrees that it has knowledge of the programs Inside Education requests funding for. It states that "Inside Education provided proposals prior to receiving a grant and reports on the use of such funding" (rebuttal submission, at para. 30).

[para 49] The Public Body and Applicant both refer to the content of specific records; however, in all but one instance those records appear to relate to the Applicant's other request, discussed in Order F2020-19. I say this as the records in the other file were released in six batches whereas the records in this file were released in two batches. All but one of the references of the Applicant and Public Body refer to records from a fourth or fifth release of records. The only specific reference to records that might refer to records responsive to the Applicant's request at issue in this inquiry doesn't appear to relate to the issues raised by the Applicant. As such, what I know of the content of the records relevant to the request at issue here, consists of the minimal descriptions provided by the parties in their submissions. The Public Body's description (reproduced at paragraph 6 of this Order) includes grant requests for 2013 and a few particular programs, communications relating to providing the grants; grant descriptions, program summaries and program proposals for a few particular programs.

[para 50] The above description, although brief, indicates that the records – especially Inside Education program descriptions and summaries provided in grant requests and approvals – provide details about the programs the Public Body has funded.

[para 51] Nothing in the submissions and description of records indicates that the Public Body has directed Inside Education on what content to include in the programs.

¹ <https://www.insideeducation.ca/impact/>

[para 52] I do not know whether the emails regarding the provision of the grants and the briefing note regarding grant funding were of a procedural nature or if they detailed the reasons for the Public Body's grant approvals. I do not know whether any records show why the Public Body decided to fund certain Inside Education programs, or whether the Public Body decided to fund certain programs over others (i.e. whether the Public Body chose which programs to fund or whether it simply agreed to fund the particular programs proposed by Inside Education).

[para 53] I note that the Applicant needn't show that there is anything necessarily inappropriate about Inside Education's programs, or the Public Body's funding of certain programs through grants, in order for the records to relate to a matter of public interest.

[para 54] The Applicant argues that even if Inside Education's programs are "objectively neutral", the public still have an interest in knowing about the Public Body's funding of these programs, so the public can make its own decision as to the appropriateness of such funding.

[para 55] Not all grant funding or government expenditures relate to matters of public interest. However, the Applicant has demonstrated that there is a public interest in what is taught in schools about the energy resources in Alberta and who has input into the programs taught. That these programs are provided voluntarily does not negate the interest, especially as Inside Education programs appear to be fairly widely used.

[para 56] The Public Body points out that information about Inside Education's activities is available on its website and therefore available to the public. Having reviewed this website I note that it does not appear to detail which programs were funded by the Public Body and which were otherwise funded. The submissions of the parties indicate that some of the records would likely detail which programs the Public Body agreed to fund.

[para 57] The Public Body also states that the rules and requirements of a Public Body grant are already available to the public by way of the Energy Grants Regulation (Alta Reg. 103/2003). That Regulation sets out the authority of the Minister to give grants, states that the use of grant funds by recipients must be for the purposes identified, and the ability of the Minister to request information about the spending of grant money. To the extent that the information in the records repeats this information, I agree it is already available to the public. However, the records clearly contain additional information about the grants to Inside Education.

Conclusion regarding the fee waiver in the public interest

[para 58] I conclude that there is a public interest in information in the records that shows what programs the Public Body provided grant funding to, and why (to the extent that the records relate to why the Public Body chose to fund particular programs). Information such as grant requests and approvals, and program descriptions or summaries appear to comprise at least a portion of the records. Because I have found a public interest in these records, a waiver of the fees in relation to these records is appropriate.

[para 59] The Public Body has asked that if I find that some records relate to a matter of public interest, the fee waiver "only cover the proportional costs of only the relevant records" (initial

submission at para. 98). Past Orders have partial fee waivers are warranted where only some of the responsive records relate to a matter of public interest (see Orders 2001-023 and F2013-10).

[para 60] Approximately 290 pages of records were provided to the Applicant in response to this access request. Based on the description of the records provided to me, I do not know how many records shed light on the content of programs funded by the Public Body.

[para 61] For example, the Public Body described some responsive records as comprising a report of Inside Education to the Public Body regarding a 2004 forum held by Inside Education on Alberta education curriculum. The Public Body states that the forum identified

where further support for education on the environment and natural resources may have been needed. The records do not show: an attempt to intervene in curriculum development; discussions or collaboration between Alberta Energy and Inside Education related to curriculum development; or what curriculum, materials or programs Inside Education has given to Alberta's public schools. (Initial submission, at para. 82)

[para 62] Possibly this report was provided to the Public Body to support a grant request for education programming to fill any gaps identified in this forum. However, this is speculation, without knowing more about the context of this report – such as what the Public Body might have done with it – it isn't clear that it sheds any light on the Public Body's activities or decisions.

[para 63] Similarly, The Public Body acknowledges that some records show that Public Body "representatives" participated in Inside Education programs as speakers (initial submission at para. 93). Clearly there has been Public Body participation in at least a few programs. I do not know whether the participating Public Body employees had input on the content of the program more generally, or only on the topic they were asked to speak about. Therefore, I do not know the extent to which this information relates to the Public Body's support or funding of Inside Education programs.

[para 64] As was the case in Order F2013-10, it seems likely that a significant amount of the correspondence, while tangentially related, does not shed light on the grant funding decisions made by the Public Body. The Applicant states the Public Body did not ask if she wanted to narrow the request or advise her on how she could do so. While the Applicant states she was open to narrowing the request, she didn't provide any indication that she had actually asked to do so. An applicant needn't wait for a public body to invite them to narrow a request.

[para 65] Had I a copy of the records, I could have ascertained the portion of records that relates to a matter of public interest. Unlike in Order F2020-19, the parties have not provided me with relevant excerpts of the records responsive to the Applicant's request at issue in this inquiry. From the limited information before me, I can conclude only that at least some of the records relate to a matter of public interest but not all. In Order F2020-19 I found that a significant portion of the responsive records related to a matter of public interest, and found that a 50% fee waiver was warranted. It is the Applicant's burden to satisfy me that a fee waiver is appropriate; in this case, the minimal information before me does not justify a waiver of 50% of the fees. While the topic relates to a matter of public interest and at least some records seem to shed light

on the matter, I cannot conclude that a significant portion of the records do so. From the Public Body's description of the responsive records, I estimate that 25% of the records relate to the matter of public interest.

[para 66] I will therefore order a waiver of 25% of the fees associated with the request. As the Applicant has already paid the fees, this will amount to a refund of that portion of the fees paid.

V. ORDER

[para 67] I make this Order under section 72 of the Act.

[para 68] I find that the Applicant should be excused from paying 25% the fee based on public interest. I order the Public Body to refund 25% the total amount paid by the Applicant for the records responsive to her request.

[para 69] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator