

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2026-09

February 18, 2026

ALBERTA HUMAN RIGHTS COMMISSION

Case File Number 024848

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Alberta Human Rights Commission (the Public Body). The Applicant requested:

Excluding ALL records originating from [the Applicant] please send any record related in any way to:

*Alberta Human Rights Commission; June 1, 2018 to date
Complaints Re Alberta Government Re Alberta Elections Act
Complaints Re Alberta Provincial Court
Complaints Re Alberta University of Calgary
Complaints Re Alberta Edmonton Journal
sent to people that include:
[...] Director
[...] Registrar*

Time period: from June 01, 2018 to June 07, 2021

The Public Body searched for and located responsive records. The Public Body determined that it would require payment of fees to process the Applicant's access request. Accordingly, it provided a fee estimate to the Applicant. The Public Body estimated that it had 73 pages of responsive records and stated that the "rate" was 25 cents per page. It requested payment of

\$18.25 and informed the Applicant it would begin processing the access request once the Applicant agreed to pay the amount of the fee estimate. The Applicant requested a fee waiver, which the Public Body refused.

The Applicant requested review by the Commissioner.

The Adjudicator found that the Public Body had not charged fees based on its actual costs, as required by section 69(6) of the FOIP Act. The Adjudicator determined that in the absence of evidence as to the Public Body's actual costs, the cost of photocopying was more properly estimated at 5 cents per page. As the total amount of fees would be less than \$10, the Public Body could not charge fees by operation of section 12 of the Freedom of Information and Protection of Privacy Regulation (the Regulation). The Adjudicator ordered the Public Body to refund any fees that had been paid

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. 12, 13, Schedule 2

Authorities Cited: AB: Orders F2011-015, F2019-18

I. BACKGROUND

[para 1] The Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Alberta Human Rights Commission (the Public Body). The Applicant requested:

Excluding ALL records originating from [the Applicant] please send any record related in any way to:

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[...] Director
[...] Registrar*

Time period: from June 01, 2018 to June 07, 2021

[para 2] The Public Body searched for and located responsive records. The Public Body determined that it would require payment of fees to process the Applicant's access request. Accordingly, it provided a fee estimate to the Applicant. The Public Body estimated that it had 73 pages of responsive records and stated that the "rate" was 25 cents per page. It requested payment of \$18.25 and informed the Applicant it would begin processing the access request once the Applicant agreed to pay the amount of the fee estimate.

[para 3] The Applicant paid the fees but requested a fee waiver on the basis of the public interest.

[para 4] The Public Body refused the Applicant's request for a fee waiver, stating:

Section 93 of the FOIP Act provides that fees may be charged for providing you with the records you requested.

Your request for a fee waiver cannot be granted under section 93(4) of the FOIP Act as there is no sufficient evidence to support the subject matter is of public interest.

[para 5] The Applicant requested review by the Commissioner. The Commissioner agreed to conduct an inquiry and delegated the authority to conduct it to me.

ISSUES

Issue A: Did the Public Body properly estimate the amount of fees in accordance with sections 93(1) and 93(6) of the Act, and the Regulation?

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

II. DISCUSSION OF ISSUES

Issue A: Did the Public Body properly estimate the amount of fees in accordance with sections 93(1) and 93(6) of the Act, and the Regulation?

[para 6] Section 93 of the FOIP Act sets out the process for charging fees and restricts the kinds of fees that may be charged. It states:

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.

(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

(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.

(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.

(4.1) If an applicant has, under subsection (3.1), requested the head of a public body to excuse the applicant from paying all or part of a fee, the head must give written notice of the head's decision to grant or refuse the request to the applicant within 30 days after receiving the request.

(5) If the head of a public body refuses an applicant's request under subsection (3.1), the notice referred to in subsection (4.1) must state that the applicant may ask for a review under Part 5.

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

[para 7] The foregoing provision establishes that the head of a public body must provide an applicant with a fee estimate if the head of the public body intends to require fees. Section 13 of the Freedom of Information and Protection of Privacy Regulation (the Regulation) sets out the requirements for fee estimate to which section 93 of the FOIP Act refers. This provision states:

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

- (a) the time and cost to search for, locate and retrieve a record,*
- (b) the cost of computer processing and related charges to produce the record from an electronic record,*
- (c) the time and cost for computer programming to produce the record from an electronic record,*
- (d) the cost to produce a copy of the record,*
- (e) the time and cost for preparing and handling the record for disclosure
[...]*

The foregoing provision requires that the Public Body provide a breakdown of the costs for searching for and preparing a record and for producing a copy of a record if it intends to charge fees to offset these costs.

[para 8] Schedule 2 of the Regulation sets out the maximum amounts of fees that may be charged for particular services. For example, this schedule establishes that the maximum amount that may be charged for searching for, locating and retrieving a record is \$6.75 per quarter hour. The maximum that may be charged for photocopying is 25 cents per page.

[para 9] Cited, above, section 93(6) of the FOIP Act prohibits a public body from charging more than its actual costs for providing copies of records. As discussed in Order F2011-015, at paragraphs 42 – 50, if 25 cents per page exceeds the per page costs of photocopying records, then the Public Body cannot charge 25 cents per page. Rather, the Public Body must calculate its actual photocopying costs as it may only charge fees in relation to actual costs. The maximum in

the Regulation becomes relevant only once the Public Body's photocopying costs per page exceed the maximum.

[para 10] The Public Body argues:

Fees were assessed at \$18.25 for 73 pages at \$0.25 per page which was the Public Body's production cost at the time of the request. The Applicant requested a fee waiver on the grounds of public interest but did not provide any details on how the public would benefit from the disclosure. Moreover, most of the records (68 out of 73 pages) were already sent to him by the AHRC

[para 11] It is unclear from the Public Body's estimate or its arguments how it characterized the access request, or the kinds of costs it included in its rate or "production cost".

[para 12] The Regulation distinguishes between the costs that may be charged for non-personal information and for personal information. Section 12 of the Regulation states:

12(1) This section applies to a request for access to a record that is a record of the personal information of the applicant.

(2) Only fees for producing a copy of a record in accordance with items 3 to 6 of Schedule 2 may be charged if the amount of the fees as estimated by the public body to which the request has been made exceeds \$10.

(3) Where the amount estimated exceeds \$10, the total amount is to be charged.

If an access request is for personal information, the Public Body may charge only photocopying costs (if the applicant has requested information in that format), provided the fees exceed \$10. If the costs of making photocopies are less than \$10, then a fee may not be charged.

[para 13] The Public Body located 73 pages of records and charged the Applicant "a rate" of 25 cents per page. It did provide a breakdown of costs, such as searching, so it appears that the Public Body considered the access request to be one for personal information. Moreover, although it does not say so, it appears that the Public Body charged 25 cents per page for photocopying. I draw this inference from the fact that a public body may only charge for the actual costs of making copies under Schedule 2 of the Regulation when an access request is for personal information.

[para 14] The Public Body has not provided evidence regarding its actual costs to make photocopies. As a result, there is no evidence to support finding that the Public Body's actual photocopying costs are 25 cents per page.

[para 15] Past orders of this office have rejected arguments, in the absence of evidence, that the actual costs of photocopying are 25 cents per page. In Order F2019-18, the Adjudicator undertook a review of photocopying costs charged by public bodies at paragraphs 67-69. The Adjudicator said:

In any event, there are options available to the Public Body that would allow it to charge fees and comply with section 93(6). Ignoring the prohibition in section 93 of the Act against charging more than actual costs, and instead charging the maximum allowable fee set out in Schedule 2, is not a reasonable alternative. In part because it contravenes the Act, and in part because by all accounts, \$0.25 per page is several times higher than an actual cost. It is 5.5 times higher than the actual costs of two public bodies discussed above (at paragraph 58) and 3.9 times higher than the third public body's. It is also 2.3 times higher than the fee charged by a for-profit business.

The range of costs given by other public bodies for black and white copies ranges from \$0.045 per page to \$0.0635 per page. I do not know any of the costs of the Public Body associated with making copies in response to an access request. If at least one public body (also a municipality) can produce a copy for \$0.045 per page then it seems possible that the Public Body can as well. It may be that the Public Body's costs are closer to \$0.0635 per page, similar to Alberta Health Service's costs, but that might be an overestimate (since at least two public bodies estimated costs almost 2 cents lower). The Public Body can charge its costs but not more. Therefore, I will allow the Public Body to calculate the fees for photocopying based on the lowest number: \$0.045 per page.

For future access requests, the Public Body should undertake its own calculation of its costs, taking into account the factors that it can reasonably calculate and keeping in mind that the number it arrives at needn't be *the* actual cost but must be no higher than the actual cost.

[para 16] In the absence of evidence from the Public Body regarding its actual costs of photocopying, and in light of other orders of this office regarding photocopying costs, I find that 5 cents per page would more accurately reflect the Public Body's actual costs of photocopying. As a rate of 5 cents per page results in a total amount less than \$10, I also find that the Public Body cannot charge fees for processing the access request. I will direct the Public Body to refund any fees it charged the Applicant.

[para 17] Given the lack of evidence from the Public Body regarding its actual costs to make copies of the records, I have decided that I do not hear from the Applicant. The burden of proof to establish that fees have been appropriately assessed lies on the Public Body; the Public Body has not discharged its burden.

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

[para 18] Given that I have found that the fees were not properly calculated, and that the fee estimate did not provide information regarding the fees that were being charged in accordance with the regulation, I have reduced the fees to zero. As a result, I need not consider whether the records requested by the Applicant relate to a matter of public interest.

IV. ORDER

[para 19] I make this order under section 72 of the FOIP Act.

[para 20] I order the Public Body to refund any fees paid by the Applicant regarding this access request.

[para 21] 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.

Teresa Cunningham
Adjudicator