



Order F24-19

SQUAMISH-LILLOOET REGIONAL DISTRICT

David S. Adams
Adjudicator

March 18, 2024

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested records related to the Squamish-Lillooet Regional District (District)'s handling of a drinking water advisory and a wildfire. The District assessed the applicant a fee for processing each of the two access requests. The applicant requested that the District waive the estimated fees under s. 75(5)(b) of FIPPA because the records relate to a matter of public interest. The District declined to waive the assessed fees. The adjudicator found that the records related to a matter of public interest and that the applicant should be excused from paying the estimated fees.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 6(1), 7(1), 7(4), 7(5), 58(3)(c), 75(5)(b)

INTRODUCTION

[1] This inquiry concerns a dispute over a fee assessed by the Squamish-Lillooet Regional District (District) under s. 75 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).¹ Section 75 allows a public body to charge a fee for various services related to providing an applicant with the records they requested. However, an applicant can request that the public body waive the fee under ss. 75(5)(a) (fee waiver for applicant who cannot afford the fee) and/or 75(5)(b) (fee waiver in the public interest).

[2] An applicant made two requests, under FIPPA, to the District for access to records. The first was for records related to a 'do not consume' advisory for the Bralorne water system (the Water Request), and the second was for records related to the District's response to the 2023 Downton Lake wildfire (the Wildfire

¹ The District is a public body under FIPPA since a "public body" is defined in Schedule 1 to include a "local public body", which in turn is defined to include "a local government body." A "local government body" includes "a regional district."

Request). The District issued a fee estimate of \$103.75 and \$387.50 for the two requests, respectively. The applicant asked the District to waive these estimated fees under both ss. 75(5)(a) and (b), but it declined to waive them.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the fee estimate. During mediation, the District reduced its fee estimate to \$75 and \$285 for the two requests.² The applicant also withdrew his reliance on s. 75(5)(a) and is now relying only on s. 75(5)(b). The denial of the fee waiver remains in issue, so the matter proceeded to inquiry.

ISSUE AND BURDEN OF PROOF

[4] In this inquiry, I will consider whether the District's estimated fees of \$75 and \$285 should be waived, in whole or in part, under s. 75(5)(b).

[5] FIPPA does not expressly set out who has the burden in inquiries about s. 75(5), but previous orders have established that it is the applicant who has this burden.³

DISCUSSION

Background

[6] The District is a federation of local governments and unincorporated rural areas, headquartered in Pemberton, BC. It is responsible for a variety of services, including water and sewer utilities and fire protection.⁴

[7] On August 25, 2023, the District was advised that the Bralorne water reservoir had been tampered with. As a result, the Interior Health Authority issued a warning to residents not to consume the water from that reservoir. On September 7, the advisory was lifted.⁵

[8] Between July and September 2023, the Downton Lake wildfire destroyed or damaged several properties in the region.⁶

[9] In September 2023, the applicant submitted the Water Request and the Wildfire Request to the District.

² This reduction came from the District's agreement to provide the records electronically (OIPC Investigator's Fact Report).

³ Order F21-48, 2021 BCIPC 56 (CanLII) at paras 6-10.

⁴ <https://www.slrld.bc.ca/about-us/what-slrld/mandate-role-purpose>

⁵ District's initial submission at 1.

⁶ <https://www.slrld.bc.ca/inside-slrld/news-events/squamish-lillooet-regional-district-confirms-structure-losses-due-downton-lake-wildfire%C2%A0>

Authority to intervene in fee disputes – s. 58(3)(c)

[10] Under s. 58(3)(c) of FIPPA, I have the authority as the commissioner's delegate to confirm, excuse, or reduce the disputed fee in the appropriate circumstances. The jurisdiction conferred by s. 58(3)(c) is broad and enables me, in appropriate cases, to substitute my decision for that of the public body.⁷ The applicant requests that I intervene in this case because he says the District should have granted his request for a fee waiver under s. 75(5)(b).

Fee waiver where a record relates to a matter of public interest – s. 75(5)(b)

[11] FIPPA allows public bodies to require applicants to pay fees for access to a record, subject to certain exceptions. It also allows public bodies to waive these fees in some circumstances. The following parts of FIPPA are relevant to this inquiry:

Fees

75 (1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body the following:

(a) a prescribed application fee;

(b) prescribed fees for the following services:

(i) locating and retrieving the record;

(ii) producing the record;

(iii) preparing the record for disclosure, except for time spent severing information from the record;

(iv) shipping and handling the record;

(v) providing a copy of the record.

(2) Subsection 1(b)(i) does not apply to the first 3 hours spent on a request.

...

(4) If an applicant is required to pay fees for services under subsection 1(b), the head of the public body

(a) must give the applicant a written estimate of the total fees before providing the services, and

⁷ Order F22-18, 2022 BCIPC 20 (CanLII) at para 14, citing Order F21-10, 2021 BCIPC 14 (CanLII) at para 28; and Order F20-14, 2020 BCIPC 16 (CanLII) at para 14.

(b) may require the applicant to pay a deposit in an amount set by the head of the public body.

(5) If the head of a public body receives an applicant's written request to excuse payment of all or part of the fees required under subsection (1)(b), the head of the public body may excuse payment, if, in the head of the public body's opinion,

...

(b) the record relates to a matter of public interest, including the environment or public health or safety.

Parties' positions

[12] The District's position is that s. 75(5)(b) is not engaged because it already released relevant and timely information to the public during the wildfire and the drinking water advisory.⁸

[13] The applicant says the requested records will enable residents of the District to have confidence in their government's communication during disasters, since they will know what was being communicated behind the scenes. He says the records will "help residents and [the District] to improve communications and response" during disasters.⁹

Analysis

[14] The District did not provide me with copies of the records responsive to the two requests, nor did it describe the records' contents. Nevertheless, I can make a decision on the fee dispute based on the materials before me.

[15] Previous orders have established the following two-part test for determining whether a public interest fee waiver is appropriate:

- 1) Do the records relate to a matter of public interest?
- 2) If so, should the applicant be excused from paying all or part of the estimated fee?¹⁰

For the reasons that follow, I find that the answer to both questions is yes.

⁸ District's initial submission at 1-2.

⁹ Applicant's response submission.

¹⁰ Order 332-1999, 1999 CanLII 4202 (BC IPC) at section 3.3; Order F17-38, 2017 BCIPC 42 at para 11; Order F19-09, 2019 BCIPC 11 at paras 12-14; Order F21-48, *supra* note 3 at para 17.

Do the records relate to a matter of public interest?

[16] Previous orders have set out the following non-exhaustive list of factors to decide whether records relate to a matter of public interest:

- 1) Has the subject of the records been a matter of recent public debate?
- 2) Does the subject of the records relate directly to the environment or public health or safety?
- 3) Could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
 - a) disclosing an environmental concern or a public health or safety concern?
 - b) contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue? or
 - c) contributing to public understanding of, or debate on, an important policy, law, program, or service?
- 4) Do the records disclose how the public body is allocating financial or other resources?¹¹

[17] There is no room under s. 75(5)(b) for a public body to assess the *degree* of public interest in a matter. Previous orders have clarified that the test is not whether a matter is “sufficiently” of public interest. Rather, if a record “relates to” a matter that is of public interest, this branch of the test is satisfied.¹²

Recent public debate

[18] The District’s reply submission contains a summary of the District’s communication activity related to the 2023 wildfire event. This summary shows that between July 15 and September 2, 2023, the District received 92 incoming phone calls from the public and made 103 Facebook posts related to the event. The District relies on those Facebook posts to argue that it has already done a lot of public outreach on the wildfire event and therefore, it implies, there is no further public interest in that matter.

[19] I find the parties’ materials do not sufficiently address the question of public debate. The parties did not provide me with adequate evidence to show

¹¹ Order F21-48, *supra* note 3 at para 20.

¹² Order 03-19, 2003 CanLII 49192 (BC IPC) at para 37.

there was public debate about the wildfire and the water tampering event. While these events may have generated considerable public debate, the parties did not provide me with any evidence of it such as news articles, online posts from community members, or newsletters. Therefore, I am not satisfied the subjects of the records are matters of recent public debate.

Records relate directly to the environment or public health or safety

[20] The applicant's two requests make it clear that he is seeking records related to the wildfire and drinking water advisory events. I am satisfied, based on the substance of these requests, that the subjects of the records requested by the applicant are directly related to the environment and/or to public health or safety.

[21] The District has not denied that the subject of the records relates directly to the environment or to public health or safety. Instead, the District says that because the Water Request was made after the Interior Health advisory had been lifted, "the public health and safety concern no longer existed when the request was made".¹³ I disagree. The public's interest in a matter does not end when the immediate public health and safety concerns have passed.

Public benefit of dissemination

[22] The next factor considers whether dissemination or use of the information in the records could reasonably be expected to yield a public benefit. Previous OIPC adjudicators have taken two approaches in considering this factor: 1) by focusing on the potential benefit to the public if the information at issue was disseminated or used;¹⁴ or (2) by focusing (in one case) on the applicant's ability to disseminate the information in the requested records.¹⁵ I prefer the former approach because, in my view, the focus at this stage of the test is on the information in the records and the potential public benefit. I find the consideration of an applicant's ability to disseminate the information at issue is a relevant factor under the second part of the s. 75(5)(b) test. In other words, this factor of the s. 75(5)(b) test considers the public benefit of dissemination of the information and not the applicant's ability to disseminate it.

[23] With that in mind, the applicant says that disclosure of the information in the requested records could be expected to yield a public benefit by giving residents confidence in the District's actions and communications, since

¹³ District's initial submission at 2.

¹⁴ See, e.g., Order F21-48, *supra* note 3 at paras 36-42; Order F19-09, 2019 BCIPC 11 (CanLII) at paras 32-33; Order F22-37, 2022 BCIPC 41 (CanLII) at paras 48-51; Order F05-36, 2005 CanLII 46569 (BC IPC) at paras 59 and 67.

¹⁵ Order F22-18, *supra* note 7 at paras 29-30.

disclosure would dispel rumours and speculation and allow the public to understand how the District was responding to the wildfire and drinking water events at the time they occurred.¹⁶ The District does not dispute this characterization. While the evidence on this point is rather thin, I am satisfied that the public could reasonably be expected to benefit from dissemination of the information in the requested records, because I accept the applicant's uncontradicted submission that dissemination of the records could contribute to the public's understanding of important environmental and public safety issues.

Disclosure of allocation of financial resources

[24] Nothing in the materials before me addresses the question of whether the records would disclose how the District is allocating financial or other resources, so I make no finding on this factor.

Conclusion: records relate to a matter of public interest

[25] Weighing the factors above, I am satisfied that the records requested by the applicant relate to matters of public interest. Indeed, it is difficult to imagine matters of greater public interest than wildfires and the safety of drinking water, and a regional district's response to those events.

Should the applicant be excused from paying the estimated fee?

[26] Since I have found that the records relate to a matter of public interest, I must consider whether the applicant should be excused from paying all or part of the estimated fee. At this stage, the focus is on who the applicant is and the applicant's purpose in making the requests.¹⁷

[27] Previous orders have considered the following non-exhaustive list of factors relevant to the question of whether an applicant should be excused from paying the fee:

- 1) Is the applicant's primary purpose for making the request to use or disseminate the information in a way that can reasonably be expected to benefit the public, or is the primary purpose to serve a private interest?
- 2) Is the applicant able to disseminate the information to the public?
- 3) Did the public body meet legislated time limits in responding to the request?

¹⁶ Applicant's response submission.

¹⁷ Order F21-48, *supra* note 3 at para 49.

- 4) The manner in which the public body attempted to respond to the request (including in light of the public body's duties under s. 6 of FIPPA).
- 5) Did the applicant, viewed reasonably, co-operate or work constructively with the public body, where the public body so requested during the processing of the access request, including by narrowing or clarifying the access request where it was reasonable to do so?
- 6) Has the applicant unreasonably rejected a proposal by the public body that would reduce the costs of responding to the access request? It will almost certainly be reasonable for an applicant to reject such a proposal if it would materially affect the completeness or quality of the public body's response.
- 7) Would waiver of the fee shift an unreasonable cost burden for responding from the applicant to the public body?¹⁸

Applicant's purpose in making requests

[28] The applicant says his purpose in making the requests was to share disaster-related information among members of the community. The District does not dispute this or allege that the applicant has any private motive. I am satisfied that the dissemination of the information in the records requested by the applicant could reasonably be expected to benefit the public.

Applicant's ability to disseminate information

[29] The applicant says that "the importance of sharing this vital information is critical for the community to move forward with confidence that [the District's] information channels are transparent, clear, and accurate". He does not say how he might disseminate the information. The District does not say anything about the applicant's ability to disseminate it. I accept that the applicant has the *intention* to disseminate the information, but in the absence of more fulsome detail about how the applicant plans to distribute or share this information, I assign little weight to this factor.

Legislated time limits for responding

[30] The next factor I will consider is whether the District met the legislated time limits in responding to the requests. Section 7 of FIPPA deals with the time limits a public body has for responding to a request. Section 7(1) says that a public body must respond to an access request within 30 days after receiving the request.¹⁹ However, s. 7(4) says that if the head of a public body determines that

¹⁸ *Ibid* at para 50.

¹⁹ FIPPA defines "day" to exclude Saturdays and holidays. Section 29 of the *Interpretation Act*, RSBC 1996, c 238 defines a "holiday" to include Sundays and a day set by the Legislature to be observed as a day of thanksgiving. I have taken these definitions into account in my analysis.

an applicant must pay a fee for the request, this time does not run from the time the fee is determined until the applicant is excused from payment or the applicant pays, or agrees to pay, the assessed fee. Meanwhile, s. 7(5) says that if an applicant asks the OIPC to review a fee estimate, this time does not run from the time of the applicant's request for review until the OIPC makes a decision.

[31] The applicant made both of his requests on September 11, 2023. The District determined that the applicant was to pay a fee on October 12. The applicant requested a fee waiver for both requests on October 13. The District denied the fee waiver for both requests on October 16.²⁰ By my calculation, only 22 “days” (as that term is used in FIPPA) elapsed between the applicant's requests and the fee determination. The applicant has not alleged that the District's response is overdue. I find that the District has, to this point, met its legislated time requirements for responding to the applicant's requests.

Manner of public body's attempt to respond

[32] Section 6(1) of FIPPA requires public bodies to “make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely”. The applicant has not alleged that the District behaved unreasonably in responding to his requests, and I can find no indication of unreasonableness in the parties' correspondence. I find that the District has, to this point, fulfilled its duty under s. 6 of FIPPA.

Applicant's co-operation

[33] I am satisfied that the applicant worked constructively with the District on his requests. The requests themselves do not appear to me to be unreasonably broad or to amount to a fishing expedition; they are strictly limited in time and scope. Also, during mediation, the applicant accepted the District's offer to reduce the estimated fee in exchange for delivering the responsive records electronically. From the materials before me, the applicant appears to have engaged with the FIPPA process in good faith and in a spirit of co-operation.

Unreasonable rejection of proposal

[34] There is no indication in the materials before me that the applicant has rejected any proposal from the District, let alone that he has done so unreasonably.

²⁰ OIPC Investigator's Fact Report.

Shifting of unreasonable cost burden

[35] The applicant says he is retired, with a limited income, though he does not provide further specifics.²¹ The District does not dispute this characterization or say anything about what effect the cost burden of a fee waiver would have on its finances. While the evidence and argument on this point is slight, I am satisfied that waiver of the fee would not shift an unreasonable cost burden onto District, considering the relatively low amounts of the estimated fees.

Conclusion: the District should waive its fee

[36] Taking all these circumstances into account, I am persuaded that the applicant should be excused from payment of the District's estimated fee. The applicant has satisfied me that he is making the requests for a public-interest purpose, that he has worked constructively with the District, and that it would not be unreasonable to place the cost burden of responding to the request on the District.

CONCLUSION

[37] For the reasons given above, under ss. 58(3)(c) and 58(4) of FIPPA, I require the District to excuse the applicant from paying its estimated fees of \$75 and \$285 and to process the applicant's two access requests in accordance with Part 2 of FIPPA.

March 18, 2024

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File No.: F23-94678

²¹ Applicant's October 20, 2023 letter to the OIPC.