



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F25-30

PROVINCIAL HEALTH SERVICES AUTHORITY

Carol Pakkala
Adjudicator

April 11, 2025

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Summary: An applicant requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to information held by the Provincial Health Services Authority (PHSA). PHSA issued a fee estimate under s. 75 to process the request. The adjudicator found the estimate amount was not justified by the evidence and ordered PHSA, under a. 58(3)(c), to reduce the fee.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 58(3)(c) and 75, and *Freedom of Information and Protection of Privacy Regulation* (B.C Reg. 155/2012).

INTRODUCTION

[1] An applicant requested records from the Provincial Health Services Authority (PHSA) under the *Freedom of Information and Protection of Privacy Act* (FIPPA).¹ PHSA issued a fee estimate under s. 75 for disclosing the records.

[2] The applicant was dissatisfied with the fee estimate and requested a review from the Office of the Information and Privacy Commissioner (OIPC). Mediation by the OIPC failed to resolve this matter, and the applicant requested that it proceed to an inquiry. Both parties provided written inquiry submissions.

Preliminary matters

Search technology

[3] Both parties make submissions about the appropriate technology for conducting the search for records.² PHSA says, and the applicant does not

¹ From this point forward, unless otherwise specified, whenever I refer to section numbers, I am referring to sections of FIPPA.

² eDiscovery, Microsoft Purview Compliance Center, and PowerShell scripts.

dispute, that FIPPA does not impose an obligation on a public body to obtain and utilize any particular tool. I agree and will not further consider the appropriateness of the chosen technology.

Fee waiver

[4] Both parties' submissions address the topic of fee waivers which fall under s. 75(5) of FIPPA:

(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,

(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.

[5] Section 75(5) was not listed in the Notice of Written Inquiry as an issue to be decided in this case. I note that neither party says the applicant ever asked PHSA to waive the fee for any reason, let alone those listed in s. 75(5).

[6] I do not read the applicant's inquiry submission as actually requesting a fee waiver under s. 75(5). In my view, his position is simply that the PHSA's calculation of the fee does not comply with what is permissible under s. 75, so it should be overturned.

[7] For the reasons above, I will not consider or make any determination about s. 75(5) and the requirements for granting a waiver under that provision.

ISSUE AND BURDEN OF PROOF

[8] The issues I must decide in this inquiry are:

1. Whether the \$2,400 fee estimate is in accordance with s. 75(1)(b) of FIPPA;³ and if not,
2. What is the appropriate remedy for a fee that does not comply with s. 75(1)(b)?

[9] FIPPA does not say who has the burden of proof respecting fee matters. Previous orders have held that the burden is on the public body as it is

³ The *Schedule of Maximum Fees* is set out at s. 13 and Schedule 1 of the *Freedom of Information and Protection of Privacy Regulation*, BC Reg 155/2012.

in the best position to establish how the fee estimate complies with 75(1) and the prescribed *Schedule of Maximum Fees* in the *Freedom of Information and Protection of Privacy Regulation* (Schedule).⁴ I adopt that same approach here.

DISCUSSION

Background

[10] The applicant submitted an access request under FIPPA for all communications between seven PHSA employees and each of four other individuals for a period of almost three years.⁵

[11] In response to what it characterized as an excessively broad access request, PHSA asked the applicant if he would be willing to narrow it. The applicant agreed to narrow the date range for his request to the communications over a one year period.⁶ PHSA issued a fee estimate of \$2,400 for what it says are allowable fees to process this narrowed request.

Allowable fees, s. 75(1)(b)

[12] Section 75 permits public bodies to charge fees as follows:

- 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.
- (3) Subsection (1) does not apply to a request for the applicant's own personal information.
- (4) If an applicant is required to pay fees for services under subsection (1) (b), the head of the public body

⁴ Order F24-74, 2024 BCIPC 84 at para 9 and Order F24-04, 2024 BCIPC 5 (CanLII) at paras 18-19.

⁵ The date range for the original request was January 1, 2022 to the date of the request, October 18, 2024. PHSA's submission, Appendix 1, Request for access form.

⁶ PHSA's submission, Appendix 2.

- (a) must give the applicant a written estimate of the total fees before providing the services, and
- (b) may require the applicant to pay a deposit in an amount set by the head of the public body.

[13] The Schedule provides the allowable hourly rate for services is \$7.50 per quarter hour.

[14] Previous orders establish that the above fee scheme is not designed to allow public bodies to recover all, or even most, of the costs associated with processing access requests.⁷

[15] If a public body decides to charge an applicant a fee, it cannot charge for the first three hours spent locating and retrieving the records nor for the actual severing of the records. In addition, public bodies are only permitted to charge for the actual services listed in s. 75(1)(b).

[16] I will consider the parties' evidence and submissions with these principles in mind.

Details of the fee estimate

[17] The PHSA explains its fee estimate was based on an hourly rate of \$30 per hour extrapolated from the \$7.50 per quarter hour provided for in the Schedule. PHSA set out the fee estimate as follows:

Locating and retrieving records	25 hours
<i>Pursuant to section 75(2), the first 3 hours of locating and retrieving records is free.</i>	-3 hours
Producing the records	0 hours
Preparing records for disclosure	50 hours
Shipping and handling the records	0 hours
Providing a copy of the records	8 hours
Total Hours	80 hours
Fee Estimate (at \$30/hr)	\$2,400.00

Parties' submissions, s. 75(1)(b)

[18] The applicant says PHSA's fee estimate is baseless and highly inflated.⁸ The applicant says it is inflated because it is based on irrelevant and non-responsive records being captured in the search, namely attachments to emails

⁷ Order F09-05, 2009 CanLII 21404 at para 19 and Order 00-19, [2000] B.C.I.P.C.D. No. 22 at p. 8.

⁸ Applicant's initial submission, p. 1.

when he is only interested in the emails themselves.⁹ The applicant further says PHSA's fee practices are arbitrary and designed to discourage public access.¹⁰

[19] On the specific amounts in the fee estimate, the applicant says generating a searchable PDF from the requested emails is a straightforward process, requiring at most four to eight hours for a large data set.¹¹ The applicant further says the 50-hour preparation estimate is vague and may include non-chargeable severing time.¹²

[20] To support his position, the applicant relies on his own experience with the fees imposed by PHSA and the Ministry of Health in his previous access requests. He included details of these requests with his submissions. The applicant says his prior access requests with similar or larger scopes were processed by PHSA without demand for excessive fees.¹³ The applicant further says that other public bodies release large volumes of email records without requiring any fees.¹⁴

[21] PHSA says its fee estimate is both reasonable and justifiable given the scope of the request, the volume of potentially responsive records, and the complexity involved in processing and preparing the records for release.¹⁵ PHSA says the applicant's argument about the fee being inconsistent with those imposed by itself or by other public bodies in prior instances, is irrelevant.

[22] PHSA says it assesses fees on a case-by-case basis, with a view to various factors, and using methodology that is consistent with practices based on transparent and verifiable processes. PHSA further says that each organization's capacity and systems vary such that any comparisons to other public bodies are therefore not applicable.¹⁶

[23] To support its position, PHSA submitted an affidavit from its Director, Cyber Security Intelligence, Analytics and Monitoring (Director) who conducted the search upon which the fee estimate was based. The Director says he conducted a search for the communications of five of the seven PHSA employees with the named individuals.¹⁷

⁹ Applicant's reply submission, p. 7.

¹⁰ Applicant's initial submission, p. 2.

¹¹ Applicant's initial submission, p. 1.

¹² Applicant's reply submission, p. 8.

¹³ Applicant's initial submission, pp. 1-2.

¹⁴ Applicant's initial submission, p. 2.

¹⁵ PHSA's submission at para 20.

¹⁶ PHSA's submission at paras 31 and 36.

¹⁷ PHSA's submission at para 14.

[24] The Director says he conducted the search for records himself, that it took two and a half hours, and located 5,888 potentially responsive records.¹⁸ He says the large size of the search is probably attributed to the fact the records include emails, attachments, and unknown metadata. He says the statistics of the search were exported to an Excel spreadsheet.¹⁹

[25] The Director also says it will take more time to download the records and convert them to PDF so they can be processed, but he is unable to attest to how much more time. The Director describes processing as identifying and removing duplicates, organizing, reviewing for redactions, and performing consultations and quality checks as necessary.²⁰

[26] PHSA estimates it could take up to one to ten minutes per record for it to “process” the request and attributes this range to the different types of documents. For example, it says an item could be a simple email chain with no attachments that may take only one minute to process whereas an item with multiple of complex attachments may take up to ten minutes to process.

[27] PHSA says its estimate does not include the time that would be required to sever records.²¹ PHSA also says exporting the records is an unknown variable since it has not previously exported records in that volume using its current tool. It says the time required to export the records and to prepare the records for processing and provide copies is an unknown variable. PHSA says its time estimate for these tasks is a “conservative approximation based on the best available information known at this time”.²²

[28] The applicant questions the technical qualifications of the Director to do a search responsive to a FIPPA request. The applicant says the Director lacks document management expertise which he says is evident in what he describes as “unfiltered search results” inflating the size of the responsive search.²³ The applicant says filtering is a basic document management practice and a qualified expert would have excluded non-email content to align with his access request, thereby reducing both size and item count.²⁴ The applicant says he is only interested in emails, not in attachments.²⁵

¹⁸ Director’s affidavit at paras 5-6.

¹⁹ Director’s affidavit at para 5.

²⁰ Director’s affidavit at para 8.

²¹ PHSA’s submission at para 16.

²² PHSA’s submission at para 25.

²³ Applicant’s reply submission, p. 14

²⁴ Applicant’s reply submission, p. 13.

²⁵ Applicant’s reply submission, p. 9.

[29] The applicant says the Director’s evidence only confirms a two and a half hour search, yet PHSA adds 22.5 hours for retrieval which he says is unjustified and lacks an explanation.²⁶

Analysis, s. 75(1)(b)

[30] PHSA is in the best position to establish how the fee estimate complies with 75(1) and the prescribed *Schedule of Maximum Fees*. For the reasons that follow, I find PHSA provided insufficient evidence to show that its fee estimate to provide 80 hours of services was authorized by s. 75.

PHSA terminology

[31] PHSA uses terms that do not appear in s. 75 to describe the services that form the basis for its fee estimate. I will use the s. 75 language in this order. For example, when PHSA refers to “items”, I find it means “records” and when PHSA says to “export” I find it means to “retrieve”.

[32] PHSA also routinely refers to “processing” the records which I find is used to describe services that do not have a distinct category under s. 75. PHSA describes “processing” as extracting, gathering, organizing and sorting, identifying duplicate and in-scope records, and converting records to PDF for release.²⁷ I find that “extracting and gathering” is “locating and retrieving” and the remaining steps identified are “preparing the record for disclosure”.

Section 75(1)(b)(i), locating and retrieving the records

[33] PHSA calculated a fee for 25 hours for “locating and retrieving” the records. PHSA’s evidence shows that the search, which I find is the activity of “locating” responsive records, took two and a half hours. I can see that this search did not include two of the members of the PHSA employee group. PHSA says those two people were not included because they are no longer employees and PHSA did not have their consent. PHSA does not say the records are not in its custody or under its control.

[34] The applicant says, and I agree, that the consent of the two employees is not required for this search.²⁸ PHSA does not say how much more time it would take for the Director to add these two names to the computer search parameters he has already set up and run. I fail to see why doing that would add more than about 30 minutes to the activity of locating responsive records. All of this combined, puts “locating” records at three hours. Section 75(2) provides that fees do not apply to the first three hours spent on locating and retrieving records.

²⁶ Applicant’s reply submission, p. 8.

²⁷ PHSA’s submission at para 16.

²⁸ Applicant’s reply submission, p. 10.

[35] PHSA has provided insufficient evidence to support its claim for how long it will take to “retrieve” the records. The only evidence I have on the retrieval aspect is that of the Director who says he is unable to attest to how much time is required to download the records and convert them to PDF.

[36] PHSA said the fee for retrieval is based on 25 hours less the two and a half hours spent locating the records, leaving 22.5 hours. PHSA does not explain why it chose 25 hours in the first place and offers no basis in evidence for that figure. PHSA says the time required to retrieve such a large volume of records is an unknown variable, yet it describes its time estimate as a “conservative approximation”.²⁹ I fail to see how an estimate which is based on an unknown variable can also be described as conservative. The evidence I do have is the Director saying he is not able to attest to the time required for retrieval. To me, this suggests this 22.5 hour “retrieval” portion of the estimate is completely arbitrary.³⁰

[37] I find PHSA has provided insufficient evidence to support its claim that it will take 25 hours to locate and retrieve the records, so it has not established that the fee assessed at 25 hours for those services is authorized under s. 75(1)(b)(i).

Section 75(1)(b)(iii), preparing the record for disclosure, except for time spent severing information from the record

[38] PHSA claimed fees for 50 hours for “preparing the records for disclosure” but offered no evidence in support of this claim. I cannot see, and PHSA does not explain, how it came to this figure. Without further information, I have no means to assess the merits of this estimate. I conclude PHSA has provided insufficient evidence to establish that the fee it assessed to provide the service of preparing the records for disclosure is authorized under s. 75(1)(b)(iii).

Section 75(1)(b)(v), providing a copy of the record

[39] PHSA claimed fees for eight hours for providing a copy of the records to the applicant but offered no explanation or evidence in support of this claim. Without further information, I have no means to assess this calculation. I find PHSA has provided insufficient evidence to establish that the fee it assessed for providing a copy of the records to the applicant is authorized under s. 75(1)(b)(v).

²⁹ PHSA’s submission at para 25. PHSA uses the phrase “exporting” records, but as I explained above, I find that refers to the activity of “retrieving” records under s. 75(1)(b)(i).

³⁰ PHSA’s submission at para 18 b. Time per item=25 hours–2.5hours/5888 items =0.004 hours per item. Since 1 hour=3600 seconds, the time per item=0.004*3600 =14 seconds per item.

Conclusion, s. 75(1)

[40] PHSA correctly identified the categories of activities for which s. 75 permits it to charge fees and applied the correct rates from the *Schedule of Maximum Fees*. I found above that PHSA's claim for locating the records falls within the three hours that should be exempt from fees as required by s. 75(2). Beyond that, PHSA has not sufficiently demonstrated how it estimated the number of hours required to retrieve, prepare, and provide a copy of the records.

[41] I find PHSA has not met its burden of proof to demonstrate that its fee estimate of 80 hours was authorized under s. 75.

Remedy, s. 58(3)(c)

[42] As the Commissioner's delegate, under s. 58(3)(c), I have the authority to confirm, excuse or reduce the disputed fee in the appropriate circumstances. The jurisdiction to intervene under s. 58(3)(c) is broad and it enables me, in appropriate cases, to substitute my decision for that of the head of the public body.³¹

[43] Section 58(3)(c) has been used to penalize public bodies by forgoing fees in cases where circumstances warrant such a penalty.³² While PHSA's fee estimate was somewhat arbitrary, I am not convinced by the applicant's argument that it was an "obstructive practice, not a cost-recovery measure".³³ However, I do agree with the applicant that the fee estimate of 80 hours was not authorized under s. 75 and in my view, it warrants reduction.

[44] Previous fee estimate orders are not that helpful for assessing the appropriate reduction here. These orders provide guidance primarily on the issue of fee waivers, full cancellation of fees, and commercial applicants. Some previous orders applied a percentage reduction approach without identifiable indicators for assessing that percentage.³⁴ For these reasons, I do not find previous orders to be helpful in assessing the appropriate reduction here.

³¹ Order F21-10, 2021 BCIPC 14 at para 28 citing Order 332-1999, 1999 CanLII 4202 (BC IPC) at p. 3; Order 01-04 2001 CanLII 21558 (BC IPC) at para 14; and Order 01-24, 2001 CanLII 21578 (BC IPC) at p. 8.

³² Order F05-21, 2005 CanLII 24737 (BC IPC) at para 37.

³³ Applicant's reply submission, p. 13.

³⁴ For example: Order F09-05, 2009 CanLII 21404 (BC IPC) applied a 20% reduction; and in Order 00-20, 2000 CanLII 10327 (BC IPC), former Commissioner Loukidelis found insufficient evidence to support the fee estimate and said "Weighing the evidence of the applicant and the evidence of the BCSC – and also taking into account a certain enthusiasm for overstatement detectable in the applicant's submissions – I conclude that the fee for these requests should be calculated on the basis of 10 instead of 15 hours of labour, [...]".

[45] I can see from the Director's evidence that the volume of potentially responsive records is substantial and will require more than the three hours exempted by s. 75(2) to respond. I cannot, however, see how the request might take 80 hours for the services authorized under s. 75(1)(b). Only PHSA can explain why 80 hours is a valid estimate, but I have not been provided with a sufficiently detailed explanation.

[46] I can see from the applicant's submission that he believes the request will take between three and twelve hours to respond. While I am not suggesting that in every case evidentiary weight must be attached to an applicant's estimate, in this case, I find it appropriate to do so.³⁵ The applicant has established he has a fair bit of familiarity with FIPPA access requests made to PHSA and to other public bodies, so I give his estimate some weight.

[47] I was not convinced that the circumstances warrant the penalty of foregoing the fees altogether. I am convinced however that the circumstances here, including the apparent arbitrariness of PHSA's fee estimate, do warrant a reduction.

[48] I am reducing the PHSA's time estimate for locating, retrieving, and preparing the records from 80 hours to 15 hours. As per s. 75(2), the PHSA is not authorized to charge for the first three hours spent locating and retrieving the records. The most it may charge is \$360 which is 12 hours at \$7.50 per 1/4 hour.

CONCLUSION

[49] For the reasons given above, under ss. 58(3), I require PHSA to reduce the prescribed fees for services under s. 75 to a maximum of \$360.

[50] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by May 28, 2025.

April 11, 2025

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No.: F24-98819

³⁵ Former Commissioner Loukidelis did the same in Order 00-20, 2000 CanLII 10327 (BC IPC).