



F07-13-MS Refined Calculation Reduces Fee Estimate for Engineering Records

A lawyer acting for an unnamed client made two different access to information requests to a regional district for information related to a major water filtration project. In both cases the regional district responded with fee estimates and requested payment of a deposit of 50% as a condition of processing the requests.

Section 75 of the *Freedom of Information and Protection of Privacy Act* authorizes a public body to require an applicant to pay a fee for

- locating, retrieving and producing a record;
- preparing the record for disclosure; shipping and handling the record; and
- providing a copy of the record.

Fees do not apply to the first three hours spent locating and retrieving a record, to the time spent severing information from a record or to a request for the applicant's own personal information.

An applicant may make a written request to the public body to have the fees waived. A public body may waive all or part of the fees if, in its opinion, the applicant cannot afford the fee, if the public body considers it fair to excuse the fee, or if the record relates to a matter of public interest. It is the responsibility of the applicant to demonstrate that any of these conditions apply.

The lawyer representing the applicant asked our office to review the amount of the fee estimate for each request. The applicant had not made a direct request to the public body for a fee waiver.

A public body's fee estimate is just that: an estimate. Often the public body's freedom of information analysts depend on staff in the program areas to provide them with details about where records are stored, how many records need to be searched and how long it may take to gather them up. In this case the requested records were mostly engineering records stored at the public body's head office, at the contractor's field office, at several worksites, or in offsite storage. An estimated 5,000 records needed to be searched.

In an attempt to resolve the matter once it came to our attention, the regional district went back to the engineers to try and refine the fee estimate. As a result, it was able to reduce both fee estimates, by a small amount in one case and substantially in the other. The lawyer for the applicant accepted the new estimates as reasonable and withdrew the complaints.