



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

Order 00-20

**INQUIRY REGARDING A BRITISH COLUMBIA SECURITIES COMMISSION
FEE ESTIMATE**

David Loukidelis, Information and Privacy Commissioner
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Summary: Request for review of calculation of fee estimate partly upheld. Permissible for the public body to combine the time for location and retrieval of closely-related records for the purpose of calculating the “free” time entitlement under s. 75(2)(a) of the Act. The public body did not provide sufficient evidence to justify the size of its fee estimate under s. 75(1), however. Fee reduced under s. 58(3).

Key Words: Fees – calculation.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 75.

Authorities Considered: B.C.: Order No. 00-19.

1.0 INTRODUCTION

The applicant and the public body involved in this case are the same as in Order 00-19, released concurrently with this order. Similar issues are involved respecting fees charged by the public body. In this case, the applicant simultaneously delivered five single-item requests for access to records to the British Columbia Securities Commission (“BCSC”), a public body under the *Freedom of Information and Protection of Privacy Act* (“Act”). The requests were for:

1. 1998 travel, accommodation and meal expenses of the BCSC’s chair;
2. 1999 travel, accommodation and meal expenses of the BCSC’s chair;

3. January 1 to June 30, 1999, travel and accommodation expenses of a named BCSC employee;
4. 1998 travel, accommodation and meal expenses of the same BCSC employee; and
5. 1998 travel and accommodation out-of-country expenses for BCSC investigators.

The BCSC calculated a fee estimate, then revised it, having combined the applicant's requests for that purpose. The applicant objected to this and to the overall amount of the fee estimate.

2.0 ISSUES

The following issues arise in this inquiry:

1. Did the BCSC act properly in combining the applicant's access requests for the purpose of allocating free location and retrieval time under s. 75(2)(a) of the Act?
2. Was the BCSC's fee estimate otherwise excessive?

Consistent with previous decisions on this point, the BCSC bears the burden of proof in relation to these issues.

3.0 DISCUSSION

3.1 Calculation of Free Location and Retrieval Time – Section 75 of the Act reads 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 fees for the following services:
- (a) locating, retrieving and producing the record;
 - (b) preparing the record for disclosure;
 - (c) shipping and handling the record;
 - (d) providing a copy of the record.
- (2) An applicant must not be required under subsection (1) to pay a fee for
- (a) the first 3 hours spent locating and retrieving a record, or
 - (b) time spent severing information from a record.

Although the applicant delivered five separate request documents to it, the BCSC considered it was dealing with three access requests, not five. It arrived at this

conclusion because it combined into one the two requests relating to the expenses of the BCSC's chair and treated the two requests in relation to the expenses of the BCSC employee as one request. The third request was the one relating to the expenses of investigators. The BCSC then prepared an initial fee estimate which offered the applicant two options, as follows:

If you would like a basic report that lists the date, person and total amount of expenses then this can be provided in the three free hours you are allowed. If you want a breakdown by date, person, type of expense and amount then this will require more staff hours and the fee estimate that follows will apply.

The estimate given was for \$2,610, plus \$0.25 per page for copies of records. The estimate was said to represent time "in excess of three person-hours". This was also reflected in an attached schedule, where the following statement was made: "The three free hours have been taken into account before this estimate was made." The applicant, not unreasonably in my view, interpreted the BCSC's letter to mean that the fee estimate, under either option offered, was calculated on the basis of a total of three free hours of location and retrieval time for all five of his access requests.

The applicant immediately filed a request for review under s. 52 of the Act, in which he claimed that the BCSC "has improperly combined different FOI requests, creating one global fee. The apparent objective is to prevent access to the information requested". He also claimed that the \$2,610 fee estimate was "totally unrealistic", because the requested information could be quickly obtained and produced.

The BCSC responded with a significantly revised fee estimate of \$180, plus \$0.25 per page for copies. In an affidavit provided for this inquiry, Brian Feeny, the Acting Manager of Public Information and Records at the BCSC, deposed that the revised fee estimate was calculated on the basis of three access requests, in respect of each of which the applicant was entitled to three free hours of location and retrieval time. He deposed as follows:

I determined that all three requests would require fifteen hours of labour and after the nine hours were deducted from the estimate, a total of six hours would be chargeable.

The BCSC's revised fee estimate broke the six chargeable hours down into five hours for locating and retrieving records and one hour for handling and disclosure.

The applicant continues to object to the BCSC's combining of his access requests for the calculation of a single fee estimate. He argues as follows:

The effect of combining requests is to deny citizens their statutory right to three (3) free hours of search time for each FOI request, and to allow public bodies to charge enormous fees. There is no statutory provision permitting public bodies to do this.

A key question here is whether, under s. 75 of the Act, the BCSC is required to treat the applicant's requests as five different requests, with each one being entitled to three free hours of location and retrieval time. This issue was also raised in Order 00-19. If the answer to this question is yes, the applicant would be entitled to 15 free hours of location and retrieval time. This would offset all but one hour of the labour calculated by the BCSC, since free time under s. 75(2)(a) applies to location and retrieval but not to handling and disclosure. The fee estimate would be \$30.00, instead of \$180.00.

The BCSC says, quite simply, that it may combine several requests from a single applicant into a single request or split a single request into several requests. This is reflected in the BCSC's practice of treating a body of work performed for one applicant, at one time, as a single request under the Act. The BCSC does not, in my view, have an unfettered right to combine or split access requests for the purpose of processing them. Applying the same reasoning as I used in Order No. 00-19, the companion decision to this one, however, I am satisfied that s. 75 does not contemplate that applicants may make multiple, simultaneous requests which seek closely related records for the purpose of generating more free location and retrieval time under s. 75(2)(a) of the Act. I agree with the BCSC that the applicant's access requests for expense information for the BCSC's chair in 1998 and 1999 are closely related requests. The type of record is the same in each case, although each covers a different period of time. The applicant is also the same and he made the requests simultaneously. I also accept that it was most efficient for the BCSC to locate and retrieve the records responsive to these requests on a combined basis. I make the same findings in relation to the BCSC's combining of the two requests for expense information for the named BCSC employee. In this case, I find that it was permissible for the BCSC to treat the applicant's requests as three requests instead of five and to calculate its fees on that basis.

3.2 Reasonableness of the BCSC's Fee Estimate – In its revised fee estimate, the BCSC offered the applicant the following explanation for the difference between its initial fee estimate of \$2,610 and its revised figure of \$180:

The original fee estimate included the cost of compiling all of the information you requested on a spreadsheet. After considering the points made in your request for review [under s. 52 of the Act], we have prepared a revised fee estimate to cover only the cost of locating, retrieving and photocopying the relevant expense vouchers. Since we will no longer be extracting and compiling the information for you, the time estimate has dropped considerably.

In his affidavit, Brian Feeney expanded on this:

When I prepared the original fee estimate of \$2,610.00, I believed I was required to construct a spreadsheet containing the information requested by [the applicant].

The fee estimate was reduced because I subsequently determined that it was unnecessary to create a document to satisfy the requests. It was sufficient to photocopy the travel expense sheets of the various individuals with respect to whom the requests had been made. As a result of the decision not to construct

the record, but rather to provide copies of existing documents, the fee estimate was reduced significantly.

The applicant, who is familiar with the BCSC's operations, maintains, in his initial submission, that his requests can be satisfied "in a few minutes" by releasing travel authorization forms and expense approval forms. He says he does not require underlying information which would be on documents attached to these forms and gives examples of how he believes records responsive to one of his access requests could be located and retrieved in 10 or 20 minutes. The BCSC filed no reply to the applicant's initial submission.

The applicant seems to think the BCSC's revision of its fee estimate from \$2,610 to \$180 calls into question the good faith of the initial estimate. I draw no such inference. To my mind, the BCSC made an initial estimate of \$2,610 because it misunderstood what the applicant was requesting. The applicant, who is experienced in making access requests to the BCSC, responded with an immediate request for review, which clarified what he was seeking. This enabled the BCSC to revise its fee estimate downward. The BCSC could have asked the applicant to clarify his requests before issuing its initial fee estimate. The applicant equally could have offered to clarify his request to the BCSC before he made his request for review under the Act. What is relevant now, in my view, is whether the \$180 fee estimate, not the \$2,610 fee estimate, can be justified under s. 75(1) of the Act.

Again, it is acceptable under s. 75(2)(a) for the BCSC to calculate free location and retrieval time by combining closely related requests in a case such as this and, on that basis, to combine the requests for expense records for the BCSC's chair and the requests for expense records for the named BCSC employee. The remaining question is whether the evidence before me justifies a 15-hour time estimate when the applicant, who has some knowledge of the BCSC's record-keeping systems, has argued that his requests could be fulfilled in ten to 20 minutes each. I am troubled by the fact that the BCSC has not responded to this.

The BCSC's submission, including Brian Feeney's affidavit, is not a sufficient explanation respecting the applicant's argument on this issue. I am not suggesting that in every case I will attach evidentiary weight to an applicant's own estimate of how much time he or she thinks it would or should reasonably take to locate and retrieve requested records. In this case, however, the applicant has some familiarity with both the BCSC's record-keeping and the nature of the records he has requested. His submission, on its face, does suggest that the task of locating and retrieving records responsive to his requests is not difficult or time-consuming and would require less than 15 hours. In the circumstances, an answer is called for from the BCSC. Only the BCSC can explain why 15 hours is a valid estimate, but I have not been provided with a sufficiently detailed explanation on this point. As a result, I have decided to reduce the BCSC's fee.

The fee the BCSC arrived at is calculated on the basis of 15 hours of labour, minus nine free hours under s. 75(2)(a). It may be inferred that the 15 hours breaks down as 14 hours for record location and retrieval and one hour for record handling and disclosure. 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, which in turn must be reduced by the nine free hours given to the applicant under s. 75(2) of the Act. The result will be a \$30 fee for one hour for handling and disclosure, plus copies at \$0.25 per page.

4.0 CONCLUSION

For the reasons given above, under s. 58(3)(c) of the Act, I reduce the BCSC fee estimate to \$30, plus the costs of photocopies of records at \$0.25 per page.

June 30, 2000

David Loukidelis
Information and Privacy Commissioner
for British Columbia