



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 04-14

MINISTRY OF FINANCE

Mary Elizabeth Carlson, Adjudicator
May 14, 2004

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Summary: Applicant requested records relating to the creation of two documents, both of which were posted on the Ministry’s website. The Ministry charged a fee and denied the applicant’s request to waive the fee in the public interest. The records are not related to a matter of public interest. The fee is confirmed.

Key Words: fee waiver — public interest.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 75(5).

Authorities Considered: B.C.: Order No. 332-1999, [1999] B.C.I.P.C.D. No. 45; Order No 293-1999, [1999] B.C.I.P.C.D. No. 6.

1.0 INTRODUCTION

[1] On June 4, 2002, the applicant, on behalf of the Canadian Union of Public Employees (“CUPE”), made a request under the *Freedom of Information and Protection of Privacy Act* (“Act”), to the Ministry of Finance (“Ministry”) for records relating to the preparation of the “Capital Asset Management Framework” and for a document titled “An Introduction to Public-Private Partnerships”. The applicant clarified that he was seeking any information related to any request for proposals, contracts for the preparation of the documents, communications between the government and the contractors, and any records related to the credentials of the contractors.

[2] On July 17, 2002, the Ministry responded by issuing a fee estimate of \$523.75 for responding to the request and requesting a 50% deposit, the balance being due “prior to release of the records.”

[3] The applicant wrote to the Ministry on August 12, 2002, requesting that the Ministry waive the fee “because the release of information is in the public interest.” Notwithstanding his request for a fee waiver, the applicant agreed to pay the deposit.

[4] On August 16, 2002, the Ministry denied the applicant’s request for a fee waiver in the public interest, stating “[w]hile the records you seek may be of general interest to your membership, you have not established that there is a need to disclose them in the public interest.”

[5] In a letter dated September 23, 2002, the applicant requested a review of the Ministry’s denial of the fee waiver.

[6] On November 26, 2002, the Ministry wrote to the applicant, stating that the initial fee estimate was based on providing copies of 835 pages, but that the actual number of pages responsive to the request was 425 pages. The fee estimate was reduced from \$523.75 to \$421.25. The Ministry stated it would release the “final phase” of the records upon receipt of the outstanding balance.

[7] Mediation was unsuccessful and, on March 28, 2003, the matter was set down for a written inquiry. I have dealt with this inquiry by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[8] The issue in this inquiry concerns the applicant’s belief that he is entitled to a fee waiver under s. 75(5) of the Act because the requested records relate to a matter of public interest. Section 57 of the Act, which sets out the burden of proof in an inquiry, is silent with respect to the burden of proof under s. 75(5). Previous decisions of the Commissioner have established that the applicant has the burden of proof for inquiries concerning s. 75(5).

3.0 DISCUSSION

[9] **3.1 Preliminary Issues** – The applicant requests that the inquiry be expanded to include a separate file involving a complaint about the Ministry’s delay in responding to this particular request. This issue—which is not mentioned in the Notice of Inquiry this Office issued—is not properly before me and, consequently, has not been dealt with in this decision.

[10] **3.2 Public Interest Fee Waiver** – The relevant portions of s. 75 read as follows:

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 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.

...

- (5) If the head of a public body receives an applicant's written request to be excused from paying all or part of the fees for services, the head may excuse the applicant if, in the head's opinion,

...

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

[11] There is a two-step process for determining whether a fee should be waived in the public interest. First, a public body must examine the requested records and decide whether they relate to a matter of public interest, taking into consideration a variety of factors. If the public body determines that the records relate to a matter of public interest, it must then decide if the records should be provided free of charge, with that decision being guided by a variety of factors. See, for example, Order 02-43, [2002] B.C.I.P.C.D. No. 43, and Order 03-19, [2003] B.C.I.P.C.D. No. 19. I will apply the principles set out in these two decisions without repeating them here.

Do the records relate to a matter of public interest?

[12] The applicant states that public private partnerships have “become a central part of the provincial government’s plans for the province.” The government, the applicant states, “is absolutely committed to private sector delivery of public service.” He continues: “They are supported in this by huge and powerful organizations that stand to gain from this. It is essential that there be a public debate around these issues and this debate cannot occur if information is withheld” (initial submission of the applicant, at page 12).

[13] The applicant, in his initial submission, makes two points. The first point is his belief that the records relate to a matter of public interest. The second point is his belief that the Ministry did not properly exercise its discretion in denying his request for a fee waiver.

[14] The applicant has requested records relating to the preparation of two documents, the “Capital Asset Management Framework” and “An Introduction to Public-Private Partnerships”. Both of these documents were publicly posted on the Ministry’s website. The records the applicant asks for relate not to the government’s policies on public private partnerships, but rather to records created in the course of developing those policies.

[15] The Ministry, in its submission, describes the responsive records as “largely administrative and transitory” in nature and includes items such as emails dealing with scheduling of meetings, communications concerning the process by which the framework was to be developed, drafts of the framework, communications concerning the structure of the document, updates from the contractor and billing and payment information.

[16] In his reply submission, the applicant states that knowing who contributed to the development of the policy is “critical to allow the public to understand the nature of

public private partnerships.” The applicant argues that knowing who is involved allows the public to identify conflicts of interest:

There is a potential question of conflict of interest that can only be resolved by the release of this information. If government policy is being written by people with a vested interest in public private partnerships, the result may well be different from policy crafted by in house employees offering a more objective perspective.

[17] Having considered the factors that form the first part of the test in such cases, I have concluded that disclosure of these specific records would not promote greater public understanding of the issues pertaining to public private partnerships. The essence of the government’s position with respect to capital asset management, as well as its position with respect to public private partnerships, is laid out in the two public documents. Whether or not anyone working on those documents is a paid lobbyist is also a matter of public record under the *Lobbyists Registration Act*. There is no evidence that the records created in the preparation of these documents would reveal any information warranting a “public interest” designation for the purposes of s. 75(5).

[18] Since I have found that the records in dispute do not relate to a matter of public interest, it is not necessary for me address the second part of the test.

4.0 CONCLUSION

[19] For the reasons given above I confirm the decision of the head of the Ministry not to waive the estimated fee and therefore, under s. 58 (3)(c) of the Act, I confirm the fee estimated by the Ministry.

May 14, 2004

ORIGINAL SIGNED BY

Mary Elizabeth Carlson
Adjudicator