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INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Order F07-01

**MINISTRY OF ENVIRONMENT**

Celia Francis, Adjudicator  
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**Summary:** WCWC requested public interest fee waiver which Ministry denied. Ministry was correct in finding that records do not relate to a matter of public interest. Ministry therefore acted properly in denying fee waiver request.

**Key Words:** timeliness—time extension—fee waiver—public interest—dissemination of information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 7(1), (2), (4) & (5), 10(1)(b), 75(5)(b).

**Authorities Considered:** **B.C.:** Order 332-1999, [1999] B.C.I.P.C.D. No. 45; Order 01-24, [2001] B.C.I.P.C.D. No. 25; Order 01-35, [2001] B.C.I.P.C.D. No. 36; Order F05-21, [2005] B.C.I.P.C.D. No. 29; Order F05-36, [2005] B.C.I.P.C.D. No. 50.

## 1.0 INTRODUCTION

[1] The Western Canada Wilderness Committee (“WCWC”), the applicant in this case, made a request under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) to the Ministry of Water, Land and Air Protection, now the Ministry of Environment (“Ministry”), for records relating to the introduction of parking meters in 41 provincial parks in 2003 and 2004. WCWC attached a four-page letter which provided reasons as to why it believed it was entitled to a public interest fee waiver under s. 75 of FIPPA.

[2] The Ministry responded to WCWC’s access and fee waiver requests by issuing a fee estimate of \$1,170.25 and requesting \$585.00 as a deposit against payment of the full fees. It said that FIPPA provides for a fee waiver in some

cases, but would not consider the fee waiver request that accompanied WCWC's access request.

[3] In a subsequent email letter, WCWC repeated its arguments for a fee waiver, which the Ministry rejected. WCWC paid the deposit "under protest" and complained to this Office about the Ministry's denial of its request for a fee waiver.

[4] In mediation, the Ministry agreed to waive part of the fee but said it was still charging a fee of \$536.75 (which resulted in a refund of \$48.25 to WCWC). WCWC requested that the issue of the denial of the waiver for the remaining fee proceed to an inquiry. Because the matter did not settle fully in mediation, a written inquiry was held under Part 5 of FIPPA.

## 2.0 ISSUE

[5] The issue before me in this case is whether the Ministry acted properly in denying the applicant a fee waiver under s. 75(5)(b).

## 3.0 DISCUSSION

[6] **3.1 Background**—The Ministry said that in 2002 it appointed an expert panel, the CORE Review and Recreation Stewardship Panel, to review its fish, wildlife and park recreation services and to recommend opportunities to improve the existing management model and funding. The Panel recommended a number of fees for various recreation services in BC parks as

... part of a broader government strategy of putting parks and protected area systems on a sound financial footing. Revenue raised through the assessment of such fees is dedicated back into the parks system.

[7] The Ministry said that, in the 1990s, the size of the province's parks system increased while funding for parks declined and there is as a result a \$40 million "facilities maintenance backlog". The "modest fees" would help reduce the fiscal burden of operating parks, the Ministry said, and parking fees, designed to offset park operating costs, were introduced to 41 parks over the period 2003-2004.<sup>1</sup>

[8] **3.2 Preliminary Matters**—I will start with some preliminary issues that arose during the inquiry.

### ***WCWC's objection to Ministry's reply***

[9] In a supplementary submission, WCWC objected to statements in the Ministry's reply submission:

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<sup>1</sup> Paras. 4.01-4.04, initial submission.

2. At paragraph 2, the Public Body alleges WCWC is wrong in alleging that the Public Body purchased and replaced previously installed meters that were unable to accept Canadian coins at a cost of \$350,000.00. As is set out below, the records disclosed clearly indicate a need to have the machines replaced, that a request for proposal “will” be issued and that it was “probably not” possible that the meters could be retrofitted.<sup>2</sup>

[10] WCWC said that it did not dispute the Ministry’s assertion that the Ministry ultimately did not replace the parking meters. It objected, however, to the Ministry’s “assertion as bare fact, without any supporting evidence” and on the grounds that the assertion was, in WCWC’s view, contrary to filed evidence. WCWC said that, if the Ministry made such a decision, documents relating to that decision would have fallen under WCWC’s access request.<sup>3</sup>

[11] WCWC asked me to strike para. 2 of the Ministry’s reply and argued that I should consider the following in determining whether or not a fee waiver was merited in this case:

- The Ministry’s reliance on documents and factual matters that the Ministry had not disclosed, in order to discredit WCWC
- The Ministry had used a “dismissive tone” in its allegation that WCWC was wrong on this issue
- The Ministry was “using a selective disclosure of information as a weapon to undermine the public credibility of WCWC”
- If the Ministry had made a decision to replace or not replace the meters (which WCWC could not confirm or deny), this raised the issue of whether the Ministry had made full disclosure of records.<sup>4</sup>

[12] The Ministry responded that there was nothing objectionable about the paragraph in question. The policies and procedures of this Office do not prohibit the admission of unsworn evidence, it said, and the Office frequently admits unsworn evidence in inquiries conducted under FIPPA. The Ministry saw no need to file a sworn affidavit, saying that the facts are not inadmissible or objectionable, even if they are not supported by sworn evidence.<sup>5</sup>

[13] The Ministry denied WCWC’s other allegations, saying among other things that the disputed information was not inconsistent with filed evidence and that the Ministry had simply provided more current information on the issue. The Ministry said the records it supplied to WCWC do not refer to the Ministry’s ultimate decision not to purchase new parking meters, because the decision was made as

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<sup>2</sup> Para. 2, December 13, 2005 objection by WCWC to the Ministry’s reply.

<sup>3</sup> Para. 3, WCWC’s December 13, 2005 objection.

<sup>4</sup> Paras. 5-8, WCWC’s December 13, 2005 objection.

<sup>5</sup> Para. 1, Ministry’s supplementary submission of December 21, 2005.

the result of a number of verbal discussions over a matter of months. The Ministry said it did not deliberately withhold this information and would have supplied WCWC with up-to-date information if WCWC had asked.<sup>6</sup>

[14] While the Ministry is correct to say that the Office's inquiry policies and procedures do not require the submission of sworn evidence, the policies and procedures do say this at p. 8:

Evidence generally consists of affidavits or other documents that contain factual information that can be used to support a participant's argument. A participant is not required to submit an affidavit in order to present evidence, although past orders indicate that public bodies are expected generally to provide affidavits.

[15] I note that the Commissioner has rejected hearsay on occasion.<sup>7</sup> He has also stated that it is desirable for public bodies to provide affidavit evidence wherever practicable.<sup>8</sup> In this case, although it is not clear why the Ministry did not provide sworn evidence in support of its statements in para. 2 of its reply, I conclude that nothing turns on this paragraph. I accept the Ministry's explanation that its aim was to provide me with current information on the parking meter issue and decline WCWC's request to strike the paragraph in question.

[16] As for WCWC's other concerns, I can understand that WCWC may have been frustrated at learning, some time after the fact, that the information it was relying on was out of date. There is, however, no evidence that the Ministry deliberately attempted to discredit WCWC or undermine its credibility or that it engaged in "selective disclosure" of information.

### ***Allegation of inadequate search***

[17] The Ministry said that, in suggesting the Ministry had not disclosed all responsive records, WCWC had attempted to raise the issue of whether the Ministry conducted a reasonable search for records in response to WCWC's request. The Ministry said it had done so in this case but that in any event its search is not an issue in this inquiry.<sup>9</sup>

[18] I agree with the Ministry that its compliance with s. 6, insofar as the adequacy of its search is concerned, is not an issue in this inquiry and I will therefore not consider it here. I also note that the Ministry said that the decision not to replace the faulty meters came as a result of verbal discussions.

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<sup>6</sup> Paras. 2-6, Ministry's supplementary submission of December 21, 2005.

<sup>7</sup> See Order 02-58, [2002] B.C.I.P.C.D. No. 60, at para. 21, for example.

<sup>8</sup> See Order 02-38, [2002] B.C.I.P.C.D. No. 38, at para. 130, for example. Although unsworn evidence may be admitted, the fact that the public body has submitted unsworn or hearsay evidence may affect the weight that evidence is given.

<sup>9</sup> Para. 8, Ministry's supplementary submission of December 21, 2005.

WCWC is of course free to make a new request for any up-to-date records on this issue, if it wishes.

***WCWC's request for waiver due to alleged delay***

[19] WCWC devoted several paragraphs of its initial submission to arguing that it should receive a fee waiver as a remedy under s. 58(3)(c),<sup>10</sup> due to factors it perceives as follows:

- Disclosure of the requested records outside the legislated time limit, even if the extension was justifiable
- The extension was not justifiable as ss. 10(1)(a)-(c) did not apply, particularly s. 10(1)(b), since WCWC had not requested a large number of records
- The Ministry's "unreasonable" interpretation of the term "day"; WCWC argued that the 30-day time limit for responding under FIPPA is 30 calendar days, not 30 working days
- The Ministry's timing in releasing the documents past the summer season when "parks issues" are "most acutely relevant" to members of the general public and when the media would be most interested in reporting on these issues.<sup>11</sup>

[20] In response, the Ministry pointed to the definition of "day" in Schedule 1 of FIPPA and said that WCWC is mistaken in its calculation of time. It acknowledged that it responded to the request 16 days late<sup>12</sup> but argued a delay of this length (which it said was not intentional) does not warrant a decision that WCWC should not have to bear any of the costs associated with providing the requested records. It also said that WCWC previously asked for a review of the Ministry's timeliness in this case and agreed to a mediated settlement, thereby withdrawing its request for a review.<sup>13</sup>

[21] The Ministry said further that it was entitled to take an extension under s. 10 for these reasons: it was necessary to search a large number of records of nine park facility operators responsible for operating 41 provincial parks, as well as the offices of three park area supervisors; considerable search time was required; and meeting the time limit would have unreasonably interfered with the Ministry's operations.<sup>14</sup> It argued that the time taken to locate and retrieve the records was not unreasonable. The Ministry also argued that WCWC had an

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<sup>10</sup> Section 58(3) reads as follows: If the inquiry is into any other matter, the commissioner may, by order, do one or more of the following: ... confirm, excuse or reduce a fee, or order a refund, in the appropriate circumstances, including if a time limit is not met;

<sup>11</sup> Paras. 32-48, WCWC's initial submission.

<sup>12</sup> The Ministry did not offer an explanation of this supposed delay.

<sup>13</sup> Para. 4.43, Ministry's initial submissions; para. 7, Ministry's reply submissions. The Ministry provided no evidentiary support for this statement.

<sup>14</sup> Para. 4.29, initial submissions.

opportunity to request a review of the Ministry's decision to extend the time required for a response and it did not do so and thus s. 10 is not in issue in this inquiry.<sup>15</sup>

[22] The relevant parts of ss. 7 and 10 read as follows:

**Time limit for responding**

- 7(1) Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5 (1).
- (2) The head of the public body is not required to comply with subsection (1) if
- (a) the time limit is extended under section 10, or
  - (b) the request has been transferred under section 11 to another public body.
- ...
- (4) If the head of a public body determines that an applicant is to pay fees for services related to a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the head of the public body gives the applicant a written estimate of the total fees to the end of the day one of the following occurs:
- (a) the head of the public body excuses the applicant from paying all of the fees under section 75 (5);
  - (b) the head of the public body excuses the applicant from paying part of the fees under section 75 (5), and the applicant agrees to pay the remainder and, if required by the head of a public body, pays the deposit required;
  - (c) the applicant agrees to pay the fees set out in the written estimate and, if required by the head of a public body, pays the deposit required.
- (5) If an applicant asks the commissioner under section 52 (1) to review a fee estimate or a refusal to excuse the payment of all or part of the fee required by the head of the public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the applicant asks for the review to the end of the day the commissioner makes a decision....

**Extending the time limit for responding**

- 10(1) The head of a public body may extend the time for responding to a request for up to 30 days if one or more of the following apply:
- (a) the applicant does not give enough detail to enable the public body to identify a requested record;

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<sup>15</sup> Para. 9, Ministry reply submissions.

- (b) a large number of records are requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body;
- (c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record.

[23] The term “day” is defined in Schedule 1 to FIPPA as follows:

“**day**” does not include a holiday or a Saturday.

[24] The *Interpretation Act* defines a “holiday” as follows:

“**holiday**” includes

- (a) Sunday, Christmas Day, Good Friday and Easter Monday,
- (b) Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day and New Year’s Day

[25] The combined effect of these definitions is that weekends and holidays are not included in the calculation of time limits under ss. 7 and 10 of FIPPA.<sup>16</sup>

[26] Neither s. 7 nor s. 10 is specifically in issue in this inquiry. A public body’s general handling of a request may, however, be a factor in the second step of the public interest fee waiver test or in constructing a remedy under s. 58(3)(c). From those perspectives, therefore, I will make some observations.

[27] Based on my calculations of the dates on which salient events occurred, I believe that the Ministry was within its statutory time limits, both when it provided the initial fee estimate and when it took an extension pursuant to s. 10. I also accept the Ministry’s explanation of the search efforts required to retrieve the responsive records from the park facility operators and am satisfied that the Ministry’s extension under s. 10(1)(b) was reasonable in the circumstances.

[28] I also see no evidence that the Ministry delayed providing its response intentionally until after the summer season. As for the supposed delay in the response, while delay is regrettable, a delay of 16 days is not overly long in most cases, certainly not enough, on its own, to warrant a fee waiver here.

[29] In any case, the Ministry issued its revised fee estimate during mediation of WCWC’s complaint about the fee waiver. Given the wording of ss. 7(2), 7(5) and 10(1), I am satisfied that the original and extended time limits for responding did not apply once, and so long as, WCWC’s fee waiver concerns were brought to this Office.

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<sup>16</sup> Pursuant to ss. 25(4) & (5) of the *Interpretation Act*, the first day must be excluded and the last day included in a calculation of time.

### **Ministry's failure to consider initial fee waiver request**

[30] WCWC complained that the Ministry did not consider the request for a fee waiver that accompanied its request for records but “forced” it to make a duplicate request for a fee waiver later. The Ministry’s basis for refusing to consider that request was that a “decision to waive a fee is based on information regarding volume and time and this information is not available until we conduct a records search”. WCWC argued that the Ministry’s basis for refusing to consider the initial fee waiver request was “absurd”, given that, in the same letter, the Ministry provided a fee estimate based on the time required to conduct a records search and the volume of records that would be retrieved. According to WCWC, the Ministry’s refusal to consider the initial fee waiver was for the inappropriate purpose of delaying the ultimate release of information under FIPPA.<sup>17</sup>

[31] The Ministry responded that it is reasonable to expect an applicant to provide reasons for a public interest fee waiver after a public body issues a fee estimate, as the public body is not able to make a decision on such a fee waiver request until it has ascertained the amount of the fee (determined from search time required and the volume of records involved) and the content of the records. The Ministry said that factors in the exercise of discretion<sup>18</sup> recognize that a fee waiver request can generally only be considered after a public body issues a fee estimate. In deciding on a public interest fee waiver, the Ministry said, it is appropriate to consider the content of the records and then to have discussions with the applicant with a view to narrowing the scope of the request, to see if certain records will satisfy the applicant, saving costs for the applicant and saving the public body time, effort and expense.<sup>19</sup>

[32] The Ministry then said this:

13. ... If the Applicant chose not to consider the additional information<sup>20</sup> that the Ministry provided to it in the course of the Applicant resubmitting, *verbatim*, its earlier argument for a fee waiver, then that was the Applicant's decision. However, the Ministry submits that a more productive approach in a case such as this would have been for the Applicant to work with the Ministry to narrow the request, which could have easily been done without sacrificing its ability to engage in a meaningful public discussion about the

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<sup>17</sup> Paras. 49-54, initial submission.

<sup>18</sup> The Ministry listed three of the additional factors in step two of the public interest fee waiver test from Order 01-35.

<sup>19</sup> Para. 13, reply submission.

<sup>20</sup> It is not clear what “additional information” the Ministry is referring to here. Its fee estimate letter simply invited WCWC to provide reasons for the fee waiver while its decision letter on the fee waiver request invited WCWC to submit additional factors if it wished. If the Ministry did indeed provide WCWC with “additional information” during this time to assist it in making its fee waiver arguments, I saw no evidence of it in the material before me.

issue of parking fees in parks.<sup>21</sup> For the above reasons, the Ministry submits that there was nothing inappropriate in the way it handled the Applicant's request for a fee waiver in this case.

[33] Encouraging an applicant to narrow a request is of course something a public body can do, whether or not an applicant requests a fee waiver. In any case, as I say below, while there is no evidence that WCWC offered, or refused, to work with the Ministry on narrowing the request, equally there is no evidence that the Ministry asked WCWC to narrow the request. There is also no indication that the Ministry described the contents of the responsive records, to assist WCWC in narrowing the scope of its request (supposing WCWC had wished to do so). It is not clear what, if any, meaningful communications WCWC and the Ministry may have had on the scope of the request. In any event, WCWC appears to have wanted all of the responsive records, including those related to vandalism, the primary subject matter of the records in dispute here.

[34] I take the Ministry's point that, in the normal course, a public body will first issue a fee estimate and an applicant may then request a fee waiver. However, in my view, WCWC showed some foresight in providing the Ministry with its public interest fee waiver arguments at the beginning of the request process, rather than waiting until it received a fee estimate.

[35] Preparing a fee estimate entails a review, at least in a preliminary way, of files or records. The public interest fee waiver test requires a public body, not just to review, but to examine responsive records to determine if they relate to a matter of public interest.<sup>22</sup> I do not see why the Ministry could not have saved duplication of effort by combining these two activities and issuing a joint fee estimate and decision on the fee waiver request, particularly since WCWC simply re-sent the same argument when it responded to the Ministry's request for reasons for the fee waiver. Doing so might have shortened the processing time by up to three weeks, judging by the dates of the relevant letters.

[36] The Ministry says that it wanted to ensure that WCWC was able to advance its fee waiver argument

... in the context of the specific records requested, which is the context in which the Act requires the Ministry to consider such a request, rather than an applicant simply saying that a fee waiver is appropriate simply on the basis of its identity.<sup>23</sup>

[37] In my view, it is clear on the evidence, and I agree with WCWC, that the Ministry's submission on this point is erroneous. WCWC did not ask for a fee

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<sup>21</sup> The Ministry made similar arguments about WCWC's supposed lack of willingness to work with it in its discussion of the exercise of discretion. See below.

<sup>22</sup> The Ministry did not say if it examined the records before it concluded that they do not relate to a matter of public interest.

<sup>23</sup> Para. 1.09, initial submissions.

waiver simply on the basis of its identity.<sup>24</sup> The first fee waiver request was lengthy, detailed and related to specific records which it believed the Ministry had.<sup>25</sup>

[38] **3.3 Chronology of the Request**—The Ministry and WCWC exchanged a series of letters on the request and waiver and in this case it is desirable to describe the events.

***WCWC's request for records***

[39] In a letter of May 25, 2005, WCWC made the following request:

Pursuant to the *Freedom of Information and Protection of Privacy Act*, section 5, the Western Canada Wilderness Committee hereby requests information pertaining to the BC government's introduction of parking meters in 41 provincial parks. The parking meters were implemented at 27 provincial parks on January 1st, 2003 and at 14 additional parks in 2004.

**Specifically, we request any records, including but not limited to, projected costs and actual costs associated with the introduction, maintenance and repair of parking meters in the aforementioned parks. We are also interested in any records pertaining to vandalism of the meters, associated costs as well as maintenance costs of the meters.** [bold in original]

[40] WCWC stated that it is a non-profit organization and requested that any fees be waived pursuant to the public interest provisions of s. 75(5).

***WCWC's request for a public interest fee waiver***

[41] In another letter of May 25, 2005, WCWC provided four pages of arguments, in accordance with past orders on this topic, on why it believed its request met the fee waiver criteria of s. 75(5) of FIPPA:

- WCWC works for the preservation of wilderness through research and education and promotes ecological principles and democratic efforts that help develop sustainable communities
- in the 25 years WCWC has been operating, it has been involved in several precedent-setting environmental legal cases where the courts recognized it as acting on behalf of the public interest

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<sup>24</sup> An applicant's status, purpose in making a request and ability to disseminate information are factors in the second step, the exercise of discretion. But the Ministry appears to have made them considerations in applying the first step. I discuss below the two steps in applying the public interest fee waiver test.

<sup>25</sup> Para. 2, WCWC reply submissions.

- its request relates to matters of broad public interest: British Columbia's Provincial Parks
- the provincial government's restructuring of parks has been a matter of increasing public concern for the past three and a half years
- park-based issues, such as funding and staff cutbacks, logging, road building, campground closures, the introduction of pay parking meters and privatization, that, in its opinion, had been the subject of recent and ongoing public debate
- there had been recent and widespread provincial and national media coverage of the new funding model for BC Parks, including the introduction of pay parking meters in provincial parks, and a number of named television news stations were regularly reporting on the issue
- in the three years prior to its letter, WCWC had participated in more than 200 media interviews regarding provincial government initiatives in BC parks
- WCWC has undertaken to educate the public about park-related issues by, for example, participating in information rallies and government-sponsored consultation processes, distributing hundreds of park petitions and producing and distributing more than 150,000 educational newsletters on the threats to provincial parks<sup>26</sup>
- dissemination of the requested records regarding the cost of pay parking meters would provide a public benefit by determining if the public interest was well served, as the records could clarify whether the costs of the meters outstripped the revenues

[42] WCWC also quoted the following section of the BC Parks Mandate:

...As a public trust, our mission is to protect representative and special natural places within the Province's Protected Areas System for world class conservation, outdoor recreation, education and scientific study.

[43] WCWC then argued the following:

- release of the requested records "would yield a public benefit by contributing to public understanding regarding the management of provincial parks"
- "the intrinsic relationship between protection of the environment, public lands, tax payers' monies and the lengthy consultation processes that

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<sup>26</sup> WCWC's letter indicates that it attached a copy of the newsletter but there was no such attachment in the material before me.

created most parks in British Columbia clearly make [sic] parks a public trust”

- the public has a right to be fully informed about how the decisions of government affect this public trust and a right to know these things: if public funding has been used against the public interest; whether due process has been followed; whether a fair and transparent process has been adhered to; whether mechanisms for public participation and deliberation were included; whether the process was fairly shaped, accountable and transparent; and whether public monies were well spent
- the public's right to scrutinize the government's activities and hold government accountable for its actions is an inherent right in a democratic society and a fundamental underpinning of freedom of information legislation; government management of a public good is well served by a transparent, fair and inclusive decision-making process
- it is important to a free and democratic society to promote open discussion of public affairs and enhance government accountability and creating an obligation for public authorities to provide reasoned explanations for decisions ultimately improves the quality of decision making
- WCWC has a clear and demonstrated ability to broadly disseminate the requested records in a way that could reasonably be expected to benefit the public and dissemination would contribute to an informed public debate and a better understanding of the management of a public resource
- the primary purpose of WCWC's request was to analyze, interpret and publicize the information in the requested records, part of WCWC's ongoing campaign to educate the public regarding the management of parks in this province, purposes and efforts which are all in the public interest

### ***Ministry's fee estimate***

[44] The Ministry responded to the request for records in a letter of July 7, 2005. Among other things, the Ministry stated that s. 75 of FIPPA “provides that the Ministry may charge a fee for certain limited costs of providing you with the requested records.”<sup>27</sup> The Ministry then said that it was entitled to charge a fee in this instance because of the time required to search and locate records. It provided a fee estimate as follows:

261 pages @ \$.25 per page =	\$ 65.25
38.5 hr to locate and retrieve records @\$30an hr =	\$1065.00
(First 3 hours of [sic] to locate and retrieve are at no cost)	
1 hr to prepare the records for disclosure @\$30.00 per =	\$ 30.00
Shipping =	<u>\$ 10.00</u>
Total =	\$1170.25

<sup>27</sup> July 7, 2005 letter from Ministry.

[45] The Ministry requested that WCWC pay a \$585 deposit before it would proceed with work on the request. The Ministry noted that fees may be excused under FIPPA if WCWC could not afford payment “or if there are other reasons that justify excusing the fees”. It then said:

The Ministry is unable to consider the fee waiver letter which accompanied the request. A decision to waive a fee is based on information regarding volume and time and this information is not available until we conduct a records search.<sup>28</sup> If you wish to request the fee be waived, please submit a request for a fee waiver and your reasons why the ministry should waive all or part of the fee.

***Ministry’s decision on request for fee waiver***

[46] WCWC responded on July 21, 2005 by emailing the Ministry a duplicate of its four-page May 25, 2005 fee waiver request. The Ministry replied in a letter of July 26, 2005:

As I understand your argument, it is that the Western Canada Wilderness Committee (WCWC) is:

1. a non-profit organization and thus cannot afford the fee;<sup>29</sup>
2. mandated to preserve wilderness areas and thus acts, almost by definition, in pursuit of the public interest; and
3. also mandated to carry out public education and advocacy activities and will, thus, ensure that the information contained in the records will be disseminated to inform and support the public debate regarding the preservation and use of BC’s parks.

I also understand your argument to be that:

- there has been considerable public and media interest in “the new funding model” for BC Parks and, particularly, in the introduction of parking meters;
- key decisions about parks, including the decision to introduce parking meters in the parks, should be made in an open, transparent, and accountable manner; and
- the public has a right to know that its parks are being well managed, that good decisions are being made about the management of those parks, and that its monies (ie. those spent on installing and maintain [sic] parking meters) are well spent.

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<sup>28</sup> These are of course not appropriate grounds on which to consider a fee waiver. Moreover, as noted elsewhere, WCWC pointed out that the Ministry had in the same letter set out the estimated volume of records and search time for responding to the request.

<sup>29</sup> WCWC did not ask for a fee waiver on the basis that it could not afford to pay the fee.

[47] The Ministry said it accepted the following aspects of WCWC's arguments:

- that WCWC was an active and informed non-profit advocacy group respecting parks issues; however, many of its access requests come from similar groups and if it were to accept that advocacy always equals public interest, this would deprive the general public of revenues that s. 75 authorizes to help offset processing costs
- there has been considerable public and media interest in the parking meter issue and WCWC would disseminate any information it received through this request to further the media and public debate about the wisdom of the Ministry's decision to instal parking meters in parks
- transparent and accountable decision making and the public's right to know its monies are well spent are important; however, those ends would be served by disclosure of the records and WCWC could use them to inform public discussion of these matters

[48] The Ministry then said:

The question here, to be clear, is not about access, but, rather, about whether the taxpayers generally should bear all the costs of providing those records to you or whether the WCWC should bear some of those costs itself.

[49] The Ministry went on to say that

- the requested records were "administrative" records about installation and maintenance costs and revenues which "do not speak, to any significant extent, to accountable or transparent decision making", nor to "prudent fiscal management"
- it did not believe a material public interest was to be served by showing how much was paid to purchase and maintain a parking meter in a given park
- records it had already disclosed show that parking revenues fell short of initial projections, that it was for those types of records that a reasonable public interest fee waiver argument might be made and that it had not charged for the requests that produced those records
- WCWC had not in its opinion made the argument that the public interest required that the Ministry waive the fee in this case but WCWC could bring additional factors to the Ministry's attention, if it wished

***Ministry's partial fee waiver***

[50] WCWC paid the deposit of \$585 "under protest" and stated that it would request that this Office look at the Ministry's denial of WCWC's fee waiver

request. In a separate letter two days later, WCWC complained to this Office about the Ministry's denial of the fee waiver request. The Ministry later wrote<sup>30</sup> to WCWC indicating that it had

... reviewed the fees assessed, reconsidered its decision, and determined to waive the fee associated with what we have characterized as Evaluation/Assessment records.

The revised fee for providing the records you have requested is **\$1405.50** as follows:

**Evaluation/Assessment records** (fee to be waived):

155 pages @ \$.25 per page =	\$ 38.75
30.5 hr to locate and retrieve records @ \$30an hr =	\$ 915.00
(First 3 hours of [sic] to locate and retrieve are at no cost)	(90.00)
Shipping =	<u>\$ 5.00</u>
Total =	\$ 868.75

**Administrative records:**

87 pages @ \$.25 per page =	\$ 21.75
16 hr to locate and retrieve records @ \$30an hr =	\$ 480.00
1 hr to prepare the records for disclosure @ \$30.00 per =	\$ 30.00
Shipping =	<u>\$ 5.00</u>
Total =	\$ 536.75

<b>Grand Total =</b>	\$ 1405.50
Partial fee waiver =	\$ (868.75)
Deposit paid =	\$ (585.00)
<b>Balance owing =</b>	\$ <b>(48.25)</b>

[51] The Ministry disclosed all of the responsive records, subject to minor severing, which is not in issue here, about a week after it sent the letter on the partial fee waiver.

[52] **3.4 Is a Fee Waiver Merited on Public Interest Grounds?—**  
Section 75(5)(b) reads as follows:

- 75(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,
- (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.

<sup>30</sup> The Ministry's revised decision apparently arose as a consequence of mediation on WCWC's complaint.

[53] A number of orders have considered whether fee waivers in the public interest are merited.<sup>31</sup> I have applied the approach taken in those orders.

[54] Order 01-24 sets out the long-established two-step process for deciding public interest fee waivers under s. 75(5)(b), as follows:

***Applicable Principles***

[32] For convenience, I reproduce here the two-step process I set out at p. 5 of Order No. 332-1999:

1. The head of the Ministry must examine the requested records and decide whether they relate to a matter of public interest (a matter of public interest may be an environmental or public health or safety matter, but matters of public interest are not restricted to those kinds of matters). The following factors should be considered in making this decision:

- (a) has the subject of the records been a matter of recent public debate?;
- (b) does the subject of the records relate directly to the environment, public health or safety?;
- (c) could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
  - (i) disclosing an environmental concern or a public health or safety concern?;
  - (ii) contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue?; or
  - (iii) contributing to public understanding of, or debate on, an important policy, law, program or service?;
- (d) do the records disclose how the Ministry is allocating financial or other resources?

2. If the head of a Ministry, as a result of the analysis outlined in paragraph 1, decides the records relate to a matter of public interest, the head must still decide whether the applicant should be excused from paying all or part of the estimated fee. In making this decision, the head should focus on who the applicant is and on the purpose for which the applicant made the request. The following factors should be considered in doing this:

- (a) 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?
- (b) is the applicant able to disseminate the information to the public?

[33] It should be emphasized here that the references in para. 1, above, to the environment and public health or safety do not exhaust the scope of

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<sup>31</sup> See, for example, Order 01-24, [2001] B.C.I.P.C.D. No. 25, and Order 01-35, [2001] B.C.I.P.C.D. No. 36.

what may be a matter of public interest. This is made clear by para. 1(c)(iii).

[55] In Order 01-35, the Commissioner further commented on factors that arise in step two, the exercise of discretion, as follows:

[45] There is no doubt in my mind that the discretion conferred on a head in s. 75(5)(b) is not limited to the two factors set out above in the second part of the test. In Order No. 332-1999, for example, I added to that list. I said that a head should also consider whether the applicant's primary purpose is to use or disseminate the information in a way that can reasonably be expected to benefit a public interest.

[46] Although the list of factors will never be exhaustive, I consider that the following criteria may, in addition to those described or referred to above, be relevant to a head's exercise of discretion:

1. As expressly contemplated by s. 58(3)(c) of the Act, whether "a time limit is not met" by the public body in responding to the request;
2. 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 the Act);
3. Did the applicant, viewed reasonably, cooperate 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?;
4. 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;
5. Would waiver of the fee shift an unreasonable cost burden for responding from the applicant to the public body?

***Do the records relate to a matter of public interest?***

[56] The Ministry began its submission on the fee waiver issue by discussing its views on the purpose of fees:

- 4.05 In making a person's right of access under the Act subject to the payment of fees (section 4(3)) and in limiting the circumstances under which the head may waive or reduce fees (section 75(5)), the Legislature made clear its intention that fees be a necessary component of the proper administration of the Act.
- 4.06 The Commissioner has acknowledged the need to administer the Act in a cost-effective and pragmatic fashion. [footnote omitted].

- 4.07 The reality that public bodies in British Columbia face is that the fees chargeable to an applicant under the Act are only a fraction of a Ministry's actual costs in processing requests under the Act.
- 4.08 The Ministry submits that in this era of significant demands for government services and limited resources, it is not surprising that the Legislature provided a mechanism in the Act to recover at least some of the costs of processing requests where a request involves a large volume of records or involves considerable search time.<sup>32</sup>

[57] The Ministry has got hold of the wrong end of the stick here. First, while the right of access under FIPPA is subject to the payment of fees, it is clear from the wording of s. 75 that fees are discretionary. I do not think this means they are "a necessary component of the proper administration" of FIPPA.

[58] Moreover, contrary to what the Ministry suggests, it is the circumstances under which public bodies may charge fees that are limited, not those under which they may waive fees. Section 75(1) lists the four services for which public bodies may charge while, under s. 75(5)(a), it is clear that public bodies may waive fees under any circumstances where they consider it fair to do so.

[59] While the Ministry did not suggest otherwise, it is worth reiterating that the public interest consideration in s. 75(5)(b) is not limited to matters relating to the environment or public health or safety. In Order 01-24, to give only one example, the Commissioner said these terms were not exhaustive and found that the settling of aboriginal land claims was a matter of public interest.

[60] Finally, the issue here is not whether the Ministry or WCWC should bear some or all of the costs of processing WCWC's request. Rather, the issue is whether the records in dispute relate to a matter of public interest and, if so, whether a fee waiver is warranted in the circumstances.

### ***Records disclosed without a fee***

[61] The Ministry correctly pointed out that the test in s. 75(5) is whether the requested records themselves relate to a matter of public interest, including the environment or public health or safety. As discussed above, the Ministry agreed, apparently as a result of mediation, to waive a portion of the assessed fees for records it characterized as "evaluation/assessment" records,<sup>33</sup> which it elsewhere described as records relating to the decision to instal parking meters in provincial parks, including records on the costs of acquiring and installing

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<sup>32</sup> See my comments at para. 71 below on similar remarks the Ministry made at para. 4.26 of its initial submission.

<sup>33</sup> Ministry's decision letter of September 30, 2005 and para. 1.15, Ministry's initial submission.

parking meters, and “the financial viability of that activity/program”, including anticipated revenues.<sup>34</sup>

[62] The Ministry said it disclosed without a fee the following types of records:<sup>35</sup>

- revenue and cash flow projections in relation to parking meters in parks
- the division of parking revenue between Parks Facility Operators and the Province
- a document entitled “BC Parks Pay Parking Program–Fact Sheet 2004/2005”, which refers to capital costs in relation to parking meters, as well as high vandalism costs
- the performance of the Ministry service provider and issues concerning the design of the parking meters in question
- a document entitled “Pay Parking Contracts and Performance Review for Vancouver Island and Lower Mainland Regions” which on p. 4 refers to projected revenues for pay parking and high vandalism rates
- costs of purchasing parking meters in various regions, parking meter break-ins for the mid-Island, costs for maintenance for the Lower Mainland in 2003, Cypress Provincial Park parking revenue and costs for 2004, parking meter operation costs for Porpoise Bay Provincial Park, an email with “minute details” on vandalism costs for parking machines in the “2004 Shuswap bundle”, including how the machines were vandalized, *i.e.*, glue or silicone in the coin slots, spray paint on the ticket dispensers
- a chart providing details for the Okanagan Region, Day Use Parking Revenue Summary, including operational and maintenance costs, and vandalism costs to parking meters
- an invoice from the service provider for the costs of re-building a vandalized meter
- an email with details of ticket machine vandalism costs for specific South Island provincial parks

[63] WCWC interpreted the Ministry’s decision to waive fees for some of the records to mean that the Ministry had acknowledged that those records relate to a matter of public interest,<sup>36</sup> something the Ministry vigorously denied in its reply:

1. ... [The Ministry] never conceded that the records in issue in this inquiry relate to a matter of public interest. Further, the Ministry continues to believe that those records do not relate to a matter of public interest. The Ministry made a decision to waive part of the fee assessed to the

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<sup>34</sup> Para. 4.35, initial submission; para. 11, reply submission.

<sup>35</sup> Para. 4.36, initial submission; para. 11 reply submission.

<sup>36</sup> Para. 11, initial submission.

Applicant on the basis of the content of the records associated with that portion of the fee ... ([which are] more policy in nature). ...

[64] The Ministry did not explain how the content or “policy” nature (whatever that means) of the records did not relate to a matter of public interest and yet, apparently, led it to waive the fee for the “evaluation/assessment” records. The Ministry claims to have explained to WCWC the distinction between those records and the “administrative” records which in its view warrant a fee,<sup>37</sup> although it did not explain this distinction in this inquiry. Of course, whether or not a public interest fee waiver was warranted for the “policy” records is not in issue here.

[65] The Ministry said that WCWC has already learned from the records for which it waived fees that there have been high vandalism rates related to parking meters in provincial parks. In its view, WCWC thus already has the records it needs to comment on or contribute to the public’s understanding of the costs of implementing the parking policy in provincial parks. The remaining records would not, in its view, add to the public’s understanding of the provincial park parking issue or vandalism issues and the Ministry should not be expected to bear the costs of searching for and producing these records.<sup>38</sup>

***Records for which Ministry believes a fee waiver is not warranted***

[66] The Ministry described the records in issue in this inquiry, *i.e.*, those which do not in its view satisfy the s. 75(5)(b) criteria, as follows:

- A record that refers to (1) the location of parking meters in parks and information concerning replacement parts for such meters and (2) proposals concerning such meters (2 pages)
- An e-mail dealing with the issue of capital investment concerning parts for parking meters, with attached prices for spare parts (5 pages)
- Complaint/Occurrence reports filed by Park facility operators that deal with reports of vandalism and/or damage in relation to parking meters within parks (80 pages)<sup>39</sup>

[67] The Ministry said that these records are “administrative in nature” and consist mostly of incident reports regarding parking meters and parking meter maintenance issues in provincial parks. It said the Commissioner has found that the fact that an applicant intends to use records to accomplish a public interest aim does not mean that the records themselves relate to a matter of public

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<sup>37</sup> Para. 1, reply submission.

<sup>38</sup> Para. 4.35, initial submission; paras. 11-12, reply submission.

<sup>39</sup> Para. 4.17, initial submission. The Ministry said it did not charge for searching for four pages on costs of replacement parts but only for providing copies; para. 6, reply submission.

interest. The records do not, in the Ministry's view, relate to any of the items in the first step of the public interest fee waiver test, as follows:<sup>40</sup>

- they do not relate to the environment or public health or safety or another matter of public interest
- they have no connection between to the health, protection or preservation of the environment nor do the records relate to any other matter of public interest, a term the Commissioner found not to be possible or desirable to define<sup>41</sup>
- there is no evidence that the subject matter of the records, routine parking meter maintenance records, has been the subject matter of recent public debate<sup>42</sup>
- there is no reasonable expectation that use or dissemination of the records could yield a public benefit by disclosing or contributing to development or public understanding of or debate on an environmental concern, public health or safety concern or an important policy, law, program or service
- they do not disclose how the Ministry is allocating financial or other resources

[68] The Ministry said its Director, Information, Privacy and Records,<sup>43</sup> considered WCWC's fee waiver arguments and concluded that WCWC had failed to demonstrate that the requested records relate to a matter of "public interest" for the purposes of s. 75.<sup>44</sup> The Ministry provided indirect affidavit evidence on this issue from the Ministry analyst who processed the request.<sup>45</sup>

[69] According to the Ministry analyst, the decision-maker considered the following factors:<sup>46</sup>

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<sup>40</sup> Paras. 4.18-4.39, initial submission. The Ministry also referred to a number of relevant orders in support of these arguments.

<sup>41</sup> Para. 4.25, initial submission.

<sup>42</sup> By contrast, the Ministry's decision letter of July 26, 2005 acknowledged that there had been considerable public and media debate in the parking meter issue.

<sup>43</sup> This person's decision letters give his title as "Manager".

<sup>44</sup> The Ministry described its analysis of whether the records relate to a matter of public interest in a section entitled "The Head's Exercise of Discretion under Section 75". As may be seen below, and as happened in Order F05-36, the Ministry has to some degree conflated the two steps in the public interest fee waiver analysis in this case. It also considered other factors that do not relate to either step.

<sup>45</sup> The Ministry did not explain why it failed to provide direct evidence from the decision-maker himself, the Ministry's Information, Privacy and Records Manager. I made a similar observation in Order F05-36, [2005] B.C.I.P.C.D. No. 50. Direct evidence is preferable and I see no reason why the Ministry could not have provided it here. Nonetheless, the absence of such direct evidence has not in this case entered into my decision on the merits.

<sup>46</sup> Para. 4.15, initial submission; Edwards affidavit.

- The requested records have nothing to do with, and are irrelevant to, a health, safety, environmental, conservation or preservation concern
- The requested records are not relevant to issues of accountability or transparency in the context of how government has discharged its stewardship responsibilities towards the environment
- The records sought do not speak, to any significant extent, to accountable or transparent decision making and shed no light on issues relating to fiscal management
- The records already released to WCWC (*i.e.*, records not subject to a fee), already show that parking meter revenues fell short of initial projections<sup>47</sup>
- The records at issue relate to administrative matters, not policy matters<sup>48</sup>
- There is no reason to believe that disclosure of the requested records would contribute to the development or public understanding of, or debate on, an important environmental or public health or safety issue
- There is no reason to believe that disclosure of the requested records would contribute to the development or public understanding of, or debate on, an important policy, law, program or service
- Ordering a fee waiver would unreasonably shift the cost burden from WCWC to the Ministry in this case;<sup>49</sup> WCWC, like any other applicant, is expected to be reasonable and work with public bodies on questions related to what records are really required to address their interests/needs and should not expect to be able to demand free access to everything, regardless of the content of the records sought; WCWC has not expressed a willingness to

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<sup>47</sup> WCWC disputed this at para. 3 of its reply, saying it has never received initial revenue projections and that it made the other requests because the Ministry refused to provide this information. There appears to be some overlap in the subject matter of WCWC's eight requests described elsewhere here but, except for this case, I do not know what other records WCWC has received and whether they contain information on projected revenues. It is therefore not clear what "records already released" the Ministry is referring to. I note however that an undated report entitled "Pay Parking Contracts and Performance Review for Vancouver Island and Lower Mainland Regions", one of the responsive records in this request and among the records on which the Ministry waived fees, contains information on projected revenues versus costs for 2003 for parking meters and some information on costs for 2004. The copy of this report that the Ministry provided with its initial submission appears to be incomplete so I do not know if the report contains other costs versus revenue information. The Recreation Stewardship Panel's 2002 report, one of the Ministry's publicly available documents, also contains some information on projected revenues for park user fees. WCWC is of course free to pursue this issue directly with the Ministry.

<sup>48</sup> Since the Ministry explicitly said at para. 1 of its reply submission that it did not consider the so-called "policy" records for which it waived the fee to relate to a matter of public interest, it is not clear how this distinction is relevant.

<sup>49</sup> The Ministry provided no evidence in support of this point. This factor does not in any case relate to the first step in the public interest fee waiver analysis but to the second step, the exercise of discretion. See Order F05-36, at para. 55, where I made the same observation in relation to a similar argument from the public body in that case.

narrow the request in order to focus on the records that were really required to address their interests or needs<sup>50</sup>

- WCWC has provided no evidence that it is unable to pay the fee at issue; as such, it is reasonable to expect that WCWC should contribute something towards the cost of producing the requested records<sup>51</sup>

[70] The Ministry also said this:

4.26 The Commissioner has stated that the bar for meeting the public interest fee waiver test is fairly high (Order 01-24, paragraph 52). The Ministry submits that this view is consistent with the clear legislative intent in section 75, namely, that an applicant is expected to bear some of the financial burden of processing requests for large amounts of records or requests involving more than three hours of search time, except in situations where there are compelling public interest reasons that dictate otherwise.

[71] It is not clear from this passage or other parts of the Ministry's submissions (such as para. 4.08, quoted above at para. 56), whether it contends that the 87 pages of records in issue here constitute "a large volume of records" (I do not consider them to be) or that the 16 hours in this case are a large amount of search time (again, not large, in my view). Perhaps the Ministry means it was required to search a large number of files, as it argued in its discussion of the grounds for its time extension.

[72] I do not, in any event, consider that the "clear legislative intent of section 75" is that applicants are "expected" to pay fees at all, let alone in the circumstances the Ministry suggests. While access is subject to fees, as I noted earlier, both fees and not just fee waivers are discretionary. Further, regardless of the volume of records or the search time, there may be any number of circumstances besides compelling public interests in which a public body may decide to waive fees.

[73] As with the Ministry, WCWC's arguments tend to conflate the two steps of the public interest fee waiver test. I have summarized below its arguments but have considered in the discussion of each step of the fee waiver test only those elements that pertain to that step.

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<sup>50</sup> These factors also do not relate to the first step in the public interest fee waiver analysis but to the second step, the exercise of discretion. Again, see Order F05-36, at para. 55, where I made this observation in relation to a similar argument. The Ministry combined these two arguments in one bullet point in its submission, as I have set it out above, as if the second flows from the first. They are of course two separate factors with no relation to each other: an applicant's willingness—or lack thereof—to work with a public body on focusing a request has no bearing on whether a fee waiver would shift an unreasonable burden onto the public body.

<sup>51</sup> WCWC nowhere argued that the fee should be waived on the ground that it could not afford it. Moreover, this factor relates to a fee waiver under s. 75(5)(a), not under s. 75(5)(b), the provision in issue here.

[74] WCWC began as follows:

14. Generally speaking, the records request [*sic*] in this dispute relate to a decision of the Government of British Columbia to install parking meters in the parks of British Columbia under the guise of a “new funding model” for BC parks. ...

[75] WCWC then quoted extensively from its original fee waiver request (which I outlined above and so will not repeat here) and continued as follows:

15. Within this larger context, the records deemed administrative shed light specifically on the costs of installation, maintenance and repair of parking meters as well as the overall management proficiency of the program.

16. The records add to the cumulative data that is being sought and collected by WCWC that may well demonstrate that the cost of the parking meter program was greater than the revenues collected.

17. The “administrative” records substantiated information that the Public Body purchased and installed meters that were unable to accept Canadian coins and had to be replaced at a cost of \$350,000.

18. Additionally, the “administrative” records revealed the nature and extent of activities termed “vandalism”. The records reveal that while some of the damage was motivated [*sic*] an intent to steal money within the meters, other damage was motivated by anger regarding the decision to install parking meters.<sup>52</sup>

[76] In WCWC’s view, it is a matter of public interest whether the Ministry anticipated this activity, including the nature and extent of damage to public property, prior to its decision. It said that, since it has paid for and received the records, “widespread interest in the records is demonstrable”. It named a series of media outlets which had covered the vandalism and costs issues regarding parking meters and said that the stories prompted the Minister of the time to write letters to the editor of two newspapers. WCWC provided copies of newspaper articles generated in response to the records it received and said that the articles referred to material contained in the “administrative” records.<sup>53</sup> WCWC said the media coverage on this issue has proven WCWC’s ability to publicly disseminate

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<sup>52</sup> The Ministry disputes this at para. 4 of its reply, saying that, while many of the incident reports contain details on the vandalism of parking meters, only a couple of the reports make a link between the vandalism and anger at the government’s decision to instal parking meters and that it is not possible with the others to tell what motivated the actions in question. I agree with the Ministry on this point.

<sup>53</sup> These media items, naturally, post-date its request. WCWC did not provide me with copies of any media articles that pre-dated its request or any other evidentiary support for its argument that the parking meter issue had been the subject of recent public debate before its request.

information and that the records in issue here, including the “administrative” records, clearly relate to a matter of public interest.<sup>54</sup> In its view, the distinction between “administrative” and “Evaluation/Assessment” records is unhelpful, immaterial and irrelevant.<sup>55</sup>

[77] In support of its arguments, WCWC provided affidavit evidence from its policy director. She outlined her experience with the request process and the subsequent media interest in the parking meter issue<sup>56</sup> and then described a conversation with the Ministry in which she disputed its rationale for denying WCWC’s fee waiver request as follows:

- the Ministry had inaccurately characterized WCWC as an “advocacy” organization
- the Ministry was mistaken in concluding that, as a non-profit organization, WCWC could not afford to pay the fee, an argument WCWC had not made in its request for a fee waiver
- the Ministry had erroneously assumed that “records already released to WCWC show that parking meter revenues fell well short of initial projections”—WCWC said it had still not received the original parking meter revenue projections
- the Ministry had defined the requested records as administrative not policy matters
- the Ministry had alleged that there was “no material public interest to be served by answering the question of how much was spent to purchase and maintain a parking meter in a particular park”<sup>57</sup>

[78] WCWC’s policy director deposed that, in a later conversation with the Manager, Information, Privacy and Records Office of the Ministry, the manager had acknowledged that a public interest would be served by finding out how much the meters cost, after she pointed out that, if costs outstripped revenues, “one would have to wonder why the government continued spending taxpayers['] dollars on the meters”. She then described the “administrative” records, saying they included six pages of records related to the cost of replacing meters<sup>58</sup> and poor service by the service provider. WCWC considered these two types of records to be pertinent to the overall story on parking meters as, she said,

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<sup>54</sup> The Ministry said that most of the information in a major newspaper article came from records it disclosed free of charge; para. 10, reply submission.

<sup>55</sup> Paras. 20-31, initial submission. The Ministry countered at para. 5 of its reply that WCWC was placing “far too much emphasis” on the term “administrative” records and that it considered its fee waiver based on the contents of the records in dispute, not on a label.

<sup>56</sup> Paras. 3-9, 12-16, 20-23, Barlee affidavit.

<sup>57</sup> Para. 10, Barlee affidavit.

<sup>58</sup> The Ministry said that it did not charge for locating and retrieving the records related to the costs of replacement parts of the meters but only for providing copies and that the 16 hours of search time was for the occurrence reports; para. 6, reply submission.

19 meters had to be replaced at a cost of \$350,000 because some meters would not accept Canadian coins.<sup>59</sup> The remaining records were occurrence reports on vandalism of the meters in different regions which, she said, gave a more complete picture of the degree of vandalism involved.<sup>60</sup>

[79] WCWC also argued in its reply that:

4. ... the records requested clearly speak to accountable and transparent decision-making: were public monies well spent?; has public funding been used against the public interest?; did the meters meet the stated goal of policy makers to raise revenues for park? The records clearly speak to prudent fiscal management: did costs outstrip revenues?; was the decision to put meters into parks financially sound?; was the decision to continue with meters in parks warranted given the high fiscal costs associated with operating the meters?

5. The records requested clearly relate to an environmental concern, namely the ongoing incremental privatization of provincial parks. In the last four years, numerous initiatives have included the modification and weakening of park legislation, the introduction of user fees, the proposal to put private-for-profit lodges within park boundaries, commercial logging within parks, the elimination of interpretive programs, significant funding and staff cutbacks, increased road building and the closure of dozens of campgrounds. These initiatives have been part of the government's restructuring of parks with a focus [*sic*] a new approach to parks that has seen the government increasingly look to the private sector and privatization initiatives to fund parks.

[80] WCWC continued in this vein for several more paragraphs, saying, among other things, that it appeared that there had been no public consultation, costs of the meters had outstripped revenues, money budgeted for parks had thus not materialized, there was a concern that management of the environment "will take a back seat to a new funding model approach where parks are increasingly managed and valued as potential revenue generators rather than [*sic*] their ecological value as protected areas", with a consequent potential for eroding the environmental protection of parks.<sup>61</sup>

[81] WCWC said much the same things in its reply, *i.e.*, that the "administrative" records clearly relate to fiscal management, *e.g.*, problems with servicing and replacement of faulty meters; poor service; meter malfunctions; lost

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<sup>59</sup> As noted elsewhere, the Ministry disputed this statement at para. 2 of its reply submission, saying that, although it had for a time considered replacing the meters, it did not do so in the end. The Ministry also said, at para. 3 of its reply, that the records dealing with the potential replacement of the meters were in the records it had disclosed free of charge, reinforcing its position that WCWC has enough records, disclosed to it—free of charge—to enable WCWC to contribute to the public's understanding of the park parking fee issue.

<sup>60</sup> Paras. 11 & 17-19, Barlee affidavit.

<sup>61</sup> Para. 7, reply submission.

revenue; warranty voidance and problems with replacement parts, all of which, WCWC said, resulted in revenue loss and visitor dissatisfaction. In WCWC's view, the Ministry's position on waiving the fees on some but not all of these records is "not compelling and [is] dangerous from a policy perspective", and the records reveal the "nature and incompetence of the Public Body in the management of this program". It then argued that:

...[a]llowing governments to use fee waivers to encourage the release of favourable versions of events while using fees to discourage the release of more embarrassing information assails the spirit and purpose of the Act.<sup>62</sup>

### **Discussion**

[82] The Ministry's position, as I understand it, boils down to this:

- while parking fees and parking meters have been the subject of recent public and media interest,<sup>63</sup> the subject matter of the disputed records (principally vandalism of parking meters in parks and related costs) has not
- none of the other elements in the first step applies to any significant extent, if at all, to the disputed records
- the disputed records do not therefore relate to a matter of public interest.

[83] WCWC presented an eloquent and passionate argument on the importance of transparency and accountability in government decision-making around parks issues generally and the parking fee issue in particular. I do not dispute the validity of its arguments as they pertain to the broader issues of parks, parking fees, concerns over privatization and the other park-related issues that WCWC raised, along with prudent fiscal management. I am prepared for these purposes to accept that all of these things relate to matters of public interest. The difficulty with WCWC's arguments is that, while they may apply to some extent to the records disclosed without a fee (and that is debatable), they do not, in my view, apply to the 87 pages of records in dispute. I think WCWC has, somewhat dramatically, overstated its case regarding the contents of the disputed records and their relation to bigger parks issues.

[84] The disputed records fall into three categories:

- two pages<sup>64</sup> listing the names of parks which apparently had problematic parking meters and setting out what the parking meter service provider proposed to do to resolve problems with the meters
- a two-page email string on a proposal that an agreement with the service provider to replace faulty parking meters include a spare parts package,

<sup>62</sup> Para. 11, reply submission.

<sup>63</sup> See Ministry's fee waiver decision letter.

<sup>64</sup> These appear to be part of a larger but incomplete record.

with an attachment consisting of three pages of quotes from the service provider on options for upgrading or replacing the parking meters, including costs for spare parts<sup>65</sup>

- 80 pages of “Complaint/Occurrence Reports”, standard forms which park operators fill out to report on problems they encountered, principally vandalism of parking meters, such as meter break-ins, theft of money from meters, spray painting of ticket dispensers and insertion of glue or silicone in meter coin slots; in some cases, the meter vandalism occurred in conjunction with vandalism to other park equipment such as spray painting of signs, garbage cans and tables; a few reports deal with separate issues, such as damage to park tables or accidental damage by a vehicle to a ticket booth; many of the reports state the costs of the theft or damage, generally no more than a few hundred dollars, but in a few cases \$1,500-2,500 dollars and, in one or two cases, \$5,000 or \$10,000 in damage.

[85] The occurrence reports do provide details of vandalism to parking meters. However, I note that several records the Ministry disclosed without a fee also allude to the types of vandalism (the glue and silicone issues), meter break-ins and repair costs to vandalized meters. They also refer to coin jamming problems, meter coating failure problems and other issues not concerned with meter vandalism.

[86] The occurrence reports relate to only one of many parks maintenance and repair issues and, in my view, do not in themselves shed any light on the broader issue of costs of parking meters versus revenues they have brought in, given the records already disclosed without a fee. It may be interesting for the public to know that vandals have defaced parking meters and poured various substances into coin slots—and at some cost. I do not however think that knowing the precise names and numbers of parks that experienced such problems, the dates on which the incidents occurred or other details in these routine reports relates to a matter of the environment, public health or safety or another public interest matter, such as the broader parks issues WCWC listed, as WCWC would have it.

[87] WCWC has also not established that the issue of parking meter vandalism was the subject of recent public debate before—as opposed to after—its request.<sup>66</sup> I also do not think “dissemination of the records could reasonably be expected to yield a public benefit” as in para. 1.(c) of the test, not least because

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<sup>65</sup> The Ministry said at para. 6 of its reply that it was not charging for locating and retrieving four pages dealing with the costs of spare parts for the parking meters but simply \$1.75 for copying them. It appears that the Ministry is referring to this email, although the email and attachment contain five pages. The Ministry did not say why it had decided to treat these pages differently from the records in dispute and those which it disclosed without a fee.

<sup>66</sup> As noted in a footnote above, WCWC did not provide me with copies of any media articles on this topic or with any other evidence that predated its request that supported its claim that the subject matter of the records had recently been the subject of public or media debate.

of the overlap in content between these records and the records disclosed without a fee. (Also see my discussion of this issue below.)

[88] The Ministry's thinking on the public interest issue was muddled and took into account irrelevant factors. I have to agree with it however that, for the reasons I have just given, the records in dispute do not relate to a matter of public interest. They therefore do not pass the first step in the public interest fee waiver test and I find that the Ministry acted properly in denying the fee waiver request under s. 75(5)(b).

[89] **3.5 Exercise of Discretion**—It is not strictly speaking necessary to consider the second step in the public interest fee waiver test, given my finding on the first step. However, both for completeness and because I had concerns about some aspects of the Ministry's application of the second step, I will set out what the Ministry had to say on this part of its analysis, together with my observations. I include here any factors from the discussion of the first step that actually relate to the second step.

#### ***Other information previously disclosed***

[90] The Ministry argued that, even if the records do relate to a matter of public interest which, it reiterated, they do not, this is not an appropriate case in which to waive or reduce the fee. The Ministry said that a relevant factor here is that it has already provided considerable information about the BC Parks Pay Parking Program to WCWC free of charge. Another relevant factor, it said, is that information on that program is publicly available.<sup>67</sup> In the Ministry's view, these factors weigh in favour of finding that this is not an appropriate case in which to waive the fee. It cited Order No. 332-1999<sup>68</sup> in support of this argument.<sup>69</sup>

[91] The Commissioner considered the public availability of similar information in Order No. 332-1999, as part of the first step of the public interest fee waiver test ("would not assist public's understanding of important policy", *etc.*). It is more properly considered in that step of course—and that is where public bodies should consider it—but I have included it here because the Ministry considered it as a factor in the exercise of discretion.

[92] In Order No. 332-1999, the Commissioner was dealing with a case where information similar to the information in the disputed records was publicly available or had recently been debated in the Legislature. He concluded from

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<sup>67</sup> The Ministry cited as examples the report by the Recreation Stewardship Panel of November 2002 which explains the rationale for implementation of user fees for certain recreation services in the province. It also referred to records on park fee issues on its website. It provided copies of both with its initial submission.

<sup>68</sup> [1999] B.C.I.P.C.D. No. 45.

<sup>69</sup> Paras. 4.40-4.42, initial submission.

this, and the routine nature of their contents, that the disputed records would not assist the public understanding of an “important policy, law, program or service”.

[93] I do not think this means that the public availability of information that is generally or tangentially connected to the subject matter of disputed records is relevant in this determination. To say this would make it difficult for requested records ever to add to the public’s understanding.

[94] In this case, as I have already mentioned, there is some overlap in content between the records that the Ministry disclosed without a fee and the records in dispute. To that extent, I agree that this is a relevant factor in this case. As I am not aware of the contents of the records that the Ministry disclosed in response to WCWC’s other requests on similar topics, I am not of course able to comment on whether they also overlap and are therefore a relevant factor.

[95] The other items that the Ministry mentioned provide more general information on the topic of park fees. As such, the public availability of these items is less relevant, in my opinion.

#### ***Ministry’s “late” response and shift in cost burden***

[96] The Ministry said that the fact that it was 16 days late in responding to the request does not mean WCWC should not have to bear any of the costs of responding. The Ministry said it has already waived 62% of the fee, in recognition of the principle the Commissioner mentioned in Order No. 332-1999 that fees are not all-or-nothing. The Ministry said it does however insist on being paid for the 16 hours of staff time required to locate and retrieve the records in dispute:

4.44 ... The Ministry submits that any waiver of the fee at issue in this inquiry would shift an unreasonable cost burden for responding from the applicant to the Ministry given it has already waived most of the applicable fee.

[97] I said above that I was satisfied that the response time limits did not apply in this case, as the disclosure of the records occurred during mediation of the fee waiver issue. In any case, I agree that the fact that the Ministry may have been 16 days late in responding does not in itself warrant waiving the fee in this case.

[98] It is, however, far from clear how the Ministry’s supposed lateness in responding has any bearing on whether a fee waiver would shift an unreasonable burden onto the Ministry. Any delay in a public body’s response is a separate factor in the exercise of discretion from any shift in the cost burden.<sup>70</sup>

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<sup>70</sup> Not meeting a time limit is of course a factor to consider in fashioning any remedy under s. 58(3)(c).

[99] As for the argument on the shift in cost burden, as I noted above, the Ministry provided no evidence on this point. According to the government's website, however, at the time of this request, the Ministry had upwards of 1,000 employees and a budget in the hundreds of millions of dollars.<sup>71</sup> Without more, it is not clear to me how absorbing a modest fee of \$536.75 would shift an unreasonable cost burden onto the Ministry.<sup>72</sup>

***Applicant's willingness to work with Ministry***

[100] The Ministry's next point was that the WCWC, like any other applicant,

4.45 ... should be expected to be reasonable and work with public bodies on questions related to what records are really required to address their interests or needs and should not expect to be able to demand free access to everything, regardless of the content of the records sought. The Applicant has not expressed a willingness to narrow the request in order to focus on the records that are really required to address their interests or needs and thereby reduce the applicable fee. The Ministry submits that that factors [*sic*] weighs in favour of finding that this would not be an appropriate circumstance to waive the remaining fee.

[101] There is no indication in the material before me that the Ministry attempted to engage WCWC in discussions with a view to focusing or narrowing the request,<sup>73</sup> still less that WCWC refused. I do not think the Ministry can cast aspersions on WCWC's supposed unwillingness to discuss the request, when the Ministry appears to have made no attempts to do so itself. Given the estimated amount of time for locating and retrieving the records—5½ to 6½ days' work—surely it was in the Ministry's own interest to attempt to narrow the request?<sup>74</sup>

[102] I could find no mention in WCWC's submission that it attempted on its own initiative to discuss the scope of the request with the Ministry. This could of course have been because WCWC wanted all of the records. Moreover, the original estimate was for 261 pages, not a large volume, while the revised estimate was for only 87 pages. These latter were mainly concerned with vandalism of parking meters, an issue of particular interest to WCWC. I would therefore not fault WCWC for not narrowing its request, particularly with respect to the 87 pages.

[103] Nevertheless, communication on a request is a two-way street. Both applicants and public bodies bear some responsibility or have an incentive

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<sup>71</sup> [http://www.bcbudget.gov.bc.ca/2005/sp/wlap/Resource\\_Summary.htm](http://www.bcbudget.gov.bc.ca/2005/sp/wlap/Resource_Summary.htm)

<sup>72</sup> I rejected similar arguments in Order F05-21, [2005] B.C.I.P.C.D. No. 29.

<sup>73</sup> Item 3 in the additional factors in step 2 set out in Order 01-35 expressly contemplates a public body requesting an applicant to work with the public body, including on narrowing the request.

<sup>74</sup> See paras. 34-35, Order F05-21, and para. 83, Order F05-36, where I made similar comments about such arguments from the public body, the same in both cases.

to, where appropriate, discuss a request early in the process to ensure that applicants will receive the records they really want or need. In this vein, however, public bodies should also bear in mind that applicants may not be familiar with the types of records a public body has or, more particularly, with the contents of records for which they receive a fee estimate, and may therefore be ill-equipped to narrow a request without the public body's help. It thus falls primarily to public bodies to assist applicants by describing responsive records and otherwise discussing requests with applicants. This would be time well spent and might result in lower fees and fewer fee disputes. It would also almost certainly result in better service, improved relations and higher applicant satisfaction.

### ***Expenditures on previous requests***

[104] Referring to Order 01-35, the Ministry said that another relevant factor was the accumulated time and resources it had already expended in dealing with WCWC's seven other requests, for six of which it had not charged fees, and a number of which had required significant amounts of time to process. The Ministry outlined the records sought in the eight cases, which spanned the period from late August 2004 to late September 2005, and the time spent on them,<sup>75</sup> as follows:

- records pertaining to the introduction of parking meters in provincial parks, including projected and actual revenues, projected and actual attendance, public compliance with parking regulations and attendance records for all parks in the province (22 hours of staff time to process)
- records submitted to Cabinet about the issue in the previous request (12 hours of staff time)
- records pertaining to the introduction of parking meters in provincial parks, including projected and actual revenues, projected and actual attendance, public compliance with parking regulations and attendance records for all parks in the province (19 hours of staff time, including 9 hours of search time)
- internal government records created in response to a press conference that WCWC held related to two of WCWC's requests (9 hours of staff time, including 3 hours of search time)
- records pertaining to the introduction of parking meters in provincial parks including projected and actual costs, maintenance and repair costs of parking meters and vandalism (51 hours of staff time, including 41 hours of search time) (this is the request I am considering here where the Ministry wishes to charge a \$536.75 fee)
- records related to revenue totals, net and gross, from parking meters in provincial parks (12 hours of staff time, including 7.5 hours search time)

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<sup>75</sup> The Ministry did not provide a complete breakdown of the time spent on these requests.

- records relating to the development of a road through Monck Provincial Park to provide access to a housing development (4.5 hours search time); in this case the Ministry assessed a \$395 fee on which WCWC paid a \$200 deposit; the Ministry later waived the balance of the fee (which seems to have risen later to \$450); the fee waiver issue regarding the \$200 deposit is the subject of another inquiry
- records about the government's "Park Lodge Strategy" on the development or proposed development of lodges in provincial parks (16.5 hours of staff time to process, including 10.5 hours search time); the Ministry said it attempted to narrow the request in order to reduce fees and avoid an onerous search but WCWC was not willing to do so; the Ministry later decided to waive the fees for this request.<sup>76</sup>

[105] The Ministry then said that, after WCWC receives a response, it often calls the Ministry and asks questions about the records. One Ministry manager estimates that he has spent "the equivalent of approximately one to two full days responding to e-mails and phone calls" from WCWC (excluding time spent on the requests themselves). In the Ministry's view, the time spent in dealing with WCWC's other requests and the fact that it has charged a fee for only two of WCWC's requests weighs in favour of a finding that this is not an appropriate case in which to waive the fee.<sup>77</sup>

[106] WCWC responded by claiming that, among other things, the Ministry has been evasive, adversarial and prone to delay tactics, unreasonable and obstructionist and has not been acting in good faith, independently from public interference. WCWC said it has incurred substantial burdens in making its requests because of the delays and refusals, while obtaining no benefits, and that, in six of its requests, it received additional information only after objecting. In its view, the time the Ministry has spent on its requests is "of their own making and should not be held against WCWC in this Inquiry".<sup>78</sup>

[107] The amount of time that the Ministry's staff have spent on WCWC's seven other related requests is approximately 95 hours. The Ministry did not say why it chose to charge fees in some cases but not others. The Ministry's figures suggest that not all of the processing time was chargeable but this is not clear. The Ministry also did not say how many pages of records were involved in the other requests.

[108] I recognize that the Ministry has spent the equivalent of about three weeks of one person's time on the seven related requests, a significant amount of time. I also note that the Commissioner took into account previous expenditure of

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<sup>76</sup> Para. 4.48, initial submission. The Ministry did not say why it had decided not to charge a fee in this case.

<sup>77</sup> Paras. 4.49-4.50, initial submission.

<sup>78</sup> Paras. 12-18, reply submission.

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resources by the public body in Order 01-35. In that case, however, the Commissioner was satisfied that that the public body had expended “considerable resources” in the past in providing records (although he did not say what this meant). He also took into account the fact that the public body had made relevant information available to the applicant and to the general public, with only modest fees.<sup>79</sup>

[109] It is by no means clear that the Ministry has done the same in this case. Without more details from the Ministry on the processing costs of WCWC’s other requests, I would not give it credit for resources it has spent on those requests, such that the exercise of discretion favours paying the fee. I say this assuming that what the Commissioner said in Order 01-35 was intended to state a generally-applicable principle at this second stage of the fee waiver analysis.

#### **4.0 CONCLUSION**

[110] For the reasons given above, under s. 58 of the Act, I confirm the fee that the Ministry assessed to WCWC in this case.

January 12, 2007

#### **ORIGINAL SIGNED BY**

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Celia Francis  
Adjudicator

OIPC File: F05-26160

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<sup>79</sup> See p. 13 of that order.