



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

Order 04-29

CORPORATION OF THE CITY OF ROSSLAND

James Burrows, Adjudicator
November 1, 2004

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Summary: The applicant requested financial information about nine various projects and administration work which the City was involved with. The City provided information about seven of the nine and charged a fee for the remaining two items. They denied the applicant's request to waive the fee in the public interest. The applicant did not provide evidence as to how he would disseminate the information to the public. The decision of the public body to deny the fee waiver 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 00-19 [2000] B.C.I.P.C.D. No. 22; Order 01-35 [2001] B.C.I.P.C.D. No. 36.

1.0 INTRODUCTION

[1] On November 4, 2002, the applicant submitted a request to the Corporation of the City of Rossland ("City") for records regarding:

1. Total cost of the [named party] allowance case;
2. Total cost of preparation and assistance to the proposed site of the Ferraro grocery store;
3. City cost to the Teen Town Center;
4. Copy of the minutes and/or cost to the city on firing [named party];
5. City cost of the Iron Colt Subdivision;
6. 2002 cost/expenditure for Esling Lodge;

7. Total legal fees for the last 5 years;
8. Name of Auditor and his 2002 fees;
9. Total cost to settle case of [named party] on the Earl Street Subdivision.

[2] On November 8 and 12 and December 16, 2002, the City responded to the applicant by providing some of the requested information. In its December 16 response, the City also issued a fee of \$300.00 to process the remainder of his request.

[3] On August 19, 2003, the applicant requested a fee waiver as, in his view, the records pertained to a matter of public interest. On September 11, 2003, the City denied the fee waiver. On September 18, 2003, the applicant requested this office review the decision of the City to deny his request for a fee waiver.

[4] 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

[5] The issue in this inquiry is whether the applicant is entitled to a fee waiver under s. 75(5) of the Act because the requested records relate to a matter of public interest.

[6] Both parties have submitted arguments bearing on this issue and I have carefully reviewed both positions.

3.0 DISCUSSION

[7] The applicant requested information about nine apparently unrelated issues which involved the City of Rossland. In its three replies to the applicant, the City provided the requested information for seven of the nine issues. What remained outstanding was item 2, “total cost of preparation and assistance to the proposed site of the Ferraro grocery store” and item 5, “city cost of the Iron Colt Subdivision.”

[8] The City told the applicant that it had used the first three hours of search time for the other seven items provided at no charge, as required under *Freedom of Information and Protection of Privacy Regulation* [B.C. Reg. 323/99]. It estimated that it would require five to ten hours of additional search time to provide the remaining information.

[9] The initial submission of the City provided records to show that it had followed the procedure set out in its Bylaw 1842 which allowed the City to charge fees. The City did not send a reply submission. I would comment that it is very difficult for an applicant, or an adjudicator, to determine the appropriateness of a fee if a public body does not provide some detail as to how it arrived at the fee. For example, an explanation of how many boxes must be searched or the number of places that must be searched or how the public body calculated the number of hours required for the search will help to ensure that an applicant understands how the estimate was reached.

[10] In his submission, the applicant argued that the request for the various types of financial information was in the public interest and the release of these costs would allow greater transparency of the City government.

Request for fee waiver

[11] In Order No. 332-1999, [1999] B.C.I.P.C.D. No. 45, pp. 4-7, the Commissioner set out the two-part test for determining the validity of a public interest claim with respect to fee waivers. He used that approach in Orders 02-43 and 03-19 as well as other orders. I have followed that approach without repeating it here.

[12] To meet the requirements of the first part of the test, the records must relate to a matter of public interest. On p. 5 of Order No. 332-1999, the Commissioner stated that records which show “how the public body is allocating financial or other resources” would be a matter of public interest. The applicant fulfills the first part of the two-part test for a fee waiver as the requests were to determine how public funds are being spent.

[13] In a number of orders, the Commissioner has detailed a non-exhaustive list of factors which could be considered in determining if the second part of the test is met. In Order No. 332-1999, p. 6, he stated that a factor to consider is “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, and not a private, interest.” The applicant has stated that he wishes the information to create more transparency in the City government. However he does not provide any specifics as to how this will happen if he receives the information or how this would benefit a public interest. Given the lack of specifics, this factor is insufficient to grant a fee waiver.

[14] Another relevant factor is whether or not the applicant can disseminate the information to the public. The applicant has provided me with no clear evidence of how he can disseminate this information to the community. He has provided two newspaper articles which show a local interest in how the City manages its finances but I am not convinced that this provides a sufficient link to the requested information. Nor does it demonstrate that the applicant would be able to disseminate the information in question. I also have considered the other factors which the Commissioner listed in Order 01-35 [2001] B.C.I.P.C.D. No. 36, paras. 44-46, but I do not find those factors relevant to this request. Given that the applicant has not shown that the information can be provided to the community, I find that the applicant has not met the second part of the test for a fee waiver. Therefore, I find that the City is not required to grant a fee waiver to the applicant.

Allocation of ‘free’ location and retrieval time

[15] However, an additional issue arises in the applicant’s letter of August 19 to the City in which he requested a fee waiver. While this issue is not before me in this inquiry, I consider it appropriate to comment on it in passing, without making any finding on it.

[16] The applicant stated that “a number of different requests could be made and if unrelated would oblige [the City] to comply without fees.” In Order 00-19 [2000] B.C.I.P.C.D. No. 22, p. 10, the Commissioner determined that, while it is reasonable for a public body to combine

requests if they are alike in subject matter, he also recognized that different requests should not be combined, simply because they had been sent to the public body at the same time.

A public body should not be able to combine access requests at will for the purposes of s. 75(2)(a) of the Act. There is nothing improper about an applicant making more than one request to a public body. The public body should not be able to automatically combine those requests so the applicant loses the benefit of 'free' location and retrieval time. The language of s. 75 does not dictate this result and, in the absence of clear statutory language, I am unwilling to conclude that such a result was intended by the Legislature. The 'free' time in s. 75(2)(a) was obviously intended to benefit applicants by facilitating access without fees or with fees that do not serve as a barrier to access. This benefit was meant to be real, not an illusion. A public body should not be able to minimize, or get around, the benefit so conferred by combining, on a blanket basis, all contemporaneous requests from an applicant. By the same token, an applicant should not be penalized, for the purposes of s. 75(2)(a), if he makes a number of discrete, and unrelated, access requests in a single piece of correspondence to a public body.

[17] In carefully reviewing the requests made by the applicant, I believe that these requests for information, ranging from a termination settlement, subdivision costs, legal fees, and the name of the auditor among others, are sufficiently different that each item is actually a separate request. Even though the requests were combined in a single letter, they remain separate and distinct requests, as recognized by the Commissioner in the final sentence of the section from Order 00-19 quoted above. This entitlement to the first three hours is provided under s. 75(2) of the Act.

Fees

- 75 (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

...

[18] Therefore, I suggest the applicant is entitled to three hours of 'free' retrieval and location time for each of his requests under s. 75(2) of the Act.

4.0 CONCLUSION

[19] For the reasons given above, under s. 58(3)(c) of the Act, I confirm the decision of the City of Rossland, under s. 75(5) of the Act, not to waive the estimated fee.

November 1, 2004

ORIGINAL SIGNED BY

James Burrows
Adjudicator