



**OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
Prince Edward Island**

Order No. FI-15-012

**Re: Prince Edward Island Liquor Control Commission
Executive Council Office
Office of the Premier**

**Prince Edward Island Information and Privacy Commissioner
Karen A. Rose**

December 31, 2015

Summary: An applicant requested a review of the decisions of the Prince Edward Island Liquor Control Commission, the Executive Council Office, and the Office of the Premier, regarding access to expense claim information of specific individuals within the three public bodies. For each request, the head of the public body provided the applicant with a fee estimate to process the records. In each case, the applicant questioned the fee estimate, and requested a fee waiver on the basis that the records relate to a matter of public interest. In each request, the head of the public body denied the fee waiver request.

In all three reviews, the Commissioner reduced the fee estimate. Further, the Commissioner found that most of the records at issue relate to a matter of public interest, and allowed a partial fee waiver for all three reviews. The Commissioner found that the head of the Prince Edward Island Liquor Control Commission did not fulfill his duty to assist the applicant, pursuant to section 8 of the *Freedom of Information and Protection of Privacy Act*, as the request was subjected to unjustified delays. Therefore, the Commissioner waived the fee of the Prince Edward Island Liquor Control Commission in full.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, s. 2, 7, 8, 9, 12, 66(3), 68(1.1), 76(1), 76(3), 76(4), 76(5); *General Regulations to the FOIPP Act*, PEI Reg EC564/02, s. 9(4), 9(5), 11(1), Schedule 2.

Decisions Considered: Order No. 03-001, *Department of Development and Technology, Re*, 2003 CanLII 52558 (PE IPC)
Order No. FI-13-001, *Health PEI (Re)*, 2013 CanLII 89281 (PE IPC)
Order No. FI-15-009, *Department of Health and Wellness, Re* (27 October 2015), Charlottetown FI-15-009 (PE IPC)
Order No. FI-15-007, *Prince Edward Island (Economic Development and Tourism) (Re)*, 2015 CanLII 66635 (PE IPC)
Order No. FI-11-002, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91841 (PE IPC)
Order No. FI-11-001, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91839 (PE IPC)
Order 98-002, 1998 CanLII 18633 (AB OIPC)

Other Resources Cited: Prince Edward Island, Legislative Assembly, Prince Edward Island Speech from the Throne, *Working Together*, 65th Leg. 1st Sess. (03 June 2015) at 8 (Honourable H. Frank Lewis)

I. BACKGROUND

[1] An applicant (“the Applicant”) made a request to the Prince Edward Island Liquor Control Commission (“the LCC”), the Executive Council Office, and the Office of the Premier, pursuant to section 7 of the *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01 (the “FOIPP Act”). The Applicant requested access to expense claim information relating to particular individuals of, and held by these three public bodies (“the Public Bodies”), as follows:

1. From the LCC, for the time frame of August, 2011 and February 1, 2014:
 - a. expense claims, documents, and travel costs for the CEO; and
 - b. LCC staff expenses related to activities and events hosted at Sims Steakhouse.

2. From the Executive Council Office, for the time frame of June 1, 2011 and February 5, 2014:
 - a. expense documents for and/or pertaining to the Deputy Minister of Intergovernmental and Public Affairs, including out-of-province travel expenses, cell phone bills, and hospitality and general expenses.

3. From the Office of the Premier, for the time frame of April 1, 2011 to February 6, 2014:
 - a. expense documents for and/or pertaining to the Executive Assistant to the Premier, including out-of-province travel expenses, monthly cell phone bills, and hospitality and general expenses.

[2] The heads of the Public Bodies exercised their discretion and issued fee estimates to the Applicant. The fee estimates were to be paid before the Public Bodies could provide the Applicant with the requested records. The Applicant complied and received the records requested.

[3] The Applicant requested a review by this office of the Public Bodies' decisions, including a review of the Public Bodies' fee estimates, and of their refusals to provide a fee waiver.

II. RECORDS

[4] The responsive records to the Applicant's access request to the LCC include 141 pages of receipts, travel claims, and related expense documents. Severances made to these records are not subject to this review; however, a review of the records is necessary for a determination of the issues to this review, as set out below.

[5] The responsive records to the Applicant's access request to the Executive Council Office include 570 pages: 26 pages of bank statements, 35 pages of Procurement Card Log Reports, and 509 pages of cell phone bills. Severances made to these records are not subject to this review. Again, however, a review of the records is necessary for a determination of the issues to this review.

[6] The responsive records to the Applicant's access request to the Office of the Premier include 101 pages: 7 pages of bank statements, and 94 pages of cell phone bills. Again, severances made to these records are not subject to this review, but a review of the records is necessary for a determination of the issues to this review.

III. ISSUES

[7] The issues addressed in this review are the same for each of the three Public Bodies, as follows:

Issue 1: Did the head of the Public Body reasonably calculate the fee estimate in conformity with the guidelines under the *FOIPP Act* and its regulations, as required by subsections 76(1) and (5) of the *FOIPP Act*?

Issue 2: Regarding the Applicant's request for a fee waiver pursuant to clause 76(4)(b) of the *FOIPP Act*:

(a) Do the records at issue relate to a matter of public interest? and

(b) If the records at issue relate to a matter of public interest, did the head of the Public Body reasonably exercise his discretion in denying the request for a fee waiver?

Issue 3: Did the head of the Public Body fulfill his duty under section 8 of the *FOIPP Act* by making every reasonable effort to assist the Applicant, and by responding to the Applicant openly, accurately, and completely?

IV. ANALYSIS OF THE ISSUES

Issue 1: *Did the head of the Public Body reasonably calculate the fee estimate in conformity with the guidelines under the FOIPP Act and regulations, as required by subsections 76(1) and (5) of the FOIPP Act?*

[8] Schedule 2 of the *General Regulations* to the *FOIPP Act*, PEI Reg EC564/02 (the “regulations”) sets out the maximum amount that may be charged by a public body for each service provided in the processing of an access request. Subsection 76(5) of the *FOIPP Act* provides that the fees charged to an applicant by a public body cannot exceed the actual amount it costs the public body to carry out the services involved.

[9] A public body does not have the discretion to charge any fees over and above the initial \$5.00 fee for processing an access request until the amount of time a public body spends processing the request exceeds two hours. Subsection 9(4) of the regulations, *supra*, states:

9. (4) In addition to the initial fee, fees in accordance with Schedule 2 may be charged if the amount of time spent, as estimated by the public body to which the request has been made, exceeds two hours.

In addition, it has been the practice of public bodies in this province, since the *FOIPP Act* came into force, to provide two hours of service free of charge.

[10] **Burden of Proof:** Subsection 76(1) of the *FOIPP Act* gives a public body the discretion to decide whether or not to charge an applicant fees for the services and expenses of processing an access request. When a fee estimate is provided, a public body has the burden of proving that it calculated the fee reasonably [Order No. 03-001, *Department of Development and Technology, Re*, 2003 CanLII 52558 (PE IPC) at 5].

- [11] Generally, a fee estimate may be broken down into three primary services: location and retrieval of responsive records; preparation and handling of responsive records; and photocopying responsive records. There are additional charges, as circumstances arise, but these three categories describe the vast majority of services responsive to access requests [Schedule 2].
- [12] Locating and retrieving a record: The location and retrieval of a record was described in Order No. 03-001, *supra*, as the time required to take the requested records out of the filing system for an applicant. Depending on the specific access request, this might require the location of a single file, or the search of many files in different locations [Order No. 03-001, *supra*, at 6]. A public body is entitled to charge an applicant \$10.00 per half hour for locating and retrieving records. This calculation is based on the presumption of a reliable and organized filing system. Time spent locating and retrieving a record from a filing system that does not meet this standard should not be borne by an applicant [Order No. 03-001, *supra*, at 7].
- [13] Preparing and handling a record for disclosure: The act of severing a record is described in Schedule 2 of the regulations as preparing and handling a record for disclosure. A public body can charge up to \$10.00 per half hour for this service. Subsection 9(5) of the regulations stipulates that an applicant is not to be charged for the time it takes a public body to review the record.
- [14] It has been established in previous decisions of this office that two minutes per page is a reasonable estimate for the time to sever a record where only a few severances per page are required, and that the percentage of records to be severed is a factor to be considered. “Expressed in a formula, the estimate of the time to sever a record is: *(estimated number of pages) X (2 minutes/page) X (estimated % of records to be severed).*” [Order No. FI-13-001, *Health PEI (Re)*, 2013 CanLII 89281 (PE IPC) at para 24]

[15] While the above formula has been very helpful where there are many records with varying amounts of severances throughout, it may not always result in an accurate estimate of preparation and handling time. Indeed, in two of the reviews before me, the Public Bodies had estimated that the time they required to sever the records at issue was well below what the formula would have estimated, had they applied it, which, to their credit, they did not. In the records at issue, only a name or address is severed, or an account number, or one column of information in a table. In my view, where there is very few, or repetitive severances for a public body to make, it is logical to amend the formula to apply to such circumstances.

[16] It must be borne in mind that the time required to review a record to decide whether a severance is necessary is not chargeable by a public body; it is only the physical act of severing that is subject to a fee [subsection 9(5) of the regulations]. A charge of two minutes for an action that would take only seconds is unfair, and runs contrary to subsection 76(5) of the *FOIPP Act*, that the fees charged to an applicant by a public body cannot exceed the actual amount it costs the public body to carry out the services. Therefore, in circumstances where it is clear that two minutes per page will result in an unreasonable time estimate, I will reduce the time estimate for preparation and handling accordingly. In the three reviews before me, I have taken a more focused, deliberate, yet reasonable approach to the time estimate for preparing and handling the records at issue.

[17] Copying a record: Clause 11(1)(b) of the regulations allows a public body to charge for the cost of copying a record, but not the time it takes to make the copy. The maximum allowable fees listed in Schedule 2 of the regulations to charge an applicant for making a paper copy of a record is \$0.25 per page.

[18] Because subsection 76(5) of the *FOIPP Act* stipulates that the fees shall not exceed the actual costs of the services, the rate for photocopying has recently been established to

be \$0.08 per page. In Order No. FI-13-001, *supra*, at paragraphs 34 and 41, former Commissioner Maria MacDonald concluded, based on market cost, that \$0.08 per page is a reasonable rate for photocopying. I have adopted this rate in recent orders [Order No. FI-15-009, *Department of Health and Wellness, Re* (27 October 2015), Charlottetown FI-15-009 (PE IPC) at para 32; and Order No. FI-15-007, *Prince Edward Island (Economic Development and Tourism) (Re)*, 2015 CanLII 66635 (PE IPC) at para 21], and I note that the public bodies have adopted this rate, as well, as is demonstrated by the LCC's revised photocopy calculation.

Analysis of Fee Estimate of the LCC

[19] The LCC's initial fee estimate provided to the Applicant on February 14, 2014, is set out in the following table, for a total fee of \$425.00:

Location and Retrieval	15 hours	\$300.00
Preparation and Handling	7.5 hours	\$150.00
Photocopying records	60 pages at \$0.25 per page	\$ 15.00
2 hours free of charge	2 hours at \$20 per hour	(\$40.00)
Total fee		\$425.00

It is notable that once the access request was processed, 141 pages of records were actually provided to the Applicant, and not the estimated number of 60 pages. The LCC later amended its copying rate to \$.08 per page, thus reducing the copying charge to \$11.28, and owing the Applicant a refund of \$3.72.

Location and Retrieval

[20] The LCC states that in order to respond to the Applicant's two-part request, it was required to search current and archived files, both electronic and paper, located at its head office. It also searched files being reviewed by the Auditor General at

that time, as part of its annual year-end audit.

- [21] The LCC accurately points out that the Applicant's request specifies the time frame for the records to be between August, 2011, and February 1, 2014, for a period of 30 months. In initial submissions, the LCC notes that there were 29 employees with potential expense records related to the second part of the Applicant's access request (expenses related to Sims Steakhouse). In later submissions, the LCC states that the records of 32 employees were searched in order to respond to part two of the request.
- [22] In initial submissions, the LCC states that its search included 150 boxes of records. Because it had charged 15 hours for search and retrieval, it calculated that it had averaged six minutes to review each box. In later submissions, the LCC revised this estimate to 50 boxes of records, which changed the calculation to 18 minutes per box for search and retrieval.
- [23] The LCC further explains that not all staff working at its head office during the requested time period had still been working there at the time of the request for access. It submits that this reality added some time to the search for records. Without specifics, I am unable to imagine how this factor would affect the location and retrieval of filed expense records.
- [24] The LCC points out several times during its various submissions that the Applicant did not at any time during the access process express disagreement with the fee estimate. While I agree with the LCC, I do not think that this evidence is relevant to a determination of whether the fee estimate is accurate or reasonable.
- [25] I must assess the fee estimate of the LCC based on the presumption of an organized and reliable filing system. I have reviewed the records provided to the Applicant by the

LCC. I find that they would reasonably be contained in 33 files, representing the expenses of 32 staff and one CEO. It is reasonable to conclude that in an organized filing system, expenses of employees would all be contained in close proximity to one another, and easily accessible. One hour should be sufficient time to locate the records responsive to the Applicant's request. I also conclude that over the time period for which the records were requested, amounting to four separate calendar years, there would reasonably be four files for the CEO expense information. With regard to the staff files, the LCC points out that many of these files contained no invoices relating to the second part of the request, but that they still had to be searched. It is likely that the head of the LCC was aware that all of the Sims Steakhouse invoices were for the 2013 calendar year. Thus, 32 files would have to be searched, together with the four files for the CEO, for a total of 36 files. I find that five minutes per file is a reasonable estimate to search an employee's expense file for records responsive to the request for access. At this rate, 180 minutes would be required, or three hours, for retrieval of the records responsive to the Applicant's request.

- [26] With an organized filing system, which is assumed, and based on the foregoing reasons, I find a reasonable amount of time to search, locate, and retrieve the records provided by the LCC would be four hours. I find the 15 hour estimate of the LCC to be unreasonable in the circumstances of this request for access.

Preparing and Handling

- [27] The LCC estimates it would take 7.5 hours to sever the records at issue. It states that it required an additional eight hours for processing the Applicant's request:

Once the records were located, retrieved and prepared for the Applicant, it was determined that the manner in which they were presented would make it difficult for the Applicant to assess. In order to provide a more logical presentation it was determined that the records should be prepared for the Applicant by event rather than by date processed. This process added an

additional eight (8) hours over five (5) days to the time to finalize the response.

- [28] It is apparent that the LCC did not charge the Applicant for the additional eight hours, nor should it have. While the presentation of the records may have made it easier for the Applicant to understand the information, this service does not come under the normal activities of preparing and handling records for disclosure.
- [29] Based on my examination of the records at issue, there are 87 of 141 pages of records that required no severing at all. There are 21 pages that required only one severance, and 33 pages that required two or more severances. While the decision of what to sever and under which exception may have been time-consuming for the LCC, the actual process of severing would have taken little time.
- [30] For the 21 pages of records that required only one severance, I estimate that ten seconds per page would be sufficient to properly sever the excepted information, for a total of 210 seconds. For the 35 pages that required two or more severances, I estimate 30 seconds per page, or 1050 seconds. Therefore, the total preparation and handling time would be 1260 seconds, or 21 minutes.
- [31] It has been established in previous orders that a rate of \$20.00 per hour is a reasonable rate for an employee who has enough knowledge and experience to prepare the records in an effective and efficient manner. Therefore, based on the total time of 21 minutes to sever the records at issue, the total charge would be rounded to \$ 7.00.

Copying a Record

- [32] I agree with the LCC that a reasonable estimate for the LCC to photocopy 141 pages of records at \$0.08 per page is \$11.28.

Conclusion

[33] Based on the foregoing, I find that the LCC’s fee estimate is not a reasonable reflection of what the actual costs would be for providing the services for processing the Applicant’s access request given an organized filing system. Based on the foregoing calculations, I find that a reasonable fee estimate to process the Applicant’s access request is \$58.28, in accordance with the following table:

Location and Retrieval	4 hours	\$ 80.00
Preparation and Handling	21 minutes	\$ 7.00
Photocopying records	141 pages at \$0.08 per page	\$ 11.28
2 hours free of charge	2 hours at \$20 per hour	(\$40.00)
Total fee		\$ 58.28

Analysis of Fee Estimate of the Executive Council Office

[34] The Executive Council Office’s initial fee estimate is set out in the table below, for a total fee of \$348.00:

Location and Retrieval	5 hours	\$100.00
Preparation and Handling	10 hours	\$200.00
Photocopying records	1100 pages at \$0.08 per page	\$ 88.00
2 hours free of charge	2 hours at \$20 per hour	(\$40.00)
Total fee		\$348.00

[35] Once the Executive Council Office fully processed the request and made the records available to the Applicant, the fee estimate was amended to a revised total fee of \$466.56. This is the fee estimate that is subject to my review, as follows:

Location and Retrieval	8 hours	\$160.00
Preparation and Handling	15 hours	\$300.00
Photocopying records	570 pages at \$0.08 per page	\$ 45.60
2 hours free of charge	2 hours at \$20 per hour	(\$40.00)
Total fee		\$466.56 *

* Note: There was a calculation error, and total fee should have been \$465.60

Location and Retrieval

[36] I have reviewed the records provided to the Applicant by the Executive Council Office. It should be borne in mind that these records relate to a singular individual. Further, there are only three types of records: bank statements; Procurement Card Log Reports; and cell phone bills. I find that these records would reasonably be contained in one file, but no more than four files, for four calendar years, and that they would be filed in close proximity to each other. In an organized filing system, which is required, I find a reasonable amount of time to search, locate, and retrieve the records provided by the Executive Council Office would be two hours. I find the Executive Council Office's estimate of eight hours to locate and retrieve these records to be unreasonable.

Preparing and Handling

[37] The Executive Council Office estimates it expended 15 hours to sever the records at issue. Based on a thorough review of the records, I find this estimate to be unreasonable. For the 35 pages of Procurement Card Log Reports, no severing was required. For the bank statements, only the account number was severed, which appeared twice in the same place on each statement. I estimate that ten seconds per page would be required to sever the account number, which amounts to four minutes, 20 seconds for the 26 pages. For the cell phone bills, the severing is also repetitive. Some pages contain a column of information, being phone numbers. The time required

to sever this information, which is repetitive throughout 509 pages, would reasonably be 20 seconds per page. Therefore, a reasonable total time required to sever the cell phone bills is 169 minutes, 40 seconds.

[38] Based on the forgoing, I calculate a reasonable estimate for preparing and handling the records for disclosure, as follows:

35 Procurement Card Log Reports	0 minutes
26 bank statements	4 minutes, 20 seconds
509 cell phone bills	169 minutes, 40 seconds
Total Preparation and Handling time	174 minutes (2 hours, 54 minutes)

[39] Based on the total time of two hours and 54 minutes to sever the records at issue, the total charge would be rounded to three hours, or \$60.00.

Copying a Record:

[40] I agree with the Executive Council Office that a reasonable estimate to photocopy 570 pages of records at \$0.08 per page is \$45.60.

Conclusion:

[41] I find that the Executive Council Office’s fee estimate is not a reasonable reflection of what the actual costs would be for providing the services for processing the Applicant’s access request. Therefore, I do not uphold the Executive Council Office’s fee estimate. Based on the foregoing calculations, I find that a reasonable fee estimate to process the Applicant’s access request is \$105.60, as set out in the following table:

Location and Retrieval	2 hours	\$ 40.00
Preparation and Handling	3 hours	\$ 60.00
Photocopying records	570 pages at \$0.08 per page	\$ 45.60
2 hours free of charge	2 hours at \$20 per hour	(\$40.00)
Total fee		\$105.60

Analysis of Fee Estimate of the Office of the Premier

[42] The Office of the Premier's initial fee estimate is set out in the table below, for a total fee of \$108.80:

Location and Retrieval	5 hours	\$100.00
Preparation and Handling	2 hours	\$ 40.00
Photocopying records	110 pages at \$0.08 per page	\$ 8.80
2 hours free of charge	2 hours at \$20 per hour	(\$40.00)
Total fee		\$108.80

[43] Again, once the Applicant's access request was fully processed, and before providing the Applicant with the records at issue, the Office of the Premier revised its estimate to \$138.08, as follows:

Location and Retrieval	5.5 hours	\$100.00
Preparation and Handling	3.5 hours	\$ 70.00
Photocopying records	101 pages at \$0.08 per page	\$ 8.08
2 hours free of charge	2 hours at \$20 per hour	(\$40.00)
Total fee		\$138.08

Location and Retrieval

- [44] I have reviewed the records provided to the Applicant by the Office of the Premier. Again, it is relevant that these records relate to a singular individual. In addition, there are only two types of records: bank statements and cell phone bills. I find that these records would reasonably be contained in one file, but no more than four files, for the four year time frame requested, and that they would be filed in close proximity to each other. In an organized filing system, which is presumed, I find a reasonable amount of time to search, locate, and retrieve the records provided by the Office of the Premier would be 1.5 hours. I find the Office of the Premier's estimate of 5.5 hours to locate and retrieve these records to be unreasonable.

Preparing and Handling

- [45] The Office of the Premier estimates it took 3.5 hours to sever the records at issue, stating that of the 101 pages, only 35 did not require severing. The Office of the Premier also notes that the usual guide to estimate time for severing is two minutes per page, but that it recorded the actual time it took to sever the records, which amounts to less than if the guide was used.
- [46] Based on my review of the records, I find the 3.5 hour estimate to be unreasonable. For the bank statements, only the account number was severed, which appears twice in the same location on each statement. Estimating that ten seconds per page would be required to sever the account number, a reasonable total time required to sever the seven pages retrieved is 70 seconds. For the cell phone bills, the severing is also repetitive. The severed information includes the account number, with some pages containing a column of severed information, being phone numbers. The time required to sever this information, which is repetitive throughout 96 pages, would reasonably be 20 seconds per page. Therefore, a reasonable total time required to sever the cell phone bills is 1920 seconds.

[47] Based on the forgoing, I calculate a reasonable estimate for preparing and handling the records for disclosure to be 1990 seconds, or 33 minutes, 10 seconds. Therefore, based on the total rounded time of one half hour to sever the records at issue, the total charge would be \$10.00.

Copying a Record:

[48] I agree with the Office of the Premier that a reasonable estimate to photocopy 101 pages of records at \$0.08 per page is \$8.08.

Conclusion:

[49] I find that the Office of the Premier's fee estimate is not a reasonable reflection of what the actual costs would be for providing the services for processing the Applicant's access request. Therefore, I do not uphold the Office of the Premier's fee estimate. Based on the foregoing calculations, I find that a reasonable fee estimate to process the Applicant's access request is \$8.08, as set out in the following table:

Location and Retrieval	1.5 hours	\$ 30.00
Preparation and Handling	0.5 hours	\$ 10.00
Photocopying records	101 pages at \$0.08 per page	\$ 8.08
2 hours free of charge	2 hours at \$20 per hour	(\$40.00)
Total fee		\$ 8.08

Issue 2: *Regarding the Applicant's request for a fee waiver, and subject to clause 76(4)(b) of the FOIPP Act, do the records at issue relate to a matter of public interest, and, if so, did the head of the Public Body reasonably exercise his discretion in denying the request for a fee waiver?*

[50] The head of a public body has the discretion to excuse an applicant from paying all or part of a fee if any of the conditions under subsection 76(4) of the FOIPP Act apply. Clause 76(4)(b) states,

76. (4) The head of a public body may excuse an applicant from paying all or part of a fee if, in the opinion of the head,

...

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

[51] **Burden of Proof:** Both parties bear the burden of proof under clause 76(4)(b) of the FOIPP Act to show that the records relate to a matter of public interest. When an applicant is not yet in possession of the records, the applicant is at a disadvantage with respect to the public interest argument [Order 03-001, *supra*, at p 12]. However, in this case, the Applicant is already in possession of the records, and is thus in as good a position as the Public Bodies to make representations regarding whether the records at issue relate to a matter of public interest.

[52] This office has issued several orders with analysis of section 76 of the FOIPP Act and how to approach fee waivers. The first order of this office, Order No. 03-001, *supra*, reviews the decisions of six public bodies relating to ten fee estimates and fee waiver requests. With respect to fee waivers based on public interest, at page 12 it sets out the factors a public body should consider when making a decision on a fee waiver request, and the following two-step analysis:

(1) Does the record relate to a matter of public interest? and, if so,

(2) Should the fees be waived?

[53] Order No. FI-11-002, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91841 (PE IPC), expands on the first step of the above-noted test at paragraph [72], setting out, among others, the following guiding questions to help determine whether records can be considered records relating to a matter of public interest:

1. Will the records contribute to the public understanding of, or debate on, or resolution of a matter or issue that is of concern to the public or a sector of the public, or that would be if the public knew about it? The following factors may be relevant:

- Have others besides the applicant sought or expressed an interest in the records?
- Are there other indicators that the public has or would have an interest in the records?

2. If the records are about the process or functioning of government, will they contribute to open, transparent, and accountable government? The following factors may be relevant:

- Do the records contain information that will show how the Government of PEI or a public body reached or will reach a decision?
- Are the records desirable for the purpose of subjecting the activities of the Government of PEI or a public body to scrutiny?
- Will the records shed light on an activity of the Government of PEI or a public body that has been called into question?

[54] As Commissioner MacDonald points out in Order FI-13-001, *supra*, at paragraph [52], there may be other considerations that a public body, or the Commissioner, may consider to determine whether a record relates to a matter of public interest, depending on the circumstances. Commissioner MacDonald stated:

[52] This is not an exhaustive list of considerations for determining whether a record(s) relates to a matter of public interest. The questions noted above are intended to provide guidance in analyzing all the

circumstances of a case. The weight given to each question will vary depending on the circumstances.

- [55] Throughout the analysis of whether a record relates to a matter of public interest, it must be borne in mind that it is not necessary to determine whether each page of the record relates to a matter of public interest, but only whether the matter itself is a matter of public interest.
- [56] Public Body's Exercise of Discretion: If it is determined that the records at issue relate to a matter of public interest, it must still be determined whether the fee should be waived at all, in part, or in full. A public body is not obliged to excuse all or part of the fee, but it must exercise its discretion in a judicious manner.
- [57] Order No. 03-001, *supra*, at page 18, presents the following set of questions for a public body to consider as a guideline to help it exercise its discretion as to whether to allow a fee waiver:

. . . The decision maker should consider all of the circumstances including the purposes of the Act (open and transparent government) and should be guided by the following questions:

1. Is there a reasonable expectation that the public could benefit from disclosure of this record?
2. Would waiver of the fee shift an unreasonable cost burden for responding from the applicant to the public body?
3. Would the records contribute to debate on or resolution of the matter of public interest?
4. During the Request for Access process:
 - (a) Was the public body timely in responding to the request and did it fulfill its duty to assist?
 - (b) 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 narrowing or clarifying the access request where it was reasonable to do so?; and

(c) Has the applicant unreasonably rejected a proposal by the public body which would reduce the costs of responding to the access request?

Analysis of the Fee Waiver Request to the LCC

[58] While awaiting production of the records at issue, the Applicant requested that the LCC consider waiving the fee on the basis of public interest. The Applicant submitted that the CEO's roles and responsibilities at the LCC "would seem appropriate to determine that his expenses are a matter of public interest." With regard to the part of the Applicant's request dealing with staff expenses for Sims Steakhouse, the Applicant submitted that the spending of public money should also be considered a matter of public interest. In this submission, the Applicant relied upon Order FI-13-001, *supra*.

[59] The Applicant further submitted to the LCC, as follows:

The democratic principles of good government, accountability, openness, and ethical conduct inherently suggest that these requests satisfy the element of public interest.

This information, once received, will shed light upon the internal processes, administration, and protocols of the Liquor Control Commission.

[60] LCC responds to the Applicant's observation that the CEO has "extensive travel and expenditure" by stating that the CEO's travel expenses are a necessary requirement of his role. In its submissions on review, the LCC states:

That [the CEO] travels to attend meetings including those with representatives from other liquor jurisdictions throughout the year is to

ensure the PEILCC is kept abreast and is able to take part in discussions relevant to legislation, policy, retail operations and other relevant matters. To not attend would prevent the PEILCC from participating in important relevant decisions which may impact maximum returns to government.

[61] I will address the relevant questions, as noted above, to determine whether the records at issue are related to a matter of public interest, below.

1. Will the records contribute to the public understanding of, or debate on, or resolution of a matter or issue that is of concern to the public or a sector of the public, or that would be if the public knew about it?

[62] Expenses of those in positions of authority in government have long been a subject of concern for the public. In recent decades, there have been well-publicized incidents of questionable expenses of government leaders, some of which are referred to by the Applicant in this review. It has been an issue of concern for the public.

[63] There is evidence that others besides the Applicant have sought the records of the CEO of the LCC. Based on the evidence provided by the Applicant, it appears that the LCC is inaccurate in its submission that no other applicant has requested these records. Documentary evidence indicates that several years previously, in 2009, two similar requests for information were made. However, contrary to the submission of the Applicant, there is no evidence that the LCC intentionally made a misleading statement to this office.

[64] The Applicant points out that the records provided by the LCC in response to his request were used by both The Guardian and the Eastern Graphic newspapers, and were also reported by CBC Compass as its “top story”. Based on this evidence, I am able to conclude that the public has an interest in the records at issue.

[65] I find the above factors to be relevant to a determination that the records at issue may contribute to the resolution of a matter or issue that is of concern to the public, and not just to the Applicant.

2. If the records are about the process or functioning of government, will they contribute to open, transparent, and accountable government?

[66] I find that the records of the LCC are about the process or functioning of government. They reveal how, in some cases, expenses are claimed, which expenses are claimed, and for what reasons.

[67] The records of the LCC subject the activities of the LCC to scrutiny. As noted above, expenses of government officials have been called into question in recent years. Providing such expense information contributes to an open, transparent, and accountable government. This goal is demonstrated by recent changes to government policy, whereby government officials openly post their expenses on public websites. The Office of the Information and Privacy Commissioner has been doing so for five years, and offices in other jurisdictions have been doing so for some time, as well. As described below, several bodies of our provincial government have also made recent changes, indicating their interest in providing expense information as a reflection of an open, transparent, and accountable government.

[68] Our current provincial government, in recognition of the concern for accountability of expenses, has recently made a policy change. Effective April 1, 2015, ministers, deputy ministers, CEOs, senior advisors, political staff, and senior officials (designated by Executive Council) were required to publicly disclose their travel, hospitality, and meal expenses. The monthly reports are posted 15 business days after the end of the month, and are available under the public disclosure expense reports at

<http://www.gov.pe.ca/publicdisclosure/pdSummary.php>¹.

[69] Cabinet ministers have long been required to disclose their expenditures on a quarterly basis; however, recent changes by the Legislative Assembly have made publicly available quarterly statements of expenses of all MLAs, at <http://www.assembly.pe.ca/expensedisclosures>², beginning with the second quarter of the 2015-2016 fiscal year. This new reporting policy was seen as newsworthy, as the Legislative Assembly's news release was reported both on the CBC news website³, and in The Guardian⁴ newspaper.

[70] It is reasonable to conclude that accountability of senior government officials' expense claims is a priority of the current provincial government. In the Prince Edward Island Speech from the Throne, delivered by the Honourable H. Frank Lewis, Lieutenant Governor of Prince Edward Island, on June 3, 2015, he states:

We are committed to leading by example. My Government has already decreased the number of Cabinet portfolios and members. We have reduced the cumulative operating budgets of the Premier's, Executive Council and Ministers' Offices. We will further review MLA compensation and benefits, and specifically will bring forward proposals to reduce transitional allowances for MLAs, and will increase accountability and oversight of expense claims. [underline emphasis added]

¹ PEI, *Government Disclosure Expense Reports*, online: Government of Prince Edward Island <<http://www.gov.pe.ca/publicdisclosure/>>

² PEILA, *Members, Expense Disclosures*, online: Legislative Assembly of Prince Edward Island <<http://www.assembly.pe.ca/expensedisclosures>>

³ CBC, "P.E.I. MLA expense reports to be online soon" (28 October 2015) online: CBCnews Prince Edward Island <<http://www.cbc.ca/news/canada/prince-edward-island/p-e-i-mla-expense-reports-to-be-online-soon-1.3291920>>

⁴ Teresa Wright, "P.E.I. MLA expenses soon to go online", *The Guardian* (01 December 2015) online: The Guardian <<http://www.theguardian.pe.ca/News/Local/2015-12-01/article-4361282/P.E.I.-MLA-expenses-soon-to-go-online/1>>

[71] Of the 141 pages of records provided by the LCC to the Applicant, 130 relate to expenses of the CEO. For the reasons described above, I find that these records relate to a matter of public interest. While the remaining 11 pages responsive to the second part of the Applicant's request may be of some interest or curiosity to the public, there is not sufficient evidence to find that they relate to a matter of public interest.

Exercise of Discretion

[72] As noted above, a public body is required to exercise its discretion in a judicious manner when responding to requests for fee waivers. In exercising discretion, once it is determined that the records relate to a matter of public interest, a public body should be guided by the following questions, which were first cited at paragraph [57] above, and which I now address as they relate to the records of the LCC.

1. Is there a reasonable expectation that the public could benefit from disclosure of this record?

[73] As noted above, disclosure of the expense records of the CEO results in openness and transparency of government relating to spending public monies, and is something that can reasonably be expected to benefit the public.

2. Would waiver of the fee shift an unreasonable cost burden of responding from the applicant to the public body?

[74] The second consideration is whether a waiver of the fee would shift an unreasonable cost burden for responding from the Applicant to the LCC. While I am well aware that a waiver of fees ultimately costs taxpayers, I do not consider the revised fee estimate of \$58.28 to be an unreasonable cost burden to the LCC. This conclusion weighs in favor of waiving some or all of the fees.

3. Would the records contribute to debate on or resolution of the matter of public interest?

[75] The third consideration is whether the records would contribute to debate on, or resolution of the matter of public interest. The Applicant has pointed out that the records were not only discussed by news agencies, but also resulted in social media debate, and much public commentary. I consider this to weigh in favor of waiving some or all of the fees.

4. During the Request for Access process: (a) was the public body timely in responding to the request, and did it fulfill its duty to assist? (b) 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 narrowing or clarifying the access request where it was reasonable to do so? and (c) has the applicant unreasonably rejected a proposal by the public body which would reduce the costs of responding to the access request?

[76] The fourth consideration is rooted in the interactions and communications between the LCC and the Applicant during the processing of the access request, beginning with the LCC's timeliness and duty to assist.

[77] The Applicant's access request was received on January 31, 2014. Issues with the LCC's timeliness in responding to the request arose in the ensuing days, weeks, and months. Although the LCC's FOIPP coordinator kept in regular contact with the Applicant, there were delays in providing the records to the Applicant, which delays will be discussed more fully below, in the analysis of the LCC's duty to assist. I find that the failures of the LCC in its duty to assist weigh in favor of waiving some or all of the fees.

[78] I agree with the LCC that the Applicant was given an opportunity to cooperate or work constructively with the LCC, including narrowing or clarifying the access request where

it was reasonable to do so. The Applicant did not narrow the request; however, I find that both parties were cooperative. This fact is not relevant to a decision to waive some or all of the fees.

Conclusion

- [79] Taking into consideration the combination of the factors above as they apply to the circumstances of this review, I conclude that the head of the LCC did not reasonably exercise his discretion in refusing to waive the fee, as the circumstances warrant a fee waiver. I have found that the records relate to a matter of public interest, and I exercise my discretion to allow a 60% fee waiver based on these considerations. If the request for access had been solely related to CEO expenses, I would have allowed a full waiver; however, the 60% fee waiver takes into consideration the time required to search 32 employee files for records related to the second part of the Applicant's access request. Although only 11 pages of records were ultimately retrieved, much of the total location and retrieval time was required for this second part.
- [80] Upon applying a 60% fee waiver to the cost of providing records by the LCC, I find that the amount payable by the Applicant is \$23.31.

Analysis of the Fee Waiver Request to the Executive Council Office

- [81] The Executive Council Office has pointed out that the Applicant never requested a fee waiver during the access process. It was not until the Applicant requested a review by this office that the issue of a fee waiver was raised. The Executive Council Office submits that it should be noted that applicants have many opportunities to request a fee waiver during the request process.
- [82] I will address the relevant questions to determining whether the records are related to a matter of public interest, as they relate to the records of the Executive Council Office, including the relevancy of the above-noted submission.

1. Will the records contribute to the public understanding of, or debate on, or resolution of a matter or issue that is of concern to the public or a sector of the public, or that would be if the public knew about it?

[83] The Applicant's access request submitted to the Executive Council Office deals with expenses of the Deputy Minister of Intergovernmental and Public Affairs. As with the CEO of the LCC, expenses of executive members of government are an issue of concern for the public at large. However, no evidence has been provided that others besides the Applicant have sought the records of this deputy minister.

[84] The Executive Council Office argues that although the Applicant has had possession of the records, there is no evidence that the records have been disseminated to the public. However, I find that the records, because they disclose deputy minister expenses over four calendar years, would contribute to the public's understanding of the issue of government executive expenses, if the public was aware of them.

[85] I find the above factor to be relevant to a determination that the records of the Executive Council Office may contribute to the resolution of a matter or issue that is of concern to the public, and not just to the Applicant.

2. If the records are about the process or functioning of government, will they contribute to open, transparent, and accountable government?

[86] I find that the records of the Executive Council Office are about the process or functioning of government. They reveal which expenses are claimed by the deputy minister, and for what reasons.

[87] The records of the Executive Council Office subject the activities of the Executive Council Office to scrutiny. As noted above, providing such expense information

contributes to an open, transparent, and accountable government, which has been reflected in many recent changes to public disclosure policies relating to expense information (see paragraphs [67] to [70] above).

[88] For the reasons described above, I find that the records of the Executive Council Office relate to a matter of public interest.

Exercise of Discretion

[89] In order to exercise its discretion in a judicious manner, once it is determined that the records relate to a matter of public interest, the Executive Council Office should be guided by the following questions:

1. Is there a reasonable expectation that the public could benefit from disclosure of this record?

[90] As noted above, disclosure of the expense records of the Deputy Minister of Intergovernmental and Public Affairs results in openness and transparency of government relating to spending public monies, which is something that can reasonably be expected to benefit the public.

2. Would waiver of the fee shift an unreasonable cost burden of responding from the applicant to the public body?

[91] Keeping in mind that a waiver of fees is a cost to all taxpayers, I do not consider the revised fee estimate of \$105.60 to be an unreasonable cost burden to the Executive Council Office in the circumstances of this review. This conclusion weighs in favor of waiving some or all of the fees.

3. *Would the records contribute to debate on or resolution of the matter of public interest?*

[92] The Executive Council Office submits, as follows:

It is also worth noting that the applicant has had these records for over eight months. The public body is not aware that the applicant has disseminated any of the records to the public during this time yet the generally accepted purpose of waiving fees when records are in the public interest is to ensure the information is available to contribute significantly to the public understanding of the operations or activities of the public body.

[93] While no evidence has been provided that the records were discussed by news agencies, there is evidence that the matter of the expenses of public officials has been a subject of public debate, and will likely continue to be. I consider this to weigh in favor of waiving some or all of the fees.

4. *During the Request for Access process: (a) was the public body timely in responding to the request, and did it fulfill its duty to assist? (b) 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 narrowing or clarifying the access request where it was reasonable to do so? and (c) has the applicant unreasonably rejected a proposal by the public body which would reduce the costs of responding to the access request?*

[94] Examining the interactions and communications between the Executive Council Office and the Applicant during the processing of the access request, I find that the Executive Council Office has met its duty to assist, and that the Applicant was cooperative.

[95] The Applicant was given an opportunity to cooperate or work constructively with the Executive Council Office, including narrowing or clarifying the access request where it

was reasonable to do so. The Executive Council Office submits that this is a factor that weighs against a fee waiver in this review.

[96] I agree with the Executive Council Office that the Applicant was given opportunities to work with it to reduce the fee. The Applicant did not seize this opportunity when it was offered to him. At the outset of the review, for example, the Applicant expressed dissatisfaction with the high number of pages of cell phone records containing only cellular tracking information and not relevant financial information. If the Applicant had discussed with the Executive Council Office methods to reduce the fee, these 509 pages might have been reduced, thus reducing the fee. I find this factor to be relevant to a decision of whether to waive some or all of the fees.

Conclusion

[97] Taking into consideration the combination of the above factors as they apply to the circumstances of this review, I conclude that the head of the Executive Council Office did not reasonably exercise his discretion in refusing to waive the fee estimate, as the circumstances warrant a fee waiver. I have found that the records of the Executive Council Office relate to a matter of public interest, and I exercise my discretion to allow a fee waiver based on the considerations set out above. However, because the Applicant was given an opportunity to work with the Executive Council Office to reduce the fee, or to request a fee waiver during the processing of the access request, but did not take the opportunity, I have decided to reduce the full fee waiver to a 70% fee waiver.

[98] Upon applying a 70% fee waiver to the revised fee estimate, the Applicant is required to pay \$31.68. As the Applicant has already paid \$466.57, the Applicant is owed a refund of \$434.89.

Analysis of Fee Waiver Request to the Office of the Premier

[99] In its decision letter to the Applicant, the Office of the Premier states that “[t]he broader public interest rationale required to support such a refund is not apparent . . .”. It makes further commentary in its submissions on review, as follows:

. . . This applicant asserts that "expense accounts of senior officials in the Premier's Office are within the public interest," yet he waited until actually receiving the records to inquire about a waiver in the public interest. A request after paying the full fee and receiving records is a refund, not a fee waiver, and there are no provisions within the Act to refund fees when applicants are not happy with the records received.

I have described the test for a fee waiver based on public interest above, and have noted that there are provisions within the *FOIPP Act* that allow for refunds in certain circumstances.

[100] I will address the relevant questions to determine whether the records are related to a matter of public interest, below.

1. Will the records contribute to the public understanding of, or debate on, or resolution of a matter or issue that is of concern to the public or a sector of the public, or that would be if the public knew about it?

[101] The Applicant's access request deals with expenses of the Executive Assistant to the Premier. As noted above, the issue of expenses claimed by government executives is a matter of concern to the general public. However, there is no evidence that others besides the Applicant have sought the records.

[102] The Office of the Premier also argues that although the Applicant has had possession of the records, there is no evidence that the Applicant disseminated any of the records to the public. I agree that no evidence has been put forth relating to these specific

records. However, as noted above, the issue to which the records relate has been a matter of extensive public discussion and concern. I find this factor to be relevant to a determination that the records may contribute to the resolution of a matter or issue that is of concern to the public, and not just to the Applicant.

2. If the records are about the process or functioning of government, will they contribute to open, transparent, and accountable government?

[103] I find that the records at issue are about the process or functioning of government. They reveal expenses claimed by the Executive Assistant to the Premier, and for what reasons.

[104] The records subject the activities of the Office of the Premier to scrutiny. As discussed above, providing such expense information contributes to an open, transparent, and accountable government, which has been reflected in recent changes to public disclosure policies regarding expense information, described in detail in paragraphs [67] to [70], above.

[105] For the reasons described above, I find that the records of the Office of the Premier to be a matter of public interest.

Exercise of Discretion

[106] In order to exercise its discretion in a judicious manner, once it is determined that the records relate to a matter of public interest, the Office of the Premier should be guided by the following questions:

1. Is there a reasonable expectation that the public could benefit from disclosure of this record?

[107] As noted above, disclosure of the expense records of the Executive Assistant to the

Premier results in openness and transparency of government relating to spending public monies, which is something that can reasonably be expected to benefit the public.

2. Would waiver of the fee shift an unreasonable cost burden of responding from the applicant to the public body?

[108] I do not consider the revised fee estimate of \$8.08 to be an unreasonable cost burden to the Office of the Premier. This conclusion weighs in favor of waiving some or all of the fees.

3. Would the records contribute to debate on or resolution of the matter of public interest?

[109] The Office of the Premier submits as follows:

In closing, it is worth noting that the applicant has had these records for more than eight months yet the public body is not aware that the applicant has disseminated any of the records to the public during this time. One of the generally accepted purposes of waiving fees when records are considered to be in the public interest is to ensure information is available to contribute significantly to the public understanding of the operations or activities of government.

[110] While no evidence has been provided that the records were discussed by news agencies, it is evident that the matter of the expenses of public officials has been a subject of public debate, and will likely continue to be. As records of expenses, these records would contribute to that debate, if they were made public. I consider this to weigh in favor of waiving some or all of the fees.

4. During the Request for Access process: (a) was the public body timely in responding to the request, and did it fulfill its duty to assist? (b) 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 narrowing or clarifying the access request where it was reasonable to do so? and (c) has the applicant unreasonably rejected a proposal by the public body which would reduce the costs of responding to the access request?

[111] Examining the interactions and communications between the Office of the Premier and the Applicant during the processing of the access request, I find that the FOIPP coordinator communicated openly with the Applicant. Although a time limit was overlooked, overall, the Office of the Premier reasonably fulfilled its duty to the Applicant. These findings are discussed in more detail below, in the analysis of the duty to assist.

[112] The Applicant was given an opportunity to cooperate or work constructively with the Office of the Premier, including to narrow or clarify the access request where it was reasonable to do so, to reduce the fees. The Office of the Premier submits that this is a factor that weighs against a fee waiver in this review:

It is unfortunate that in this file, the public body was not made aware that the applicant had a concern with the fees sooner because it literally had no opportunity to negotiate a mutually satisfactory alternative with the applicant. The public body takes its duty to assist very seriously. Despite inviting the applicant to come forward and discuss the fee, it was only after processing was completed that the applicant chose to speak up. The search had been complete, the processing was complete, the public body had no ability to recover the significant time spent locating and retrieving/preparing and handling the records that were now in the applicant's possession.

[113] I agree with the Office of the Premier that the Applicant was given opportunities to work with it to reduce the fee while processing the access request. The Applicant did not take this opportunity. I find this factor to be relevant to a decision of whether to waive fees.

Conclusion

[114] Considering all of the above factors as they apply to the circumstances of this review, I conclude that the head of the Office of the Premier did not reasonably exercise his discretion in refusing to waive the fee estimate, as the circumstances call for a fee waiver. I have found that the records at issue relate to a matter of public interest, and I exercise my discretion to allow a fee waiver, based on the considerations set out above. However, given the evidence that the Applicant did not take the opportunity to work with the Office of the Premier to reduce the fee, or request a fee waiver when it was offered to him, I allow a 70% fee waiver. Applying this fee waiver to the revised fee estimate of \$8.08, the Applicant is required to pay \$2.42. The Applicant has, in fact, paid \$138.08. Therefore, he is entitled to a refund of \$135.66.

Issue 4: *Did the head of the Public Body fulfill his duty to assist under section 8 of the FOIPP Act by making every reasonable effort to assist the Applicant, and by responding to the Applicant openly, accurately, and completely?*

[115] A predominant purpose of the *FOIPP Act*, as found at clause 2(a), is to allow a person the right of access to records held by public bodies, with limited and specific exceptions. The *FOIPP Act's* intent of openness through access is supported by the *FOIPP Act's* administrative obligations, including the obligation of a public body to keep an applicant fully informed of its actions throughout the stages of processing the access request (Order No. FI-11-001, *Prince Edward Island (Department of Agriculture) (Re)*, 2011 CanLII 91839 (PE IPC) at para [17]-[18]).

[116] Compliance with a public body's duty to assist is measured by how a public body processes a request for access to information, and how well it informs the applicant. The procedures and required elements for processing an access request are found under Division 1 of Part I of the *FOIPP Act*, within sections 6 to 13.

[117] Section 8 of the *FOIPP Act* stipulates the duty of a public body to assist an applicant and to respond to an applicant openly, accurately, and completely.

[118] To determine whether a public body has satisfied its duty to assist, the Commissioner must review the interactions between the public body and applicant, the public body's responses to the applicant, and the timeliness and quality of the responses.

Duty to Assist, LCC

[119] The LCC's file indicates that the Applicant first made his request for access to records on January 31, 2014. It is clear that the FOIPP coordinator of the LCC had many communications with the Applicant over the following four months, most of which were via email messages. This open communication contributes to the LCC's fulfillment of its duty to assist. There were at least 25 contacts between the Applicant and the FOIPP coordinator during this time period.

[120] It is also clear that there were several delays during the request process, some of which are expected, and some of which are not. Under ordinary circumstances, a public body has 30 days to respond to an applicant's request for access, pursuant to subsection 9(1) of the *FOIPP Act*. However, if a fee estimate is issued by the public body, this time limit is held in abeyance until one half of the fee estimate is paid by the applicant.

[121] In the review before me, a fee estimate was sent by email attachment from the LCC to the Applicant 14 days after receipt of the Applicant's request for access, on February 14, 2014. The Applicant paid one half of the fee estimate on March 7, 2014, at which point the LCC had 16 more days to respond to the request.

[122] A public body is entitled to extend the time for responding by a further 30 days,

pursuant to section 12 of the *FOIPP Act*, as follows:

12. (1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if

...

(b) a large number of records is requested or must be searched, and responding within the period set out in section 9 would unreasonably interfere with the operations of the public body;

[123] The records indicate that on March 25, 2014, the LCC advised the Applicant it required a further time extension, but that it would likely not require a further 30 days. Inexplicably, the LCC advised the Applicant on April 15, April 22, and April 30, 2014, that some documents were not yet available. On May 5, 2014, the Applicant was advised that copies of records were being made, and on May 9, 2014, the LCC advised the Applicant that it was awaiting sign-off. On May 13, 2014, the Applicant requested a fee waiver. Finally, on May 27, 2014, the Applicant was advised that the records were ready to be picked up. The decision relating to the Applicant's request for a fee waiver was still pending.

[124] During the course of this review, the LCC provided some explanation for the delays in processing the Applicant's request. It states that, due to a resource shortage, the Chief Financial Officer was required to locate and retrieve records, with help from some other finance staff. It also lists several other time-sensitive priorities that it was facing over the same time period, each of which required a number of days' attention, including inventory counts for year-end preparation, a 2013-2014 Auditor General audit, liquor agency price changes, package sales license adjustments to pricing and processes, and a Canada Revenue Agency audit.

[125] The Applicant has pointed out that his issue is not with the FOIPP coordinator of the LCC, who acted with professionalism throughout the request process. However, he

accurately points out the following:

During these months since the initial FOI request was submitted I have on many occasions been led to believe that the documents would be imminently available. Considering the unreasonable delays it may now be necessary to deem the government has failed to respond.

[126] In 1998, it was established by the Alberta Information and Privacy Commissioner that a large number of requests and inadequate resources are insufficient circumstances to justify a failure to respond within the time limits set out under their access to information legislation (Order 98-002, 1998 CanLII 18633 (AB OIPC) at para [62]). I have adopted this approach as reasonable.

[127] I am baffled as to how the LCC could have misunderstood its own record keeping system so much that it continued to require repetitive extensions throughout the access process. I find the LCC's explanation of its delays to be insufficient. By April 24, 2014, the Applicant was entitled to treat the LCC's failure to produce the requested records as a refusal to respond, pursuant to subsection 9(2) of the *FOIPP Act*. Instead, the Applicant was required to wait over a month more to receive 141 pages of records on May 28, 2014.

[128] Clause 66(3)(c) of the *FOIPP Act* gives the Commissioner the power to reduce part or all of any fees charged an applicant by a public body, and to order a refund. Clause 66(3)(c) states:

66. (3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:

...

(c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met;

[129] Based on the inordinate and unauthorized delays in processing the Applicant's access

request, I find that the LCC has not fulfilled its duty to assist the Applicant, as required by section 8 of the *FOIPP Act*. I am authorized to reduce the Applicant's fee in these circumstances. Therefore, I find it appropriate to reduce the fee to \$0.00. The Applicant is entitled to a full refund from the LCC.

Duty to Assist, Executive Council Office

- [130] The Executive Council Office states that it "met its duty to assist by guiding the applicant through the process, providing a reasonable fee estimate based on Schedule 2 of the *FOIPP Act* regulations, and informing the applicant of how it arrived at calculating the fee."
- [131] The content of the Executive Council Office's file indicates that the Applicant first made his request for access to records on February 11, 2014. The file further indicates that the *FOIPP* coordinator of the Executive Council Office had several email communications with the Applicant over a period of two and a half months. This regular communication contributes to its fulfillment of its duty to assist.
- [132] There were delays during the request process. A fee estimate was sent to the Applicant on February 24, 2014. The Applicant paid one half of the fee estimate on March 10, 2014. If the Executive Council Office had adhered to the 30 day time limit set out in section 9 of the *FOIPP Act*, it would have had 17 more days to respond to the request. However, on March 30, 2014, the Executive Council Office belatedly extended the time for responding by a further 30 days, pursuant to section 12 of the *FOIPP Act*. At that time, it advised the Applicant that it did not anticipate needing an entire additional 30 days. On April 15, 2014, in response to the Applicant's query, the *FOIPP* coordinator advised that she was "still waiting for a few records" and, since the head of the Executive Council Office would be off-site for meetings early the following week, the records would not likely be ready until "late [the] next week". In fact, the records were

not ready until April 28, 2014, and subject to a higher fee estimate.

[133] As noted above, the Applicant's request to the Executive Council Office resulted in 570 pages of responsive records. It was not unreasonable of the Executive Council Office to advise the Applicant of its need for an extension. However, I caution public bodies to be able to support their use of such extensions, to advise applicants of section 12 extensions before the initial 30 day time limit has expired, and to provide an estimated date upon which applicants may expect to receive responsive records.

[134] I find that the Executive Council Office has fulfilled its duty to assist the Applicant, as required by section 8 of the *FOIPP Act*.

Duty to Assist, Office of the Premier

[135] The Office of the Premier also states that it "met its duty to assist by guiding the applicant through the process, providing a reasonable fee estimate calculated using Schedule 2 of the FOIPP Act regulations, and informing the applicant of how it arrived at calculating the fee."

[136] The content of the Office of the Premier's file indicates that the Applicant first made his request for access to records on February 11, 2014. Over the ensuing two and one half months, the FOIPP coordinator of the Office of the Premier had several email communications with the Applicant, and sent three formal letters. This regular communication contributes to the Office of the Premier's fulfillment of its duty to assist.

[137] There were delays during the request process. A fee estimate was sent, by letter, from the Office of the Premier to the Applicant, 13 days after receipt of the Applicant's request for access, on February 24, 2014. The Applicant paid one half of the fee

estimate on March 10, 2014. Based on the 30 day time limit, the Office of the Premier had 17 more days to respond to the request.

[138] The records indicate that on March 30, 2014, the Office of the Premier advised the Applicant, by email, that it required a further time extension, pursuant to section 12 of the *FOIPP Act*, but that it did not anticipate needing the full thirty days. On April 26, 2014, the Applicant was advised that the records would be ready to be picked up on April 28, 2014, with an updated, increased fee estimate.

[139] The Office of the Premier Office submits that section 12 of the *FOIPP Act* allows it "to extend the time for responding to a request for up to 30 days if a large number of records is requested or must be searched, and responding within the period set out in section 9 would unreasonably interfere with the operations of the public body." The Office of the Premier provides a timeline of events, showing that the Applicant was informed of the need to extend the time required to process the request.

[140] In his initial submissions, the Applicant makes the following statement:

[86] Taken as a big picture, [the Public Bodies have] engaged in an abusive process which resulted in heavy fees, continuous delays, and significantly more effort than should have been necessary to obtain documents which clearly interested the public.

[141] In view of the number of records that were required to be located and retrieved, that the records spanned four calendar years, and that the FOIPP coordinator was essentially dealing with two requests for two public bodies, it was not unreasonable of the Office of the Premier to advise the Applicant of its need for an extension. Once again, however, I caution public bodies to be able to fully support their use of such extensions, to advise of section 12 extensions prior to the expiry of the initial 30 day time limit, and to provide an estimated date upon which an applicant may expect to

receive responsive records.

[142] Based on the foregoing, I find that the Office of the Premier has fulfilled its duty to assist the Applicant, as required by section 8 of the *FOIPP Act*.

V. FINDINGS

[143] The Commissioner's consideration of a fee estimate and fee waiver is based on all of the circumstances and evidence. The Commissioner may not increase fees, but may otherwise make a "fresh" decision (Order No. FI-13-001, *supra*, at para [68]).

[144] I find that an appropriate fee estimate for the LCC, for locating and retrieving the records, preparing and handling the records, and photocopying the records responsive to the Applicant's access request, is \$58.28.

[145] I find that an appropriate fee estimate for the Executive Council Office, for locating and retrieving the records, preparing and handling the records, and photocopying the records responsive to the Applicant's access request, is \$105.60.

[146] I find that an appropriate fee estimate for the Office of the Premier, for locating and retrieving the records, preparing and handling the records, and photocopying the records responsive to the Applicant's access request, is \$8.08.

[147] I find that the expense records of the CEO of the LCC relate to a matter of public interest, pursuant to clause 76(4)(b) of the *FOIPP Act*.

[148] I find that the expense records of the Deputy Minister of Intergovernmental and Public Affairs of the Executive Council Office relate to a matter of public interest, pursuant to

clause 76(4)(b) of the *FOIPP Act*.

[149] I find that the expense records the Executive Assistant to the Premier of the Office of the Premier relate to a matter of public interest, pursuant to clause 76(4)(b) of the *FOIPP Act*.

[150] I find that the circumstances of these reviews warrant partial fee waivers, and I exercise my discretion to allow a 60% fee waiver to the Applicant in his request to the LCC, a 70% fee waiver to the Applicant in his request to the Executive Council Office, and a 70% fee waiver to the Applicant in his request to the Office of the Premier, as the records at issue relate to a matter of public interest.

[151] I find that due to inordinate and unauthorized delays, the head of the LCC did not meet his duty to assist the Applicant under section 8 of the *FOIPP Act* by making every reasonable effort to assist the Applicant, and respond to the Applicant openly, accurately, and completely, when processing the Applicant's request for access to information.

VI. ORDER

[152] Having found that the LCC's fee estimate is not appropriate under the circumstances, I order the head of the Public Body to reduce the fee estimate from \$425.00 to \$58.28.

[153] Having found that the Executive Council Office's fee estimate is not appropriate under the circumstances, I order the head of the Public Body to reduce the fee estimate from \$466.56 to \$105.60.

[154] Having found that the Office of the Premier's fee estimate is not appropriate under the

circumstances, I order the head of the Public Body to reduce the fee estimate from \$138.08 to \$8.08.

[155] I exercise my discretion to allow a fee waiver for all three Public Bodies in these reviews:

- I order the head of the LCC to allow a 60% fee waiver, as the expense records of the CEO of the LCC relate to a matter of public interest, thus reducing the fee estimate to \$23.31.
- I order the head of the Executive Council Office to allow a 70% fee waiver, as the expense records of the Deputy Minister of Intergovernmental and Public Affairs of the Executive Council Office relate to a matter of public interest, thus reducing the fee estimate to \$31.68.
- I order the head of the Office of the Premier to allow a 70% fee waiver, as the expense records the Executive Assistant to the Premier of the Office of the Premier relate to a matter of public interest, thus reducing the fee estimate to \$2.42.

[156] Based on its failure to fulfill its duty to assist, I order the head of the LCC to reduce the fee to the Applicant to \$0.00.

[157] As a result of the forgoing,

1. I ORDER the head of the Liquor Control Commission to provide a refund of \$425.00 to the Applicant;
2. I ORDER the head of the Executive Council Office to provide a refund of \$434.89 to the Applicant; and
3. I ORDER the head of the Office of the Premier to provide a refund of \$135.66 to the Applicant.

[158] I thank the Applicant for his carefully crafted submissions, and I thank the Public Bodies for their ready cooperation throughout the review process. In accordance with subsection 68(1.1) of the *FOIPP Act*, the head of the Public Bodies shall not take any

steps to comply with this order until the end of the period for bringing an application for judicial review of the order under section 3 of the *Judicial Review Act*.

Karen A. Rose
Information and Privacy Commissioner