Order F21-48

CITY OF VANCOUVER

Laylí Antinuk
Adjudicator

October 8, 2021

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Summary: The applicant requested records related to St. Augustine School from the City of Vancouver (City) and a waiver of any potential fees the City might charge to respond to the request under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The City assessed a fee of $960 to respond to the request and declined to waive the fee. The applicant complained to the OIPC that the City should have waived the fee under s. 75(5)(b) (public interest fee waiver). The adjudicator confirmed the City's decision not to grant a fee wavier under s. 75(5)(b).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 58(3)(c), 75(1) and 75(5)(b).

INTRODUCTION

[1] This order decides a dispute over a fee assessed by the City of Vancouver (City) for access to information under s. 75 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant made two requests that the City of Vancouver (City) provide records related to St. Augustine School (the School) during a nearly six year period. The applicant also asked the City to excuse him from paying any fees for the fulfillment of the requests because he was making them as a matter of public interest, including the safety and security of minor children who attend the School or day care.

[3] The City merged the two requests into one, estimated a fee of $960 and declined to waive that fee.

[4] The applicant complained to the Office of the Information and Privacy Commissioner (OIPC) that the City should have waived the fee under s. 75(5)(b)

because the records relate to a matter of public interest. Mediation did not resolve the dispute. The applicant then paid the $960 fee estimate under protest and the file proceeded to inquiry.

ISSUE AND BURDEN OF PROOF

[5] In this inquiry, I will consider the City's decision to deny a fee waiver requested by the applicant under s. 75(5)(b).[1]

[6] FIPPA does not say which party has the burden of proof in inquiries about s. 75(5) and previous OIPC orders are inconsistent on this point. Some OIPC orders have assigned the burden of proof to the applicant in fee waiver disputes.[2] Other orders have said that in the absence of a statutory burden of proof, it is in the interests of each party to present argument and evidence to justify their positions.[3]

[7] I agree with the approach taken by past orders that have assigned the burden of proof to applicants in fee waiver disputes. The other approach (i.e. the approach that does not assign the burden) "does not satisfactorily answer the question of burden in the context of an OIPC inquiry, where it is in the interests of both parties to present argument and evidence in support of their positions whether or not they have the burden of proof."[4]

[8] Furthermore, the lack of a statutory burden of proof does not mean there is no burden of proof.[5] The general rule in the administrative law context "is that a person challenging a ruling of a lower body has the burden of proof, of making its case in accordance with the tests set out in the statute".[6] I see no reason to depart from this general rule here. The applicant has requested this inquiry because he is challenging the City's decision not to waive a fee it assessed under FIPPA. In such inquiries, the Commissioner has the jurisdiction to confirm, excuse or reduce a fee, or order a refund.[7] This jurisdiction is broad and it enables the Commissioner (or his delegate), in appropriate cases, to substitute

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[1] The amount of the City's fee estimate is not in dispute.
[2] Order 332-1999,1999 CanLII 4202 (BC IPC) at p. 2-3; Order 01-04 2001 CanLII 21558 (BC IPC) at para. 4; Order 01-35, 2001 CanLII 21589 (BC IPC) at para. 12; Order 01-24, 2001 CanLII 21578 (BC IPC) at para. 13; Order 02-28, 2002 CanLII 42459 (BC IPC) at para. 8. For more recent orders that assign the burden of proof in fee disputes to applicants, see Order F21-10, 2021 BCIPC 14 at para. 24; Order F20-14, 2020 BCIPC 16 at para. 8; Order F19-09, 2019 BCIPC 11 at para. 7.
[3] For example, see Order F07-09, 2007 CanLII 30394 at para. 5; Order F09-05, 2009 CanLII 21404 at para. 7; Order F09-11, 2009 CanLII 42410 at para. 10; Order F10-38, 2010 BCIPC 58 at para. 10.
[4] Order F20-50, 2020 BCIPC 59 at para. 4.
[5] Order F18-11, 2018 BCIPC 14 at para. 13.
[6] See *British Columbia Administrative Law Practice Manual*, (looseleaf) Vancouver: The Continuing Legal Education Society of British Columbia, 2012 (updated to 2015), §5.11, p. 5-16.
[7] Section 58(3)(c).

his own decision for that of the head of the public body.[8] Consequently, when it comes to inquiries respecting a public body's fee waiver decisions, I consider the Commissioner (or his delegate) to be reviewing a ruling of a "lower" body.

[9] Moreover, in general, it is for the party claiming the benefit of a legislative provision to show that it is entitled to rely on that provision.[9] I see no reason to depart from this general rule either. The applicant claims the benefit of s. 75(5)(b), so he should have the burden to prove that section applies. As stated by former Commissioner Flaherty:

> To be excused from paying a fee under the Act is to receive a discretionary financial benefit… Thus it appears logical that the party seeking the benefit should prove its entitlement on the basis of the criteria specified in the Act. This places the burden of proof on the applicant...[10]

[10] With all this in mind, I conclude that the applicant bears the burden of proof when it comes to fee waiver disputes related to s. 75(5) of FIPPA.

DISCUSSION

Background

[11] The School is located approximately 25 metres away from the planned western terminus station for the Broadway Subway Project (the Project).[11] The Project is a 5.7-kilometre extension to the existing Millennium Line SkyTrain system from its current terminus at VCC-Clark Station to a new terminus at Arbutus Street and West Broadway. The new terminus will have a SkyTrain station and bus loop. The bus loop will be kitty-corner to the School's playground.

[12] The applicant has made a total of three access requests related to the School and the Project. First, in April of 2020, the applicant asked for all records mentioning the School (with a date range spanning 2013 to 2019). The applicant indicated that his request was not limited to records that relate to the Project. The City sought clarification from the applicant respecting this request and noted that the request as originally worded was broad in scope and may result in a substantial fee estimate. The applicant then agreed to narrow the scope of his request to records regarding safety and security, traffic management and health

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[8] Order 332-1999, *supra* note 2 at p. 3; Order 01-04, *supra* note 2 at para. 14; Order 01-24, *supra* note 2 at p. 8.
[9] *Québec v. (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, 1994 CanLII 58 (SCC) at p. 15.
[10] Order No. 90-1996, 1996 CanLII 532 (BC IPC) at p. 3.
[11] The information summarized in this background section is uncontested, so I accept it as fact. It comes from the applicant's submission at para. 3 and a Vancouver Sun article titled *Vancouver School at end of Broadway Skytrain extension worries about location of bus loop* (included with applicant's submission); the Director's affidavit at paras. 4, 13-15, 17-24 and 33; and the City's submission at paras. 1, 21 and 22.

and injury prevention between the School and the City in relation to the Project. In response, the City provided the applicant with 99 pages of responsive records and did not charge a fee. The City also encouraged the applicant to make the same type of access request to Metro Vancouver, TransLink and/or the Vancouver School Board.

[13] Approximately two months later, the applicant made the two requests at issue in this inquiry. The applicant requested all records in the custody or under the control of two named City employees in which the School is mentioned (with a date range spanning January 1, 2015 to October 26, 2020).[12] Again the applicant indicated that his request was not limited to records that relate to the Project.[13] In each request, the applicant requested a fee waiver, stating:

> Please excuse me from the requirement to pay any fees for the fulfillment of this request, as I am making this request as a matter of public interest including the safety and security of minor children who attend the elementary school or childcare centre.

[14] The City merged the two requests, imposed a $960 fee and denied a fee waiver.[14] The City's also advised the applicant to let it know if he could narrow his request. The applicant did not narrow his request.

Fees under FIPPA – section 75

[15] FIPPA authorizes public bodies to require applicants to pay fees for access to information, subject to certain exceptions.[15] FIPPA also authorizes public bodies to waive fees in certain circumstances. The relevant provisions state:

> 75(1) The head of a public body may require an applicant who makes a request under section 5 [how to make an access request] to pay to the public body fees for the following services:
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> (a) locating, retrieving and producing the record;
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> (b) preparing the record for disclosure;
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> (c) shipping and handling the record;
>
> (d) providing a copy of the record.

[12] Applicant's two November 25, 2020 access requests.
[13] The two named City employees work for the Transit Integration and Projects Department, which is responsible for facilitating and coordinating the City's involvement in the Project. The named employees are two of the most senior City employees involved in the Project. Director's affidavit and paras. 31 and 33.
[14] City's December 8, 2020 letter to the applicant.
[15] FIPPA does not allow public bodies to charge fees for the first three hours spent locating and retrieving a record, or for time spent severing information from a record, or for an applicant's own personal information. See ss. 75(2) and (3).

> …
>
> (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,
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> (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.

[16] In this case, the applicant requested a public interest fee waiver under s. 75(5)(b). The applicant did not request a fee waiver because he cannot afford to pay the fee under s. 75(5)(a).[16]

PUBLIC INTEREST FEE WAIVER – SECTION 75(5)(B)

[17] Previous orders have established a two-part test for determining if a public interest fee waiver is appropriate.[17] The test asks:

1) Do the records relate to a matter of public interest?

2) If so, should the applicant be excused from paying all or part of the estimated fee?

Previous orders have also set out a variety of factors to consider when answering the two questions above. I will describe the factors in detail below.

Do the records relate to a matter of public interest?

[18] A public interest fee waiver requires that the requested records *themselves* relate to a matter of public interest.[18] An applicant's intention to use the records in a manner that relates to the public interest does not suffice.[19] Nor does an applicant's identification of public interest issues as the motivation for the access request.[20]

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[16] The applicant's submission includes financial information about the School, which I have not considered because it is not relevant to the issue of whether the requested records relate to a matter of public interest per s. 75(5)(b).
[17] Order No. 332-1999, *supra* note 2 at p. 5; Order F17-38, 2017 BCIPC 42 at para. 11; and Order F19-09, 2019 BCIPC 11 at paras. 12-14.
[18] Order F09-11 *supra* note 3 at para. 20.
[19] Order F17-38, 2017 BCIPC 42 at para. 13, citing Order 01-24, *supra* note 2 at paras. 56-62; Order F05-36, 2005 CanLII 46569 (BC IPC); and Order F10-38, 2010 BCIPC 58 at para. 20.
[20] For similar reasoning, see Order F09-11, *supra* note 3 at para. 20 where Adjudicator McEvoy (now Commissioner McEvoy) said "… while the issues identified by the applicant for his research relate to a matter of public interest, this is not the test under s. 75(5) of FIPPA. I must determine whether the requested records themselves specifically relate to this matter of public interest."

[19] That said, s. 75(5)(b) does not require an assessment of the degree to which a matter is of public interest.[21] The only consideration at this stage in the analysis is whether the records "relate" to a matter of public interest. The matter does not need to be of sufficient public interest.

[20] To decide whether records relate to a matter of public interest, previous orders have considered the following non-exhaustive list of factors:

1) Has the subject of the records been a matter of recent public debate?
2) Does the subject of the records relate directly to the environment, public health or safety?
3) Could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
    a) disclosing an environmental concern or a public health or safety concern?
    b) contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue? or
    c) contributing to public understanding or debate about an important policy, law, program or service?
4) Do the records disclose how the public body is allocating financial or other resources?[22]

I will discuss each of these four factors in turn.

Has the subject of the records been a matter of recent public debate?

Parties' positions and evidence – public debate

[21] To show that the subject of the records has been a matter of recent public debate, the applicant provided a link to a YouTube video of a TransLink open board meeting on September 28, 2020. At that meeting, the School Principal gave a five-minute presentation to the TransLink board about the School's health and safety concerns regarding the location of the new terminus station.[23] The applicant also provided a 44-second radio clip of Global News' coverage related to the Principal's presentation to the TransLink board.

[21] Order 03-19, 2003 CanLII 49192 (BC IPC) at paras. 36–37.
[22] Order No. 332-1999, *supra* note 2 at p. 5; Order 01-24, *supra* note 2 at para. 32.
[23] The applicant also provided a transcript of the School Principal's prepared remarks as evidence in the inquiry.

[22] In addition, the applicant says "[w]e are aware of discussion at town hall information sessions" that some parents attended in their personal capacity.[24] The applicant does not describe anything about what was said at those town hall sessions or say whether issues related to the School were discussed or debated.

[23] The applicant also provided two newspaper articles that discuss the proximity of the proposed terminus station to the School, and two website postings regarding a petition the School asked friends and neighbors to sign to support the School's recommendations to Project decision-makers about the new terminus station. The applicant's evidence indicates that approximately 1,600 supporters signed the petition.[25]

[24] The City says that the subject matter of the responsive records is the School, and the School has not been the topic of recent public debate.[26] The City acknowledges some of the responsive records likely relate to the School's role as a stakeholder in the Project, but it says public debate has not been about the stakeholders themselves or the details of what was said during stakeholder consultations.

[25] The City's evidence indicates that the responsive records total 9,220 pages and include a wide range of documents. For example, the City's Access to Information Director (Director) deposes that many of the responsive records relate to the Project in general, or consultation with various stakeholders.[27] The Director also deposes that many records are drafts or administrative records generated in scheduling and preparing for meetings between the Project team (made up of representatives from the Province, the City and TransLink) and the School.[28] The Director also says the records include lengthy drafts or final copies of reports or presentations available on the City or Project websites, such as the Broadway Subject Project Environment and Socio-economic Review.[29]

Analysis and findings – public debate

[26] The applicant's evidence shows that two news articles discuss the School's proximity to the proposed terminus station and that 1,600 people signed a petition supporting the School's recommendations concerning the station. The applicant's evidence also shows that the TransLink board permitted the School Principal to make a five-minute presentation at their meeting respecting the School's concerns about the terminus station. Global News reported on this presentation on the radio. These aspects of the applicant's evidence lead me to

[24] Applicant's submission at para. 7 (my numbering).
[25] Church for Vancouver website article provided with the applicant's submissions.
[26] The information summarized in this paragraph comes from the City's submission at paras. 42-43.
[27] *Ibid* at para. 37.
[28] *Ibid* at para. 36.
[29] Director's affidavit at paras. 36-37.

conclude that the location of the terminus station was a matter of recent public debate.

[27] However, the applicant did not confine his request to records that relate to the School and the location of the terminus station (or even the Project at large). Instead, the applicant requested *all* records in which the School is mentioned and explicitly said his request was *not* limited to records that relate to the Project. I conclude that many of the records that respond to such a broad request have nothing to do with the recent public debate about the location of the terminus station. For example, many of the responsive records relate to the scheduling of meetings between the School and the Project team, or to the stakeholder consultations in general, or are drafts or final copies of publicly available reports. I can see nothing in the submissions or evidence to show that there has been any recent public debate about the School, including in relation to its role as a stakeholder, its meetings with the Project team, or what it may have said during stakeholder consultations. There is also nothing in the evidence to show that there has been recent public debate about any of the publicly posted reports related to the Project.

[28] That said, I am persuaded that at least some of the responsive records do relate to the location of the terminus station, which was a matter of recent public debate.

[29] In short, I conclude that the 9,220 pages of responsive records cover a wide range of topics, some of which relate to a subject of recent public debate (i.e. the location of the terminus station), and many of which do not.

> *Does the subject of the records relate directly to the environment, public health or safety?*

[30] The applicant says the School consists of approximately 400 elementary school children whose health will be directly affected by the proposed development.[30] The applicant says the School is "a microcosm of the British Columbia community at large who is affected by the project in terms of noise, fumes and particulate pollution, both during and post construction and in terms of public safety."[31]

[31] The applicant's submissions also state:

> We are not asking for information contained in calendar notices or agendas or other types of documents that, although may state certain key words, would not be informative. Rather, we are seeking records such as notes, minutes, written notes, emails, reports, internal and external

[30] Applicant's submission at para. 3 (my numbering).
[31] *Ibid* at para. 4 (my numbering).

> correspondence, briefing notes, issues notes, etc held by TWO individuals at the City… who are closely aligned with what is known as the Broadway subway project."[32]

[32] I have some difficulty with this submission. As I have said, the applicant requested *all* records in the custody or control of two named City employees in which the School is mentioned. The City issued its fee estimate and declined to waive the fee based on that request. As noted, the City's letter to the applicant that contains the fee estimate clearly states "if you can narrow your request, please let me know."[33] Rather than attempting to narrow the request at that point, the applicant complained to the OIPC and took that complaint to inquiry. Now is not the time to attempt to narrow or clarify the scope of the request. The question I must answer here is whether the subject of the records responsive to the specific request for which the City refused to waive a fee directly relates to the environment or public health/safety.

[33] The City submits that the applicant's request seeks the broadest possible scope of records related to the School for over a period of almost six years.[34] The City notes that the request has no limitation as to topic (e.g. health or safety, or traffic planning), or type of records (e.g. reports or studies). Given the broad scope of the request, the City submits that the records regarding the School do not directly relate to the environment, public health or safety.

[34] The City did not provide the responsive records for my review in this inquiry.[35] However, given that they total over 9,200 pages, I conclude that they cover a wide range of subjects, some of which relate to the environment or public health/safety and some of which do not. For example, as noted above, many of the responsive records were generated in scheduling and preparing for meetings between the Project team and the School. I am not satisfied that this type of record directly relates to the environment or public health/safety. Other records do directly relate to the environment or public health/safety. For instance, as mentioned previously, the responsive records include a copy of the Broadway Subject Project Environment and Socio-economic Review.[36]

[35] To summarize, I find that the subject of some, but not all, of the records relate to the environment or public health/safety.

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[32] *Ibid*.
[33] City's December 8, 2020 letter to the applicant.
[34] The information summarized in this paragraph comes from the City's submission at paras. 7, 40 and 46.
[35] As mentioned previously, at the time of the inquiry submissions, the City was still processing the applicant's request (Director's affidavit at para. 41).
[36] Director's affidavit at para. 37.

Could dissemination or use of the information in the records reasonably be expected to yield a public benefit?

[36] The applicant says he expects to review the requested information and seek further environmental and safety advice.[37] The applicant says the advice may result in reports for public consumption or the information may be used to better inform the School community, which will allow for more productive dealings with the City and Project team. The applicant also submits that the requested information should benefit the public through public health and safety advocacy. The applicant says: "we expect the information to inform our direct discussions with the public body and inform our engagement in community and public consultations as part of the project consultation process given that we are community members affected by the project."[38]

[37] The City submits that dissemination or use of the information in the records cannot reasonably be expected to yield a public benefit given the substantial amount of information the applicant already has and the type of records at issue.[39]

[38] The City's affidavit evidence shows that the Project team has engaged in "significant" consultations with School representatives over the course of approximately 25 meetings.[40] The City's evidence also shows that a "significant" number of records were provided directly to School representatives to address the School's concerns over the course of these meetings. The applicant does not counter or contest this evidence.

[39] The City's uncontested affidavit evidence also demonstrates that: (a) the City has taken a proactive approach to public disclosure of records relating to the Project; and (b) the Project team has proactively posted records relating to various aspects of the Project and performed public engagement and consultations.[41] For example, the City website and the Project website contain a myriad of documents, including environmental reports respecting air quality, greenhouse gases, and noise and vibration assessments. Additionally, as mentioned previously, the City's affidavit evidence indicates that many of the responsive records were generated in scheduling and preparing for meetings with the School, or are drafts or final copies of reports or presentations available online.[42]

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[37] The information in this paragraph comes from the applicant's submission at paras. 5-6 (my numbering).
[38] *Ibid* at para. 6.
[39] City's submission at paras. 47-48.
[40] The information summarized in this paragraph comes from the Director's affidavit at paras. 11-12 and Exhibits D and E.
[41] *Ibid* at paras. 7-10 and Exhibits A, B and C.
[42] *Ibid* at paras. 36-37.

[40] Given this, the City argues that it is highly unlikely that the records will disclose any new concerns or meaningfully contribute to the public understanding of issues with the Project as they relate to the School. I agree.

[41] On balance, I find it likely that any records that disclose an environmental or public health/safety concern related to the School and the Project would have already been disclosed to the applicant in response to his first access request (which focussed specifically on health, safety and traffic management) or over the course of the School's 25 meetings with the Project team. Given the applicant's identity, I conclude he certainly would have had access to the records the City provided directly to School representatives. I can also see that a substantial amount of information has already been made available to the School and the public about many significant parts of the Project. I am not persuaded by what the applicant says about the public deriving any further benefit from disclosure of the records he has requested. I do not think the information in the responsive records would contribute to public understanding or debate about important policy, law, programs or services.

[42] With all this in mind, I am not satisfied that dissemination of the records could reasonably be expected to yield a public benefit.

Do the records disclose how the public body is allocating financial or other resources?

[43] The applicant does not argue (or provide evidence to show) that the records reveal how the City is allocating financial or other resources. The City says the records do not disclose how it is allocating resources and notes that the Province is leading the Project and the City is only involved in an advisory and support role.[43]

[44] Given the parties' evidence and argument, I am not satisfied that the records disclose anything about how the City is allocating resources, financial or otherwise.

Summary – do the records relate to a matter of public interest?

[45] I accept that the applicant's motivation and intention in making the access request at issue is to protect the health and safety of young children. Protecting the health and safety of children is undoubtedly a matter of public interest. However, as noted above, an applicant's intention to use the records in a manner that relates to the public interest does not suffice, nor does an applicant's identification of public interest issues as the motivation for the access request. As

[43] City's submission at para. 50.

previous orders establish, s. 75(5)(b) requires that the requested records *themselves* relate to a matter of public interest.[44]

[46] The applicant has established that the proximity of the terminus station in relation to the School has been a subject of recent public debate and I am persuaded that at least some of the responsive records relate to this issue. However, the applicant's broadly-worded request also captures numerous records related to many other subjects, none of which have been shown to be the subject of recent public debate. Similarly, I am not persuaded that all the responsive records relate to the environment or public health/safety. Instead, I find that only some records do. Furthermore, given the level of information already available publicly and to the applicant specifically, I am not satisfied that dissemination or use of the information in the records could reasonably be expected to yield a public benefit. Lastly, nothing in the evidence or argument before me establishes that the records disclose anything about how the City is allocating resources.

[47] Taking all this into account, I am not satisfied that the *all* the records relate to a matter of public interest. However, I am persuaded that a subset of the records does relate to a matter of public interest within the meaning of s. 75(5)(b). The subset comprises records that relate to the proximity of the terminus station in relation to the School, which I find is a matter of recent public debate that directly relates to the environment and public health/safety.

[48] Given these findings, I will move on to the second part of the s. 75(5)(b) test solely in relation to the subset. I will not discuss the other records any further.

Should the applicant be excused from paying the estimated fee?

[49] If the records relate to a matter of public interest, I must consider whether the applicant should be excused from paying all or part of the estimated fee. In making this decision, the focus is on who the applicant is and on the purpose for which the applicant made the request. As noted, I am only considering a subset of the responsive records at this stage in the analysis.

[50] To decide whether the applicant should be excused from paying all or part of the estimated fee, previous orders have considered the following non-exhaustive list of factors:

1) 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?

[44] Order F09-11, 2009 CanLII 42410 at para. 20.

2) Is the applicant able to disseminate the information to the public?

3) Did the public body meet legislated time limits in responding to the request?

4) 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 FIPPA[45]).

5) Did the applicant, viewed reasonably, co-operate 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?

6) 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.

7) Would waiver of the fee shift an unreasonable cost burden for responding from the applicant to the public body?[46]

[51] I am satisfied that the applicant's primary purpose for making the request is to use or disseminate the information to benefit the public. Given the applicant's identity and role in the School community, I find it clear that he made the request to serve a public rather than private interest.[47] The City does not dispute this.

[52] However, the City does argue that the applicant has not said how he will use or disseminate the wide range of requested records, or how he is able to disseminate information broadly.[48] The City also submits that the applicant does not explain how the requested information could reasonably be expected to benefit the public generally.

[53] In my view, the applicant's evidence establishes that he is able to disseminate information broadly.[49] However, for the reasons identified in

[45] Under s. 6 of FIPPA, a public body must make every reasonable effort to assist access applicants and to respond without delay to each applicant openly, accurately and completely.
[46] The factors listed at items 1-2 come from Order No. 332-1999, *supra* note 2 at p. 5. Former Commissioner Loukidelis added the factors listed at items 3-7 in Order 01-35, *supra* note 2 at para. 46.
[47] In order to protect the applicant's privacy, I will not say more about his identity or role here.
[48] City's submission at para. 53.
[49] YouTube video; CityWatch and Church of Vancouver website articles respecting the petition; radio clip from Global News; June 16, 2020 letter to the Attorney General and Minister of Environment.

paragraph 41 above, I am not persuaded that dissemination of any of the requested information (including the subset) could reasonably be expected to benefit the public because of the amount of information already available to the applicant and the public in general.

[54] The evidence indicates that the City met legislated time limits in responding to the request.[50] The City submits that it acted in accordance with its s. 6 duties. The City says it assisted the applicant with his first access request, providing a specific recommendation on how to reformulate that request and consulting extensively with him in response to that request. The City says it did not make any specific proposals to narrow the request at issue here because it was clear that the applicant intended to request a broad range of records, since he essentially re-submitted his first request (limited only by the naming of two City employees). The City also says the applicant did not seek to work constructively with the City in relation to the request at issue. The applicant does not contest or counter any of the City's submissions on these points.

[55] I am satisfied that the City acted reasonably in this case. The City met the legislated time frames. Furthermore, given its previous interactions with the applicant respecting the first request, I find it reasonable that the City did not suggest that the applicant may wish to narrow the request at issue here. It had just gone through that process with the applicant a few months prior. It is clear to me that the applicant purposefully made a broadly worded access request because he wanted to capture records that his first, more focussed request did not yield.

[56] The applicant already knew that a broad access request could result in a substantial fee estimate. Knowing this and after receiving 99 pages of records in response to his first access request without having to pay a fee, the applicant made the request at issue here. As I have said, it is a broad access request that spans almost six years. The responsive records total over 9,200 pages.

[57] To my mind, waiving part or all of the fee estimate in the circumstances would shift an unreasonable cost burden from the applicant onto the City. The City's original fee estimate of $960 was based on an estimation that responding to the request would take approximately 35 hours. The Director deposes that it has already taken nearly 30 hours to process the request and will take approximately 30 more.[51] Clearly, the City initially significantly underestimated the time it would take to respond to the applicant's request.

[58] The fee estimate the applicant received from the City states that the actual cost of providing the records may be higher or lower.[52] The Director says that the

[50] The information summarized in this paragraph comes from the City's submission at para. 54.
[51] Director's affidavit at paras. 42 and 43.
[52] City's December 8, 2020 letter to the applicant.

City usually issues a revised fee estimate in cases where the original fee estimate is significantly below the actual time required.[53] In this case, the City says that it will not issue a revised fee estimate despite its usual practice. Instead, the City is prepared to excuse the applicant from paying any additional fees in relation to the request.

[59] In other words, the City has decided to charge the applicant for 35 hours of work when it anticipates that it will actually take approximately 60 hours to respond to the applicant's request. As described in detail above, I have found that only a subset of the requested records relates to a matter public interest. The rest of the records do not. Therefore, I find it reasonable and fair that the applicant will pay part (but not all) of the City's costs in responding to the request. I find that it would shift an unreasonable cost burden from the applicant to the City to waive any part of the $960 fee estimate in the circumstances.

[60] Taking all this into account, I do not think the applicant should be excused from paying all or part of the estimated fee.

CONCLUSION

For the reasons given above, under s. 58, I confirm the City's decision to deny the applicant's request for a fee waiver under s. 75(5)(b).

October 8, 2021

ORIGINAL SIGNED BY

Laylí Antinuk, Adjudicator

OIPC File No.: F20-84922

[53] Director's affidavit at para. 44.