



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

Order 04-10

DISTRICT OF WEST VANCOUVER

James Burrows, Adjudicator
April 6, 2004

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Summary: The applicant requested records relating to various building and right of way issues. The District provided a fee estimate for the production of the records. The applicant objected to the amount of the estimate. The District was found to have properly applied s. 75(1) to the fee estimate.

Key Words: calculation of fee estimate

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 75(1).

Authorities Considered: B.C.: Order 157-1997 [1997] B.C.I.P.C.D. No. 15; Order 318-1999 [1999] B.C.I.P.C.D. No. 31.

1.0 INTRODUCTION

[1] On January 10, 2003, the applicant submitted a five-part request, under the *Freedom of Information and Protection of Privacy Act* (“Act”), to the District of West Vancouver (“District”) for various records relating to building and right of way issues. The request was subsequently revised to:

- 1) Engineered drawings and stamped final inspections of the [named individual] wall and pony wall brought to zoning and building bylaws subsequent to [a named company] writing the Municipality to revoke their certification...
- 2) Communications with anyone, including the [named individual], concerning the right of way and view issue of our trees...

- 3) Correspondence from [City Manager] and Mayor...to Municipal departments requesting documents and wall certification.
- 4) Inspection of the house basement, retaining wall on [named individual]'s property.
- 5) Letters sent to owners of Lot...and lot... and correspondence regarding trees on the Right of Way.

[2] On February 24, 2003, the District advised the applicant that the named company had not revoked its certification so that there were no records responsive to part 1 of the applicant's request.

[3] On March 6, 2003, the District responded to the applicant issuing a fee of \$300.00 to conduct a search for the records related to part 5 of the request and noted that additional fees for photocopying and preparation of records for disclosure were not included at that time.

[4] On April 4, 2003, the District provided a fee estimate of \$383.50 for parts 2, 3 and 4 of the request, applying costs for the preparation of the records for disclosure and photocopying but no charges for searching. Those charges were included in the March 6 estimate as the required three hours of free search time.

[5] On June 15, 2003, the applicant requested this office review the amount of the fee as it related to the estimated search time. Mediation was unsuccessful and a written inquiry was scheduled under Part 5 of the Act for December 10, 2003.

[6] I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[7] The issue in this inquiry concerns the District's application of s. 75(1) of the Act to its fee estimates.

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

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

3.0 DISCUSSION

[9] In his submissions, the applicant has argued the records that he has requested are routinely available public records. He does not believe that it should require the number of search hours estimated by the District.

[10] In its initial submission, the District detailed its correspondence with the applicant in regard to his request and explained that the fee estimate which it had provided was determined using the *Guidelines for Determination of Fees Estimates*. The guidelines are published on-line by the Corporate Privacy and Information Access Branch (“CPIAB”) of the Ministry of Management Services.

Guidelines for Determination of Fee Estimates

Locating/Retrieving/Searching for Records

Includes time spent:

- reviewing file lists and off-site lists (active and semi-active) and generating a list of files
- calling boxes from off-site storage (i.e., the time required to phone and ask for the retrieval of the boxes from off-site storage)
- consulting with staff about content of specific boxes of files
- pulling paper files out of cabinets
- pulling specific paper records out of files
- reading through files to determine whether the records are responsive — estimated time to read/review files for documents is 15 minutes per 1" file
- determining how many records might be in each file when all files not yet retrieved — do random sample of files found, determine average number of documents found in each — use this as estimate for balance of files. Add 10% as a cushion.
- viewing videotapes and listening to audio tapes to determine whether they are responsive to request
- electronic records:
 - searching e-mail records and printing any records responsive to the request
 - searching other electronic records and printing any records responsive to request

...

Preparing Records for Disclosure

Use **either** of the following processes, depending on circumstances.

1. Includes (per order 157):
 - time to prepare records for photocopying (remove staples, etc.)
 - time to photocopy the records
 - time it takes to put the file back together again (re-file, re-staple, put reports back in cerlox coils, etc.)
 - time it takes to prepare the package — includes assembling the package, ensuring the package is complete and preparing the package for shipping or viewing. Estimated time for this is 30 minutes for 'regular' and 60 minutes for 'mixed,' depending on the size of the package.

** This estimate is dependent upon the specificity of the request.

2. Includes:

A general estimate used by some ministries is $\frac{1}{4}$ the cost of the copying equals the estimated time to prepare the records for disclosure. Other ministries use the rate of $\frac{1}{2}$ minute to 1 minute per page for preparing records for disclosure. This charge is dependent on specific circumstances of the request.

...

[11] The District affirmed that the amount of the fees were “based on the Schedule of Maximum Fees in B.C. Reg. 323/93.” It also stated that the Council of the District had adopted this schedule by resolution.

Part 1 of the Applicant’s Request

[12] In its letters of February 24, 2003 and April 2, 2003, the District advised the applicant that since the named company had not revoked its certification, it was not able to find responsive records to part 1 of his request.

[13] In his initial submission, the applicant re-states part 1 of his request to the specific building plans without the reference to the revocation of certification. The District acknowledges this modification in its reply submission. The applicant must make a new access request for the part 1 records if he now wishes to have them despite there being no revocation of certification. It is open to the District, of course, to treat the applicant’s re-statement of the request in his initial submission as such a new request and respond accordingly. Since there is no s. 75(1) issue before me with regard to part 1 of the request, I will not comment further.

Parts 2 to 4 of the Applicant's Request

[14] With regard to the fees for preparing and photocopying the available 394 pages in response to parts 2 to 4 of the applicant's request, the District has applied the guidelines published by the CPIAB. The District determined that it would take 6.5 hours to prepare and photocopy these records accounting for \$195.00 based on \$30.00 per hour. In the original estimate, there was an additional charge of \$90.00 for preparing the package—again 3 hours based on \$30.00 per hour—and, lastly, photocopying charges of \$98.50 at \$0.25 per page. There were no charges for locating and retrieving the records as this work was covered under the first three hours for which there can be no charge, as prescribed by the Act.

[15] However, I note that, in its reply submission, the District has acknowledged that its estimate of \$384.50 included a redundant component for preparation of the package and should be reduced by \$90.00 to \$294.50. The District has also offered to provide the file to the applicant for his review, so he may reduce the amount of photocopying required, if appropriate. Undoubtedly, this would be a way for the applicant to reduce costs.

[16] Based on the number of pages responsive to these three parts of the request, the reduction of \$90.00 and the use of the fee estimate guidelines, I find that the District has appropriately applied s. 75(1) to parts 2 to 4 of the applicant's request.

Part 5 of the Applicant's Request

[17] In its March 6, 2003 letter, the District provided the applicant with a fee estimate of \$300.00 (10 hours at \$30.00 per hour) for locating and retrieving records in response to part 5 of the request. The applicant objected to the fee, arguing that the responsive records were public information and could be quickly accessed. In its reply submission, the District responded to the applicant's argument by detailing the amount and types of records the District must review to comply with part 5 of the applicant's request. The Municipal Clerk of the District stated that she received 5 files and a box of claims records responsive to the request and would be required to review these records to properly respond to part 5 of the applicant's request. As the first three hours of search, which must be conducted without cost to the applicant, were allocated to parts 2 to 4, she estimated an additional ten hours to review the approximately 1,400 pages of records responsive to part 5 of the request. In her submission, the Municipal Clerk detailed the volume and state of the records she would be required to prepare:

For the purposes of this review, I have spent 2 ½ hours simply organizing and cataloguing this disorganized box of records and additional files, that appear to relate to the Applicant's property and/or his neighbour's property ([named individual]). The box contains a claims file from our insurers filled with notes, plans, sketches, surveys, cerlox reports and stapled reports, photographs, and over 100 loose pages of records, letters, emails, photographs, etc. There is also a file of microfiche cards containing a total of 126 images, and 4 additional files or binders containing inspection notes, microfiche, legal files, and photographs. There are

over 1400 pages in these files, and my estimate of 7-10 hours to review these files is likely on the low side and generous to the Applicant.

[18] There is no basis for reducing the District's fee estimate in this matter. The District has also, I note, offered the applicant opportunities to reduce his costs.

4.0 CONCLUSION

[19] For the reasons given above, under s. 58 of the Act, I make the following orders:

1. I confirm the District's estimate for parts 2 to 4 of the applicant's request as provided to this inquiry in its reply submission; and
2. I confirm the District's estimate for part 5 of the applicant's request provided to this inquiry in its March 6, 2003 letter to the applicant.

April 6, 2004

ORIGINAL SIGNED BY

James Burrows
Adjudicator