

**THE MUNICIPAL GOVERNMENT FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY ACT**

A REQUEST FOR REVIEW of a decision of the **MUNICIPALITY OF THE DISTRICT OF LUNENBURG** to refuse a request to waive fees.

REVIEW OFFICER: Darce Fardy

DATE: **February 3rd, 2003**

ISSUE: Whether the Municipality should waive fees on this application because the Applicant is a journalist who will disseminate the information he is seeking; and because his employers cannot afford the fee.

In a Request for Review under the **Municipal Government Freedom of Information and Protection of Privacy Act (Part XX of the M.G.A)**, the Applicant has asked that I recommend to the Municipality of the District of Lunenburg (the Municipality) that all fees be waived for processing his application.

The Applicant had asked the Municipality for access to all records pertaining to the Osprey Ridge Golf Course since January, 1994. He also asked that all fees be waived except the application fee of \$25.00 stating, "I am a journalist and will disseminate the information contained in the records I have requested. This dissemination will promote the free and vigorous debate of important public issues".

The Municipality refused the fee waiver request and provided an estimate of \$1,920.00. Subsequently the Applicant narrowed his application to relevant records created after January 1, 2000. In response the Municipality issued a revised fee estimate of \$690.00.

In turning down the fee waiver, the Municipality described the processing of the application as, “a massive undertaking and will require many hours scrutinizing documents to determine FOIPOP applicability”. It said the narrowed application would still require the processing of thousands of records to check for confidentiality and any third party interests. **Section 482** of the **Act** requires public bodies, when determining whether to disclose records, to notify any third parties whose interests could be affected by disclosure.

Section 471 allows a public body to charge fees for:

- locating, retrieving and producing a record;
- preparing the record for disclosure;
- shipping and handling the record; and
- copying the record.

Section 6 of the Regulations provides the amount of the fees: \$15.00 a half hour spent locating and retrieving; \$15.00 a half hour for producing a record manually; and \$15.00 a half hour for preparing the record for disclosure. The Municipality provided me with a breakdown of the fee estimate:

- 1 hour to retrieve/assemble files - \$30.00;
- 6 hours of the CAO’s time reviewing the files - \$180.00;
- 2.5 hours each for the CAO and the solicitor to jointly review the records at issue - \$150.00;

- 4.5 hours preparing the records for disclosure - \$135.00; and
- 1000 pages to be copied @ 20 cents a page - \$200.00.

Section 471(7) allows a Municipality to excuse an applicant from paying all or part of a fee if, in the opinion of the Municipality, the applicant cannot afford to pay the fees or for any other reason it is fair to excuse payment.

Conclusions:

The imposition of fees is at the discretion of the Municipality. In this case the Applicant believed there should be no fees because he is a journalist. There is no evidence that the Municipality considered this argument when reaching its decision to provide a fee estimate. In earlier Reviews I have listed factors which a public body should use in determining whether or not to waive fees in the public interest. They include:

- has the matter been the subject of public debate?
- does the subject matter relate directly to the environment or public health or safety?
- would dissemination of the information yield a public benefit by assisting public understanding of an important policy?
- do the records show how the public body is allocating financial or other resources.

I note that in dealing with this Application the Municipality did not live up to its obligations under the **Section 469(1)**. While the Municipality turned down the fee waiver request on the same day the application was received (July 24), it did not provide him with the first fee estimate until September 16. Vacations were given as the reason for the delay. Section 469(1) requires a municipality to make a decision on an application within 30 days of receiving it. It may extend the time for response by another 30 days, or longer with the approval of the Review

Officer, if certain conditions are met: the application isn't clear; a large number of documents is requested and meeting the time limit would unreasonably interfere with the operations of the municipality; or more time is needed to consult third parties. If an extension is taken the applicant must be told why and when a response can be expected.

The applicant doesn't recall getting notice of an extension and there was no request for approval to the Review Officer. This failure to observe the requirements of the **Act** could be a factor to consider when a municipality is determining if it would be fair to excuse or reduce fees.

With respect to details of the estimate, the Municipality charges for 2.5 hours each for the CAO and the solicitor to jointly review the records. The time spent cannot be multiplied by the number of people reviewing the same documents at the same time. The estimate shows that the CAO had already spent six hours reviewing the files.

Recommendation:

That the Municipality:

- review the above factors with respect to public interest and consider a total fee waiver and, in the meantime;
- reduce the fees by \$75.00 because it charged for the time of the CAO and the solicitor for reviewing the same documents at the same time; and
- in light of its failure to meet the time lines imposed by the **Act**, reduce the total estimate by \$100.00.

Section 493 requires the Municipality to make a decision on this recommendation within 30 days of receiving it and to inform the Applicant and the Review Officer, in writing, of that decision.

DATED at Halifax, Nova Scotia, this 3rd day of February, 2003.

Darce Fardy, Review Officer