



Office of the Information and Privacy Commissioner for Nova Scotia

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## Know Your Rights When do you have to pay fees?

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### **Notice to Users**

This document is intended to provide general information and it is not intended nor can it be relied upon as legal advice. The contents of this document do not fetter or bind this office with respect to any matter. The Information and Privacy Commissioner for Nova Scotia will keep an open mind if this office receives a review request (appeal) on the subject matter of this document. As an independent agency mandated to oversee compliance with *FOIPOP* and *Part XX* of the *MGA* the Office of the Information and Privacy Commissioner for Nova Scotia cannot investigate in advance any concerns from an applicant related to an access to information request, so if there are concerns with a public body's or municipality's decision, the applicant must file a review request for this office to investigate the issue and to provide recommendations in response to those appeals. It remains the responsibility of each public body or municipality to ensure that it complies with its responsibilities under the relevant legislation.

## INTRODUCTION

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Under Nova Scotia's access to information laws, anyone can make an application for access to a record ("access to information request"). This document is part of our series entitled *Know Your Rights* and is intended to help the public understand how to interpret the information they get back from public bodies and municipalities.

The law permits public bodies and municipalities to charge fees. The law also sets out exactly what fees may be charged. There are two types of fees: application fees and processing fees.

### **(i) Application fees**

Public bodies and municipalities are required to charge a \$5 application fee for requests for general information. They cannot charge this fee for your own personal information.

### **(ii) Processing fees**

Public bodies and municipalities may charge processing fees in accordance with the law. Processing fees include the cost of locating and retrieving records, producing responsive records, preparing the record for disclosure and shipping and handling. The law provides generally that the public body may charge \$30 per hour for these activities. The public body can charge up to 20 cents per page for copying, but if the actual copying cost is less, they must only charge you the actual copying cost.

Please see our [Glossary: Review Request Terms](#) for help understanding terms in this document and terms that appear frequently during the review process.

## LEGISLATION

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There are two access to information laws in Nova Scotia. The *Freedom of Information and Protection of Privacy Act* ("FOIPOP") applies to government departments, agencies, universities, and school boards. The *Municipal Government Act* ("MGA") applies to organizations such as municipalities, police forces, and libraries.

Fees are set out in section 11 of *FOIPOP* and section 471 of the *MGA*, which state, in part:

- 11 (1) An applicant who makes a request pursuant to Section 6 shall pay to the public body the application fee prescribed by the regulations.
- (2) The head of a public body may require an applicant who makes a request pursuant to Section 6 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.

- (3) An applicant is not required pursuant to subsection (2) to pay a fee for the first two hours spent locating and retrieving a record.
- (4) Subsections (1) and (2) do not apply to a request for the applicant's own personal information.
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and:

- 471 (1) An applicant who makes a request pursuant to this Part shall pay to the municipality the prescribed application fee.
- (2) A responsible officer may require an applicant who makes a request to pay 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.
- (3) An applicant is not required pursuant to subsection (2) to pay a fee for the first two hours spent locating and retrieving a record.
- (4) No fee shall be charged for a request for the applicant's own personal information.
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## ESSENTIAL FEE RULES

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There are four essential fee rules you should be aware of as an access to information applicant.

**Rule #1:** Public bodies and municipalities cannot charge any fees if you request only your own personal information.

**Rule #2:** Public bodies and municipalities cannot charge any fees for the first two hours of time spent searching for records.

**Rule #3:** The fee you pay cannot exceed the actual cost of providing the service.

**Rule #4:** If public bodies and municipalities are charging fees, they must provide you with the fee estimate prior to processing your request. In other words, public bodies and municipalities cannot do the work first and then provide you with a fee estimate. The fee estimate must be for the total amount of fees they will charge you for all services. You need to know how much you will have to pay before you can decide if you want to proceed or not.

This means that the public body must keep track of the hours spent on each chargeable task and must calculate the actual cost at the end. If the actual time spent is less than the estimate, then they must ensure that you only pay the lesser amount. The law also says the public body can charge up to 20 cents per page for copying, but if the actual copying cost is less, they must only charge you the actual copying cost.

**Tip #1: You do not have to pay fees for your own personal information.**

### **Fee waivers**

The law also sets out a process where an individual can request that fees be waived. There are three circumstances contemplated under *FOIPOP* and two circumstances in the *MGA*:

- The applicant cannot afford to pay;
- For any other reason it is fair to excuse payment; or
- The record relates to a matter of public interest, including the environment or public health or safety (*FOIPOP* only)

**Tip #2: Check out previous Review Reports to see what type of circumstance may qualify for a fee waiver: <https://oipc.novascotia.ca/reports>.**

If you want to request a fee waiver, it is usually more effective to wait for the fee estimate and then make a request in writing explaining why the fee should be waived. Focus your arguments on one or more of the three circumstances listed above. Note that when the public body issues a fee estimate, the time for processing will be suspended until the fee is paid or waived. If you request a fee waiver from the public body in response to a fee estimate, the time for processing remains suspended until the public body or municipality makes a decision about whether or not to waive the fees.

Public bodies and municipalities must make this decision within a reasonable time period, which our office recommends not exceeding two weeks. It is up to you to provide the public body or municipality with all of the information to support your request for a fee waiver, you may need to provide proof.

## **STEPS FOR PUBLIC BODIES AND MUNICIPALITIES**

The law requires that public bodies or municipalities take a number of steps in order to charge fees:

- Step 1:** The public body or municipality must first calculate a fee estimate for all services associated with completing the access request and must provide the estimate to you (the applicant) in writing within 30 days of receiving your access to information request.
- Step 2:** The public body or municipality *may* (not must) require that you pay a deposit, usually 50% of the fee estimate, before it begins processing your request. Public bodies and municipalities are permitted to place the processing time “on hold” pending receipt of your payment.

- Step 3:** While the public body or municipality processes your access to information request it must keep track of the actual processing cost.
- Step 4:** Once the response is ready for release, the public body or municipality must calculate what, if any, fee remains to be paid. It does so by comparing the actual cost with the cost based on the fee estimate. It must choose the lesser of the two costs and determine if any amount remains outstanding (compare the total owing with the amount of deposit paid).
- Step 5:** When the response to your request is ready, the public body will ask you to pay the remainder of the fee (if any). They will typically not release the response to your request until the fee is fully paid.

**Tip #3: The public body must provide the fee estimate within 30 days of receiving your access request.**

## **STEPS FOR THE APPLICANT**

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If you receive a fee estimate from the public body, there are several steps you can take:

**Step 1 – Check the math:** When you get a fee estimate, review the calculation if it is provided. Check the math to see if it is accurate. It is not unusual for miscalculations to occur. If a calculation is not provided, you can ask the public body or municipality to provide it to you. See our [Duty to Assist #4: How to Calculate Fees](#).

**Step 2 – Call the public body:** Ask the public body or municipality if the fee can be lowered. Some ways to reduce the fee include requesting electronic documents to avoid the copying fee or asking the public body if any of the records requested have been processed for a previous access to information request. If the records have been disclosed previously, they should be provided to you at no cost. Public bodies and municipalities cannot charge you for work it has already been completed on a previous request.

**Step 3 – Consider narrowing your request:** If the fee is too high, consider whether or not you can narrow your request to focus only on the most important information you are seeking. Call the public body or municipality to discuss ways in which you might be able to focus your request to reduce the fee.

**Step 4 – Request a fee waiver:** If you want, you may request a fee waiver. As noted above, make your request in writing and provide details about why the waiver should be granted, including any supporting proof.

**Step 5 – Pay the deposit:** If the fee is not waived and a deposit is requested, you must pay the deposit before the public body or municipality will continue processing your request.

**Step 6 – Request a review:** If the fee is not waived and you do not want to pay the fee you can file a request for review of the fee with the Office of the Information and Privacy Commissioner (OIPC). However, your request will not be completed by the public body or

municipality until the OIPC's review is complete. You also have the option to pay the fee and also request that the OIPC review the fee so that you will receive the public body or municipality will continue to process your access request while you await the outcome of your fee appeal with the OIPC. On appeal, the OIPC may end up recommending that the fee be waived and the money returned to you. However, it is important to note that public bodies and municipalities are allowed to reject the OIPC's recommendations.

**Tip #4:** You must first request a fee waiver from the public body or municipality before requesting a waiver as part of a review with this office.

**Step 7 – Pay the remainder of the fee:** When the response is ready, the public body will ask you to pay the remainder of the fee. Ask them to provide you with the actual cost of processing the fee. If it is less than the fee estimate, you only need to pay the actual cost.

## WHAT NEXT?

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When you receive the response to your access to information request, review it carefully. Remember, you can ask the public body or municipality to provide an actual accounting of the fees.

If you have questions about what you receive, call the public body or municipality. You have a right to request a review (appeal) of the public body's or municipality's decision in response to your access to information request within 60 days. We encourage you to take the first step of talking with the public body or municipality before asking for the OIPC's review. Often this could resolve the matter without you having to go through what can be a lengthy process with the OIPC.

## QUESTIONS?

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This guidance was prepared by the Office of the Information and Privacy Commissioner for Nova Scotia. Whether you are an applicant, a public body or a municipality, we encourage you to contact us if you have any questions about the access to information process in Nova Scotia.

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