



# Duty to Assist #4: How to Calculate Fees

## Guidelines for Public Bodies and Municipalities

Office of the Information and Privacy Commissioner for Nova Scotia  
July 25, 2019

### **Notice to Users**

This document is intended to provide general information only. It is not intended nor can it be relied upon as legal advice. As an independent agency mandated to oversee compliance with *FOIPOP*, *MGA* and *PHIA* the Office of the Information and Privacy Commissioner for Nova Scotia cannot approve in advance any proposal from a public body. We must maintain our ability to investigate any complaints and to provide recommendations in response to these complaints. The contents of this document do not fetter or bind this office with respect to any matter, including any complaint investigation or other matter respecting which the Information and Privacy Commissioner for Nova Scotia will keep an open mind. It remains the responsibility of each public body to ensure that they comply with their responsibilities under the relevant legislation.

## INTRODUCTION

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Access to information laws are fundamental to the health of our democracy.<sup>1</sup> The Nova Scotia Court of Appeal recently reaffirmed that the legislation in Nova Scotia is deliberately more generous to its citizens and is intended to give the public greater access to information that might otherwise be contemplated in the other provinces and territories in Canada.<sup>2</sup>

In responding to access to information requests, public bodies and municipalities have a duty to assist applicants. They are required to make every reasonable effort to assist applicants and to respond without delay, openly, accurately and completely.

The duty to assist means that if a public body or municipality decides to charge processing fees as permitted under the law, it must make every reasonable effort to ensure that the fee calculation is accurate and is processed without delay. This guide is intended to assist public bodies and municipalities to accurately calculate processing fees according to the law.<sup>3</sup>

## LEGISLATION

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The duty to assist is set out in s. 7(1)(a) of the *Freedom of Information and Protection of Privacy Act (FOIPOP)* and s. 467(1)(a) of the *Municipal Government Act (MGA)*:

*7(1) Where a request is made pursuant to this Act for access to a record, the head of the public body to which the request is made shall*

*(a) Make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely.<sup>4</sup>*

There are two types of fees authorized under *FOIPOP* and the *MGA*: (1) the \$5 application fee and (2) processing fees.

The \$5 application fee set is out in s. 11(1) of *FOIPOP* and 471(1) of the *MGA*:

*11(1) An applicant who makes a request pursuant to Section 6 shall pay to the public body the application fee prescribed in the regulations.*

In addition to the \$5 application fee, *FOIPOP* and the *MGA* allow public bodies and municipalities to charge an applicant processing fees for the following services:<sup>5</sup>

- (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.*

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<sup>1</sup> [https://oipc.novascotia.ca/sites/default/files/reports/18-06%20Review%20Report%20%2820%20Sept%2018%29%20\\_0.pdf](https://oipc.novascotia.ca/sites/default/files/reports/18-06%20Review%20Report%20%2820%20Sept%2018%29%20_0.pdf), para 14.

<sup>2</sup> *Nova Scotia (Office of the Ombudsman) v. Nova Scotia (Attorney General)*, 2019 NSCA 51, para 102.

<sup>3</sup> For the *Personal Health Information Act (PHIA)*, please refer to our *PHIA Fee Fact Sheet*:

[https://oipc.novascotia.ca/sites/default/files/publications/15-00084%20PHIA%20fees%20fact%20sheet%20%2815%20Oct%2015%29\\_0.pdf](https://oipc.novascotia.ca/sites/default/files/publications/15-00084%20PHIA%20fees%20fact%20sheet%20%2815%20Oct%2015%29_0.pdf)

<sup>4</sup> The *MGA* provision, s. 467(1), is identical except that it refers to the “responsible officer” rather than the “head of the public body”.

<sup>5</sup> *FOIPOP* s. 11(2) and *MGA* s. 471(2).

Regulation 6(3)<sup>6</sup> specifies the amounts that can be charged for each service. Only what is included in the Regulation can form part of a fee estimate.<sup>7</sup> Fees cannot exceed the actual cost of the services.<sup>8</sup>

### Tip: Fees & Personal Information

When an individual makes a request for her own personal information, no fee may be charged.

## TIMELINES

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Fee estimates need to be calculated and provided to the applicant within the first five days of receiving the access to information request. This ensures there is adequate time to complete all the processing steps within the 30 day time limit required by the Acts.<sup>9</sup> Keep in mind that once a fee estimate is sent, the 30 day processing time is suspended until the fee is paid or a fee waiver is granted. For more information on time, see our [Time Extension Guidelines for Public Bodies](#) and our [Time Extension Guidelines for Municipalities](#).

## LEADING CASE

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In the OIPC's leading case on the issue of fees, [Review Report FI-11-23\(M\)](#), the Information and Privacy Commissioner describes fee estimates in general:

Administrators should consider the following principles to guide them in the preparation of fee estimates.

- **Authorized:** The estimate is prepared in accordance with the *FOIPOP* Act and Regulations. It includes only those services for which a fee may be charged and is based on rates allowable under the Act;
- **Reasonable:** The estimate is proportionate to the work required to respond to the request in an efficient and effective manner; and
- **Equitable:** The estimate is fair, balanced, developed without prejudice and is consistent with similar estimates given the same facts and circumstances.

Fee estimates should be comprehensive and prepared in good faith so that the costs take into account the full response to the application. This can entail a review of file indexes and contact with those individuals who hold the records so that the full volume of records can be determined.

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<sup>6</sup> *FOIPOP* and the *MGA* share the same Regulations for access and privacy.

<sup>7</sup> Review Report FI-11-23(M).

<sup>8</sup> *FOIPOP* s. 11(8) and *MGA* s. 471(8).

<sup>9</sup> *FOIPOP* s. 7(2) and *MGA* s. 467(2).

## HOW TO CALCULATE PROCESSING FEES

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In deciding to allow fees, the legislature attached a real value to the time and work involved in meeting the requirements of *FOIPOP* and the *MGA*. The charging of fees is legitimate, but it cannot be used as a means of discouraging access to information. Fees associated with access to information should not act as a barrier to public access to information.

The decision to charge processing fees is discretionary. It is entirely up to the organization to decide whether or not to charge processing fees. For example, a public body or municipality may decide not to charge any fees because it is late in processing the request or because the fee is so small that it will lose money simply processing the payment. Some public bodies or municipalities simply choose not to charge fees in the spirit of openness and accountability.

### Tip: Fee Waivers

The law also sets out a process whereby an individual can request that fees be waived. There are three circumstances contemplated by s. 11(7) of *FOIPOP* and two circumstances in s. 471(7) of the *MGA*:

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

To meet their obligations to provide an accurate fee estimate, public bodies and municipalities should consider the following guidance.

**Locating & retrieving fees** can be charged for activities relating to locating, searching and identifying records responsive to the request. Fees for locating and retrieving can only be charged where more than two hours of work is involved. After two hours, \$30<sup>10</sup> per hour can be charged.

**Tip:** The first two hours of search time are always free!

Locating & retrieving fees **may include:**<sup>11</sup>

- Generating a list of files to be searched
- Examining file lists
- Staff time to search paper files
- Pulling paper files
- Pulling specific papers from files

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<sup>10</sup> Per hour fees are charged by the ½ hour, rounded down to the nearest ½ hour.

<sup>11</sup> The following lists are based on a survey of jurisdictions across Canada, including individual guidance documents and OIPC Orders.

- Recalling records from off-site storage or other service providers
- Pulling a sample to generate size estimate
- Viewing videotapes and listening to audio tapes to determine relevancy
- Searching email records and printing any of relevance
- Reading and reviewing content for responsiveness
- Internal consultations about the responsiveness of the file contents
- In-house and external programming or data processing

Locating & retrieving fees **may not include:**<sup>12</sup>

- Cost to retrieve from off-site storage
- Cost to ship files to *FOIPOP* office from the district office
- Reviewing the search results of another person
- Time to make a working copy of the record
- Proofing the accuracy of the data within the responsive record
- Sorting through disorganized filing systems
- Computer down time

**Producing fees** can be charged for activities relating to getting the file ready for processing. Fees for producing are \$30 per hour if for paper records,<sup>13</sup> or the actual cost of computer usage or the time it takes to develop a computer program for electronic records. There is no “free” time for producing the record.

Producing fees **may include:**

- Querying an electronic database to create a record that includes the requested fields of information
- Running reports from a computer
- Cost of disks or tapes

**Tip:** You may only charge the actual fee or the fee set out in the Regulations, whichever is less.

**Preparing fees** can be charged for activities relating to processing the file for disclosure. Fees for preparing are \$30 per hour of person time.

Preparing fees **may include:**

- Getting record ready to copy, including pulling staples
- Making a working copy
- Collating/organizing the package in a coherent manner
- Physically severing information (by hand or electronically)
- Noting the applicable exemption where the information has been severed and including notes of explanation
- Putting the file back together

<sup>12</sup> These lists are intended to ensure public bodies and municipalities meet their duty to assist in a manner consistent with best practices across Canada.

<sup>13</sup> Charged by the ½ hour, rounded down to the nearest ½ hour.

- Refiling the record
- Putting the response package together
- Preparing file for delivery

Preparing fees **may not include:**

- Preparing the fee estimate
- Identifying and preparing records for consultations with third parties, other public bodies or other municipalities, including preparing notices, preparing packages of records and discussions related to the matter
- Calling a courier
- Proofing the accuracy of the data within the responsive record
- Preparing an index of records
- Seeking legal advice from solicitor (scope, search, disclosure)
- Supervising the viewing of a record on-site
- Writing the decision letter

**Copying fees** can be charged for the cost of providing a copy of the record to the applicant. Fees are 20 cents per page (or the actual cost, whichever is less)<sup>14</sup> if they are copied on a conventional photocopier and if not (for example a large map or architectural drawing), the actual cost of reproduction.

Copying fees **may include:**

- The copy being provided to the applicant
- If a two-sided document, it counts as two pages
- Pages printed from a computer to a printer

Copying fees **may not include:**

- Making a working copy of the record
- Consultation packages
- Pages that are completely withheld

**Shipping and handling fees** can be charged for the cost of packaging and transporting the disclosure package to the applicant. Handling fees are \$30 per hour of person time. Shipping fees are limited to the actual cost of the method chosen by the applicant.

Handling fees **may include:**

- Putting the package together
- Preparing file for delivery, including putting files in mailroom or calling the courier (packaging and addressing)

Shipping fees **may include:**

- Standard post office shipping rates
- Courier fees if specifically requested by the applicant

Shipping fees **may not include:**

- Cost of sending third party notifications by registered mail

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<sup>14</sup> For example, the OIPC's photocopier costs less than 3 cents per page.

## **In general**

Fees cannot be charged for:

- Work that was already done
- The same service more than once, for example: charging to locate the record and then to review it for responsiveness
- Transferring a request to another organization
- Time to discuss the request with the applicant
- Time explaining the content of the records to the applicant
- Time associated with any part of a review by the Information and Privacy Commissioner
- Legal costs

## **Fee estimates in practice**

Below are some fee estimate shortcuts commonly employed in jurisdictions across Canada:

- 1 inch of records is equal to 200 pages
- A 1 cubic foot box (banker's box) is equal to 2,200 letter-sized pages or 1,800 legal-sized pages
- It takes 15 minutes to read 1 inch of records (200 pages) to determine relevance
- It takes 5 minutes to scan a drawer of records to determine relevance
- It takes 3 minutes per email account to run a query for relevant records
- It takes 30 seconds to two minutes per page to process a file for disclosure
- It takes 30 minutes to an hour to prepare a file for delivery

### **Tip:**

Keep track of the actual time spent processing the record. You'll need it for the final fee calculation.

## **ISSUING A FEE DECISION**

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1. Before providing any service, do a preliminary search for the requested records and estimate the time, beyond two hours, to locate and retrieve the records plus any time to produce electronic records. Now estimate the number of pages that will be copied and released to the applicant. Calculate the preparation and handling costs based on the number of pages being released. Add any shipping costs.
2. Now prepare a written estimate of the above and give the estimate to the applicant. It must include details about how and when the payment is due. The 30 day response time clock stops the day the fee estimate is issued until the day after the deposit on the fee is paid or a fee waiver is granted.
3. After the fee is paid or the waiver is granted, the clock starts again where it left off (the day the fee estimate was issued). Proceed with locating, retrieving, producing, preparing, handling and shipping the record. Keep track of the actual time for each component.
4. Calculate the final fee. To calculate the final fee, you must compare the actual cost of processing the request with your estimate. You must charge whichever is less. Be sure to also deduct any fee deposit already received. We recommend that if the actual time it took was longer than the time estimated, treat it as a lesson learned and rely on the original estimate. If the actual time is less, you must charge the lower amount. Remember you can also only charge the actual cost of photocopying if it is less than the 20 cents per page maximum allowed under the Regulations. Generally photocopying now costs less than 20 cents per page.

5. At this point, you are ready to issue your disclosure decision to the applicant, along with details about how and when the final payment is due and how that affects the delivery of the disclosure package.

## **APPEAL OF A FEE ESTIMATE**

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Applicants who are not satisfied with the fee estimate that they receive are entitled to appeal that decision to this office. If this happens, we will be looking for a detailed breakdown of the calculation of fees, which may include pulling and processing a sample of records to confirm the accuracy. If the response has already been processed, we will be looking for the calculation of the actual time spent processing the request.

## **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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