

**THE NOVA SCOTIA FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT**

A **REQUEST FOR REVIEW** of a decision of the **DEPARTMENT OF FINANCE** with respect to the charging of fees for locating requested records.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** December 15, 2004

**ISSUE:** Whether a public body should charge fees for locating records it is unsure exist.

In a Request for Review pursuant to the Nova Scotia **Freedom of Information and Protection of Privacy Act** (FOIPOP), dated October 22, 2004, the Applicant asked that I review the fee estimate provided by the Department of Finance (the Department) and to “(d)irect that when fee estimates are prepared, a more realistic and fulsome explanation is given to the applicant initially, and that the fee estimates not be used as a deterrence for access to public information.”

The Applicant had asked the Department for

All internal correspondence and analysis related to the potential effects of the continued down-grading of reserve estimates for the Sable Offshore Energy Project (SOEP) on royalties, taxes and the Nova Scotia economy.

The Applicant subsequently narrowed his request to records for the period August 1, 2003 to the present.

The Department, in accordance with **Section 11(5)** of FOIPOP, provided the Applicant with a fee estimate for locating, producing, preparing the record for disclosure, shipping and handling and providing a copy of the records. The Department said “it is our estimate that the amount of time required to provide the services prescribed under s.11 is 5 hours charged at the rate of \$30.00 an hour.”

It was later learned that the Department was not sure the records requested exist. This was confirmed in the Department’s submission to this Review in which the administrator said she had been advised that it was “very unlikely that relevant records existed.”

The Applicant, in his submission to this Review, said that the letter providing the fee estimate made no mention of the possibility that no records existed. He said it was obvious that the fee estimate was not based on fact.

**Conclusions:**

In my view the fee estimate may not be out of line. A public body cannot be sure if the real costs and final fee will be less or more than the estimate.

However, I share the Applicant’s concern that the Department arrived at the estimate, based on processing the records, when it did not know if any would be found. The Applicant should have been told the fee estimate was for locating only, and that it was uncertain any would be found.

This raises the question of whether the Applicant is being asked to pay for questionable records management. I would expect public bodies to keep this in mind when

setting fees under s.11. It should also take into consideration that the Applicant has already paid \$25.00 to make the application. He has now paid another \$25.00 for the review without any certainty that the records he wants even exist. Although FOIPOP does not address this particular issue, I would expect fairness and common sense would prevail.

**Recommendations:**

- That the Applicant pay the fee and that the Department refund it if it finds there are no records related to the application.

**Section 40** of the Act requires the Department of Finance to make a decision on these recommendations within 30 days of receiving them and to notify the Applicant and the Review Officer, in writing, of that decision. If a written decision is not received within 30 days, the Department of Finance is deemed to have refused to follow these recommendations.

**Dated** at Halifax, Nova Scotia this 15th day of December, 2004.

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Darce Fardy, Review Officer