



City Clerk Department

City of Medicine Hat

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February 19, 2025

Sent Via Electronic Mail: info@ratepayersmedicinehat.org

Attention: Medicine Hat Utilities Ratepayer Association

Dear Ms. Boss et al:

Re: Request for Fee Waiver in Relation to – Request Ref 75-2024

We write to provide our decision with respect to your request to waive the fees (the “**Fee Waiver Request**”). This Fee Waiver Request arises from your request for access to information under the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (the “**FOIP Act**”), received by the City of Medicine Hat (the “**City**”) on December 12, 2024, and bearing File Number 75-2024.

The access to information request at issue is as follows:

Provide any and all financial analysis, economic analysis, projections of commodity prices, revenue, expenses and or capital costs and projections of carbon credits or carbon costs as it relates to large solar developments in Alberta including, but not limited to, the Saamis solar project.

Include any internal or external emails, notes and phone conversations or voice messages, etc., received or sent discussing any of these topics.

This would also encompass those that include DP Energy as well as any emails or notes, etc., discussing the use of EDC Associates for projections or subscriptions to their services.

Section 93(3.1) of the FOIP Act states that an applicant may request that the head of a public body excuse the applicant from paying all or part of a fee for services. Section 93(4) of the FOIP Act sets the parameters of the City’s discretion to waive the fee and states:

93(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
- (b) the record relates to a matter of public interest, including the environment or public health or safety.

You were provided with a fee estimate of \$ 675.00 on January 20, 2025. We acknowledge that you have paid this fee and are now making this request to waive the fee. We read your request as relying on section 93(4)(b) of the FOIP Act. We understand that you are asking the City to waive the fee of \$ 675.00 because the records generated by the access request will relate to a matter of public interest.

The reasons you gave for the Fee Waiver Request are as follows:

MHURA believes that, since the City of Medicine Hat (a Public Entity) has requested approval from the Alberta Utilities Commission (AUC) to purchase the Saamis Solar Park from DP Energy (a privately owned entity), the costs to purchase, manage and maintain said park is solely based on using funds gained through taxation and other fees placed upon the residents of Medicine Hat, along with possible dividends from other endeavors that the City of Medicine Hat holds. In light of that truth, all residents effectively become shareholders, the only shareholders, as the City is publicly and not privately funded. Though the AUC ruling has yet to be determined, it is a matter of public interest, as this issue affects our present and future tax dollar and that any other liabilities this project may encompass will also fall onto the taxpayers.

It is in the Public Interest to know what due diligence, if any, our energy department, our Council and/or any committee has done on the taxpayers' behalf.

The information we are asking for has not been shared so as to give the public (shareholders) reassurance that this is a low risk and affordable investment.

Section 93(4) states that the head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head, the record relates to a matter of public interest, including the environment, or public health or safety.

Please accept this request for a Fee waiver based on the above.

In considering the Fee Waiver Request and whether the City should exercise its discretion to waive the fees, the City has had regard to the following:

- 1) Guidance from the caselaw in relation to other fee waiver requests;
- 2) The reasons put forward in the Fee Waiver Request itself;
- 3) What the City knows about the records subject to the access to information request, keeping in mind that the City has not completed its processing of the access to information request and only has partial information at this time; and
- 4) The City's knowledge of what other requests have been made to it and what other information has been made public about the subject of the access to information request.

The FOIP Act creates a user pay model. The taxpayers of the City will pay the majority of the cost for processing this access to information request. Only a small portion of the actual cost has been

requested in the form of a fee from you. The fee estimate provided by the City of \$675 is modest considering the scope of the undertaking to process the access to information request.

Section 93(4) directs the City to consider if there should be a departure from this user pay model for one of the reasons set out in the statute. The key question is whether the **specific records** which the requestor is seeking to access are themselves so important and of such public interest that the City should exercise its discretion and depart from the default user pay model and instead require all taxpayers to pay the totality of the costs involved.

We have considered Order F2021-18 from the Office of the Information and Privacy Commissioner of Alberta. Order F2021-18 both cites and then streamlines the list of thirteen factors outlined in Order F2006-032. While these factors are not set out in the statute, they have animated the caselaw and can assist the City when it considers how to exercise the discretion bestowed on it by section 93(4)(b) of the FOIP Act. The factors in Order F2021-18 are:

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it? The following may be relevant:
 - Have others besides the applicant sought or expressed an interest in the records?
 - Are there other indicators that the public has or would have an interest in the records?
2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public? The following may be relevant:
 - Do the records relate to a conflict between the applicant and government?
 - What is the likelihood the applicant will disseminate the contents of the records?
3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government? The following may be relevant:
 - Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?
 - Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?
 - Will the records shed light on an activity of the Government of Alberta or a public body that have been called into question?

For the reasons set out in this letter, the City has declined to exercise its discretion to waive the fee. We elaborate below.

Discussion of the Factors

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?

This factor asks the City to consider if there are other members of the public who have asked for the materials which will be generated by the access to information request. Along the same lines, it also asks the City to consider if the records which will be provided to the Requestor will be disclosed more broadly, thus contributing to the public's understanding.

The Fee Waiver Request notes that the acquisition of the Saamis Project is a matter of public interest, but it does not explain how the specific records requested are themselves of public interest. Nor does the Fee Waiver Request provide any information about the intended distribution of the information obtained.

While not determinative, the City is mindful that the request does not seek access to a single record or report. Rather the request seeks access a broad set of more granular records. The City is not aware of any prior request for these documents. The City is not aware of any planned dissemination by the Requester of the records to educate the public.

Overall, it is the City's view that this factor does not weigh in favour of a fee waiver. The record does not persuade the City that the records will contribute to the public understanding of, debate on or resolution of a matter that is of concern to the public.

2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public?

This factor asks about the motivation of the person making the request as another potentially relevant factor in the exercise of discretion. In the caselaw, this factor relates not only to commercial disputes, but also to requesters who themselves have a dispute with the City. An applicant who is motivated by commercial or other private interest is less likely to benefit from a fee waiver on public interest grounds.

The City notes that Medicine Hat Utilities Ratepayer Association ("MHURA") characterizes the public as "shareholders" of the proposed Saamis project in its Fee Waiver Request. The access to information request was made on behalf of the MHURA. While the MHURA is not a corporation which is seeking access to the confidential business information of a competitor, the MHURA does have private interests which appear at least in part to motivate the request. MHURA has applied for standing in the ongoing proceedings before the Alberta Utilities Commission related to the subject matter covered by the Request and was denied standing. MHURA is also opposed to the City's acquisition of the Saamis project.

MHURA is certainly entitled to make the access to information request, but overall, this factor does not support waiving the fee.

3. If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government?

This factor asks if the records which will be generated will contribute to open, transparent and accountable government. All records in the hands of public institutions, if disclosed, contribute in some sense to open, accountable and transparent government. More is required if this factor is to weigh in favour of the fee waiver. This factor in our view really asks if the records at issue cast specific light on a specific governance issue or issue of public concern related to the operation of the public body which would justify removing the modest obstacle posed by paying a fee to ensure that the public benefits from the disclosure of the records.

We note that in the Fee Waiver Request, the Requestor asks what due diligence has been undertaken by the City. It seems unlikely that internal emails, notes or phone conversations will materially contribute to open, transparent and accountable government on this issue.

In addition, the decision to purchase the Saamis solar power project is subject to regulatory hearings before the Alberta Utilities Commission. That process has, and will, shed light on the decisions made by the City. As far as the City is aware at this stage, none of the records requested are the kinds of documents which would show, in a comprehensive way, how or why the City made the decisions it did. The release of these documents is not reasonably anticipated to subject the activities of the City to public scrutiny in the way this factor suggests is necessary to support a fee waiver.

Conversely, there is every expectation that the process before the Alberta Utilities Commission has and will provide meaningful information to the public about all aspects of the Saamis development.

The City is mindful that the access request made of the City is onerous. It requires the detailed sifting through a large volume of detailed and technical records. This access to information request does not seem likely to produce records whose value is so high that the full cost of the process ought to be borne by the taxpayer rather than the Requester. As noted at the outset, another contextual factor is that the \$675 fee estimate provided by the City is relatively modest. This is particularly true in light of the full cost to the taxpayer of completing this access to information request. The City also notes, although this is a contextual factor only, that the fee has been paid and it does not appear to be a barrier for the Requester.

Conclusion and Next Steps

For the reasons set out in this letter, the City has carefully considered the Fee Waiver Request. The City declines to exercise its discretion to waive the fee. Put differently, when considering all the factors set out in this letter, requiring the Requester to pay a relatively modest fee is appropriate and in keeping with the user pay principle set out in the FOIP Act. It is anticipated by the City at the time of writing this decision, that over 1,500 potential responsive documents amounting to many thousands of pages will have to be reviewed by the City. It remains uncertain how many documents will be released following the completion of the process. However, the true cost of

processing this access to information request will be many multiples of the fee estimate given.

If you are dissatisfied with this decision, you may ask for a review under Part 5 of the FOIP Act by the Information and Privacy Commissioner of the decision to refuse your Fee Waiver Request. You must do so within 60 days of being notified of this decision.

If you wish to re-formulate or more narrowly tailor your request, the City would be pleased to work with you, but it will do so in writing. Should you have any questions about the processing of your request, please contact the FOIP Office at foip@medicinehat.ca

Yours Sincerely,

Lovejoy Sibanda

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