



Staff Report

DATE: May 31, 2017

TO: Chair and Directors
Regional Hospital District Board

FROM: Russell Dyson,
Chief Administrative Officer

RE: **Fee estimate from Island Health in response to board's request for records under the *Freedom of Information and Protection of Privacy Act***

Purpose

To advise the board of a fee estimate received from Island Health in response to the board's request for records under the *Freedom of Information and Protection of Privacy Act* regarding the helipads at the North Island Hospitals and to present options for next steps for the board's consideration.

Policy Analysis

The *Freedom of Information and Protection of Privacy Act* (the Act) provides for access to records of a public body. Under the Act, a public body that has received a request for records that is of a broad scope may require the requester to pay a fee to cover the costs for locating, retrieving and producing the records, preparing the records for disclosure, shipping and handling the records and providing copies of the records. The public body may also provide options to reduce or eliminate the fees such as having the requester narrow the scope of their request. If the requester doesn't wish to narrow the scope of their request they are required to pay half the fee estimate in order for the public body to commence locating and retrieving the records. The requester may be required to pay additional costs when the actual number of records is determined.

Executive Summary

At its April 20, 2017 meeting, the Comox Strathcona Regional Hospital District (CSRHD) board passed the following motion:

THAT the Comox Strathcona Regional Hospital Board request, through a freedom of information request, all emails, reports and correspondence between the North Island Hospitals Project team, MMM Group Limited and Transport Canada from August 2013 to the present regarding the helipads at the North Island hospitals.

Correspondence was sent to the Freedom of Information (FOI) Analyst and Coordinator for Island Health (Appendix A).

A response was received from Island Health (Appendix B) indicating that, due to the size and scope of the request, a preliminary fee has been assessed of \$2,760.00 and suggesting the CSRHD could consider reducing the scope of its request in order to reduce or eliminate the required fee.

The options available to the board include:

- narrowing the scope of its request by defining the types of records sought, reducing the time period for the requested records and/or more narrowly specifying the subject matter or program areas of the records sought;
- abandoning the request for records;
- paying the deposit (half of the fee estimate) to proceed with the request for records as originally defined; or
- postponing further processing of the records request while Island Health and Transport Canada work through the heliport and helipad certification process.

Recommendation from the Chief Administrative Officer:

THAT the Comox Strathcona Regional Hospital District board postpone further processing of its request under the *Freedom of Information and Protection of Privacy Act* to Island Health for records regarding the helipads at the North Island hospitals until such time as the helipad certification process is complete.

Respectfully:

R. Dyson

Russell Dyson
Chief Administrative Officer

History/Background Factors

At its April 20, 2017 meeting, the CSRHD board approved a resolution to request records from Island Health relating to helipads at the North Island Hospitals Project. This was a new item presented to the board at its April 20, 2017 meeting and there was no staff report or correspondence that provided background information or context at the time of the meeting. The response from Island Health (Appendix B) identifies a cost estimate for producing such records. This report describes several options available to the CSRHD board at this time.

Options

Depending on the board's preference, the following four options are available:

1. Narrowing the scope of the request by:

- clarifying the types of records sought as well as the types of records not sought
 - Island Health has advised that a large number of records relating to the hospital design and construction bid and evaluation process and subsequent design and construction phase of the hospital project fall within the broad parameters of the request. If the board does not require these types of records, the board can specify that those records be excluded from the request for records.
- more narrowly specifying the subject matter of the records sought
 - the wording of the request could be modified to more specifically state the subject matter of the records requested

- narrowing the time period for the requested records
 - instead of specifying August 2013 to the present (April 27, 2017), the request could be amended to clarify that the records sought are those generated during the time period when discussions ensued regarding the change from H2 to H1 designation for helipads up to and including April 27, 2017.

Accordingly, a revised request could be worded as follows:

- “A copy of all final e-mails, briefing notes, reports and correspondence between the North Island Hospitals project team, MMM Group Limited and Transport Canada commencing from the time discussions ensued between the relevant parties regarding the change from H2 to H1 designation for helipads at the North Island Hospitals. This request does not include records pertaining to either the design and construction bid and evaluation process or design and construction phase for the hospitals unless they contain reference to subsequent change in helipad designation from H2 to H1.”

Option 1 recommendation of the CSRHD board:

THAT the following revised request for records under the Freedom of *Information and Protection of Privacy Act* be provided to Island Health:

“A copy of all final e-mails, briefing notes, reports and correspondence between the North Island Hospitals Project team, MMM Group Limited and Transport Canada commencing from the time discussions ensued between the relevant parties regarding the change from H2 to H1 designation for helipads at the North Island Hospitals. This request does not include records pertaining to either the design and construction bid and evaluation process or design and construction phase for the hospitals unless they contain reference to subsequent change in helipad designation from H2 to H1.”

2. Abandoning the request for records

- The board could pass a motion to abandon its request for records from Island Health.

Option 2 recommendation of the CSRHD board:

THAT the Comox Strathcona Regional Hospital District abandon its request under the Freedom of Information and Protection of Privacy Act to Island Health for records regarding the helipads at the North Island hospitals.

3. Paying the deposit (half of the fee estimate) to proceed with the request for records as originally defined

- The board could pass a motion to direct staff to proceed with the request as originally defined and pay the required deposit and any subsequent costs related to the request.

Option 3 recommendation of the CSRHD board:

THAT the Comox Strathcona Regional Hospital District board approve payment of the required fees relative to its request under the *Freedom of Information and Protection of Privacy Act* to Island Health for records regarding the helipads at the North Island hospitals.

4. Postponing the FOI request until such time as Transport Canada and Island Health have conducted the certification for helipad design

- Given that the City of Campbell River has recently sent a letter to the CSRHD enquiring as to the status of the helipad design and ability to accommodate helicopters, the CSRHD board may want to postpone its FOI request until the helipad certification is complete. Related correspondence from Chair Cornfield is included on the June 2017 CSRHD agenda.

Option 4 recommendation of the CSRHD board:

THAT the Comox Strathcona Regional Hospital District board postpone further processing of its request under the Freedom of Information and Protection of Privacy Act to Island Health for records regarding the helipads at the North Island hospitals until such time as the helipad certification process is complete.

The staff report recommends that the board approve option 4.

Financial Factors

The fee estimate is \$2,760 is based on an estimated 92 hours at \$30 per hour for Island Health staff to locate and retrieve the records that fall within the current scope of the request. The CSRHD would be required to pay the actual cost of processing the request whether it ends up being higher or lower than the estimate. Narrowing the scope of the request as suggested in this report is expected to reduce this fee estimate.

Prepared by:

K. Kenney

Kelly Kenney
Manager of Legislative Services

Concurrence:

J. Warren

James Warren
General Manager of
Corporate Services

Attachments: Appendix A – “Correspondence from CSRHD dated April 27, 2017 to Island Health”
Appendix B – “Correspondence from Island Health dated May 10, 2017 to CSRHD”

COMOX STRATHCONA
REGIONAL HOSPITAL DISTRICT



April 27, 2017

File: NIHP

Sent via email only: FOI@viha.ca

Ms. Krisna Phosy, FOI Analyst and Coordinator
Island Health
1952 Bay Street
Victoria, BC V8R 1J8

Dear Ms. Phosy:

Re: Request for records under the *Freedom of Information and Protection of Privacy Act*

On behalf of the Comox Strathcona Regional Hospital Board (CSRHD) I would like to request the following records under the *Freedom of Information and Protection of Privacy Act* pertaining to the helipads at the North Island Hospitals (new Courtenay and Campbell River hospitals):

All emails, reports and correspondence between the North Island Hospitals Project team, MMM Group Limited and Transport Canada from August 2013 to the present regarding the helipads at the North Island Hospitals.

Please forward all requested records via email to jwarren@comoxvalleyrd.ca or contact me at 250-334-6007 if you have any questions.

Sincerely,

J. Warren

James Warren
General Manager of Corporate Services

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Excellent health and care, for everyone,
everywhere, every time.



File Number: FOI17182

Comox Valley Regional District

RECEIVED

File:

MAY 15 2017

To: J. Warren

cc:

May 10, 2017

James Warren
Comox Strathcona Regional Hospital District
600 Comox Rd
Courtenay, BC V9N 3P6

Dear Mr. Warren:

I am writing further to your request received by Island Health. Your request is for:

A copy of all emails, reports and correspondence between the North Island Hospitals Project team, MMM Group Limited and Transport Canada from August 2013 to the present (April 27, 2017) regarding the helipads at the North Island Hospitals.

Section 75(1) of the Act provides that we may charge a fee for certain limited costs of processing your request. However, the first three hours to search for records and any time spent reviewing and/or severing information from the records is not charged to you. A copy of section 75 is enclosed for your reference.

Due to the size and scope of your request, we are assessing a **preliminary fee** based on search time only. You may wish to consider options to reduce or possibly eliminate the fee estimate, such as:

- Reducing the time period for which you have requested records, or
- Requesting records from specific program areas in Island Health, or
- Requesting specific types of records (e.g. final versus draft, correspondence, briefing notes, reports).

In an attempt to help you understand the volume of records and to aid in a possible narrowing of the scope of records that will need to be searched, the program area provided the following information.

.../2

Preparing Bid Process:

- As part of the bid process (which was underway in August of 2013) the North Island Hospital Project Team was engaged with 3 proponents who were preparing their Proposal Responses. This process allowed for the proponents to submit enquiries to Island Health who in turn would consider the enquiry, seek information from others in many cases and provide a response to all proponents. As a result there was a lot of correspondence generated during the bid process.

Evaluation of Bid Process:

- During the evaluation of bids phase of the project there is also potential for records that meet the parameters of the FOI request. We would need to review the records to determine if that is the case.

Design and Construction Process:

- The design and construction phase of the project has a significant volume of records. The sheer volume of records created during this time period requires a cursory review of all the records to determine what portion of that volume is likely responsive to the FOI request.

A more comprehensive fee estimate reflecting all chargeable items may be provided at a later date. Our office will work with you to try to find an efficient and cost effective method in which to provide records.

The preliminary fee has been calculated as follows:

92 hour(s) to locate and retrieve records @ \$30.00/hour = <i>Does not include the first 3 hours which are not charged to you</i>	\$2,760.00
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Due to the amount of the estimate, we will require a **deposit** in the amount of **\$1,380.00**. Please send a cheque or money order made payable to Island Health, quote your file number and mail it to:

Attn: Krisna Phosy
Island Health
Information Stewardship, Access and Privacy Office
Begbie Hall 1952 Bay Street
Victoria BC V8R 1J8

All reasonable efforts have been made to generate an accurate estimate. You will be required to pay the actual cost whether it is higher or lower than the estimate. If it appears that the actual cost of processing the request will be different than the original fee estimate, we may issue a revised estimate. In certain circumstances fees may be partially or entirely waived. We have enclosed a Fee Waiver Information Sheet for your convenience.

Where a balance of fees is owed, payment must be received prior to the release of the records. We will notify you if a balance is due. Your request will be placed on hold pending receipt of final payment.

In accordance with the Act, your request has been placed on hold pending receipt of your deposit or narrowing of the request. You have **20 business days** to respond to this letter. If we do not hear from you by **June 8, 2017**, we will consider your request abandoned and close the file.

If you have any questions regarding your request, please contact our office at 250-370-8585 or via email at FOI@viha.ca.

Under section 52 of the Act, you may ask the Information and Privacy Commissioner to review Island Health's response to your request. You have 30 days from receipt of this notice to request a review by writing to the Office of the Information and Privacy Commissioner. I have enclosed information on the review and complaint process.

Sincerely,



Krisna Phosy
Coordinator, Information Access Compliance
Information Access Compliance Team

Enclosures

Fees

75 (1) The head of a public body may require an applicant who makes a request under section 5 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.

(2) An applicant must not be required under subsection (1) to pay a fee for

- (a) the first 3 hours spent locating and retrieving a record, or
- (b) time spent severing information from a record.

(3) Subsection (1) does not apply to a request for the applicant's own personal information.

(4) If an applicant is required to pay a fee for services under subsection (1), the head of the public body

- (a) must give the applicant a written estimate of the total fee before providing the service, and
- (b) may require the applicant to pay a deposit in the amount set by the head of the public body.

(5) If the head of a public body receives an applicant's written request to be excused from paying all or part of the fees for services, the head may excuse the applicant if, in the head's opinion,

- (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.

(5.1) The head of a public body must respond under subsection (5) in writing and within 20 days after receiving the request.

(6) The fees that prescribed categories of applicants are required to pay for services under subsection (1) may differ from the fees other applicants are required to pay for them, but may not be greater than the actual costs of the services.

Fee Waiver Information Sheet

You have the right to request a fee waiver. Section 75(5) of the *Freedom of Information and Protection of Privacy Act* (the Act) sets out the rules regarding when a fee waiver may be granted by a public body. If you decide to request a fee waiver, you bear the burden of proof to establish that a waiver should be granted. You must demonstrate that:

1. You cannot afford the payment or for any other reason it is fair to excuse payment, or
2. The record relates to a matter of public interest, including the environment or public health or safety.

Please send your fee waiver request in writing and provide detailed evidence and reasons to support your case. You may mail or email this information to the analyst processing your request. Their contact information is provided in the body of the letter.

Island Health will consider these factors when assessing whether or not to grant a fee waiver request:

1. Inability to pay:

In order for the head of a public body to consider waiving or reducing the fee for reasons of inability to pay, you must provide sufficient evidence to allow the public body to make a fair determination. Sufficient evidence could include a financial statement, pay stub, bank statement or Canada Revenue Agency Notice of Assessment. ([Commissioner's Order 79-1996](#) and [2001-04](#)).

2. Public Interest:

In order for the head of a public body to consider waiving or reducing the fee because the records relate to a matter of public interest, you must provide sufficient evidence in support of the following factors:

- Has the information been the subject of recent public debate?
- Does the subject matter of the record relate directly to the environment, public health, or safety?
- Would dissemination of the information yield a public benefit by
 - disclosing an environmental, public health or safety concern
 - contributing meaningfully to the development or understanding of an important environmental, health, or safety issue, or
 - assisting public understanding of an important policy, law, program, or service?
- Do the records show how the public body is allocating financial or other resources?

If the head decides that the records do relate to a matter of public interest, then he or she must then determine whether you should be excused from paying all or part of the estimated fees. Factors that should be considered would include:

- Is your primary purpose to disseminate information in a way that could reasonably be expected to benefit the public, or to serve a private interest?
- Are you able to disseminate the information to the public?

If your primary purpose is to serve a private interest, then the head may be justified in refusing to waive fees, even where he or she is of the opinion that the records do relate to a matter of public interest. ([Commissioner's Order 155-1997](#)).

**How to Request a Review with the
Office of the Information and Privacy Commissioner**

If you have any questions regarding your request please our office at 250-370-8585.

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (the Act), you may ask the Office of the Information and Privacy Commissioner to review any decision, act, or failure to act with regard to your request under the Act.

Please note that you have 30 business days to file your review with the Office of the Information and Privacy Commissioner. In order to request a review please write to:

Information and Privacy Commissioner
PO Box 9038 Stn Prov Govt
4th Floor, 947 Fort Street
Victoria BC V8W 9A4
Telephone 250-387-5629 Fax 250-387-1696

If you request a review, please provide the Commissioner's Office with:

1. A copy of your original request;
2. A copy of our response letter; and
3. The reasons or grounds upon which you are requesting the review.