

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 026/2015

Ministry of Health

Summary: The Applicant submitted an access to information request to the Ministry of Health (Health). Health responded by stating that no records exist. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that there was a misunderstanding of the Applicant's request, and therefore, found that Health did not make a reasonable effort to locate the requested records. The IPC recommended that Health complete another search for records.

I BACKGROUND

[1] On December 12, 2014, the Ministry of Health (Health) received the following request:

This is a request for non-personal information created by or in custody of government, which is historical in nature and of public health interest. I request any and all information with the Ministry (as specified above) from October 17, 1999 back to January 1, 1980 that specifically discusses the "insuring", "delisting", "deinsuring" (e.g., <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1337903/>) of publicly-funded physician services billed through the Payment Schedule for Insured (Physician) Services (i.e., using "fee-for-services") that specifically include "pre-travel", "pre-departure", "travel medicine", "out-of-country" and/or "travel health" (or similar term for the pre-travel components of travel medicine services) "visit", "assessments", "immunizations", "counselling," (or similar term for pre-travel preventive services or interventions). An initial Index of Records would be appreciated to determine which files may be responsive to my request (i.e., I will determine responsiveness). This request is to include cabinet records, health policy position papers and any correspondence that addresses the described topic.

[2] In a letter dated December 19, 2014, Health responded by stating that no records exist.

[3] On February 9, 2015, the Applicant requested a review by my office.

[4] In correspondence dated February 11, 2015, my office notified Health and the Applicant of its intention to undertake a review. My office requested a submission from Health outlining its search efforts, and invited the Applicant to provide a submission representing his views on Health's response that records do not exist.

[5] My office received a submission from the Applicant on February 17, 2015 and Health's submission on February 23, 2015.

II RECORDS AT ISSUE

[6] Since Health asserted that there are no responsive records, the focus of this review will be on Health's search efforts.

III DISCUSSION OF THE ISSUES

[7] Health is a "government institution" as defined in subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

1. Did Health conduct an adequate search?

[8] As stated in past Review Reports, the focus of a search review is whether or not the public body conducted a reasonable search. A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request.

[9] The threshold that must be met is one of "reasonableness". In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable. FOIP does not require the public body to prove with absolute certainty that records do not exist.

[10] When a public body receives a notification letter from my office requesting details of its search efforts, the following can be included in the public body's submission (non-exhaustive):

- Outline the search strategy conducted:
 - For personal information requests – explain how the individual is involved with the public body (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search;
 - For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others;
 - Identify the employee(s) involved in the search and explain how the employee(s) is “experienced in the subject matter”;
 - Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
 - Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject
 - Consider providing a copy of your organizations record schedule and screen shots of the electronic directory (folders & subfolders).
 - If the record has been destroyed, provide copies of record schedules and/or destruction certificates;
 - Explain how you have considered records stored off-site;
 - Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
 - For electronic folders – indicate what key terms were used to search if applicable;
 - On what dates did each employee search?
 - How long did the search take for each employee?
 - What were the results of each employee’s search?

[11] Providing the above details does not guarantee that my office will find the search conducted was reasonable. Each case will require different search strategies and details depending on the records requested.

- [12] In its submission dated February 23, 2015, Health advised that the Director of Payments and Audits within the Medical Services Branch searched for responsive records. Health advised that the Medical Services Branch’s “paper records management was previously organized by functional area, subject matter and by year. There were no records stored on site that matched the requested criteria.” An email dated March 17, 2015 from my office sought clarification from Health – did the Director search through the records and determine that no records existed, or did she examine the records classification system and determine that no records exist. Health responded that there is only one filing cabinet that contains records regarding payment schedule fee code addition/changes. The files are organized alphabetically. Health asserted that this filing cabinet was physically searched but it turned up no responsive records.
- [13] Health’s search through a filing cabinet that contains payment schedule fee codes indicates that perhaps there is a discrepancy between Health’s understanding of what the Applicant is seeking versus what the Applicant is actually seeking. There would not be a payment schedule for travel immunizations because travel immunizations are not publicly funded. The Applicant, though, is seeking records pertaining to the decision to *not* fund travel immunizations. In other words, he is seeking records about a decision, and not records regarding payment.
- [14] Next, in its submission, Health advised that it searched through logs of files that were sent offsite but located no responsive records. An email from my office dated March 17, 2015 sought more information from Health regarding these logs. Health sent me a copy of the logs. The log is dated October 27, 1999. A three page chart provides information regarding boxes of records that were being transferred offsite, plus six pages of attachments that further describes contents of the boxes that were sent offsite.
- [15] When my office examine the log, I find that there may be records stored offsite that may be responsive to the Applicant’s request. This finding is based on the following:
- a. The Applicant specified he sought “cabinet records, health policy position papers and any correspondence that addresses the described topic”.

- b. On page 4 of the logs (header “Box 5 -1 1996”) provides that there was records classified as “05-80-41 Cabinet Submissions/Decisions” and “10-30-14 Policy & Planning Branch”.
 - c. Further, in his access request, the Applicant provided a link that suggests that there were changes to the *Canada Health Act* that may have affected the insurance of travel medicine. On the ninth page of the log (header “Box 5-6”), there were records classified as “40-20-60 Canada Health Act – Extra Billing, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993”). The log suggests that these records are permanent boxes in that they have not been destroyed.
- [16] However, Health did not provide material to suggest that it searched through these particular records that are stored offsite.
- [17] Finally, Health argued that it does not insure travel medicine and therefore it is reasonable to expect that it would not have responsive records. However, when I consider the Applicant’s request, it seems he is seeking records that pertain to the decision to *not* insure travel immunizations. He is not seeking records that deal with Health providing payment for insuring travel immunization.
- [18] In its Draft Review Report, my office recommended that Health conduct another search for records, and that the search for records include, but not be limited to, the records described in paragraph 15. In a letter dated April 17, 2015, Health agreed that it would conduct another search for records within 60 days. Health indicated it will review and redact any records that may be located, and then provide records to the Applicant.

IV FINDINGS

- [19] I find that Health did not make a reasonable effort to locate responsive records.

V RECOMMENDATIONS

[20] I recommend that Health complete another search for records.

Dated at Regina, in the Province of Saskatchewan, this 28th day of April, 2015.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner