

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT 031/2014**

**Ministry of Health**

**Summary:**

The Applicant requested information such as the date, location and patient outcomes, regarding critical incidents reported to the Ministry of Health (Health) since 2004. He wanted the information to be formatted into an electronic searchable form. Initially, Health refused the Applicant access to records, citing subsections 15(1)(c) and 17(3) of *The Freedom of Information and Protection of Privacy Act* as its reasons. The Applicant appealed to the Information and Privacy Commissioner (IPC). He asserted that he did not want the critical incident reports themselves but he only wanted information such as the date, location and patient outcomes. In the course of the review, Health asserted it should not have refused the Applicant access to the records but should have responded to the Applicant pursuant to subsection 7(2)(e) of FOIP – that the records do not exist. The IPC found that Health would have had to cull through critical incident reports and create a new record in order for the information to be in electronic searchable form. FOIP does not require a public body to create a new record to respond to an access to information request. As such, the IPC found that the record requested by the Applicant does not exist. He recommended that the Health continue to assert that the records do not exist.

**I BACKGROUND**

[1] On January 22, 2014, the Ministry of Health (Health) received the following access to information request:

A list in electronic searchable form such as Excel spreadsheet, of all critical incidents reported to the ministry since 2004 from every health region. Data should include the date and location of the incident, as well as patient outcomes.

- [2] Health responded in a letter dated February 14, 2014. It cited subsections 17(3) and 15(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as reasons for refusing the Applicant access. However, it offered the Applicant a 5-page table that broke down critical incidents into categories and by fiscal year.
- [3] On March 19, 2014, my office received a request for review from the Applicant. In his request, the Applicant clarified he did not seek the critical incident reports themselves but he only sought the “resulting statistical data”. He was interested in the data, location (hospital), and patient outcomes.
- [4] In its submission, Health asserted that it should not have relied on subsections 17(3) and 15(1)(c) of FOIP to refuse access to records. It said it should have responded to the Applicant pursuant to subsection 7(2)(e) of FOIP – that the records do not exist.

## **II RECORDS AT ISSUE**

- [5] According to its submission, Health’s position is that the records do not exist. Although the Applicant asserted he was not interested in the critical incident reports themselves, the information he sought would be in the critical incident reports. Therefore, if there are any records at issue, the records would be the critical incident reports.

## **III DISCUSSION OF THE ISSUES**

### **1. Does the information that the Applicant seek exist in the format he requested?**

- [6] The Applicant sought information such as the date, location and patient outcomes of critical incidents reported by health regions to Health since 2004. He asked for the information to be in a “searchable electronic format”.
- [7] Regional health authorities, or health regions, are required to provide written reports of critical incidents, as defined by subsection 58(1)(a) of *The Regional Health Services Act* (RHSA), to Health, pursuant to subsections 58(2) and 58(4) of the RHSA. These written

reports must contain the information listed in subsection 8(2) of *The Critical Incident Regulations* (CIR). Subsection 8(2) of the CIR provides:

8(2) A written report required by subsection (1) must include:

(a) a description of the circumstances leading up to and culminating in the critical incident;

(b) a statement identifying any current practice, procedure or factor involved in the provision of the health service or the operation of the program that:

(i) contributed to the occurrence of the critical incident; and

(ii) if corrected or modified, may prevent the occurrence of a similar critical incident in the future;

(c) a description of the actions taken and the actions intended to be taken by the regional health authority as a result of the investigation; and

(d) any recommendations arising from the investigation.

[8] Based on the above, the critical incident reports would not necessarily contain the information the Applicant sought. As stated earlier, the Applicant had stated in his request for review that he “was not requesting the critical incident reports themselves” but only the “resulting statistical data”.

[9] For the purpose of this review, Health provided my office with sample of critical incident reports it has received from various regional health authorities. Reports from different regions were in different formats. While some of the reports included information the Applicant sought, such as date and location, the records are not in the format that the Applicant is seeking.

[10] Further, an Analyst from my office met with Health employees on April 22, 2014 to review some of the critical incident reports. At the meeting, there were approximately 28 three-inch binders containing critical incident reports. These reports were from various health regions. Different health regions submitted reports in different formats. Again,

while some reports contained the information the Applicant sought, they were not in the format the Applicant is seeking.

[11] If Health was to provide the information the Applicant sought in the format he requested – a “list in electronic searchable form” – would require Health to cull through the reports to create a new record. FOIP enables access to records that already exist. FOIP does not require a public body to create a new record to respond to access to information request.

[12] Therefore, I find that the record requested by the Applicant does not exist.

#### **IV FINDINGS**

[13] I find that the record requested by the Applicant does not exist.

#### **V RECOMMENDATIONS**

[14] I recommend that Health continue to assert that the records do not exist.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of January, 2015.

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