



## **REVIEW REPORT 045-2017**

### **Ministry of Social Services**

**June 5, 2017**

**Summary:** The Applicant requested statistical information from the Ministry of Social Services (Social Services). Social Services responded by indicating no records exist. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that Social Services made a reasonable effort to search for records responsive to the Applicant's request and he recommended that Social Services take no further action.

#### **I BACKGROUND**

[1] On October 27, 2016, the Ministry of Social Services (Social Services) received the following access to information request:

1. Request the number of people who applied for social services and made CPP Application before receiving benefits – all cases male and female age 60 only applications.
2. Request the number of people who applied at age 60 only for social assistance without request for CPP at age 60 only.

[2] In a letter dated January 19, 2017, Social Services responded by indicating no records existed pursuant to subsection 7(2)(e) of *The Freedom of Information Protection of Privacy Act* (FOIP).

[3] On March 14, 2017, my office received a request for review from the Applicant. On the same day, my office notified both the Applicant and Social Services that it would be undertaking a review.

## II RECORDS AT ISSUE

- [4] At issue are Social Services search efforts to demonstrate that no records exist. Therefore, no records are at issue.

## III DISCUSSION OF THE ISSUES

- [5] Social Services is a government institution pursuant to subsection 2(1)(d)(i) of FOIP.

### 1. Did Social Services conduct an adequate search?

- [6] Section 5 of FOIP provides the right of access as follows:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

- [7] Section 5 provides individuals with the right of access to records in the possession or under the control of a government institution. FOIP does not require a government institution to provide with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

- [8] A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. 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.

- [9] Each access to information request is different so each request will require different search strategies. Below is a non-exhaustive list of examples of the details a government institution could provide in its submission to support its search efforts:

- 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.
- Explain how records that may be in the possession of a third party but in the public body’s control have been searched such as a contractor or information service provider. For more on this, see the OIPC resource, *A Contractor’s Guide to Access and Privacy in Saskatchewan* available on our website.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- 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?
  - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support

the details provided. For more on this, see the OIPC resource, *Using Affidavits in a Review with the IPC* available on our website.

- [10] The above is a non-exhaustive list and is meant to be a guide only. Each case will require different search strategies and details depending on the records requested.
- [11] In its submission, Social Services explained that it searched its Program Effectiveness Branch, Income Assistance Division. Since the Applicant sought statistical information, it searched within this particular branch because it is the central repository for all statistical data used within Income Assistance. The Director, Program Effectiveness, confirmed that it did not have the statistical information that the Applicant sought nor could it generate or create from existing data without a manual review of client files.
- [12] In his submission, the Applicant provided a copy of an access to information request he had submitted under the federal *Access to Information Act* to Employment and Social Development Canada (ESDC). His access to information to ESDC was very similar to his access to information request to Social Services, which is as follows:
1. The number of individuals who requested CPP benefits at age 60 both sexes for these years 2010, 2011, 2012, 2013, 2014, 2015, 2016 in Saskatchewan.
  2. If possible the number of people in Saskatchewan both sexes who received Social Services approved benefits at age 60. This would be available through the reporting channels you have as reflected in the Canada Assistance Act and the agreement between Saskatchewan and the Federal Government's Agencies.
- [13] To respond to the first part of his request, ESDC was able to provide the Applicant with a table that shows the number of individuals who requested Canada Pension Plan (CPP) benefits at age 60 for both sexes, from 2010 to 2016, in Saskatchewan. To respond to the second part of this request, ESDC indicated "This information is not available. Our agreements with Saskatchewan do not encompass this type of exchange".
- [14] ESDC's response to the second part of the Applicant's access to information supports Social Services' position that it does not have the record the Applicant seeks. ESDC indicates that it does not exchange information with Social Services regarding individuals applying for Social Services and CPP. If they did exchange such information, then it would be likely that the record the Applicant seeks does exist. However, since they do

not exchange such information, then it is conceivable that the record that the Applicant seeks does not exist.

[15] Therefore, based on Social Services' search efforts and because Social Services does not exchange information with ESDC that the Applicant seeks, I find that it is likely the record the Applicant seeks does not exist.

## **2. Is Social Services obligated to create a record?**

[16] To positively respond to the Applicant's request, Social Services would have to create a record for the Applicant. In some jurisdictions, there is an obligation on public bodies in certain circumstances to create a record. This is usually where information is in electronic format. For instance, in Alberta's *Freedom of Information and Protection of Privacy Act*, subsection 10(2) provides:

- 10(2) The head of a public body must create a record for an applicant if
- (a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and
  - (b) creating the record would not unreasonably interfere with the operations of the public body.

[17] In Saskatchewan, FOIP does not have a similar section. In past Review Reports, my office has said that the general rule is that the obligation on a government institution to assist an applicant does not include an obligation to create records which do not currently exist. In cases where records do not exist, my office encourages public bodies to provide information requested by citizens where it is practical and not too difficult. In this case, to create the record that the Applicant is seeking, Social Services would have to manually go through each client file to determine age, gender, and whether they have applied (or not) for CPP. I find that this would be a difficult task that Social Services has no obligation to undertake.

**IV FINDING**

[18] I find that Social Services has made a reasonable effort to search for records responsive to the Applicant's request.

**V RECOMMENDATION**

[19] I recommend that Social Services take no further action.

Dated at Regina, in the Province of Saskatchewan, this 5th day of June, 2017.

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