

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 057/2014

Ministry of Social Services

Summary:

In April 2014, an Applicant submitted an access to information request to the Ministry of Social Services (MSS). MSS advised the Applicant that it was withholding records in part pursuant to subsections 17(1)(a), (b), (d) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant proceeded to request a review by the Office of the Information and Privacy Commissioner (OIPC). Upon review, the Applicant advised the OIPC that he was not interested in the records withheld. The Applicant asserted there were other records not provided by MSS. MSS agreed to conduct another search for responsive records and to provide details of its search efforts to the OIPC for review. The Commissioner found that MSS had conducted a reasonable search for responsive records. As the Commissioner was satisfied with MSS' search efforts, there were no recommendations made.

I BACKGROUND

- [1] On April 18, 2014, the Ministry of Social Services (MSS) received an access to information request from the Applicant for the following:

I am an employee...and have worked with the Ministry of Social Services since 2006. I am requesting all of my personal information under the Freedom of Information Act...

- [2] In a letter dated April 25, 2014, MSS responded to the Applicant advising that it received the access to information request and that it was partially transferred to the Public Service Commissioner (PSC) pursuant to subsection 11(2)(a) of *The Freedom of Information and*

Protection of Privacy Act (FOIP). Further, in a letter dated May 20, 2014, MSS advised the Applicant that access to the records were denied in part pursuant to subsections 17(1)(a), (b), (d) and 29(1) of FOIP.

- [3] On June 6, 2014, my office received a request for review from the Applicant.
- [4] In a letter dated July 11, 2014, my office notified MSS and the Applicant of its intention to undertake a review. In my office's notification letter to MSS, my office requested a copy of the records, its Index of Records (Index) and a submission in support of the exemptions relied on.
- [5] My office received a copy of the record and Index from MSS on August 8, 2014. My office shared the Index with the Applicant. The Applicant advised my office that he was not interested in any of the records listed on the Index and was looking for the records from 2006 to 2012. On September 2, 2014, my office advised MSS of what the Applicant was looking for. MSS agreed to conduct a second search for records specific to the years 2006 to 2012 that would be responsive to the access request.
- [6] On October 8, 2014, MSS advised my office that it located some additional records and provided them to the Applicant. Further, it provided a submission containing details of its search efforts. My office followed up with the Applicant who advised that he was not satisfied with the additional records received and requested that my office review the search efforts conducted by MSS.

II RECORDS AT ISSUE

- [7] The records sought by the Applicant are records containing his personal information from 2006 to 2012 from a specific division of MSS.
- [8] MSS has asserted that it has searched for these records and the records could not be found or have been destroyed. Therefore, the focus of this review was on the search efforts conducted by MSS.

III DISCUSSION OF THE ISSUES

[9] MSS is a “government institution” as defined in subsection 2(1)(d)(i) of FOIP.

1. Did MSS conduct an adequate search?

[10] 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.

[11] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the government institution. FOIP does not require a government institution to prove 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.

[12] 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.

[13] To ensure a complete and adequate search, government institutions should utilize and document a search strategy which could include consideration of the following:

- Were records in any form or format considered (i.e. electronic, paper, and other)?
- Is the original access request broad and does it include information developed over a wide open time period? If so, determine how you will define the search?
- How do you intend to conduct the search for records in the public body’s possession?
 - Do you search yourself?
 - Do you delegate others to do the search? If so, how can you be sure that the search was comprehensive?
 - Do you send out an email to other units, etc.?

- Could records also exist that are responsive but are not in your possession, but in your control?
- Did agents, consultants or other contracted services have any role in the project the access request is referencing? If yes, should these records be included?

[14] When providing details of search efforts to my office, generally, the details should include:

- Who conducted the search?
- On what dates did each employee search?
- What was the search strategy?
 - for paper files; and
 - for electronic files (i.e. what key terms were used to search?)
- Which files or departments were searched and why?
- How long did the search take for each employee?
- What were the results of each employees search?
- Are there any additional program areas that should be searched in order to ensure that every reasonable effort was made?
- Have staff searched files held apart from the main department files (such as those held by individual employees), or records stored off-site?

[15] In its submission, MSS broke down the search it conducted and provided some explanations as to why it believed certain records did not exist. Attached to MSS' submission was a copy of the search instructions and log that it had provided to each of its employees for conducting their searches. The instructions and log included searches for paper, electronic and off-site storage files. MSS advised that the records requested pertain to the Applicant as an employee and common practice is for local management to create a file for each employee in order to maintain documentation while supervising/managing that employee. These files are not kept in a general filing area with operational records but are kept at management's desk/office in secured filing. Further, the file is considered a local file for use by the manager only and is not a part of the official personnel file. The personnel file is maintained by the PSC. Documentation

required for the personnel file is forwarded to the PSC. Additional records held on the local file are considered transitory and are destroyed when no longer needed.

- [16] MSS referred to the *Administrative Records Management System 2006* (ARMS) for its definition of transitory records which states that *transitory records* are records of a temporary usefulness that are needed for a limited period of time, to complete a routine task. Transitory records are not required to meet statutory obligations or to sustain administrative or operational functions and should be destroyed after they have served their purpose.
- [17] In its submission, MSS included details of searches done by three managers who were involved in managing the Applicant during the timeframe 2006 to 2012. MSS advised in its submission that the managers sent records relevant to the Applicant's personnel file to the PSC and securely destroyed transitory records (secure shredding) when the Applicant was no longer an employee under their supervision. A fourth manager was not included in the original search for records as the manager was away from the office for an extended period. The manager returned and was asked to search for responsive records on October 2, 2014 which resulted in the additional records being located and released to the Applicant. No further records have been located by MSS specific to the access request.
- [18] MSS has detailed its search efforts. In addition, MSS has provided details of how its searches were conducted, where they were conducted, who conducted them and what the outcomes were for each employee. Additional program areas did not need to be searched as the Applicant had specified the department he had previously worked in.
- [19] The threshold that must be met is one of "reasonableness". Based on what has been provided to my office, I find that MSS has demonstrated that its search for records responsive to the Applicant's access request was reasonable and adequate for purposes of FOIP.

IV FINDINGS

[20] I find that MSS has demonstrated that its search for records responsive to the Applicant's access request was reasonable and adequate for purposes of FOIP and that no further responsive records appear to exist.

V RECOMMENDATIONS

[21] There are no recommendations to be made at this time as I am satisfied with the efforts made by the Ministry of Social Services in this circumstance.

Dated at Regina, in the Province of Saskatchewan, this 5th day of November, 2014.

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