

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 068/2014

Ministry of Health

Summary: The Applicant submitted an access to information request to the Ministry of Health (Health) for a copy of a contract. Health responded by stating the record does not exist. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that Health made a reasonable effort to search for records. Due to his finding, the IPC had no recommendations.

I BACKGROUND

[1] On March 5, 2014, the Ministry of Health (Health) received the following access to information request:

A copy of the contract for health care linen services between 3sHealth and K-Bro Linen Services signed in December 2013.

[2] In a letter dated March 24, 2014, Health responded to the Applicant by stating that the record does not exist.

II RECORDS AT ISSUE

[3] As already stated earlier, the Applicant is seeking a copy of a contract between 3sHealth and K-Bro Linen Services signed in December 2013 for health care linen services. Health asserts that that the record does not exist. As such, the focus of this review is on the search efforts conducted by Health.

III DISCUSSION OF THE ISSUES

[4] 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?

[5] Section 5 of FOIP provides individuals with the right of access to records in the possession or control of a government institution:

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.

[6] However, FOIP does not require a government institution to prove with absolute certainty that records do not exist. However, government institutions must demonstrate that it has made a reasonable effort to identify and locate responsive records.

[7] 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. 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.

[8] Below is what my office considers when determining if a public body has made a reasonable effort to search for records:

- The search strategy conducted:
 - For personal information requests – explanation of 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 – the connection between the subject matter of the request to the departments/divisions/branches included in the search. In other words, an explanation why certain areas were searched and not others;

- Employee(s) involved in the search and an explanation how the employee(s) is “experienced in the subject matter”;
- Explanation of how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
 - Description of how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject
 - If applicable, copies of public body’s record schedule and screen shots of the electronic directory (folders & subfolders).
 - If applicable, copies of record schedules and/or destruction certificates;
 - Explain how you have considered records stored off-site;
- Explanation of 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 employees search?

[9] In its letter dated March 24, 2014 to the Applicant, Health asserted it had searched electronic and paper records within the Deputy Minister’s Office, and that it had searched with the Director of Communications and the Director of Regional Support, Planning and Labour. However, in its search, it did not locate the record.

[10] In its submission dated August 7, 2014, and in a clarification email dated February 2, 2015, Health explained that the Director, Regional Support, Planning and Labour

Relations (Director), and a Regional Consultant was involved in the original search for records. The Director was the primary individual within Health who handled matters related to 3sHealth. Her duties included weekly meetings with 3sHealth and she would provide advice, support and possible solutions to issues raised by 3sHealth. However, that particular Director has now left Health.

[11] Therefore, the Executive Director of Partnerships and Workforce Planning (Executive Director) had possession of all physical files related to 3sHealth. Together with the Senior Policy Analyst working on this review with my office, the Executive Director searched through the paper records left by the Director. They located presentations, publications, letters and memos but did not locate a copy of the contract being requested by the Applicant.

[12] In terms of electronic records, Health described in its submission dated August 7, 2014 that the Director had searched through her email account (prior to her departure), including her inbox, sent folder, 3sHealth folder (and subfolders) and her archive folder. The Director used the search function and typed in key words such as “KBro” and “K-Bro” in an attempt to locate records but did not find any. The Director also asserted that she had never attended a meeting with K-Bro nor had she ever seen the contract.

[13] In its email dated February 2, 2015, Health asserted that the Administrative Coordinator, Partnerships and Workforce Planning (Administrative Coordinator) conducted another search through its electronic records in the presence of the Senior Policy Analyst. The Administrative Coordinator located records that were budget documents for 3sHealth’s funding arrangement with Health along with correspondence and briefing notes. However, the Administrative Coordinator did not locate a copy of the contract requested by the Applicant.

[14] Regarding any off-site storage of records, Health asserts that no responsive records would have been stored off-site because 3sHealth has not been in existence long enough that would require Health to archive any records.

[15] Finally, Health asserts that it would not have the requested record in its possession or control because Health is neither a principle nor a signatory to the agreement and therefore, it would not have a business reason to have a copy of the contract. Since the contract is between 3sHealth and K-Bro Linen Services.

[16] Based on the details of the search provided to my office, I find that Health has made a reasonable effort to locate responsive records.

IV FINDINGS

[17] I find that Health has made a reasonable effort to locate responsive records.

V RECOMMENDATIONS

[18] I do not have any recommendations as I find that Health has made a reasonable effort to locate records.

Dated at Regina, in the Province of Saskatchewan, this 10th day of February, 2015.

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