

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 101/2014

Ministry of Justice (Corrections & Policing)

Summary: In August 2013, an Applicant submitted an access to information request to the Ministry of Justice (Corrections & Policing) (Justice). Justice advised the Applicant that it was denying access pursuant to subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as the record requested did not exist. Upon review, the Commissioner found that Justice had conducted a reasonable search for the responsive record. As the Commissioner was satisfied with Justice's search efforts, there were no recommendations made.

I BACKGROUND

[1] On August 15, 2013, the Ministry of Justice (Corrections & Policing) (Justice) received an access to information request from the Applicant for the following:

Complaint directed to Regina Leader Poste [sic] re. accuracy of Reporting investigation by one [name removed]

[2] In a letter dated September 12, 2013, Justice responded to the Applicant advising that it received the access to information request and was refusing access pursuant to subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as the record did not exist.

[3] On September 11, 2014, my office received a request for review from the Applicant.

[4] In correspondence dated November 11, 2014, my office notified Justice and the Applicant of its intention to undertake a review. In my office's notification letter to Justice, my office requested a submission outlining the search efforts undertaken to locate the responsive record.

[5] On November 24, 2014 and November 25, 2014, my office received submissions from the Applicant. On December 12, 2014, my office received a submission from Justice. On January 22, 2015, my office received an additional submission from Justice.

II RECORDS AT ISSUE

[6] Justice has asserted that no responsive records exist or could be found. Therefore, the focus of this review was on the search efforts conducted by Justice.

III DISCUSSION OF THE ISSUES

[7] Justice is a "government institution" as defined in subsection 2(1)(d)(i) of FOIP.

1. Did Justice conduct an adequate search?

[8] 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 and LA FOIP do 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] The above list is meant to be a guide. Providing the above details is not a 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, Justice broke down the search it conducted and provided some explanations as to why it believed the responsive record did not exist. Justice advised that the request is for a letter written in 1995 to the Leader Post by a former Chief Provincial Firearms Officer in relation to an article about the Applicant printed in the Leader Post by another individual. For this reason, Justice treated the request as a personal information request.

[13] Justice indicated that the Applicant submitted a total of 37 access to information requests between 2013 and 2014. At the time of the current access to information request at issue in this review, the Applicant sent six others the same day. As a result, any and all records pertaining to the Applicant from 1959 to 2013 were gathered on August 16, 2013 in order to deal with all requests efficiently and effectively. The record sought by the Applicant pre-dates March 28, 1995 as per the Leader Post Article. Justice provided an internal email dated August 16, 2013 from Policing Services to the access and privacy team at Justice. The email indicates that all records related to the Applicant were retrieved from Gemini (off-site storage) dating back to 1959. Further, no records have been destroyed by Justice in that timeframe. Therefore, if the record existed, it would be in the materials pulled from Gemini. The only involvement the Applicant has had with Justice was with Policing Services. Therefore, any records pertaining to the Applicant would be from this area. However, Justice also consulted with the Manger of Records Management who confirmed that all records pertaining to the Applicant would have been housed with Policing Services. The Manager had several years of experience with records pertaining to the Applicant.

[14] Justice also indicated that the lists of records stored at Gemini were reviewed to ensure all records had been retrieved. The records received were searched multiple times for different access to information requests. However, for the access to information request at issue, Justice again searched the boxes of records in September 2013. The search took two hours and was completed by an experienced staff member. No responsive record was found.

[15] The threshold that must be met is one of “reasonableness”. Based on what has been provided to my office, I find that Justice has demonstrated that its search for records responsive to the Applicant’s access request was reasonable and adequate for purposes of FOIP.

IV FINDINGS

[16] I find the search conducted by Justice in this case was reasonable.

V RECOMMENDATIONS

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

Dated at Regina, in the Province of Saskatchewan, this 26th day of January, 2015.

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