



REVIEW REPORT 107-2019

Water Security Agency

September 3, 2019

Summary: The Water Security Agency (WSA) received an access to information request for certain rules, regulations, procedural guidelines for determining and divesting excess lands. WSA indicated that records did not exist. After reviewing WSA's search for records and other information, the Commissioner found the WSA performed a reasonable search for records and recommended it take no further action.

I BACKGROUND

- [1] On March 12, 2019, the Water Security Agency (WSA) received an access to information request for “rules, regulations, procedural guidelines for determining excess land and procedures to divest of same”. The Applicant requested records from 2013 to the time of the access request.
- [2] On April 3, 2019, WSA replied to the Applicant's request indicating that responsive records did not exist.
- [3] On April 4, 2019, the Applicant requested a review of WSA's response. On April 10, 2019, my office notified both WSA and the Applicant of my intention to undertake a review of WSA's search for records.

II RECORDS AT ISSUE

[4] As this review deals with a review of WSA's search for records, there are no records to review.

III DISCUSSION OF THE ISSUES

1. Does FOIP apply in these circumstances?

[5] Subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) provides that the definition of a government institution includes a body that is prescribed in *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Subsection 3(a) of the FOIP Regulations indicates bodies listed in Part I of the Appendix are prescribed government institutions. WSA is one of the bodies listed in Part I of the Appendix, and as such qualifies as a government institution for purposes of FOIP. Thus, I have jurisdiction to conduct this review.

2. Did WSA perform a reasonable search for records?

[6] Section 5 of FOIP provides:

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 is clear that access to records must be granted if they are in the possession or under the control of the government institution subject to any applicable exemptions under FOIP.

[8] In the notification, my office requested that WSA describe its search efforts for the records in its possession or control that are responsive to the Applicant's 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 does not require the government institution to prove with absolute certainty that records do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.
- [10] 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. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.
- [11] When conducting a review of a government institution’s search efforts, details are requested that help my office understand the level of effort made to locate the records. Examples of the type of information that can be provided can be found in my office’s resource *IPC Guide to Exemptions for FOIP and LA FOIP*.
- [12] In its submission to my office on April 18, 2019, WSA indicated that it consulted with WSA’s General Counsel about records. The General Counsel has been working for WSA since 2009 and has been responsible for land administration for the entire 10 years. The General Counsel indicated that there has never been written material addressing “determining excess land and procedures to divest of same”. WSA indicated that the reason is that WSA only holds lands for water management purposes. However, there was one instance in 10 years where WSA held potentially excess lands. Further, WSA only reviews the lands it holds in the event of a Treaty Land Entitlement request.

[13] On July 24, 2019, my office asked further questions about WSA's search for records. WSA provided the following details about its search:

- WSA rules, regulations, and procedural guidelines are located on the corporate Intranet under the heading 'Policies'. This directory was searched on March 20, 2019.
- WSA staff searched the Lands database, Legal database, and hardcopy files located in the Legal, Lands and Aboriginal Affairs work unit on March 20, 2019.
- Between the dates of March 13 and 26, 2019, the following WSA work units were asked to search for responsive records in physical and/or electronic format:
 - Regulatory Affairs;
 - Licensing & Water Use;
 - Special Projects;
 - Planning & Business Improvement; and
 - Environmental & Municipal Management Services.
- On March 20 and 21, 2019, WSA's General Counsel reviewed all WSA's Lands-related policies and confirmed that none dealt with the disposal of WSA land.
- WSA's General Counsel also consulted with WSA's President and CEO (who formerly held the position of WSA General Counsel) about the existence of a WSA land disposal policy.

[14] WSA indicated that no responsive records were identified during this search process, and there was no indication that any land disposal policy was ever approved by WSA management.

[15] WSA has provided me with details of its search. It has also provided reasons why responsive records do not exist. I am satisfied that WSA has performed a reasonable search for records.

IV FINDING

[16] I am satisfied that WSA has preformed a reasonable search for records.

V RECOMMENDATION

[17] I recommend that WSA take no further action.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of September, 2019.

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