

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 110/2014

Ministry of Health

Summary: The Applicant submitted an access to information request to the Ministry of Health (Health). She did not receive a response within the legislated timelines so she appealed to the Information and Privacy Commissioner (IPC). Eventually, she did receive a response. The Applicant also dissatisfied with the search efforts of Health. The IPC found that Health did not respond within the legislated timelines. Further, it found that Health did not make a reasonable effort to search for records but that it was taking appropriate steps to address its deficiencies. The IPC recommended that Health continue to make changes to its processes so it can achieve timelier responses and more comprehensive searches for records.

I BACKGROUND

[1] On June 11, 2014, the Ministry of Health (Health) received the following access to information request:

All correspondence between the Ministry, eHealth, and their board of directors and Saskatoon Health Region's Children's Hospital of Saskatchewan project team concerning the Electronic Health Record (EHR) between October 1, 2012 and present.

[2] In a letter dated September 24, 2014, the Applicant wrote a letter to my office detailing her concern about not having received a response to her request.

[3] Soon after, in a letter dated September 26, 2014, Health advised the Applicant she was being refused portions of the record pursuant to subsection 17(1)(g) and subsection 29(1)

of *The Freedom of Information and Protection of Privacy Act* (FOIP). Further, it notified the Applicant that portions of the record had been redacted as non-responsive.

[4] The Applicant indicated to my office she was not satisfied with the response. Therefore, in a letter dated October 16, 2014, my office notified Health that it would be undertaking a review. It requested a submission on Health's decision to deny access to records pursuant to subsections 17(1)(g) and 29(1) of FOIP, its decision to redact portions of the records it determined to be non-responsive, and on its search efforts.

[5] My office received the submission on February 3, 2015. In its submission, it raised an additional exemption, subsection 17(1)(a) of FOIP. Health provided my office with a version of its submission that could be shared with the Applicant.

[6] Once the Applicant had reviewed the submission, she advised my office that she no longer had concerns about the application of subsections 17(1) and 29(1) of FOIP to withhold information within the records, and that she was not concerned about the records marked as non-responsive. Her concern over Health's search efforts remained.

II RECORDS AT ISSUE

[7] There are no records at issue.

III DISCUSSION OF THE ISSUES

1. Did Health respond to the Applicant within the legislated timelines?

[8] Subsection 7(2) of FOIP requires government institutions to respond to access to information requests within 30 days after the request is made. Subsection 7(2) provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:...

- [9] Subsection 12(1) of FOIP enables government institutions to extend the 30 days for a reasonable period not exceeding 30 days.
- [10] 114 days elapsed between the time Health received the access to information request to the time that the Applicant received a response from Health. I find that Health did not respond to the Applicant within the legislated timeline.
- [11] On February 12, 2015, my office recommended that Health make necessary changes to its processes so that it can respond to access to information requests in the future within the legislated timelines.
- [12] In response to the recommendation, Health stated the following in its letter dated February 13, 2015:
- Review the approval process to reduce the number of approvals and the time spent in this process.
 - Analysts will work with and get approval from responsive branches on their responsive records prior to the entire package being routed.
 - Engage the Kaizen Promotion Office (KPO) to ensure we are collecting and utilizing the most appropriate and best data.
 - Engage the KPO to analyze pressures and identify areas of improvement.
 - Added the Access to Information (ATI) process to the Ministry Wall Walk to enhance accountability within the Health Information Privacy Unit and across the Ministry.
 - Engage legal counsel to improve consistent interpretation and application of the law more generally.
 - Provide weekly updates to the Executive Director to help identify problems and opportunities for improvement.
 - Re-assign resources within the Partnerships and Workforce Planning Branch, on a temporary basis, to assist the Health Information Privacy Unit in addressing the significant, and growing, workload.

[13] I commend Health on identifying the above steps it will take to improve its response times.

2. Did Health make a reasonable effort to search for records?

[14] The Applicant made a similar request to another government institution. She expected to receive similar responses from Health and this other government institution. She received more records from the other government institution. Therefore, the Applicant was concerned about Health's handling of this request that resulted in her receiving a smaller amount of records.

[15] In its submission, Health identified 15 additional pages that were responsive to the Applicant's request but not included in its response to the Applicant. It explained that five of these pages were located in the Deputy Minister's office (DMO). In its original search for records, Health had only identified its Strategy and Innovation Branch (SIB) as the only area that would have had responsive records so it did not search the DMO.

[16] The ten remaining pages were not included in Health's response to the Applicant because it was missed in the search of electronic records. Health explained that these pages were missed because of two reasons. The first reason was that these pages contained a "minute amount" of information about the electronic health record so it did not catch the attention of the person searching for the records. The second reason was because of the parameters used for the search through the electronic records. For example, using the search term "EHR" instead of "electronic health record".

[17] After reviewing Health's submission, the Applicant rebutted that most decision items would be overseen or signed off by the DMO. Therefore, the DMO should be included in Health's search for records.

[18] Further, the Applicant asserted that if the Director of the Strategy and Innovation Branch was involved in the search for records, she would have had the awareness of appropriate search terms that would have captured the responsive records.

[19] In its submission, Health acknowledged its search issues. To address these search issues, it asserted in its submission that it will create additional standard work and instructions for searches of records, and that it would also search the DMO when it is reasonable to believe that it would have responsive records.

[20] In this case, I find that Health did not make a reasonable effort to search for records but that it is taking appropriate steps to address deficiencies in its search process.

IV FINDINGS

[21] I find that Health did not respond to the Applicant within the legislated timelines.

[22] I find that Health did not make a reasonable effort to search for records but that it is taking appropriate steps to address deficiencies in its search process.

V RECOMMENDATIONS

[23] I recommend that Health remain committed to the changes it is making to its processes by regularly evaluating whether it is achieving timelier responses and more comprehensive searches. It should continue to make necessary changes until both are achieved.

Dated at Regina, in the Province of Saskatchewan, this 13th day of February, 2015.

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