



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 116-2017

Ministry of Corrections and Policing

March 16, 2018

Summary:

The Applicant requested a copy of his case file from the Ministry of Corrections and Policing (Corrections and Policing). Corrections and Policing provided partial access to the file and applied subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to the withheld portions. Upon receipt, the Applicant believed records were missing and requested a review by the Office of the Information and Privacy Commissioner (IPC). Upon review, the Commissioner found that subsection 29(1) of FOIP was appropriately applied to the personal information of individuals other than the Applicant. Further, that the search for responsive records conducted by Corrections and Policing was reasonable and adequate for purposes of FOIP. The Commissioner recommended that Corrections and Policing continue to withhold the personal information of other individuals.

I BACKGROUND

[1] At the time of the access to information request, the Ministry of Justice was a single ministry. However, during the course of this review, the Ministry of Justice split into two ministries: the Ministry of Justice and Attorney General and the Ministry of Corrections and Policing. This report will refer to the Ministry of Corrections and Policing as it has the records the Applicant was seeking.

[2] On April 24, 2017, the Ministry of Corrections and Policing (Corrections and Policing) received an access to information request from the Applicant for:

I'd like copies of ENTIRE files reports written about me from 1991-1998. These reports had been written when I'd been housed in Dales House, Paul Dojack Youth

Centre, Kilburn Hall Youth Centre North Battleford Youth Centre, P.A. Social Services.

- [3] Corrections and Policing responded to the request by a letter dated May 24, 2017, indicating that access was partially granted. Corrections and Policing advised the Applicant that portions of the record were being withheld pursuant to subsections 3(1)(b), 13(1)(a), 13(2) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] On June 9, 2017, my office received a Request for Review from the Applicant. The Applicant asserted that records were missing from the package he received from Corrections and Policing. The Applicant also took issue with the exemptions applied by Corrections and Policing.
- [5] My office notified Corrections and Policing and the Applicant of our intention to undertake a review on June 16, 2017. In my office's notification to Corrections and Policing, my office requested a submission outlining the search efforts undertaken by Corrections and Policing to locate the records requested by the Applicant. In addition, my office requested Corrections and Policing provide support for the exemptions applied.
- [6] During the early resolution stage of the review, the Applicant indicated he was not concerned with the court records that were not provided to him pursuant to subsection 3(1)(b) of FOIP unless they were the reports he was looking for. The Applicant identified two reports and one letter that he asserted were missing from the package he received:
- Report written at Paul Dojack Youth Centre while on the tigers unit written in November of 1993. It was a discharge report of sorts, and he was shown it once he had arrived at Dale's House;
 - The report written by [worker's name] while he was at North Battleford Youth Centre written in October of 1996. It was presented to the courts as he transitioned from the young offender program to adult corrections; and
 - A letter the Applicant wrote to another offender while at Paul Dojack Youth Center. The letter was referred to in one of the Dales House records he was provided.

[7] On August 18, 2017, Corrections and Policing provided its submission to my office. In its submission, it advised it was no longer relying on subsections 13(1)(a) and 13(2) of FOIP and the records redacted under those provisions would be released to the Applicant. Corrections and Policing released those records to the Applicant via letter dated September 15, 2017.

[8] Further, after receiving a copy of the records, my office can confirm that the two court records withheld by Corrections and Policing under subsection 3(1)(b) of FOIP are not the records the Applicant claims are missing. One record is a Warrant of Committal and the other is a court order.

[9] As the matters involving subsections 3(1)(b), 13(1)(a) and 13(2) of FOIP have been resolved, the only issues remaining in this review are the search efforts conducted by Corrections and Policing and the application of subsection 29(1) of FOIP.

II RECORDS AT ISSUE

[10] The Applicant asserted that the following three records were missing:

1. Report written at Paul Dojack Youth Centre while on the tigers unit written in November of 1993. It was a discharge report of sorts, and he was shown it once he had arrived at Dale's House;
2. The report written by [worker's name] while he was at North Battleford Youth Centre written in October of 1996. It was presented to the courts as he transitioned from the young offender program to adult corrections; and
3. A letter the Applicant wrote to another offender while at Paul Dojack Youth Center. The letter is referred to in one of the Dale's House records he was provided with.

[11] Corrections and Policing has asserted that a thorough and reasonable search was conducted and the records do not exist. Therefore, part of the focus of this review is the search efforts conducted by Corrections and Policing.

[12] In addition, Corrections and Policing applied subsection 29(1) of FOIP to 13 pages. This includes pages 8, 9, 10, 16, 30, 38, 78, 100, 101, 102, 104, 109 and 120.

III DISCUSSION OF THE ISSUES

[13] Corrections and Policing is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP.

1. Did Corrections and Policing conduct an adequate search?

[14] Section 5 of FOIP provides an Applicant 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.

[15] 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 exemptions under Part III of FOIP.

[16] FOIP does not require a government institution to prove with absolute certainty that records responsive to an access to information request do not exist. It must, however, demonstrate that it has conducted a reasonable search to locate them.

[17] 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.

[18] 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. The submission to my office should outline the search strategy conducted which can include:

- 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.
- Explain how records that may be in the possession of a third party but in the public body's control have been searched such as a contractor or information service provider.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- 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?
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the IPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[19] The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

[20] In its submission, Corrections and Policing outlined the search it conducted. In its original search, Kilburn Hall only found school records. Paul Dojack Youth Centre was unable to find any responsive records for Paul Dojack Youth Centre or for Dale's House. North Battleford Youth Centre located a box of files stored at its offsite storage facility.

[21] Corrections and Policing advised that in addition to its original search, it conducted a second search for the three records alleged to be missing by the Applicant. Requests to search for the three records were sent to North Battleford Youth Centre, Kilburn Hall and the Paul Dojack Youth Centre on June 21, 2017. A response was received on June 27, 2017 from all three areas indicating no additional records were located. The staff that conducted the searches were all experienced staff with 15 to 30 years of experience.

[22] For the North Battleford Youth Centre, the Office Supervisor spent an hour searching through a list of records. The records are stored in paper files and sorted alphabetically by last name. Old files, such as files from the 1990s, are stored offsite at Gemini in numbered boxes. The Office Supervisor looked at the list which would indicate the box number that would have held the Applicant's file and requested the appropriate box from Gemini. Once received, she spent a half hour searching through the box for the alleged missing records. Unable to find them, she asked a colleague to look through the box. The colleague was also unable to find them.

[23] For Kilburn Hall, an excel spreadsheet lists what has been sent to offsite storage. The spreadsheet lists every box and its contents including names, birthdates, and types of files

included. The boxes are sorted by the date of last occurrence in the youth custody system. The records are all paper format. The employee spent a half hour to 45 minutes searching the excel spreadsheet to see if there were any other files related to the Applicant. She was unable to find anything beyond the school file for the Applicant.

[24] As noted earlier, a government institution does not have to prove with absolute certainty that records responsive to an access to information request do not exist. It must, however, demonstrate that it has conducted a reasonable search to locate them. The threshold that must be met is one of “reasonableness”. Reasonableness does not mean perfection but rather an effort that is objectively diligent and prudent in all the circumstances.

[25] Based on what has been provided to my office, I find that Corrections and Policing has demonstrated that its search for records was reasonable and adequate for purposes of FOIP.

2. Did Corrections and Policing properly apply subsection 29(1) of FOIP?

[26] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to subsection 24(1) of FOIP. Part of that consideration involves assessing if the information has the following two elements:

1. An identifiable individual; and
2. Information that is personal in nature.

[27] Once identified as personal information, the public body needs to consider subsection 29(1) of FOIP which provides:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[28] Corrections and Policing withheld portions of pages 8, 9, 10, 16, 30, 38, 78, 100, 101, 102, 104, 109 and 120 citing subsection 29(1) of FOIP.

[29] In its submission, Corrections and Policing asserted that the information qualified as personal information because the information severed included the names of individuals as well as identifying facts about their relationships, living situations, and reactions to situations.

[30] From a review of the pages, the majority of the information has been released with small snippets severed on each of the pages. The information severed consists of names of individuals and or information that could assist in identifying individuals.

[31] I find that the severed information on pages 8, 9, 10, 16, 30, 38, 78, 100, 101, 102, 104, 109 and 120 qualifies as personal information of someone other than the Applicant pursuant to subsections 24(1)(b), (f), (k)(i) and (ii) of FOIP which provide:

24(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

(f) the personal opinions or views of the individual except where they are about another individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual;

or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[32] Therefore, as I have found that the information qualifies as personal information of someone other than the Applicant, subsection 29(1) of FOIP restricting its disclosure was appropriately applied by Corrections and Policing.

IV FINDINGS

[33] I find that Corrections and Policing has demonstrated that its search for the three records the Applicant alleges are missing was reasonable and adequate for purposes of FOIP.

[34] I find that subsection 29(1) of FOIP was appropriately applied to pages 8, 9, 10, 16, 30, 38, 78, 100, 101, 102, 104, 109 and 120.

V RECOMMENDATION

[35] I recommend Corrections and Policing continue to withhold the severed information on pages 8, 9, 10, 16, 30, 38, 78, 100, 101, 102, 104, 109 and 120.

Dated at Regina, in the Province of Saskatchewan, this 16th day of March, 2018.

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