



## **REVIEW REPORT 123-2015**

### **Ministry of Justice**

**July 30, 2015**

#### **Summary:**

On December 23, 2014, the Ministry of Justice, Freedom of Information and Privacy branch (Justice) received an access to information request from the Applicant. On January 8, 2015, Justice requested clarification on the request from the Applicant. The Applicant provided Justice with the clarification they required on January 13, 2015. On February 2, 2015, Justice advised the Applicant that they were using an extension of time to respond to the request, pursuant to subsections 12(1)(a)(ii) and (b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). On March 5, 2015, Justice advised the Applicant that access to the requested records was denied pursuant to subsection 7(2)(e) of FOIP as the requested records did not exist. The Applicant requested a review of Justice decision to use a time extension and their search efforts for responsive records. The Commissioner found that the time extension and search efforts were reasonable. The Commissioner recommended that Justice take no further action.

#### **I BACKGROUND**

[1] On December 23, 2014, the Ministry of Justice, Freedom of Information and Privacy branch (Justice) received an access to information request for:

Any and all emails, letter(s) of complaint, and correspondence held within public prosecutions pertaining to [name of individual] and [name of individual] regarding concerns of but not limited to corruption and breach of ethical conduct involving their employment at [place of employment] from January 2009 to June 2014.

(Correspondence internal and external)  
Dates of interest January 2009 – June 2014.

- Any and all information pertaining to [name of individual] and [name of individual] held by Prosecutions
- Individuals that may or may not be a source to these emails, letters, official correspondence are: [names of employees].
- [2] In a letter dated January 8, 2015, Justice advised the Applicant that they had not been provided sufficient details to search for the records they were requesting. Justice requested the Applicant provide further clarification pursuant to subsection 6(3) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] The Applicant contacted Justice by phone on January 13, 2015 and clarified that his request was for records that contained “proof or allegations against the Applicant.”
- [4] In a letter dated February 2, 2015, Justice advised the Applicant they would be applying a time extension to their response pursuant to subsections 12(1)(a)(ii) and (b) of FOIP.
- [5] On March 5, 2015, Justice advised the Applicant that access to the requested records was denied pursuant to subsection 7(2)(e) of FOIP as the requested records did not exist.
- [6] On May 29, 2015, the Applicant requested my office review Justice’s decision to apply a time extension to their response to the Applicant and their search efforts for responsive records.
- [7] In emails dated June 29, 2015, my office advised both Justice and the Applicant of the review.

## **II RECORDS AT ISSUE**

- [8] There are no records at issue as Justice has taken the position that the requested records do not exist.

### III DISCUSSION OF THE ISSUES

[9] Justice qualifies as a “government institution pursuant to subsection 2(1)(d)(i) of FOIP.

#### 1. Did Justice appropriately apply an extension of time to their response?

[10] Subsections 12(1)(a)(ii) and (b) of FOIP provides as follows:

12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

...

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the government institution;

(b) where consultations that are necessary to comply with the application cannot reasonable be completed within the original period;

[11] Justice submission to my office, provided as follows:

At the end of December 2014, the Ministry had 64 Access to Information (ATI) Requests. This request was received December 23, 2014 and required clarification from the applicant, which was received January 13, 2015. By the end of January the number of open ATI requests had spiked to 108. Additionally, the staff member responsible for this request as well as several others left the branch at the end of January 2015. Due to these circumstances, the work assignments needed to be reallocated to the remaining staff. Through this process and in reference to the volume of requests opened in a very short period of time, consultations between the Freedom of Information and Privacy Branch and various other officials and program areas within the Ministry were extended to ensure requests were thoroughly searched...

[12] My office contacted Justice for further details and was advised that at the time there were seven vacancies in the Freedom of Information and Privacy Branch when the number of open requests rose to over 100. In an email, Justice advised that normally the average number of open requests would be “somewhere between twenty five to fifty.”

- [13] Both the Office of the Information and Privacy Commissioner for British Columbia and Nova Scotia's Freedom of Information and Protection of Privacy Review Office have resources entitled *Time Extension Requests Guidelines for Public Bodies*. In these resources it lists circumstances that may contribute to unreasonable interference. The lists include: significant increase in requests, significant increase in analysts caseloads and unexpected analysts leave.
- [14] Although a "large number of requests" is not defined, it is reasonable to consider at least double the amount of requests normally open with Justice to be a large number of requests for that Ministry. Further, the fact that at that time Justice had seven vacancies in their Freedom of Information and Privacy Branch, it is reasonable to consider the interference with the operations of the government institution to have been met.
- [15] Based on the information provided to my office, it appears Justice has reasonably applied an extension of time to their response to the Applicant.
- [16] As an extension of time pursuant to subsection 12(1)(a)(ii) of FOIP appears to have been applied appropriately, I will not consider the application of subsection 12(1)(b) of FOIP.

**2. Did Justice perform a reasonable search for responsive records?**

- [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. 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. Public bodies are not required to prove with absolute certainty that records do not exist.
- [18] The Applicant's submission to my office indicated that he had knowledge of records that existed, however I was not provided anything to support this assertion.

[19] Justice's submission indicated that the Executive Director of Public Prosecutions was asked to search for records responsive to the Applicant's request. The search included its electronic case management system, as well as physical files and emails of specific employees that were named in the request that still worked for Public Prosecutions but no responsive records were found.

[20] Based on the information provided to my office, I find Justice has demonstrated that its search for records responsive to the Applicant's request was reasonable and adequate for purposes of FOIP.

#### **IV FINDINGS**

[21] I find that Justice has provided a reasonable explanation for applying a time extension to their response to the Applicant.

[22] I find that Justice has provided sufficient information to find that they have conducted a reasonable search for responsive records.

#### **V RECOMMENDATION**

[23] I recommend that Justice take no further action regarding the request for these records.

Dated at Regina, in the Province of Saskatchewan, this 30th day of July, 2015.

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