

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 129-2014

Ministry of Health

Summary: The Applicant submitted an access request to the Ministry of Health (Health). The Applicant received notice from Health that it would be extending the period to respond pursuant to the access request pursuant to subsection 12(1)(a)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). After a conversation with Health, the Applicant asserts that she was advised by Health to withdraw her request, and submit two new access requests. She did so. Unfortunately, she still did not receive a response to neither request within legislated timelines. 138 days elapsed before she received a response to one of her requests. She was also concerned that certain records were not included in the response from Health. She appealed to the Information and Privacy Commissioner (IPC). The IPC found that Health did not respond to the Applicant within the legislated timelines and that Health conducted an adequate search for records. He recommended that Health continue to strive to respond to access requests within the legislated timelines and that Health continues to clarify access requests with applicants.

I BACKGROUND

[1] On July 4, 2014, the Ministry of Health received an access request. On July 22, 2014, Health advised the Applicant that it was extending the period to provide a response pursuant to subsection 12(1)(a)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). However, on August 28, 2014, the Applicant withdrew her access request after a discussion with Health.

[2] On August 30, 2014, Health received two new access requests. In her Request for Review to my office, the Applicant asserts she was advised by Health to split her original request

to two new access requests. This Draft Review Report only deals with one of the two new access requests. The access request at issue on this file is as follows:

All internal Ministry of Health (including with any and all Governing Council committee members) correspondence or documentation of discussions regarding the JBA contract negotiations to “scale back the lean consultant contract”. FINAL email chains only.

[3] On September 25, 2014, Health notified the Applicant it was extending the period to provide a response to the Applicant pursuant to subsection 12(1)(a)(i) of FOIP.

[4] On November 20, 2014, the Applicant appealed to my office because she still had not received a response from Health.

[5] On January 15, 2015, Health responded to the Applicant’s request. 125 pages of records, partially redacted, were released to the Applicant.

[6] On March 10, 2015, the Applicant advised my office she was not satisfied with Health’s response. Her three concerns were as follows:

- a. The time it took Health to respond to access to information request.
- b. The attachment to an email dated May 29, 2014 was not a part of the 125 pages of records she had received and,
- c. A string of emails seemingly missing from an email exchange that seems to begin at the beginning of May 2014, then suddenly stopping, and then resuming at the end of May 2014.

[7] On March 11, 2015, my office notified Health of the Applicant’s remaining concerns and requested that it provide a submission.

[8] My office received Health’s submission on April 17, 2015.

II RECORDS AT ISSUE

[9] The records at issue are as follows:

- An attachment to the email dated May 29, 2014. They are documents provided to the Ministry of Health by a third party for the purposes of contract negotiations with Health.
- Two emails from May 2014 between Health and an external organization.

III DISCUSSION OF THE ISSUES

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

[10] 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:...

[11] Subsection 12(1) of FOIP enables government institutions to extend the 30 days for a reasonable period not exceeding 30 days.

[12] 138 days elapsed between the time Health received the access to information request to the time that the Applicant received a response. I find that Health did not respond to the Applicant within the legislated timelines.

[13] I have already issued eight reports addressing the issue of delay. Health has assured my office that it is committed to improving its response times and I remain hopeful that the issue of delay will soon become an issue of the past. I recommend that Health continue to strive to respond to requests within the legislated timelines.

[14] Regarding the Applicant's assertion that she was advised to withdraw her original request and submit two new requests, I dealt with this matter in Review Report 128-2014. Health advised it has implemented a standard work process where it seeks clarification from the Applicant early in the processing of an access to information request so it understands what the Applicant is seeking and to avoid delays. I find that creating the standard work

process is appropriate. I recommend that Health continue its course of clarifying access requests with Applicants.

2. Did Health conduct an adequate search for records?

[15] In its submission, Health advised that since the Applicant requested the final email chains only, that the attachment for the email was not captured. It explained that once an email with an attachment is replied to, the attachment would not be attached to the reply. I understand and accept Health's explanation as to why the attachment was not included in the responsive records. I find that the email attachment is not responsive to the request.

[16] In the course of the review Health located the email attachment. It advised that the email attachment would be withheld in full under subsections 19(1)(b) and 19(1)(c) of FOIP. Since I have found the email attachment to be non-responsive, I will not consider these two exemptions.

[17] For the string of emails that are seemingly missing, Health explained that there were two additional emails that were not internal but they were between Health and another organization. Since the Applicant requested "internal" correspondence or documentation, Health regarded these two emails as outside the scope of the request. When I review the two emails, I see that the emails are between Health and another organization. I accept that these emails are not "internal" and not responsive to the Applicant's request.

IV FINDINGS

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

[19] I find that Health conducted an adequate search for records.

V RECOMMENDATIONS

[20] I recommend that Health continue to strive to respond to access requests within the legislated timelines.

[21] I recommend that Health, after receiving a request and lacking clarity, strive to clarify access requests with Applicants.

Dated at Regina, in the Province of Saskatchewan, this 25th day of May, 2015.

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