



REVIEW REPORT 131-2019

Ministry of Corrections and Policing

February 12, 2020

Summary:

The Applicant submitted an access request to the Ministry of Corrections and Policing (the Ministry). The Ministry responded by providing the Applicant access to records, but it withheld the badge number of a police officer that appears on two pages of records. The Ministry cited subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as reason for withholding portions of the two pages. The Commissioner found that a police badge number does not qualify as personal information as defined by subsection 24(1) of FOIP. The Commissioner recommended that the Ministry release the two pages in their entirety. The Commissioner also found that the Ministry conducted a reasonable search for records.

I BACKGROUND

- [1] On November 14, 2019, the Ministry of Corrections and Policing (the Ministry) received the following access to information request, (which was dated November 7, 2019):

Please send all records relating to me including records originating at other trustees to the address above. State a reason for redaction or omission of every record not included. I don't have the ability to pay for this information. My identification is attached.

This notice revokes consent to collect, use or disclose my information with respect to the Health Information Protection Act section 7.

Do not send me an official form as I won't submit one and this letter obligates you under legislation. As per HIPA you have until November 21st to respond to my October 21st request and **until December 7th to respond to my request for records between October 21st and November 7th.**

Emphasis added

- [2] As noted in the above quote, the Applicant had sent in an earlier access request to the Ministry. That access request is discussed in Review Report 130-2019. This Review Report deals with the Applicant's access request for records about the Applicant between October 21st and November 7th, 2018.
- [3] In a letter dated November 28, 2018, the Ministry responded by providing the Applicant access to records. However, it withheld portions of the records. The Ministry cited subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as its reason. It also said that since it had already provided records up until October 25, 2018, the responsive records are from the time period of October 26, 2018 to November 7, 2018.
- [4] In an email dated April 1, 2019, the Applicant requested a review by my office.
- [5] In emails dated May 10, 2019, my office notified the Applicant and the Ministry that it would be undertaking a review.

II RECORDS AT ISSUE

- [6] At issue are two pages to which the Ministry applied subsection 29(1) of FOIP. The Ministry released the majority of the two pages to the Applicant. However, it withheld a police officer's badge number that appears on each of the pages.
- [7] Another issue in this review that does not involve records is the Ministry's search efforts.

III DISCUSSION OF THE ISSUES

1. Does FOIP apply and do I have jurisdiction to review this matter?

- [8] The Ministry qualifies as a "government institution" as defined by subsection 2(1)(d)(i) of FOIP. Therefore, FOIP applies and I have jurisdiction to review this matter.

[9] The Applicant cited *The Health Information Protection Act* (HIPA) in their access request. However, HIPA deals with personal health information. The information at issue is a police badge number. It is obvious that a police badge number does not qualify as personal health information as defined by subsection 2(m) of HIPA. I should also note that subsection 24(1.1) of FOIP also provides that “personal information” does not include information that constitutes personal health information as defined by HIPA. Therefore, I must consider if a police number qualifies as “personal information” as defined by subsection 24(1) of FOIP as HIPA does not apply.

2. Did the Ministry properly apply subsection 29(1) of FOIP?

[10] The Ministry applied subsection 29(1) of FOIP to two pages of the responsive record – pages 40 and 41. Subsection 29(1) of FOIP provides as follows:

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.

[11] In order to rely on subsection 29(1) of FOIP to withhold records, the government institution must determine if the information qualifies as “personal information” as defined by subsection 24(1) of FOIP. A part of the determination involves assessing if the information has both of the following:

1. Is there an identifiable individual?
2. Is the information personal in nature?

[12] Subsection 24(1) of FOIP defines “personal information as follows:

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:

...

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in *The Health Information Protection Act*;

...

(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.

[13] It should be noted that the list of personal information set out in subsection 24(1) of FOIP is not an exhaustive list. Information that is personal in nature about an identifiable individual can be considered personal information under subsection 24(1) of FOIP. If the information is about an individual other than the Applicant, then the information could be withheld under subsection 29(1) of FOIP.

[14] In its submission, the Ministry submitted that since police services are not "government institutions", police officers are individuals who receive the personal information protections set out in FOIP. The Ministry provided that a police officer's badge number is an identifying number that is assigned to an individual by a police service and falls within the non-exhaustive examples enumerated in subsection 24(1)(d) of FOIP. As such, the Ministry's position is that a police badge number qualifies as personal information as defined by FOIP. Therefore, the Ministry said it was required to deny access to the portions of pages 40 and 41 where the police badge number appears.

[15] In an undated letter received by my office on June 27, 2018, the Applicant argued that the badge number is to identify the employee in their professional capacity.

[16] In Review Report 059-2017, I found that information generated by employees in the course of their professional or employment duties would not qualify as personal information:

I must determine if the information about the employees of organizations other than PCC qualify as personal information. **As mentioned earlier, the names of non-PCC employees appear with other information including badge numbers**, signatures, and business contact information. To determine whether such information qualifies as personal information, I consider subsection 24(1)(k) of FOIP, which provides:

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:

...

(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.

[64] In Review Report LA-2012-002, my office found that information generated by employees in the course of their professional or employment duties would not qualify as personal information. It found that information “employment history” would be information that would normally be found within an individual’s personnel file including performance reviews, disciplinary actions taken, and reasons for leaving a job. My office’s findings in that Review Report were upheld by the Court of Queen’s Bench of Saskatchewan in *Evenson v. Kelsey Trail Regional Health Authority*, [2012] SKQB 382 where Zarzeczny J. said at paragraph [9]:

The facts, circumstances, analysis and conclusions which the Commissioner reached in his Report are the same as those that I have reached in my review of this matter de novo. I am in complete agreement with the Commissioner’s Report.

[65] Therefore, **I find that the information about employees of organizations other than PCC does not qualify as personal information as defined by subsection 24(1) under FOIP.**

[Emphasis added]

[17] Based on a review of the two pages, I note that the badge number appears next to the Escorting Officer’s signature on both pages. Each page is part of a Ministry “Offender Return Form”. Therefore, it appears that the Escorting Officer was working in their professional capacity when filling out the form. Information such as the Escorting Officer’s badge number was generated in the course of the Escorting Officer’s course of their professional or employment duties. As such, I find that the badge number that appears on pages 40 and 41 does not qualify as personal information as defined by subsection 24(1) of FOIP. I recommend that the Ministry release pages 40 and 41 in their entirety to the Applicant.

3. Did the Ministry conduct a reasonable search for records?

[18] FOIP does not require a government institution to provide 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.

[19] 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.

[20] 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, 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.

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

[22] In its submission, the Ministry explained that it had a Programs Clerk and a Medical Administrative Clerk conduct the search. As explained in Review Report 130-2019, they searched on-site and in their "Records Room" and the medical file in the Medical Clinic. They searched the Criminal Justice Information Management System (CJIMS) and printed the incident reports. The Ministry searched for the time period October 25, 2018 to November 7, 2018.

[23] In an undated letter, received by my office on June 27, 2019, the Applicant indicated that there was no copy of the sign "No showering, no complaining" sign that was posted in

Admitting that was not provided to them. However, I note that their access request was for records related to them personally. Such a sign is not about the Applicant personally. Therefore, I find that such a sign would be outside the scope of the access request. The absence of such a sign is not indicative that the Ministry did not conduct a reasonable search for records. Furthermore, I note that in my office's Review Report 036-2019, 077-2019, my office conducted a review of how the Ministry processed an access request from this particular Applicant. In that review, the Applicant had submitted an access request that explicitly requested the sign, "No showering, no complaining". Since I have already dealt with the sign in that review, I will not deal with it in this review.

[24] I find that the Ministry has conducted a reasonable search for records.

IV FINDINGS

[25] I find that FOIP applies in the circumstances, not HIPA.

[26] I find that the badge number that appears on pages 40 and 41 does not qualify as personal information as defined by subsection 24(1) of FOIP.

[27] I find that the Ministry has conducted a reasonable search for records.

V RECOMMENDATION

[28] I recommend that the Ministry release pages 40 and 41 in their entirety to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 12th day of February, 2020.

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