



REVIEW REPORT 132-2017

Public Complaints Commission

September 13, 2017

Summary:

In the course of a previous review (Review Report 059-2017) by the Information and Privacy Commissioner (IPC), records were identified and marked as “non-responsive”. Since the issue of whether records were responsive or not were not a part of the original scope of the previous review, the IPC undertook another review focused on whether records were responsive or not to the Applicant’s access to information request. The IPC found that the records were indeed non-responsive. He also found that it is likely that PCC did not follow best practice. He recommended that PCC fulfill its responsibility under section 8 of *The Freedom of Information and Protection of Privacy Act* (FOIP).

I BACKGROUND

[1] On March 13, 2017, the Applicant submitted an access to information request to the Public Complaints Commission (PCC) for the following:

Please provide, to me, all records available, from the Public Complaints Commission. The PCC file is 16-063.

[2] PCC responded in a letter dated March 14, 2017. It indicated that it was refusing the Applicant access to the records in their entirety. Its letter cited subsection 15(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] The Applicant appealed to my office and my office undertook a review, which is documented in Review Report 059-2017. In the course of that review, PCC marked records as “non-responsive”. Since PCC had not indicated to the Applicant in its letter dated March 14, 2017 that he was being refused access to some of the records because

they were considered as “non-responsive”, the issue of whether the records were indeed non-responsive was not captured within the scope of my office’s Review Report 059-2017.

- [4] This review is to determine if the records marked as non-responsive are indeed non-responsive to the Applicant’s access to information request.

II RECORDS AT ISSUE

- [5] At issue are the records marked as “non-responsive” to the Applicant’s request. Specifically, pages 519 to 584, 597 to 606, and 609 to 625 of the record discussed in my office’s Review Report 059-2017 are at issue.

III DISCUSSION OF THE ISSUES

1. Are the records non-responsive to the Applicant’s request?

- [6] PCC asserts that these pages were marked as non-responsive because these records were created after the Applicant submitted his access to information request on March 13, 2017.

- [7] Only records that exist on the day that a government institution receives an access to information request should be responsive to the access to information request. That is because it is physically impossible for a government institution to reach into the future to determine what records will exist. Freedom of information legislation in other jurisdictions allow for the applicant to make continuing requests so that records created in the future may be responsive to an applicant’s request. However, in Saskatchewan, FOIP does not allow for continuing requests.

- [8] Therefore, based on the above, records created on or prior to March 13, 2017 would be responsive to the Applicant’s access to information request.

[9] Based on a review of the records at issue, I note they were created after March 13, 2017. Therefore, I find that they are non-responsive.

2. Did PCC follow best practice?

[10] Section 7 of FOIP requires that government institutions respond to applicants within 30 days of receiving an access to information request. Government institutions are rarely able to respond to access to information requests instantaneously due to the amount of work that is required in processing an access to information request. This work includes searching, reviewing, severing, and preparing records for release pursuant to section 8 of FOIP, which provides:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[11] In this case, as noted in the background, PCC responded to the Applicant's request within one day. The Applicant submitted his access request on March 13, 2017. PCC responded to the Applicant in a letter dated March 14, 2017. That is an incredible turnaround time, given there were well over 500 pages of responsive records (as noted in my office's Review Report 059-2017).

[12] PCC's one-day turnaround time in responding to the Applicant's access request and the non-responsive records being created after PCC's March 14, 2017 response to the Applicant suggests that PCC did not search, review, sever, and prepare records prior to responding to the Applicant's request. It is likely that PCC applied exemptions to records in the abstract when it responded to the Applicant's request. It is likely that it was only during the course of my office's review did it conduct a search for records, which resulted in the non-responsive records being compiled as well.

[13] I find that PCC did not follow best practice.

[14] I recommend that PCC ensure it fulfills duties pursuant to section 8 of FOIP prior to responding to an access to information request.

[15] When my office conducts a review, it establishes the scope of the review in an email (or letter) that is sent to both the government institution and the Applicant. In this case, my office sent an email to PCC dated June 27, 2017 that requested PCC explain how parts of the record qualify as non-responsive. Then, in response to my office's draft review report, PCC asserted that the issue of best practice should have been dealt with in my office's Review Report 059-2017. It suggested that my office's report should focus solely on the issue of whether records identified as non-responsive in Review Report 059-2017 were non-responsive.

[16] While I acknowledge PCC's position, I note that records were marked as non-responsive as a result of PCC not likely following best practice and fulfilling its responsibilities under section 8 of FOIP when it initially received the Applicant's access to information request. I find it appropriate to analyze the issue of best practice in this review.

IV FINDINGS

[17] I find that the records at issue were non-responsive to the Applicant's access to information request.

[18] I find that PCC did not follow best practice.

V RECOMMENDATION

[19] I recommend that PCC ensure it fulfills duties pursuant to section 8 of FOIP prior to responding to an access to information request.

Dated at Regina, in the Province of Saskatchewan, this 13th day of September, 2017.

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