



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 152-2018, 195-2018**

### **Ministry of Education**

**January 28, 2019**

**Summary:** The Applicant submitted two similar and related applications for access to records to the Ministry of Education on July 24, 2018 and August 30, 2018. The Ministry of Education refused the Applicant access to records for the reason that records did not exist. The Commissioner found that the Ministry of Education appeared to follow a reasonable search strategy to find responsive records; however, in this case, the searches conducted were not needed because the subject matter of the two applications did not concern the Ministry of Education. The Commissioner noted that the Ministry could have transferred the applications elsewhere or alternatively, the Applicant can now make an application for access to records with the institution that may have responsive records.

### **I BACKGROUND**

- [1] The Applicant submitted two similar and related applications for access to records to the Ministry of Education on July 24, 2018 (Request #1) and August 30, 2018 (Request # 2).
- [2] Request # 1 was an application for access to “Any reports, correspondence or emails relating to the Justice for Our Stolen Children camp in Wascana Centre. The time period for the request was from January 2018 to present.” Request # 2 was an application for access to “Any reports and briefing notes relating to the Justice for Our Stolen Children camp in Wascana Centre from January 2018 to present.”

- [3] On July 30, 2018 and September 11, 2018, the Ministry of Education provided the Applicant with written responses pertaining to their Request # 1 and Request # 2, respectively. These letters indicated that in accordance with subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP), access to the requested records was refused for the reason that records did not exist.
- [4] The Applicant, dissatisfied with the responses received from the Ministry of Education, submitted two applications for review to my office – one application was received by my office on August 13, 2018 and the other was received on September 21, 2018. The Applicant advised my office via their applications for review and verbally, that news articles published online in July 2018 reported that the Education Minister attended meetings with protestors related to the Justice for Our Stolen Children Camp at Wascana Centre. Because of this, the Applicant stated that they believed records did exist. The Applicant subsequently provided my office with copies of records they had received via other similar applications for access to records they had submitted, to other government institutions. These records referred to the Education Minister having attended meetings alongside other government ministers.
- [5] My office informed the Applicant and the Ministry of Education of its intention to review the search efforts of the Ministry of Education related to the Applicant's Request # 1 and Request # 2, on August 22, 2018 and September 24, 2018 respectively. My office's notices to the Ministry of Education requested details of the searches conducted to locate responsive records.
- [6] On September 10, 2018, my office received the Ministry of Education's submission related to Request # 1, and on October 1, 2018 received the submission related to Request # 2. Both submissions from the Ministry of Education were received within the requested timeframes and both outlined similar search strategies in regards to the Applicant's two requests. The submissions concluded that the Ministry had conducted an adequate search for records in both cases.

## **II RECORDS AT ISSUE**

[7] There are no records at issue as the Ministry of Education indicates that there are no responsive records related to the Applicant's two requests. At issue is whether the Ministry of Education made a reasonable effort to search for responsive records.

### **III DISCUSSION OF THE ISSUES**

#### **1. Do I have jurisdiction to review this matter?**

[8] The Ministry of Education is a government institution pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to review this matter.

#### **2. Did the Ministry of Education perform a reasonable search for responsive records?**

[9] My office's two notifications to the Ministry of Education requested that the Ministry describe its search strategy, in line with my office's *IPC Guide to Exemptions for FOIP and LA FOIP* (Guide), available online on my office's website.

[10] My office's Guide states that the following information – a non-exhaustive list meant to be used as a guide only – can be provided by a public body in their submission to describe its search strategy:

- For general requests, tie the subject matter of the request to the division 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) within the branches included in the search.
- 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?

[11] The two submissions from the Ministry of Education stated that staff in the Deputy Minister's office were tasked with conducting a search for responsive records. Staff searched within all folders of their email accounts, including archived and junk folders. They also searched individual physical and electronic records including network drives. According to the submissions, staff used specific search terms like "Justice for our Stolen Children Camp" and "Protest camp" to find responsive records. The submissions from the Ministry of Education did not indicate how long the searches took, though they did indicate that the same four individuals within the Deputy Minister's office conducted the searches related to Request # 1 and Request # 2.

[12] Currently, the Minister of Education also serves as Deputy Premier in the province. Media coverage in July 2018 surrounding the Justice for Our Stolen Children Camp protests, and documents released to the Applicant by another government Ministry, which the Applicant provided to my office, contained conflicting information regarding in what capacity the Minister of Education attended meetings related to those protests. This information was not included in either of the Ministry's submissions, but is relevant to whether or not responsive records could exist within the Ministry of Education and how the Ministry processed Request # 1 and Request # 2.

[13] My office sought to clarify with the Ministry of Education whether the Minister had attended meetings as the Minister, or as Deputy Premier. My office sent emails and made telephone calls to staff at the Ministry of Education between October 17, 2018 and December 14, 2018 in this regard. Staff informed my office during that time that if the Education Minister attends meetings in his capacity as Deputy Premier, their institution is not tasked with preparing any documents in preparation of such meetings. The institution also does not receive details of these meetings and therefore would not have records about these meetings.

[14] On December 20, 2018, I proceeded to contact the Deputy Minister of the Ministry of Education. The Deputy Minister confirmed right away that the Minister of Education attended meetings in July 2018, related to the Justice for Our Stolen Children Camp protests, in his capacity as Deputy Premier.

[15] Based on all the information provided by the Ministry of Education staff during this review, including confirmation that the issues surrounding the Justice for Our Stolen Children Camp protests are not within the mandate of the Ministry of Education, it appears that staff within the Ministry knew that responsive records would not be found. First, because the subject matter of the two requests did not concern their institution and second, because the Education Minister did not assist in any meetings related to the protests in July 2018. I find that while the Ministry of Education followed a reasonable search strategy to find responsive records, the searches conducted were not needed because the Minister attended as Deputy Premier.

[16] Subsection 5.1(1) of FOIP imposes an obligation on institutions to make every reasonable effort to assist an Applicant without delay. Subsection 5.1(1) provides:

**Duty of government institution to assist**

**5.1(1)** Subject to this Act and the regulations, a government institution shall respond to a written request for access openly, accurately and completely.

[17] My office's guide to understanding the duty to assist requirements, available on my office's website, states that the duty to assist requirement not only involves identifying and seeking out records responsive to a request, but also assisting the Applicant by identifying whether another public body would be better able to assist them.

[18] In this instance the Ministry could have assisted the Applicant by transferring the file to the Executive Council or alternatively, the Ministry could have advised the Applicant to make an application for access to records with the Executive Council.

#### **IV FINDING**

[19] I find that while the Ministry of Education followed a reasonable search strategy to find responsive records, the searches conducted were not needed.

**V RECOMMENDATION**

[20] I recommend that the Ministry of Education take no further action.

Dated at Regina, in the Province of Saskatchewan, this 28<sup>th</sup> day of January, 2019.

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