



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 160-2020

Ministry of Government Relations

November 19, 2020

Summary:

The Ministry of Government Relations (Government Relations) received an access to information request from the Applicant. Government Relations issued a fee estimate 61 days after receiving the access to information request. The Commissioner found that Government Relations did not invoke subsection 6(3) of *The Freedom of Information and Protection of Privacy Act* (FOIP) appropriately, did not meet the legislative timelines for responding to the access to information request and did not issue a fee estimate in compliance with subsections 7(2)(a) and 7(5) of FOIP. The Commissioner recommended that Government Relations develop policies and procedures that highlights the difference between clarifying and narrowing the scope of an access to information request. The Commissioner also recommended that Government Relations rescind its fee estimate and issue a section 7 response to the Applicant within 30 days of issuance of this Report.

I BACKGROUND

[1] On April 27, 2020, the Applicant made an access to information request to the Ministry of Government Relations (Government Relations) pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP). Tracking information provided by the Applicant indicated that Government Relations received the request on April 27, 2020. The access to information request stated:

Requesting e-mails, correspondence and other communication to/from and received by [employee name and title], including copies and blind copies, re Northern Village of Sandy Bay, from January 1, 2016 to present.

[2] On May 1, 2020, Government Relations indicated it tried to contact the Applicant, but was unable to reach the Applicant via telephone.

[3] On June 5, 2020, Government Relations sent a letter to the Applicant, which stated in part:

Given the breadth of your request, we are seeking clarification so we can proceed with identifying the appropriate records. My office attempted to contact you via telephone on May 1, 2020; however, we have not received a response. Therefore, we are asking you to please contact our office to clarify the following question:

Are you requesting all records that contain the name “Sandy Bay” or records that are specifically regarding the Northern Village of Sandy Bay?...

... This notification has been provided pursuant to subsection 6(3) of the Act, which states...

... if we do not receive a response from you by July 15, 2020, your application will be deemed abandoned pursuant to section 7.1(1) of the Act...

[4] On June 18, 2020, Government Relations received clarification from the Applicant via telephone.

[5] On June 29, 2020, Government Relations issued a fee estimate to the Applicant for an amount of \$1,795.50. Government Relations’ fee estimate was broken down as follows:

Fee Description	Time Required (Hours)	Hourly Rate (CAD\$)	Fees (CAD\$)
Search Fee	4.75	30.00	142.50
Preparation Fee	57.10	30.00	1,713.00
Photocopies/printing of records	0 ¹	30.00	0.00
Sub-Total:			1,855.50
Less first two hours at \$30.00/ hour			-60.00
Total Fee Estimate:			1,795.50

¹ electronic copies will be provided.

[6] On July 7, 2020, the Applicant requested a review from my office regarding the fee estimate issued by Government Relations.

[7] On July 16, 2020, my office notified both the Applicant and Government Relations that my office would proceed with a review. My office asked Government Relations to provide details of how it arrived at the amount in its fee estimate. My office received those details from Government Relations on September 1, 2020.

[8] On September 23, 2020, my office asked that Government Relations provide a copy of any written correspondence, notes or outcomes discussed with the Applicant regarding its request for clarification. On September 25, 2020, Government Relations provided my office with a copy of its “case management details”. Government Relations’ notes for June 18, 2020 stated:

Spoke with (name of Applicant) on phone saying they wanted items related to the operations of Sandy Bay, including Financial.

II RECORDS AT ISSUE

[9] As the review is only regarding Government Relations’ fee estimate, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] Government Relations is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did Government Relations appropriately invoke subsection 6(3) of FOIP?

[11] Section 6 of FOIP provides:

6(1) An applicant shall:

(a) make the application in the prescribed form to the government institution in which the record containing the information is kept; and

(b) specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject-matter to identify the record.

(2) Subject to subsection (4) and subsection 11(3), an application is deemed to be made when the application is received by the government institution to which it is directed.

(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.

(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

[12] On April 29, 2020, Government Relations received the Applicant's access to information request. Pursuant to subsection 6(2) of FOIP, the application is deemed to be made when the application is received by the government institution and the 30-day clock starts unless subsection 6(3) of FOIP is raised soon after receiving the application. Instead, after receiving the Applicant's access to information request, Government Relations indicated that it tried unsuccessfully to contact the Applicant once by telephone on May 1, 2020. It then waited for almost five weeks before sending its letter to the Applicant on June 5, 2020.

[13] In its letter to the Applicant dated June 5, 2020, Government Relations indicated that "[g]iven the breadth" of the request, it was seeking clarification so it could proceed with identifying the appropriate records. Government Relations then stated:

Are you requesting all records that contain the name "Sandy Bay" or records that are specifically regarding the Northern Village of Sandy Bay?...

... This notification has been provided pursuant to subsection 6(3) of the Act...

... if we do not receive a response from you by July 15, 2020, your application will be deemed abandoned pursuant to section 7.1(1) of the Act..."

[14] In my office's *Guide to FOIP, Chapter 3* (updated August 7, 2020) (Guide to FOIP), at page 22, it states that where an access to information request is unclear or lacks sufficient detail to identify the record, the government institution must provide the applicant with the

opportunity to provide more detail. It also advises the government institution to contact the applicant to clarify the request as soon as possible.

- [15] In my office's blog, *Clarifying Access Requests vs. Narrowing the Scope: What they mean vs. What they want*, my office discusses the difference between clarifying and narrowing the scope of an access to information request:

If an access request is vague, the public body or trustee will generally need the applicant to provide additional details in order to identify the records they wish to obtain, which we refer to as clarifying. A request is only officially deemed to have been received once the necessary clarification has been provided. If the request is detailed enough to identify the records sought but there is a large volume of records, the public body or trustee may engage the applicant in an effort to identify the specific information they are seeking, this is referred to as narrowing the scope and doing so is entirely at the applicant's discretion...

- [16] In Review Report 323-2019, my office considered a fee estimate that was issued to an applicant after the 30-day statutory timeline. At paragraph [16], it states the following:

I encourage public bodies to communicate with the applicant when a request appears overly broad to determine if there is an opportunity to narrow or focus a request to assist the applicant in obtaining the records they are seeking. However, this should be presented as an option to the applicant, especially if a fee estimate will be involved. It should not be a requirement for processing a request and should not prevent the public body from processing the request if the applicant does not agree to narrow or focus their request. **This should be done within the first 30 days of receiving an access request.**

[Emphasis added]

- [17] The Applicant's request was for "e-mails, correspondence and other communication to/from and received by [employee name and title], including copies and blind copies, re Northern Village of Sandy Bay, from January 1, 2016 to present".

- [18] In its letter to the Applicant dated June 5, 2020, Government Relations did not inform the Applicant that it had conducted an initial search, which yielded a high number of responsive records or what the fee estimate may look like based on its initial search efforts. Government Relations instead asked the Applicant to "narrow" the request by citing

subsection 6(3) of FOIP and it informed the Applicant that if it did not hear back by July 15, 2020, it would consider the Applicant's access to information request abandoned pursuant to subsection 7.1(1) of FOIP. Although broad, the Applicant's access to information request is clear in terms of what information is being sought. As explained above, there is a difference between being unable to identify records (clarification) and narrowing an access to information request.

[19] Therefore, I find Government Relations improperly invoked subsection 6(3) of FOIP.

[20] I recommend that Government Relations develop and implement a policy or procedure that highlights the difference between clarifying and narrowing the scope of a request when clarification is required to identify records pursuant to subsection 6(3) of FOIP and when instead, sufficient information to process the request has been received and Government Relations instead should reach out to an applicant to meet its duty to assist. The policy should also emphasize when these steps should be taken and how quickly after receiving an access to information request.

3. Did Government Relations meet the legislated timelines?

[21] Section 7 of FOIP provides:

7(1) Where an application is made pursuant to this Act for access to a record, the head of the government institution to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with sub-section (2); or

...

(2) The head shall give written notice to the applicant within 30 days after the application is made:

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

...

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

...

(3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

...

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[22] Subsection 7(2)(a) of FOIP requires government institutions to respond to access to information requests within 30 days unless an extension is applied pursuant to section 12 of FOIP. No such extension was applied in this case.

[23] On April 29, 2020, Government Relations received the Applicant's access to information request. Government Relations provided its fee estimate in a letter to the Applicant dated June 29, 2020. This was 61 days after receiving the access to information request. As such, its fee estimate was not issued within the statutory 30 days as required by subsection 7(2)(a) of FOIP.

[24] Pursuant to subsection 7(5) of FOIP, Government Relations failed to provide a section 7 response to the Applicant within the statutory 30-days deadline. Therefore, it is deemed to have responded on the 30th day with a refusal to provide access. My office refers to this as a deemed refusal. The 30th day in this circumstance was Friday, May 29, 2020.

[25] In conclusion, I find that Government Relations did not comply with subsections 7(2)(a) and 7(5) of FOIP and did not meet the legislated timelines.

4. Did Government Relations miss the opportunity to issue a fee estimate?

[26] Section 9 of FOIP provides:

9(1) An applicant who is given notice pursuant to section 7(2)(a) is entitled to obtain access to the record on payment of the prescribed fee.

...

(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

...

[27] My office encourages government institutions to issue a fee estimate within the first three to 10 days of receiving an access to information request. That way, there is time remaining in the 30-day response period to process the request if an applicant signals they wish to proceed by paying the 50% deposit.

[28] As explained above in this Report, Government Relations received the Applicant's access to information request on April 29, 2020. It provided its fee estimate to the Applicant 61 days after receiving the access to information request.

[29] If Government Relations' intention was to provide a fee estimate, then it should have done so within 30 days of receiving the access to information request pursuant to subsection 7(2)(a) of FOIP. After the 30 days have elapsed, there is no other mechanism within FOIP that allows for the government institution to issue a fee estimate. Without a fee estimate, a government institution would be unable to charge fees for search, preparation and reproduction of records.

[30] I find that Government Relations did not issue a fee estimate within the legislated 30 days of receiving the access to information request pursuant to subsection 7(2)(a) of FOIP. I recommend that Government Relations rescind the fee estimate it issued to the Applicant and issue a response to the Applicant that is compliant with section 7 of FOIP within 30 days of issuance of this Report. As of November 13, 2020, Government Relations indicated that it intends to comply with my office's recommendations as noted below.

IV FINDINGS

[31] I find that Government Relations improperly invoked subsection 6(3) of FOIP.

[32] I find that Government Relations did not meet legislated timelines.

[33] I find that Government Relations' fee estimate was not issued within the timeframe indicated in subsections 7(2)(a) and 7(5) of FOIP.

V RECOMMENDATIONS

[34] I recommend that Government Relations develop and implement a policy or procedure that highlights the difference between clarifying and narrowing the scope of an access to information request in an effort to assist applicants.

[35] I recommend that Government Relations develop a written policy and procedure for responding to an access to information request.

[36] I recommend that Government Relations rescind the fee estimate it issued to the Applicant and issue a response to the Applicant that is compliant with section 7 of FOIP within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 19th day of November, 2020.

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