



REVIEW REPORT 219-2016

Ministry of Social Services

October 25, 2016

Summary: The Applicant submitted an access to information request to the Ministry of Social Services (MSS) for records related to his appeal board hearing. The Applicant was dissatisfied with MSS' response when MSS stated that some of the records were destroyed. The Applicant appealed to the Office of the Information and Privacy Commissioner (IPC). The IPC found that MSS conducted an adequate search for records.

I BACKGROUND

[1] On July 6, 2016, the Ministry of Social Services (MSS) received the following access to information request:

- 2013 start date of forms filed [sic] out for social service and end of each time using social assistance to date 2016. Also money deducted from social assistance for CCP each time.
- I would like also to request all inter office memmos [sic] from you to your superiors [sic] and vice versa.
- Phone transcripts when I called or you called.
- Appeal meetings transcripts and the board member notes and the stenogearfor [sic] notes.

[2] In a letter dated August 9, 2016, MSS responded to the Applicant. It stated that while it was granting the Applicant access to some records, the notes taken during the appeal hearing were destroyed.

[3] On August 31, 2016, the Applicant requested a review by my office. His concern was over the destruction of the notes taken during the appeal hearing.

[4] On September 6, 2016, my office notified both MSS and the Applicant that it would be undertaking a review.

II RECORDS AT ISSUE

[5] At issue are MSS' search efforts.

III DISCUSSION OF THE ISSUES

[6] MSS is a "government institution" as defined by subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

1. Did MSS conduct an adequate search for records?

[7] In cases where the government institution states that records do not exist, my office's notification will seek a submission from the government institution that details the government institution's search efforts.

[8] The question is whether or not MSS conducted a reasonable search. 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.

[9] The threshold that must be met is one of "reasonableness". In other words, it is not a standard of perfection but rather what a fair and rational person would expect to be done or consider acceptable. FOIP does not require a government institution to prove with absolute certainty that records do not exist.

[10] Each access to information request is different so each request will require different search strategies. Below is a non-exhaustive list of examples of the details a government institution could provide in its submission to support its search efforts:

- Outline the search strategy conducted:
 - 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. For more on this, see the OIPC resource, *A Contractor’s Guide to Access and Privacy in Saskatchewan* available on our website.
 - 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 OIPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[11] On October 3, 2016, my office received MSS' submission. On October 11, 2016, my office received additional information regarding its efforts to respond to the Applicant's request.

[12] MSS explained that within the time period specified by the Applicant, 2013 to current, there were two appeals on the Applicant's file. It explained that a Ministry administrative staff member may be assigned to take notes during appeal hearings. The notes are then used to draft the findings of the hearing. Next, the Chairperson of the Committee or Board reviews the report for completeness and accuracy. Finally, the Chairperson signs the report. Once the report is signed, the Ministry administrative staff member places the notes in secure shredding. A copy of the signed report is provided to the person making the appeal (the Applicant in this case) and the Ministry.

[13] MSS explained that by the time the Applicant submitted his access to information request on July 6, 2016, the two appeals had already concluded. For the first appeal, the Notice of Decision was dated April 20, 2016. For the second appeal, the Notice of Decision was dated May 19, 2016. Therefore, MSS asserted that the notes that were taken by Ministry administrative staff during the appeal hearings would have been securely destroyed by the time MSS received the Applicant's access to information request on July 6, 2016.

[14] Further, MSS stated that Income Assistance clients have one file that contains all their information and documents, including any appeal documents. MSS asserted that it had searched for the Applicant's file for the time period specified in the access to information request. It had provided the Applicant with a copy of his file with minimal severing pursuant to subsection 29(1) of FOIP and subsection 27(1) of *The Health Information Protection Act* (HIPA).

[15] In a fax received by my office on September 14, 2016, the Applicant expressed his dissatisfaction with MSS' records management practice. His view was that documents need to be kept for a minimum of 85 years because that is the average lifespan of a Canadian.

[16] While it is important to keep a record of the decisions made that affect individuals, not all records (such as transitory records) should be kept. In this case, the notes taken during the appeal board hearings can be considered transitory. The Provincial Archives of Saskatchewan develop records management policies, guidelines and standards for the Government of Saskatchewan. Its *Guidelines for the Management of Transitory Records* defines transitory records as follows:

Records of temporary usefulness that are needed only for a limited period of time, to complete a routine task or to prepare an ongoing document. Also, exact copies of official records made for convenience of reference. These records are not required to meet statutory obligations or to sustain administrative or operational functions. Once they have served their purpose and, in the case of convenience copies the official record has been identified, these records should be destroyed in accordance with internal disposal procedures.

[17] The notes taken during the appeal board hearing would qualify as transitory records because they are needed only for a limited period of time. Specifically, they are needed to create the Notice of Decision. Once the Notice of Decision has been reviewed and signed by the Chairperson of the Committee or Board, the notes are no longer required. MSS' practice of destroying the notes once the Notice of Decision has been reviewed and signed is in accordance with the Provincial Archives of Saskatchewan's *Guidelines for the Management of Transitory Records*.

[18] I am satisfied that MSS had conducted an adequate search for records and I am satisfied that the notes no longer exist based on the following:

- a. the two appeals that the Applicant was involved in were concluded by the time the Applicant submitted his access to information request. Based on MSS' procedures, the notes would have been destroyed by the time the Applicant made his access to information request.

- b. If the notes were to have existed at the time of the access to information request, they would have been in the Applicant's Income Assistance file. MSS has already provided a copy of the Applicant's Income Assistance file to the Applicant.

IV FINDING

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

V RECOMMENDATION

[20] I do not have any recommendations for MSS.

Dated at Regina, in the Province of Saskatchewan, this 25th day of October, 2016.

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