



REVIEW REPORT 242-2017

Public Complaints Commission

December 19, 2017

Summary: The Public Complaints Commissioner (PCC) refused to respond to the Applicant's access to information request because it believed that the Applicant had already requested the same request before. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found *The Freedom of Information and Protection of Privacy Act* (FOIP) does not prevent an Applicant from requesting the same information again. He also found that PCC has not demonstrated it made a reasonable effort to search for records. The IPC recommended that PCC undertake another search for records.

I BACKGROUND

[1] In a letter dated August 31, 2017, the Applicant made the following request to the Public Complaints Commission:

I would like to have all the information that relates to my privacy request with the PCC. There is video of the in-car recording of transport to the police station, and the SPS detention video that (part of which) myself and the investigator from the PCC reviewed together. There is also police notes that are missing as well. With regard to this request, there are also emails within the interoffice communications between Saskatoon Police Service staff, which contain private information with regard to my information. These have not been provided. The Privacy request has not been fulfilled by your office.

[2] In a letter dated October 2, 2017, PCC responded to the Applicant by stating that the Applicant had already made a similar access to information request that my office had already reviewed in Review Report 059-2017. His original request was as follows:

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

- [3] PCC asserted that the Applicant did not have the right to make the same access to information request again.
- [4] The Applicant appealed to my office.
- [5] In the course of my office's early resolution process, PCC issued another letter (dated October 13, 2017) to the Applicant. PCC reiterated its position that it believes the Applicant was submitting an access to information request that is the same as his original access to information request. However, it said it made efforts to search for additional records it received after it responded to the Applicant's first access to information request. This search did not result in any additional records.
- [6] The Applicant was still not satisfied with PCC's letter. Therefore, on October 26, 2017, my office notified both the Applicant and PCC that it would be undertaking a review.

II RECORDS AT ISSUE

- [7] At issue is whether the Applicant's second access to information request is the same as his first access to information request. If so, does he have the right to submit the same access to information request to PCC?
- [8] Also, since PCC indicated in its letter dated October 13, 2017 that it conducted a search for records, at issue is PCC's search efforts.
- [9] Based on the above, there are no records at issue in this review.

III DISCUSSION OF THE ISSUES

[10] PCC is a government institution as defined by subsection 2(1)(d)(ii)(A) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 3(a) and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*.

1. Is the Applicant's second access to information request the same as the Applicant's first access to information request?

[11] As discussed in my office's Review Report 059-2017, and as quoted in the background, the Applicant requested all records related to PCC file 16-063 in March 2017. PCC initially had refused the Applicant access to the entire PCC file. The Applicant appealed to my office and my office undertook a review. In the course of that review, PCC created an index that listed the records at issue within that review. My office shared that index with the Applicant. At the end of that review, my office found that the discretionary exemptions applied to some of the records. However, my office recommended that PCC consider using its discretion to release some of the records even though discretionary exemptions applied. PCC complied and released some additional records. It also continued withholding some records.

[12] There are three parts to the Applicant's second access to information request. The first part is for video recordings. The second part is for police notes. The third part is for communication between Saskatoon Police Service staff. Presumably, the Applicant believes that PCC has those particular records but they were not considered or captured in his initial access to information request to PCC. When I review the index of records that was a part of my office's review 059-2017, it does not indicate that any video recordings were a part of the records at issue. However, it does indicate that the hardcopy of Saskatoon Police Service's General Occurrence file was part of the records that were considered. That could have included the police notes and emails between Saskatoon Police Service staff.

[13] Therefore, I find that the first part of the Applicant's second access request to **not** have been part of his first access to information request. However, I find that the second and

third parts of the Applicant's second access request *could have been* within the scope of his first access to information request.

a) Does the Applicant have the right to request the same information from a government institution?

[14] Section 5 of FOIP provides individuals with a right of access. It provides:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[15] Subsection 7(1) of FOIP requires that a government institution respond to access to information requests. It 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 subsection (2);

[16] Based on a strict reading of the above, subsection 7(1) of FOIP requires that government institutions respond to each access to information request it receives, regardless of whether an access to information request is the same as a previous request or not. I find that FOIP does not prevent an individual from requesting the same information from a government institution. I also find that government institutions must respond to each and every access to information request it receives pursuant to section 7 of FOIP.

[17] As part of its duty to assist, government institutions should keep in close, direct contact with applicants when processing access to information requests to clarify and possibly narrow the access requests they receive. In the event that an individual does indeed request the same information he or she requested before, government institutions can consider charging fees pursuant section 9 of FOIP.

b) Does PCC's letters dated October 2, 2017 and October 13, 2017 meet PCC's obligations pursuant to section 7 of FOIP?

[18] Subsection 7(2) of FOIP requires government institutions to respond to access requests in a very specific way. Subsection 7(2) of FOIP provides as follows:

7(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;
- (b) if the record requested is published, referring the applicant to the publication;
- (c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;
- (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;
- (e) stating that access is refused for the reason that the record does not exist; or
- (f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4).

[19] As noted in the background section of this report, PCC's letter dated October 2, 2017 said that the Applicant cannot make an access request for the same information he had requested in the past. I find that subsection 7(2) of FOIP does not enable a government institution to respond by refusing the Applicant access to records on the basis that it believes the Applicant had already made the same access to information request in the past. Therefore, I find that PCC's letter dated October 2, 2017 does not meet PCC's obligations under subsection 7(2) of FOIP.

[20] In the letter dated October 13, 2017, PCC reiterates its position that the Applicant is requesting the same information that he had already requested. The letter said the following:

Upon receiving your letter of August 31, 2017, the PCC searched to determine if the PCC had received the records specified after responding to your access to information request of March 31, 2017, the PCC did not. [sic]

[21] I find that subsection 7(2) of FOIP does not enable a government institution to respond by refusing the Applicant access to records for the reason "it did not receive the records

specified” after it had responded to the Applicant’s access request from March 2017. I find that PCC’s letter dated October 13, 2017 still does not meet PCC’s obligations under subsection 7(2) of FOIP.

2. Did PCC conduct an adequate search for records?

[22] Section 5 establishes an individuals’ right to records in the possession or control of a government institution. However, FOIP does not require a government institution to provide with absolute certainty that records do not exist. It must, however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

[23] A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. 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.

[24] The level of detail that a government institution can submit to my office is outlined in my office’s resource, *IPC Guide to Exemptions*. Each case requires different search strategies and details depending on the nature of the records and the way an organization manages them.

[25] In its submission, PCC did not provide any details of its search efforts. It argued that my office had already reviewed and commented on PCC’s search efforts in paragraph [12] of my office’s Review Report 132-2017. It argued my office cannot review a matter more than once. It also noted that my office never asked PCC to provide any representations with respect to search efforts in relation to Review Reports 059-2017 or 132-2017.

[26] When my office conducts reviews, it sends an email to the government institution, Applicant, and third party (if there is a third party) that sets out the scope of the review. For the two reviews documented in Review Reports 059-2017 and 132-2017, search effort was not identified as one of the issues in either reviews. This review (that is documented in this report) is indeed the first time my office is reviewing this matter. Paragraph [12] of

my office's Review Report 132-2017 was a criticism of PCC for not fulfilling its duties pursuant to section 8 of FOIP prior to responding to an access to information request.

[27] Based on the lack of details of its search efforts, I find that PCC has not demonstrated that it made a reasonable effort to search for records.

[28] PCC's letter dated October 13, 2017 to the Applicant suggests that PCC's search was restricted to records "received" after March 13, 2017. I find that this a very narrow search for records.

[29] I recommend that PCC undertake another search for records with 10 days of receiving this report. PCC's search should not be restricted to only records "received" after March 31, 2017. The search should be for any records involving the Applicant. PCC should document its search efforts. If requested records, such as the video recordings, do not exist, then PCC should state that the records do not exist pursuant to subsection 7(2)(e) of FOIP. If other records, such as police notes and correspondence between Saskatoon Police Service staff, do exist, then PCC should respond to the Applicant's request pursuant to subsections 7(2)(a), 7(2)(b), 7(2)(c), 7(2)(d), or 7(2)(e) of FOIP.

IV FINDINGS

[30] I find that FOIP does not prevent an individual from requesting the same information from a government institution.

[31] I find that government institutions must respond to each and every access to information request it receives pursuant to section 7 of FOIP.

[32] I find that PCC's letter dated October 2, 2017 does not meet PCC's obligations under subsection 7(2) of FOIP.

[33] I find that PCC's letter dated October 13, 2017 still does not meet PCC's obligations under subsection 7(2) of FOIP.

[34] I find that PCC has not demonstrated that it made a reasonable effort to search for records.

V RECOMMENDATION

[35] I recommend that PCC undertake another search for records within 10 days of receiving this report as described in paragraph [29].

Dated at Regina, in the Province of Saskatchewan, this 19th day of December, 2017.

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