



## **REVIEW REPORT 247-2019**

### **Ministry of Parks, Culture and Sport**

**December 1, 2020**

**Summary:** The Applicant submitted an access to information to the Ministry of Parks, Culture and Sport (the Ministry). The Ministry responded indicating that no records existed. The Applicant appealed to the Commissioner. The Commissioner found that the Ministry made a reasonable effort to search for records. He recommended that the Ministry take no further action.

#### **I BACKGROUND**

[1] On May 17, 2019, the Ministry of Parks, Culture and Sport (the Ministry) received the following access to information request:

Correspondence/communications regarding all discussions on mediation between Suffern Lake Regional Park Authority and Cabin Owners that occurred between Parks, Culture and Sport and:

1. Suffern Lake Regional Park Authority representatives including the RMs, Village of Senlac
2. [Suffern Lake Regional Park Authority] secretary, [name of SLRPA secretary]

[2] The Applicant had specified the time period for the records that they were seeking were from March 1, 2018 to June 30, 2018.

[3] On June 14, 2019, the Ministry responded to the Applicant by indicating that no records existed pursuant to subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[4] On July 4, 2019, the Applicant requested a review by my office.

[5] On July 11, 2019, my office notified both the Applicant and the Ministry that it would be undertaking a review.

## **II RECORDS AT ISSUE**

[6] The Ministry responded to the Applicant that no records existed pursuant to subsection 7(2)(e) of FOIP. At issue is the Ministry's search efforts. As such, no records are at issue in this review.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

[7] The Ministry qualifies as a "government institution" as defined by subsection 2(1)(d)(i) of FOIP. As such, I have jurisdiction to review this matter.

### **2. Did the Ministry make a reasonable effort to search for records?**

#### **a. Applicant's reason for believing records exist**

[8] Section 5 of FOIP provides an applicant the right of access to records in the possession or under the control of a government institution. Section 5 of FOIP 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.

[9] Section 5 of FOIP is clear that access to records must be granted if the records are in the possession or under the control of the government institution subject to any exemptions under Part III of FOIP. However, a government institution cannot provide access to records

that do not exist. Subsection 7(2)(e) of FOIP contemplates such situations. This provision provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...

(e) stating that access is refused for the reason that the record does not exist;

[10] Before analyzing the Ministry's search efforts, I must consider the Applicant's reasons for believing records exist. Chapter 3 of my office's *IPC Guide to FOIP* at page 7 provides that applicants must establish the existence of a reasonable suspicion that a government institution is withholding a record, or has not undertaken an adequate search for records. In their email dated July 4, 2019 to my office, the Applicant outlined the following:

1. In the May 14, 2018 Hansard Verbatim Report for the Standing Committee on Intergovernmental Affairs and Justice, Minister Gene Makowsky indicated there was an ongoing offer to mediate concerns between the two parties – the Suffern Lake Cabin Owners Association (“Cabin Owners”) and the Suffern Lake Regional Park Authority (SLRPA). The Applicant indicated that the Minister said that the cabin owners had turned down previous offers of mediation.
2. In an email dated May 15, 2018 to Minister Makowsky, the Applicant (on behalf of the Cabin Owners) indicated that they had agreed to mediation in the past. The Applicant provided my office with a copy of the email.
3. In an email dated May 31, 2018 to Minister Makowsky, the Applicant (on behalf of the Cabin Owners) indicated that they accept the Minister's offer to provide dispute resolution. The Applicant provided my office with a copy of the email.
4. In an email dated May 27, 2018 to the Chair and Deputy Chair of the Intergovernmental Affairs and Justice committee (carbon copy to the Premier and Minister Makowsky), the Applicant (on behalf of the Cabin Owners) requested that the Hansard Verbatim Report of May 14, 2018 be changed to show that the Cabin Owners had agreed to mediation.
5. In a letter dated June 1, 2018 to the Applicant, Minister Makowsky indicated it had no authority “to force participants into mediation”. The Applicant provided my office with a copy of the letter.

[11] In their email dated July 4, 2019 to my office, the Applicant asserted that the Minister's statement in the letter dated June 1, 2018, “seems to indicate communications between [the

Ministry] and SLRPA had taken place on this matter in the aftermath of the Committee Meeting and our correspondence”.

**b. The Ministry’s search efforts**

[12] When a government institution responds to an access request pursuant to subsection 7(2)(e) of FOIP, my office will ask the government institution to describe its search efforts in support of its assertion, which my office will then review. FOIP does not require a government institution to prove with absolute certainty that records do not exist but it must demonstrate that it has conducted a reasonable search to locate the records.

[13] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records related to the access to information request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances. Examples of information that can be provided to my office to support a government institution’s search efforts include the following:

- For personal information requests – explain how the individual is involved with the government institution (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 organization's 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 government institution's control have been searched such as a contractor or information management service provider.
  - Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
  - Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
  - Indicate the calendar dates each employee searched.
  - Indicate how long the search took for each employee.
  - Indicate what the results were for 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 my office's resource, *Using Affidavits in a Review with the IPC* available on my office's website.

[14] The above list is meant to be a guide. It is not an exhaustive list of what could be considered by my office in a review. Providing the above details is not a guarantee that my office will find that the government institution's search efforts were reasonable. Each case will require different search strategies and details depending on the records requested.

[15] In its submission, the Ministry indicated that its interpretation of the access request was as follows:

1. Correspondence or communications between the Ministry staff and the participating RMs or Village of Senlac between March 1 and June 30, 2018.
2. Correspondence or communications between the Ministry staff and the SLRPA secretary between March 1 and June 30, 2018.

[16] Based on a review of the wording of the Applicant's access request, I find that the Ministry's interpretation of the access request to be accurate.

[17] In its submission, the Ministry indicated that, "some internal communications occurred but there were no communications with the park authority, participating RMs or [name of SLRPA secretary]". Since the Applicant requested records of correspondence or communications between the Ministry and the participating RMS, the Village of Senlac or the SLRPA secretary, my office's review of the Ministry's search efforts will not include the search for "internal communications".

[18] The Ministry explained that when an access to information request is received, its Access Coordinator arranges a meeting with staff from branches who may have records responsive to the access request. In this case, the Access Coordinator held a meeting on May 23, 2019 with a Ministry staff member. This particular staff member has been involved with the SLRPA and the Cabin Owners since 2016. The Access Coordinator and the staff member discussed searching for responsive records in three areas – a shared network drive, emails, and hard copy files.

#### Electronic records

##### *Shared Network Drive*

[19] The Ministry explained that its electronic files are stored on a shared network drive that is accessible by division staff. Its files are organized by park business unit, provincial parks and regional parks. The Ministry explained that the regional park folder is further sorted by regional park, including a folder for Suffern Lake Regional Park Authority. The Ministry used the search function in Windows Explorer to search for responsive records, including searching the date, name and mediation. The Ministry explained that search

results included less than 50 files consisting of email PDFs, speaking notes, and Word documents relating to park business. The Ministry indicated that it visually looked through the files to determine if they were responsive, but concluded that the files did not contain information responsive to the request.

#### *Email*

- [20] The Ministry explained that it uses Microsoft Outlook (Outlook) as its email program. It explained that Outlook allows for the storage of archived emails and it has a search function. It said that communications with the SLRPA increased in 2017. As such, folders within Outlook for SLRPA and the Cabin Owners were created.
- [21] The Ministry used the search function to search by date, name, mediation and “Suffern”. The Ministry explained that less than 20 emails resulted from the search. It explained that, in Outlook, the subject line and the first few lines of messages can easily be viewed. The Ministry reviewed the emails resulting from the searches and found that none were responsive to the access request. That is, none were between the SLRPA and the Ministry.

#### Paper records

- [22] The Ministry explained that hard copy files for the SLRPA are maintained with the Park Management Services branch and consisted of park business documents and communications. The Ministry visually searched through these records by topic and date. The Ministry did not locate any records responsive to the access request.
- [23] The Ministry also indicated there were no transfer sheets to relocate files off premises for the time period relating to the access to information request.
- [24] The Ministry explained that the search for records took place on May 24, 2019, and it took two hours to complete. No records specific to the access request were found.

[25] Given the narrow time frame and the specificity of the records sought by the Applicant, I find that the Ministry has made a reasonable effort to locate responsive records. I recommend that the Ministry take no further action.

#### **IV FINDING**

[26] I find that the Ministry has made a reasonable effort to locate responsive records.

#### **V RECOMMENDATION**

[27] I recommend that the Ministry take no further action.

Dated at Regina, in the Province of Saskatchewan, this 1st day of Decembber, 2020.

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