



REVIEW REPORT 252-2017

Public Complaints Commission

December 19, 2017

Summary:

The Applicant submitted an access to information request to the Public Complaints Commission (PCC). PCC withheld the records in their entirety. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC reviewed PCC's application of the exemptions in Review Report 059-2017. After the IPC issued Review Report 059-2017, the Applicant requested that my office review PCC's search efforts to respond to his access to information request. The IPC found that PCC did not demonstrate that it made a reasonable effort to search for records. He recommended that PCC undertake another search for records and that if PCC locates additional records, then PCC should release the records to the Applicant subject to exemptions in Parts III and IV of *The Freedom of Information and Protection of Privacy Act* (FOIP) and charge no fees.

I BACKGROUND

- [1] In a letter dated March 13, 2017, the Applicant submitted an access to information request to the Public Complaints Commission (PCC). In a letter dated March 14, 2017, PCC responded to the Applicant by refusing the Applicant access to the records in their entirety. It cited the exemption in subsection 15(1)(c) of FOIP as its reason for withholding records.
- [2] The Applicant appealed to my office and my office undertook a review. PCC cited additional exemptions for withholding records. My office conducted a review of the exemptions that PCC were relying upon to withhold records. Then, my office issued Review Report 059-2017. It should be noted that PCC's search efforts was not within the scope of that particular review.

[3] In a letter dated September 25, 2017, the Applicant requested my office review PCC's search efforts.

[4] On October 26, 2017, my office notified both the Applicant and PCC that it would be undertaking a review.

II RECORDS AT ISSUE

[5] At issue is PCC's search efforts. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

[6] 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. Did PCC conduct an adequate search for records?

[7] 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.

[8] Section 5 establishes 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.

[9] 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.

[10] 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.

[11] 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.

[12] 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.

[13] 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.

IV FINDING

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

V RECOMMENDATION

[15] I recommend that, within 10 days of receiving the final version of this report, PCC undertake another search for records and provide a written letter to both my office and to the Applicant that details the outcome of its search and a description of its search efforts. If PCC locates additional records, then PCC should release the records to the Applicant subject to the exemptions in Parts III and IV of FOIP and charge no fees.

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

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