



REVIEW REPORT 313-2016

Ministry of the Economy

February 22, 2017

Summary:

The Applicant submitted an access to information request to the Ministry of the Economy (the Ministry). The Ministry responded that the requested records did not exist. The Applicant appealed to the Information and Privacy Commissioner (IPC). The Commissioner found that the Ministry conducted a reasonable search and that the Ministry had no obligation under *The Freedom of Information and Protection of Privacy Act* (FOIP) to create a record. The Commissioner recommended no further action from the Ministry, unless it could easily generate the information for the applicant.

I BACKGROUND

[1] On November 26, 2016, the Ministry of the Economy (the Ministry) received an access request for the following:

I want to know how many SINP applications were represented by 1: RCIC, 2: Lawyer, 3: Family Member, 4: Employer. Time frame: October 11, 2013 until October 31, 2016.

[2] On December 7, 2016, the Ministry responded to the Applicant that the records he requested did not exist.

[3] On December 29, 2016, my office received a Request for Review from the Applicant. On December 30, 2016, notification of this office's intention to undertake a review was provided to the Ministry and the Applicant.

II RECORDS AT ISSUE

[4] This review is of the search efforts of the Ministry. Therefore, no records are at issue.

III DISCUSSION OF THE ISSUES

[5] The Ministry is a government institution pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

1. Did the Ministry conduct an adequate search?

[6] Section 5 of FOIP provides the right of access as follows:

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.

[7] Section 5 provides individuals with the right of access to records in the possession or under the control of a government institution. 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.

[8] 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.

[9] My office requested the Ministry describe its search efforts so that my office could determine whether or not the Ministry made a reasonable effort to search for records.

[10] The Ministry advised that the information requested by the Applicant is in relation to the Saskatchewan Immigrant Nominee Program (SINP), which would be housed in the Labour Market Development Division (LMD) of the Ministry.

[11] In its submission, the Ministry advised that files within the LMD were not searched, as:

The SINP does not create records with this information and it is not possible to create a record that breaks down individual applications by this criteria without double counting applications. To avoid double counting, it would require a manual review and sorting by the type of representative. It is not possible to create a record that shows representation of SINP applications as requested because:

- SINP applications can be represented by a lawyer or a consultant (RCIC). An application that is represented by a lawyer or consultant could also be from an applicant that has a supporting member (under the former Family Referral Category) or a job offer from an employer.
- An application that is represented by a lawyer or a consultant could be from an applicant that has a job offer from an employer. (Employers do not represent or support applicant in their SINP applications – the job offer is part of the criteria).

The SINP's database includes application information. Current reports include reports that show applications and nominations by SINP category, etc. With regard to data that is captured in the system specific to representative, each individual application would have a record of whether or not there is a third party representative.

[12] The Ministry outlined the reasons why the records do not exist in the format that the Applicant is requesting. The threshold that must be met is one of "reasonableness". Based on what has been provided to my office, it is clear that the Ministry has the information that the Applicant is looking for, however it is raw data that would require the creation of a record in order to fulfill the request. As described in the submission, the Ministry does not have a record that lays out the information in the categories that the Applicant requested.

[13] I find that the Ministry has demonstrated that it does not have the records responsive to the Applicant's request, and their explanation was reasonable and adequate for purposes of FOIP.

2. Is the Ministry obligated to create a record?

[14] To positively respond to the Applicant's request, the Ministry would have to create a record for the Applicant.

[15] The Applicant made a submission to my office in which he advised that in the past the Ministry had responded to some of his previous access requests by creating a record.

[16] In some jurisdictions, there is an obligation on public bodies in certain circumstances to create a record. This is usually in the case where information is in electronic format.

[17] For instance, in the Alberta FOIP Act, subsection 10(2) provides:

10(2) The head of a public body must create a record for the applicant if

(a) the record can be created from a record that is in electronic form and in the custody or under the control of a public body, using its normal computer hardware and software and technical expertise, and

(b) creating a record would not unreasonably interfere with the operations of the public body.

[18] FOIP however does not have a similar obligation. My conclusion is that as a general rule, the obligation on a government institution to assist an applicant does not include an obligation to create records which do not currently exist. On the other hand, I do encourage the Ministry, where practical and not too difficult, to provide information requested by citizens.

IV FINDING

[19] I find that the Ministry has demonstrated that it does not have the records responsive to the Applicant's request.

V RECOMMENDATION

[20] I recommend the Ministry take no further action unless it could easily generate the information for the applicant.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of February, 2017.

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