



REVIEW REPORT 344-2017

Ministry of Immigration and Career Training

April 17, 2018

Summary: The Applicant made an access request to the Ministry of Immigration and Career Training (Immigration and Career Training) for all correspondence to or from the Deputy Minister or Assistant Deputy Ministers related to any Canmax company. Immigration and Career Training provided its response to the Applicant indicating that access to the records was partially granted. In addition, it advised that some of the information was being withheld pursuant to subsections 15(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the Office of the Information and Privacy Commissioner requesting the Commissioner review Immigration and Career Training's application of the above provisions. The Applicant also believed that records were missing from the package Immigration and Career Training provided and requested the Commissioner review Immigration and Career Training's search efforts. Upon review, the Commissioner found that the search conducted by Immigration and Career Training was not adequate for purposes of FOIP. He recommended that Immigration and Career Training conduct a more fulsome search for responsive records. Further, he also recommended that the records deemed non-responsive be provided to the Applicant.

I BACKGROUND

[1] At the time of the access to information request, the Ministry of the Economy was a single ministry. However, during the course of this review, the Ministry of the Economy was split into three ministries: the Ministry of Energy and Resources, the Ministry of Export and Trade Development and the Ministry of Immigration and Career Training (Immigration and Career Training). My office has been advised that the records involved with this review are for Immigration and Career Training. Therefore, this report will refer to Immigration and Career Training.

- [2] On May 26, 2017, Immigration and Career Training received the following access to information request from the Applicant:

Please provide all correspondence to or from the DM or ADMs related to any Canmax company.

January 1, 2012 December 31, 2013

- [3] By letter dated August 31, 2017, Immigration and Career Training provided its response to the Applicant indicating that access to the records was partially granted. In addition, it advised that some of the information was being withheld pursuant to subsections 15(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] On November 14, 2017, my office received a Request for Review from the Applicant in which he disagreed with Immigration and Career Training's application of the above provisions. The Applicant also believed that records were missing from the package he was provided and requested my office review Immigration and Career Training's search efforts.
- [5] On November 21, 2017, my office notified Immigration and Career Training and the Applicant of my office's intent to undertake a review and invited all parties to provide submissions.
- [6] On January 8, 2018, Immigration and Career Training provided my office with its submission, Index of Records and copy of the records.
- [7] On January 11, 2018, the Index of Records was shared with the Applicant. Following which the Applicant advised that he did not need my office to review Immigration and Career Training's application of subsections 15(1)(f) and 29(1) of FOIP. However, he still wanted my office to review the search efforts conducted by Immigration and Career Training.

II RECORDS AT ISSUE

[8] No records are at issue in this review. The search efforts of Immigration and Career Training are at issue.

III DISCUSSION OF THE ISSUES

[9] Immigration and Career Training is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP.

1. Did Immigration and Career Training conduct an adequate search?

[10] Section 5 of FOIP provides an Applicant the right of access to records in the possession or control of a government institution:

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.

[11] Section 5 is clear that access to records must be granted if they are in the possession or under the control of the government institution subject to any exemptions under Part III of FOIP.

[12] FOIP does not require a government institution to prove with absolute certainty that records responsive to an access to information request do not exist. It must, however, demonstrate that it has conducted a reasonable search to locate them.

[13] 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. 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.

[14] When conducting a review of a government institution's search efforts, details are requested that help my office understand the level of effort made to locate the records. The submission to my office should outline the search strategy conducted which can include:

- 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.
- 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 IPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[15] The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

[16] In its submission, Immigration and Career Training outlined the search it conducted. Its details included the following:

- A meeting was held to determine which divisions would have records. It was determined that only three Assistant Deputy Ministers (ADM) of six would have had any involvement with Canmax:
 1. ADM of Labour Market Development Division (and responsible for Immigration);
 2. ADM of Economic Development Division (and formerly of the Immigration Branch); and
 3. ADM of Performance and Strategic Initiatives (and responsible for the Greater China unit).
- According to Immigration and Career Training, the records identified by the searches were emails with attachments. The ADMs, and the DM, did not send correspondence regarding Canmax beyond emails. Any written correspondence such as letters would have been handled within the Branch itself, not through an ADM or DM office.
- Details of the searches conducted by the 3 ADMs was provided and were as follows:
 - ADM of Labour Market Development Division (and responsible for Immigration):
 - He has been with government for 12 years;
 - His Senior Administrative Assistant conducted the search; and

- Details of how she conducted the search were not received. Only an email dated June 22, 2017, was sent indicating responsive records had been found.
- ADM of Economic Development Division (and formerly of the Immigration Branch):
 - He has been with government for 17 years; and
 - Details of how he conducted the search were not received. Only an email dated June 15, 2017, was sent indicating responsive records had been found. However, these records were deemed non-responsive as he had not yet attained his position as an ADM at the time the emails were sent, and the request was specifically for ADM and/or Deputy Minister (DM) correspondence.
- ADM of Performance and Strategic Initiatives (and responsible for the Greater China unit):
 - He has been with Immigration and Career Training for 15 years so is familiar with the subject matter;
 - He conducted his search on June 21, 2017;
 - He searched the C: drive which took approximately three minutes;
 - He searched the G: drive;
 - He searched his government email folders including his “Inbox” and archive folder which took approximately three minutes;
 - He searched his calendar which took approximately three minutes;
 - He searched paper records which took approximately three minutes;
 - He conducted a search using the search terms provided by the Applicant;
 - He did not search off-site storage because there were no archived paper records; and
 - The search resulted in no responsive records.
- Details of the search conducted by the DM were provided and were as follows:
 - The search was conducted by the Senior Administrative Assistant;

- The search was conducted on June 8, 2017;
- Records were located and provided on June 14, 2017;
- The search took 20 minutes and four records were located; and
- Details of how she conducted the search were not received.

[17] I applaud Immigration and Career Training for its use of the *Responsive Record Search Log*. However, if the *Responsive Record Search Log* is sent to senior officials and they do not complete it, it does not help. I encourage the use of this document by all staff who conduct searches. The more detail provided in that log, the more likely my office will find the search was reasonable and adequate for purposes of FOIP.

[18] Despite the option to use this document, one ADM provided no details regarding his search. Although a bit more information was provided by the DM's Senior Administrative Assistant, there was insufficient detail about how the search was conducted. Only the length of time the search took was provided which reveals very little about how the search was conducted.

[19] Finally, why the records found by one ADM were deemed non-responsive is perplexing. If the ADM was in that position at the time of the access request and the records fit within the scope of the access request then the records would be responsive regardless of where they originated from. I encourage Immigration and Career Training to be open and not too technical when interpreting access requests. It would have been more appropriate to contact the Applicant and inquire if he wanted those records.

[20] On January 1, 2018, new amendments to FOIP came into effect. One of those amendments places a duty on government institutions to assist applicants by responding to requests openly, accurately and completely. Prior to this amendment, the duty to assist was implicit in FOIP. Section 5.1(1) of FOIP provides:

5.1(1) Subject to this Act and the regulations, a government institution shall respond to a written request for access openly, accurately and completely.

[21] As noted earlier, a government institution does not have to prove with absolute certainty that records responsive to an access to information request do not exist. It must, however, demonstrate that it has conducted a reasonable search to locate them. The threshold that must be met is one of “reasonableness”. Reasonableness does not mean perfection but rather an effort that is objectively diligent and prudent in all the circumstances.

[22] Based on what has been provided to my office, I find that Immigration and Career Training has not demonstrated that its search for records was adequate for purposes of FOIP.

[23] I recommend Immigration and Career Training conduct a more fulsome search for records responsive to the Applicant’s request. If additional records are located and withheld in full or in part, the Applicant has the right to request a review of those records by my office.

[24] I also recommend the records deemed non-responsive be provided to the Applicant. If information is withheld in the records, the Applicant has the right to request a review of those records by my office.

IV FINDING

[25] I find that the search conducted by Immigration and Career Training was not adequate for purposes of FOIP.

V RECOMMENDATIONS

[26] I recommend that Immigration and Career Training conduct a more fulsome search for responsive records.

[27] I also recommend the records deemed non-responsive be provided to the Applicant. If information is withheld in the records, the Applicant has the right to request a review of those records by my office.

Dated at Regina, in the Province of Saskatchewan, this 17th day of April, 2018.

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