



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 347-2019

Ministry of Highways

January 18, 2021

Summary:

The Applicant made an access to information request to the Ministry of Highways (Highways) for certain records. The Applicant was not satisfied with Highways' search efforts and believed Highways did not respond fully to all items from their access to information request. The Commissioner found that Highways did not conduct an adequate search for records, and recommended Highways conduct another search for records for the items in question. The Commissioner further recommended that within 30 days of receiving the final report, Highways should provide the details of its search efforts to the Applicant and issue a new section 7 response, taking into consideration any factors at subsection 7(2) of *The Freedom of Information and Protection of Privacy Act* that are found to apply. The Commissioner also found Highways did not meet its duty to assist when it did not respond openly, accurately and completely to the Applicant. As such, the Commissioner recommended that Highways review its policies and procedures to ensure it meets its duty to assist when responding to future access to information requests.

I BACKGROUND

[1] On July 31, 2019, the Ministry of Highways (Highways) received an access to information request from the Applicant as follows:

File: 4280-50-03 Claims 16-28 [timeframe May, 2019]

Highway Hotline Road Information posted on Highway 16, Paynton to North Battleford for April 24, 2019. [timeframe April, 2019]

The date of commencement of "Construction" for Highway 16, Paynton to North Battleford and [sic]. [timeframe April, 2019]

The log of the location and dates of all hazard sign postings for eastbound lanes of Highway 16, Paynton to North Battleford in effect for April 24, 2019. [timeframe April, 2019]

- [2] In a letter dated September 30, 2019, Highways responded to the Applicant with the following:

Further to my letter of August 15, 2019, this is to inform you that your access request has been fully granted. Enclosed are copies of the records requested.

- [3] On November 8, 2019, the Applicant asked my office to undertake a review. Their concern was that Highways did not provide records responsive to the following two parts of the access to information request.

The date of commencement of “Construction” for Highway 16, Paynton to North Battlefordand [sic]. [timeframe April, 2019]

The log of the location and dates of all hazard sign postings for eastbound lanes of Highway 16, Paynton to North Battleford in effect for April 24, 2019.

- [4] On November 13, 2019, my office provided notification to Highways and the Applicant of my office’s intent to undertake a review of Highways’ search efforts.

II RECORDS AT ISSUE

- [5] As my office is undertaking a review of Highways’ search efforts, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [6] Highways qualifies as a “government institution” pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, I have jurisdiction to conduct this review.

2. Did Highways conduct a reasonable search for records?

[7] Section 5 of FOIP provides 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.

[8] Section 5 of FOIP 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 that may apply pursuant to FOIP.

[9] Government institutions must grant access to records in their possession or control subject to any exemptions in Parts III and IV of FOIP. FOIP does not require a government institution to prove with absolute certainty that records do not exist, but it must demonstrate it has conducted a reasonable search to locate the records.

[10] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records reasonably 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 to support its search efforts that government institutions can provide to my office 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.

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

[12] Highways stated the Applicant's access to information request "has been fully granted". What I need to consider in this matter is how Highways searched for the two items requested by the Applicant when it concluded it had fully granted the Applicant's access to information request. Highways' search efforts need to demonstrate it searched for records and addressed or accounted for each part of the access to information request. The two, specific items from the Applicant's access to information request in question are as follows:

The date of commencement of "Construction" for Highway 16, Paynton to North Battleford and [sic]. [timeframe April, 2019]

The log of the location and dates of all hazard sign postings for eastbound lanes of Highway 16, Paynton to North Battleford in effect for April 24, 2019.

[13] In terms of its search efforts, Highways outlined the following:

11. The Ministry of Highways asked the following individuals to conduct a search for responsive records: [names of seven Ministry employees, whom I refer to as employee numbers 1 through 7 below according to the Ministry's list]

12. [Employee 1], Road Information Manager, searched the electronic database for the road conditions on April 2019.

13. [Employee 2], Project Manager, Design and Construction, searched the staffing schedule to determine what staff may have been working in the area. No employees were found to be working in the area.

14. [Employee 3], Resident Property Manager, Construction Branch, searched the electronic folder and hard copy files for records related to the construction project.

15. [Employee 4], Administrative Support, Central Operations Regional Administration knew where the specific damage claim file was located and found it.

16. [Employee 5], Supervisor of Operations, North Battleford Section, searched his diary and CoDES, which is an electronic database that tracks labour, materials and equipment. [Employee 5] searched CoDES to determine if there was any work being done in that area on that day. No work was found to be done in that area on that day.

17. [Employee 7], Senior Materials Standards Engineer, Saskatoon, searched his work cell phone for text messages. [Employee 7] and his crew inspected the site that was the subject of the damage claim file.

18. The individuals in the Ministry of Highways searched for records as described above. The responsive records that resulted from the search efforts were provided in full to the Applicant.

[14] As a point of clarification on what I have quoted in the preceding paragraph, my office noted that Highways mentioned seven employees and what each searched, but did not state the role of who I would refer to as Employee 6. Regarding Employee 6, Highways clarified, “[name of employee] contacted employees and received verbal information that they did not have any records. [They] acted more in the role of a messenger and was not asked to conduct a search”.

[15] When my office inquired with Highways as to the two specific records in question and how they matched up to what was provided to the Applicant, Highways responded as follows:

The results of our search efforts were provided in full to the Applicant that does not mean that every item the Applicant requested resulted in responsive records. There were no records responsive to the items mentioned below.

[16] Because Highways’ response appeared unclear, my office asked it to clarify what it meant by “no records were responsive to the items below”. Highways’ response is as follows:

The Applicant’s request was broader than the two items mentioned below [the two items in question]. The records that were found were responsive to the request; the records were responsive to other items being requested... The Ministry provided full access to the records that were responsive to the request.

[17] Highways does not seem to have understood that unless it can demonstrate how it has considered every part of the Applicant’s access to information request, then it cannot have responded in full to the Applicant. Since Highways’ submission lacked sufficient details on its search efforts regarding the missing items, I find it has not conducted a reasonable search for records.

[18] Because I find Highways did not conduct a reasonable search for records, I recommend it conduct another search for the date of commencement of “Construction” for Highway 16, Paynton to North Battleford [timeframe April, 2019], and the log of the location and dates

of all hazard sign postings for eastbound lanes of Highway 16, Paynton to North Battleford in effect for April 24, 2019. Within 30 days of receiving this final Review Report, it should provide details of its search to my office and the Applicant and issue a new section 7 response, clearly indicating which provisions at subsection 7(2) of FOIP are found to apply.

[19] With respect to its duty to assist, subsection 5.1(1) of FOIP requires Highways to respond to applicants *openly*, *accurately* and *completely*. Subsection 5.1(1) of FOIP provides as follows:

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.

[20] In this matter, to respond *openly* means to provide access to all or part of a record and to be upfront in the reasons for refusing access. To respond *accurately* means to understand every part of an access to information request, and to clarify the nature if required. This includes providing applicants with information on which records the government institution has in its possession or control that may be responsive to an access to information request, and seeking clarification from the applicant on the scope if required. To respond *completely* means to not leave any gaps in a response to an applicant, thereby eliminating confusion. Highways section 7 response to the Applicant was not clear and appeared incomplete; it did not address every part of the Applicant's access to information request, or explain how Highways came its conclusion it had responded in full. Highways also does not appear to have advised the Applicant of which records it did have in its possession or control that may have been responsive to the items in question, or to have sought clarification from the Applicant on their request. I find, therefore, Highways did not meet its duty to assist in this matter when it did not respond to the Applicant openly, accurately and completely. I recommend it review its policies and procedures to ensure it meets its duty to assist when responding to future access to information requests by responding openly, accurately and completely.

IV FINDINGS

[21] I find Highways did not conduct a reasonable search for records.

[22] I find Highways did not meet its duty to assist when it did not respond openly, accurately and completely.

V RECOMMENDATIONS

[23] I recommend Highways conduct another search for the date of commencement of “Construction” for Highway 16, Paynton to North Battleford [timeframe April, 2019], and the log of the location and dates of all hazard sign postings for eastbound lanes of Highway 16, Paynton to North Battleford in effect for April 24, 2019. Within 30 days of receiving this final Review Report, it should provide details of its search to my office and the Applicant and issue a new section 7 response, including which provisions at subsection 7(2) of FOIP are found to apply.

[24] I recommend Highways review its policies and procedures to ensure it meets its duty to assist when responding to future access to information requests by responding openly, accurately and completely.

Dated at Regina, in the Province of Saskatchewan, this 18th day of January, 2021.

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