



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 078-2023, 092-2023, 093-2023

Ministry of Immigration and Career Training

September 8, 2023

Summary:

The Applicant submitted three access to information requests to the Ministry of Immigration and Career Training (Immigration). Immigration responded to the Applicant's requests indicating the requested records do not exist pursuant to subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that Immigration provided reasonable details and explanations for why existing reports that would be responsive to the Applicant's access to information request do not exist in its database called "OASIS". The Commissioner also found that the raw data contained in OASIS, or in any other database containing responsive data, is a record. As such, the Commissioner recommended that Immigration release raw data from OASIS to the Applicant within 30 days of issuance of this Report after considering whether any exemptions apply and severing identifiable personal information.

I BACKGROUND

- [1] This Review Report involves the same Applicant and deals with the Ministry of Immigration and Career Training's (Immigration's) responses to three of their access to information requests.
- [2] On March 15, 2023, Immigration received Access Request #1 (IPC File: 078-2023) for the following records for the timeframe of January 1, 2018 to March 15, 2023 broken out by year:

- how many files received by SINP where the applicant has a Chinese passport,
- how many files received by SINP where the applicant has an Indian passport,
- how many files received by SINP where the applicant has a Bangladeshi passport,
- how many files received by SINP where the applicant has a Vietnamese passport,
- how many files received by SINP where the applicant has a Ukrainian passport,
- how many files received by SINP where the applicant has an American (USA) passport,
- how many files received by SINP where the applicant has a Filipino passport,
- how many files received by SINP where the applicant has a UK passport,

Next to each # I want to see the % of each that are:

- refused
- approved
- referred to the Program Integrity Unit (outcome of this not important)

- [3] On March 28, 2023, Immigration received Access Request #2 (IPC File: 092-2023) and #3 (IPC File: 093-2023) for the following records for the timeframe of January 1, 2020 to March 29, 2023:

Access Request #2

Please send me the following for all files referred to the Program Integrity Unit:

- # of files referred per officer (include officer name)

Access Request #3

Please send me the following for all files referred to the Program Integrity Unit:

- # of files broken out by country of nationality of principal applicant

- [4] On March 23, 2023, Immigration responded to Access Request #1 and on April 6, 2023, to Access Requests #2 and #3 advising that the requested records do not exist for any of the requests. Immigration cited subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

- [5] On March 24, 2023, the Applicant submitted a request for review for Access Request #1. On April 10, 2023, the Applicant submitted a request for review for Access Requests #2 and #3.

[6] On April 17, 2023, my office notified Immigration and the Applicant of my intention to undertake a review of Access Request #1. On May 29, 2023, my office notified Immigration and the Applicant of my intention to undertake reviews of Access Requests #2 and #3.

[7] On May 11, 2023, Immigration provided its submission to my office for Access Request #1. On June 7, 2023, Immigration provided its submission for Access Requests #2 and #3. The Applicant did not provide submissions.

II RECORDS AT ISSUE

[8] There are no records at issue as these reviews are regarding search efforts for records Immigration has indicated do not exist.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] Immigration is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I find I have jurisdiction to undertake this review.

2. Did Immigration conduct a reasonable search for records?

[10] The Applicant stated as follows regarding why they believe records responsive to their access request should exist:

So how can the records not exist? Only because ICT and PIU constantly refuse to lift a finger and run a report in their system and give me what I want. Or just sort through each file by hand.

Please tell me, how is it possible that a file is referred to the PIU and nowhere in that file is the country of nationality of that person? That is literally impossible.

But again, I'm always told 'the records don't exist and we don't have to create the record for you.'

If they are allowed to keep stating that, well, its [sic] really just a very effective way of hiding whatever they choose to hide.

I'm so frustrated by this repeated nonsense of 'records don't exist.'

[11] 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.

[12] Section 5 of FOIP establishes a right of access by any person to records in the possession or control of a government institution, subject to limited and specific exemptions, which are set out in FOIP (*Guide to FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023 [*Guide to FOIP*, Ch. 3], p. 3).

[13] Subsection 5.1(1) of FOIP requires a government institution to respond to an applicant’s access to information request openly, accurately and completely. This means that government institutions should make reasonable effort to not only identify and seek out records responsive to an applicant’s access to information request, but to explain the steps in the process. 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 (*Guide to FOIP*, Ch. 3, p. 12).

[14] In Immigration’s section 7 decision letters, it advised the Applicant that the records they were seeking did not exist and therefore access was refused pursuant to subsection 7(2)(e) of FOIP, which provides as follows:

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;

[15] A statement by a local authority that a record does not exist does not imply that the record in question does not exist at all. It would not be possible for a local authority to make such a sweeping statement about the general existence of a record. The term “exist” in subsection 7(2)(e) of FOIP is a function of being possessed or controlled by the government institution to which the access request is being made. There are two circumstances where a response that records do not exist can occur: 1) the government institution searched and the search did not produce any records; or 2) the government institution does not have possession or control of the record (*Guide to FOIP*, Ch. 3, pp. 56-57).

[16] In other review reports (e.g., [Review Report 043-2022](#), [Review Report 004-2022](#)), I have also considered if public bodies have provided reasonable explanations for why records would not exist.

[17] To claim that the search did not produce records, the search should be one that is reasonable. 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. It is difficult to prove a negative, therefore FOIP does not require a government institution to prove with absolute certainty that records do not exist. When a government institution receives a notice of a review, some or all of the following can be included in the government institution’s submission:

- For personal information requests – explain how the individual is involved with the government institutions (i.e., client, employee, former employee etc.) and why certain departments/divisions/branches/committees/boards were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches/committees/boards 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/committees/boards 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 *Using Affidavits in a Review with the IPC*.

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

(*Guide to FOIP*, Ch. 3, pp. 13-15)

[18] Immigration's submission stated the following regarding its search for records:

Access Request #1

The searches were conducted by two Senior Analysts in the Branch. These individuals were chosen by the Branch due to their familiarity with the system, the fact that they routinely run inquiries into the OASIS system and their general knowledge regarding records that exist within their Branch.

Access Requests #2 and #3

The original search effort is detailed in Appendix A. The search was conducted by the Manager, Program Integrity Unit. This individual was chosen by the Branch due to their familiarity with the system, the fact that they routinely run inquiries into the OASIS system and their general knowledge regarding program integrity records that exist within their Branch.

[19] Immigration provided search logs from each employee that outlines the dates the searches were conducted and the amount of time spent on their search efforts. The search logs identified the terms it used for searching the identified electronic file directory and email. I am able to tell that the search logs indicate that no responsive records were identified. That is, OASIS does not appear to have existing reports that respond to what information the Applicant seeks. I am satisfied with Immigration's response and find it has provided reasonable details and explanations for why existing reports that would be responsive to the Applicant's access to information request do not exist in OASIS.

[20] Regarding OASIS, Immigration submitted as follows:

OASIS is a computer program that produces records. Therefore, OASIS is not a record as defined in the Act.

As previously provided to the Applicant, the OIPC provides the following in their *Best Practices for Responding to Access Requests* (page 1):

There have been instances where instead of providing the applicant with responsive records, public bodies offer summaries of the information requested, thus creating new records. This may be in fact what the applicant is looking for. However, a formal access request under either the FOIP or LA FOIP entitles the applicant to documents in their original form. **FOIP and LA FOIP are clear that access rights under these laws is to "records that are in the possession or under the control" of that public body. In other words, the access provisions in both Acts are**

“record-driven” and not “information-driven.” There is no responsibility under either Act to create records that do not otherwise exist. [emphasis added]

In Review Report 313-2016, paragraphs [16] through [18], the OIPC stated the following:

[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.

As indicated in the Ministry’s section 7 letter to the Applicant, there are no records that contain the information requested...

...

The Ministry submits that the Act provides members of the public with a right to access records in the Ministry’s possession or under its control that already exist. The Ministry submits it has followed the law when it advised the Applicant that no records exist.

[Emphasis in original]

[21] In my office’s [Review Report 057-2019](#) concerning the Ministry of Corrections and Policing and [Review Report 038-2018](#) concerning the University of Regina, I considered separate matters where an applicant requested information that was contained within a database. In those matters, I agreed that FOIP (and *The Local Authority Freedom of Information and Protection of Privacy Act* in the case of the University of Regina) do not obligate public bodies, as a general rule, to “create” records that do not currently exist. In

Review Report 038-2018, I added that if public bodies have records that contain the raw information that is sought by an applicant that can be produced, then those records would be responsive to the applicant's request. A "record" is defined by subsection 2(1)(i) of FOIP as follows:

2(1) In this Act:

...
(i) "**record**" means a record of **information in any form** and includes information that is written, photographed, recorded or **stored in any manner**, but does not include computer programs or other mechanisms that produce records;

[Emphasis added]

[22] In its submission, Immigration outlined what information may be contained in OASIS:

Access Request #1

I have been advised that while the information may be collected within the Saskatchewan Immigrant Nominee Program online application system (also known as OASIS), we do not have a singular inquiry that would produce the information that was requested by the Applicant. In order to provide the Applicant with the information [the Applicant] has requested, we would need to take multiple inquiry reports, consolidate the extracts into a single Excel file, add a column and create a formula to capture year of receipt, create pivot tables, apply filters, create a new spreadsheet, and then add additional formulas to the new spreadsheet to determine nominated, ineligible, or currently referred to Program Integrity, and then combine the table again into a new record... This is not practical, and would be time consuming and difficult for the branch. All of this is to say, no records exist that contains the information requested.

Access Requests #2 and #3

As indicated in the Ministry's section 7 letter to the Applicant, there are no records that contain the information requested. A record would have to be created to respond to this request, which would require additional filtering, formulas, and additional work to determine the number of open program integrity files and the country of nationality of the individuals who were referred to program integrity. Given the vast workload of this unit, and the Branch, it is not practical for the Branch to perform the additional work to create this record. In addition, the Applicant did not ask for **open** program integrity files by country of nationality. Once a file is closed within OASIS, the status changes to closed, and it is no longer possible for the Ministry to independently run or create a report to ascertain which closed files may have been referred to the Program Integrity Unit and by country of nationality. The Applicant requested files going back almost three and a half years, which is not possible for the Ministry to independently gather

with any existing inquiry. To create a record responsive to this request, the Ministry would need to send a service request to the vendor, and the vendor would need to do considerable work in the back end of the system to create the report. Any creation of a new report is done at a cost to the Ministry, and would require the vendor to prioritize this report over other, far more critical upgrades to the OASIS system.

- [23] It appears, then, that OASIS may contain at least some raw data that would be responsive to what the Applicant seeks. While Immigration would not have a duty to create a record that would be responsive to the Applicant's request, as I found in Review Reports 038-2018 and 057-2019, I find the raw data contained in OASIS is a record. I follow the recommendations I made in those two review reports and recommend that Immigration release the raw data from its OASIS system (or any other database that may contain such responsive data) to the Applicant within 30 days of issuance of this Report after considering whether any exemptions apply and severing identifiable personal information.

IV FINDINGS

- [24] I find that I have jurisdiction to conduct this review.
- [25] I find Immigration has provided reasonable details and explanations for why existing reports that would be responsive to the Applicant's access to information request do not exist in OASIS.
- [26] I find that that raw data contained in OASIS (or any other database containing responsive data) is a record.

V RECOMMENDATION

- [27] I recommend that Immigration release raw data from OASIS (or any other database containing responsive data) to the Applicant within 30 days of issuance of this Report after considering whether any exemptions apply and severing identifiable personal information.

Dated at Regina, in the Province of Saskatchewan, this 8th day of September, 2023.

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