



## **REVIEW REPORT 144-2021**

### **Ministry of Social Services**

**September 16, 2022**

**Summary:** The Applicant submitted an access to information request to the Ministry of Social Services (Social Services). Social Services notified the Applicant it was extending its response time by an additional 30 days pursuant to section 12(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant asked the Commissioner to undertake a review. As Social Services failed to respond to the Applicant within the extended timeline, the Commissioner found it did not comply with section 12 of FOIP. The Commissioner recommended Social Services review why it was not able to respond to the Applicant within the legislated timeframe and determine if it needs to revisit its policies and procedures, or if it has adequate resources.

### **I BACKGROUND**

[1] On February 18, 2021, the Ministry of Social Services (Social Services) received an access to information request from the Applicant. The Applicant requested access to the following records related to the Street Workers Advocacy Project (SWAP)/Raising Hope and/or Government of Saskatchewan, Ministry of Social Services, Ministry of Health, and the Ministry of Mental Health and Addictions for the time period of January 1, 2019 to January 31, 2021:

1. Independent external impartial 3<sup>rd</sup> party yearly audit for 2019 and 2020.

[2] On March 22, 2021, Social Services emailed a letter to the Applicant advising it was extending the 30-day response period an additional 30 days pursuant to section 12(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The letter noted the response deadline would be extended from March 22, 2021 to April 20, 2021.

- [3] On May 3, 2021, Social Services advised the Applicant and a third party, Street Worker's Advocacy Project Regina Inc. (SWAP), that the information requested may contain third party information pursuant to section 19(1) of FOIP. As such, Social Services provided notice pursuant to section 34 of FOIP, which stated the third party would have 20 days to submit representations for Social Services' consideration. In the letter to the third party, Social Services also stated that it intended to release the records with some redactions.
- [4] On May 11, 2021, the Applicant emailed Social Services asking when they should expect a response. On May 14, 2021, Social Services responded to the Applicant advising it could not provide an estimated response date.
- [5] On May 20, 2021, the Applicant submitted a request for review to my office as they had not received a response from Social Services. The Applicant objected to the need for Social Services to apply an extension pursuant to section 12(1)(b) of FOIP.
- [6] On May 25, 2021, my office followed up with Social Services inquiring when the Applicant should anticipate receiving a response to their request. On June 9, 2021, Social Services advised that the response was being finalized and would be "released shortly". However, it was unable to provide a specific date. On June 10, 2021, my office requested Social Services have its responses issued to the request on or before July 5, 2021. On July 6, 2021, my office followed up with Social Services requesting an update on whether or not the response had been issued. Social Services responded advising the response was being finalized, but they did not have a date for the release. On July 21, 2021, my office followed up with Social Services again regarding the release of the response. Social Services responded indicating that the response had been provided to the Applicant.
- [7] On July 22, 2021, the Applicant notified my office that they had received a response from Social Services on July 19, 2022, and provided my office with a copy of the correspondence.
- [8] On July 23, 2021, my office emailed the Applicant to ask if they were satisfied with Social Services' response.

[9] On July 23, 2021, the Applicant asked my office to review Social Services' decision to withhold portions of the record pursuant to section 19(1)(b) and (c) of FOIP, if Social Services met the legislated timelines to respond to their access to information request, and Social Services' need for an extension pursuant to section 12(1)(b) of FOIP. Additionally, the Applicant requested my office review if Social Services had met the legislative requirement regarding third party intervention pursuant to Part V of FOIP.

[10] On August 26, 2021, my office notified the Applicant, the third party and Social Services of my intention to undertake a review.

[11] On January 18, 2022, Social Services contacted my office to advise it was no longer relying on the exemptions raised for the record and that the third party had agreed to the release of the records in full. On February 17, 2022, Social Services released the records in full to the Applicant. On March 10, 2022, the Applicant confirmed with my office that they had received the records with no redactions and were satisfied with the information they had received. As such, my office closed the portion of the review relating to the redactions applied to the record (IPC File: 187-2021) effective March 10, 2022. However, the Applicant wished to proceed with the remaining portions of the review (IPC File: 144-2021).

[12] On April 26, 2022, Social Services provided my office with its submission. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

[13] This review relates to Social Services' timeline to process the Applicant's access to information request. As such, there are no records at issue in this review.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

[14] Social Services is a “government institution” pursuant to section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

**2. Did Social Services comply with section 12 of FOIP?**

[15] Section 7(2) of FOIP requires that a government institution respond to an applicant within 30 calendar days of receiving an access to information request, unless the response deadline was extended pursuant to section 12 of FOIP. Section 7(2) of FOIP provides as follows:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

[16] Section 12 of FOIP is clear that a government institution can extend the initial 30-day response deadline for a maximum of 30 more days. This means 60 days in total. However, this is only in limited circumstances, which are outlined in section 12(1) of FOIP (*Guide to FOIP*, Chapter 3: “Access to Records”, updated: June 29, 2021, at page 72 (*Guide to FOIP*, Ch. 3)).

[17] Social Services advised the Applicant it was relying on section 12(1)(b) of FOIP to extend its deadline to respond. Section 12 of FOIP provides as follows:

12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

...

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period;

...

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

[18] My office’s [Review Report 152-2020](#) provides the following regarding the calculation of time:

[11] ...In terms of calculating the due date, *The Legislation Act* establishes general rules that govern the interpretation of all statutory instruments in the province. Section 2-28 of *The Legislation Act* provides guidance on the computation of time and can be applied to the 30 day calculation as follows:

- The first day the access request is received is excluded in the calculation of time;
- If the due date falls on a holiday, the time is extended to the next day that is not a holiday;
- If the due date falls on a weekend, the time is extended to the next day the office is open; and
- As LA FOIP [and FOIP] expresses the time in a number of days, this is interpreted as 30 calendar days, not business days.

[19] Section 12(2) of FOIP states that a notice of an extension must be provided to an applicant within the first 30 days after the government institution receives an access to information request. Social Services received the Applicant's access to information request on February 18, 2021, and was required to provide notice of an extension to the Applicant within 30 days, or by March 20, 2021. Since that day was a Saturday, Social Services had until March 22, 2021, to provide the Applicant with any notice of extension.

[20] On March 22, 2021, Social Services extended the time to respond pursuant to section 12(1)(b) of FOIP, so it provided this notice of extension within the period it was allowed to do so. I note that best practice would be for a government institution to provide such notice as soon as it is able, rather than waiting until the due date to do so.

[21] On May 3, 2021, Social Services advised the Applicant it also needed to undertake third party consultations with SWAP. Social Services did not cite under which provision of FOIP it was providing this extension, but such a notice would normally occur pursuant to section 12(1)(c) of FOIP. Regardless, Social Services did not provide this notice within the period it was allowed to do so, and so I will not consider it further.

[22] Section 12(3) of FOIP then requires a government institution to respond within the period of extension. Section 12(3) of FOIP provides:

**12(3)** Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[23] Social Services did not respond to the Applicant until July 19, 2021, which was 151 days after the Applicant submitted their request. This was well beyond the time it needed to do so. As such, Social Services did not comply with section 12(3) of FOIP, so there is no need for me to consider its reasons for providing an extension pursuant to section 12(1)(b) of FOIP. I find, then, Social Services did not comply with section 12 of FOIP.

[24] My office previously recommended Social Services amend its policies and/or procedures for the processing of access to information requests in my office's [Review Report 137-2021](#), [Review Report 142-2021, 193-2021](#) and [Review Report 141-2021, 192-2021](#). I again remind Social Services of its obligation to process access to information requests as required by FOIP. In [Review Report 143-2021, 188-2021](#), I made the following recommendation which I will now reiterate: I recommend Social Services review why it was not able to respond to the Applicant within the legislative timeframe and determine if it needs to revisit its policies and procedures, or if it has adequate resources.

#### **IV FINDINGS**

[25] I find that I have jurisdiction to conduct this review.

[26] I find that Social Services did not comply with section 12 of FOIP.

#### **V RECOMMENDATION**

[27] I recommend Social Services review why it was not able to respond to the Applicant within the legislative timeframe and determine if it needs to revisit its policies and procedures, or if it has adequate resources.

Dated at Regina, in the Province of Saskatchewan, this 16th day of September, 2022.

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