



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 147-2021, 191-2021

Ministry of Social Services

September 19, 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. The Commissioner also found that Social Services had conducted a reasonable search for responsive records and recommended Social Services take no further action regarding its search efforts.

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. All advisory committees such as audit and finance, governance, community stewardship, nominations, or special committees including the reason for these committees.

- [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 some of 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 in full.
- [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 responses were 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 response issued to the request on or before July 5, 2021.
- [7] On July 6, 2021, the Applicant notified my office that they had received a response from Social Services on June 14, 2021, and provided my office with a copy of the correspondence.
- [8] On July 14, 2021, my office emailed the Applicant to ask if they were satisfied with Social Services' response.

[9] On July 22, 2021, the Applicant asked my office to review Social Services' search efforts for the requested records, 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.

[10] On July 29, 2021, my office notified the Applicant and Social Services of my intention to undertake a review.

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

II RECORDS AT ISSUE

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

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[13] 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?

[14] 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:

[15] 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)).

[16] 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.

[17] 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.

- [18] 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.
- [19] 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.
- [20] 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.
- [21] 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.
- [22] Social Services did not respond to the Applicant until June 14, 2021, which was 116 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.
- [23] 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.

3. Did Social Services perform a reasonable search for records?

[24] As noted earlier, Social Services advised that the records the Applicant sought did not exist within Social Services and cited section 7(2)(e) of FOIP. Section 7(2)(e) of FOIP 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;

[25] The Applicant requested that my office conduct a review of Social Services' claim that records do not exist.

[26] Social Services' submission provided the following regarding its reliance on section 7(2)(e) of FOIP:

While one record was located, other records requested were not within the possession or control of the ministry. The record released to the applicant pertained to the Advisory Committee; the ministry did not locate any additional records related to the other types of advisory committees identified by the applicant. Therefore, a "no records exist" response was issued for those portions of the request.

[27] Social Services' section 7 response to the Applicant indicated it had fully granted their access request; however, its response also stated that other records were not within its possession or control. My office asked Social Services to clarify if it had released all records it had located to the Applicant. Social Services clarified that it had done so. Social Services' section 7 response stated as follows:

A copy of the responsive record the Ministry has in its possession is attached. **Records related to some of the policies identified in your request are not within the possession or control of the Ministry** and therefore pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) section 7(2)(e), we must advise that portion of the request is refused as the records do not exist within the Ministry.

[Emphasis added]

[28] “Possession” is the physical possession plus a measure of control of the record. “Control” connotes authority. A record is under the control of a government institution when the government institution has the authority to manage the record including restricting, regulating and administering its use, disclosure or disposition (*Guide to FOIP*, Chapter 1, “Purposes and Scope of FOIP”, updated: July 28, 2020, at page 9).

[29] Social Services provided the following regarding its position that some records were not in its possession or control:

SWAP is a non-profit corporation that operates several different programs and receives funding from several organizations. The Ministry of Social Services funding agreement is related to only two of the programs run by SWAP. As stated previously, one responsive record for this request was in the possession of the ministry during the search efforts in both units. During conversations with both units, it was identified that some of the records requested were not within the control of the ministry as they did not fall within the scope of the ministry’s agreement with SWAP.

...

The requested documents over which the ministry does not have control are created and owned by SWAP and pertain to the internal operations (i.e., board matters including governance etc.) which the ministry does not have any control over. The agreement for services with SWAP is related to specific programs they provide, rather than all the programs SWAP provides to the public.

...

The ministry may enter into an agreement which focuses on specific services the ministry provides funding for. Reporting requirements are linked to those services and audits of the funds provided. In this case, the ministry had one of the requested documents, but other records requested were not in its possession or control as they did not relate to a ministry matter.

[30] Based on Social Services’ explanation above, some of the records requested by the Applicant would not have been requested by Social Services or submitted to Social

Services by SWAP for the purposes of this program, and as such Social Services would not have possession or control over those records. I do not need to consider records that would exist within SWAP as Social Services does not have possession or control of those records. Therefore, I only need to consider Social Services' search efforts with respect to the records in its possession or control.

[31] The focus of a search review is whether the government institution conducted a reasonable search. As noted above, 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 (*Guide to FOIP*, Ch. 3, p. 8)

[32] 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 notification letter or email from my office requesting details of its search efforts, some or all of the following can be included in the government institutions' submission (not exhaustive):

Outline the search strategy conducted:

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

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. 8 to 10)

[33] Social Services' submission provided the following regarding its efforts to locate the responsive records:

Street Workers Advocacy Project (SWAP) is a community-based organization (CBO) that receives funding from the Ministry through an agreement for services. The CBO

Contract Administration unit, Finance and Corporate Services (FACS) is responsible for the administration of the Ministry's agreements with CBOs, including financial requirements, issuing funding etc. FACS are the Ministry's experts related to financial reporting required from the CBO under the Agreement for Services (agreement). Child and Family Programs (CFP) Community Services unit is responsible for the direct relationship with SWAP, related to the specific services identified in the agreements. CFP Community Services unit are responsible for ensuring CBOs providing services for children and families are meeting the requirements detailed in the agreement. They therefore have a firm knowledge of the agreement requirements, including reporting requirements.

Therefore, FACS and CFP Community Services unit were contacted to conduct a search for responsive records. Records and Privacy had discussions with management from both units to ensure staff understood the records they were looking for and to see if any clarification from the applicant was required. Staff from both areas are subject matter experts whose jobs focus on dealing with CBOs.

The applicant submitted a total of ten access requests related to SWAP on February 18. The search for responsive records for all the access requests occurred at the same time. As the requests covered a broad range of documents, the search for records related to SWAP was thorough (i.e., all records related to SWAP). Where appropriate, the searches included both electronic files, including emails, and paper files (i.e., notebooks etc.).

...

The search for records completed in FACS was overseen by the Manager, CBO Contract Administration. The unit's filing system is based on the specific CBO with sub-folders for that CBO. Their search included the Street Worker's Advocacy Project Regina Inc. folder, Correspondence folder, using the keywords committee, governance, stewardship and nominations.

In CFP Community Services unit, the staff that completed searches included the Manager, Director and Executive Director of Community Services. Due to ongoing discussions and concerns raised by external parties, these staff were in regular contact with SWAP at the time of the request. Electronic record searches of CFP electronic files and emails included the following key words: Raising Hope, RHMFF, SWAP, bylaws, and committee.

The Ministry submits that the search conducted by the Ministry was reasonable given it was thorough and was conducted by subject matter experts in both units.

- [34] Based on the details provided by Social Services, it used an appropriate or expected search strategy, which included appropriate search terms, and provided sufficient detail of where it searched. The search also appears to have been thorough and involved the appropriate people. The standard here is not one of perfection, but what is reasonable in the

circumstances. Based on the information Social Services provided me, I find it conducted a reasonable search for records.

[35] I recommend Social Services take no further action regarding the search for responsive records for this request.

IV FINDINGS

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

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

[38] I find that the search conducted by Social Services was reasonable.

V RECOMMENDATIONS

[39] 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.

[40] I recommend Social Services take no further action regarding its search efforts.

Dated at Regina, in the Province of Saskatchewan, this 19th day of September, 2022.

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