



REVIEW REPORT 247-2022

Ministry of Education

March 29, 2023

Summary:

The Ministry of Education (Education) received an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) from the Applicant. The Applicant requested the Commissioner conduct a review of the timeliness of Education's response. In this review, the Commissioner found that Education did not comply with subsection 7(2) of FOIP. The Commissioner recommended that Education finish processing the Applicant's request and proceed with its proposed review of its processes and procedures for processing access to information requests.

I BACKGROUND

[1] The Ministry of Education (Education) received an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) from the Applicant. The Applicant sought access to records dated from 1982 to the date of the request. They described the records as follows:

All records relating to the school operated by Mile Two Church Inc., formerly Saskatoon Christian Centre Inc., (Legacy Christian Academy, formerly Christian Centre Academy) including but not limited to records relating to licensing; funding; registration and approval as an independent school; teachers at the school(s) operated by Mile Two Church Inc., or its predecessors, accredited or for whom a waiver has been provided; and all complaints or reports made in relation to the school, the associated church, and their respective staff.

[2] It is not certain when the request was received. However, Education acknowledged that it was sent to it by courier on August 11th, 2022, and advised my office that it assumed that it was received on that day. For the purposes of this review, I will also assume that the

request was received on August 11, 2022. Education acknowledged receipt of the request by email dated August 16, 2022.

[3] By September 19, 2022, Education had not issued a decision pursuant to section 7 of FOIP. The Applicant wrote to Education that day advising it that the decision was overdue.

[4] On September 23, 2022, following a discussion between the Applicant and Education, Education sent an email to the Applicant which stated:

In follow-up to our phone conversation this morning, it was agreed to take a staged approach to this request to ensure we work through the records you are requesting in a timely manner. As a result, we have agreed to prioritize the retrieval and production of the following records:

all complaints or reports made in relation to the school, the associated church, their respective staff and inspection reports relating to the school operated by Mile Two Church Inc., formerly Saskatoon Christian Centre Inc., (Legacy Christian Academy, formerly Christian Centre Academy [Between 2022-2012].

[5] Education's email also stated that "it should be able to provide the above noted records within approximately 2 weeks." Education added:

we will then work through the records in 10-year intervals so the next batch would be 2012-2002, 2002-1992 and lastly 1992-1982. However, [we] will follow-up with written correspondence to confirm as we work through this process.

[6] Subsequently, Education issued three decisions pursuant to section 7 of FOIP. The dates and description of the decisions are as follows:

- Decision 1 dated October 14, 2022 - released 47 pages of inspection reports for the period from 2011 to 2022 and withheld some information pursuant to subsection 29(1) of FOIP
- Decision 2 dated November 17, 2022 - released 198 pages of "annual returns" for the period from 2010 to 2022 and withheld portions pursuant to subsections 19(1)(b) and 29(1) of FOIP
- Decision 3 dated December 12, 2022 - released "113-page consolidation of records respecting issues from 2012 to 2022" and withheld portions pursuant to subsection

27(1) of *The Health Information Protection Act* (HIPA), and subsections 16(1), 17(1)(a), (b)(i), (b)(iii), (c), 22(a), (b), (c) and 29(1) of FOIP

- [7] On December 12, 2022, the Applicant filed a request for review with my office. In their request for a review, the Applicant asked my office to review the timeliness of Education's decisions pursuant to section 7 of FOIP. On January 16, 2023, the Applicant confirmed they wanted to proceed with the review.
- [8] On January 27, 2023, my office sent a notice of review to Education and the Applicant advising that our office would be conducting a review to determine if Education complied with section 7 of FOIP.
- [9] On February 1, 2023, Education issued its fourth decision pursuant to section 7 of FOIP. In this decision, Education released 170 pages of "teacher supervision records" for the period from 2011-2022 and withheld portions pursuant to subsection 29(1) of FOIP.
- [10] On March 8, 2023, Education issued its fifth decision pursuant to section 7 of FOIP. In this decision, Education released 46 pages of teacher accreditation records for the period from 2015 to 2022. Portions of the records were withheld pursuant to subsection 29(1) of FOIP.
- [11] The Applicant did not provide a submission. Education provided a submission to my office on March 13, 2023.
- [12] On March 28, 2023, Education issued its sixth decision pursuant to section 7 of FOIP. In this decision, Education released 180 pages of inspection and supervision records dated from 2011-2022. Portions were withheld pursuant to subsections 17(1)(a), (b)(i) and 29(1) of FOIP.

II RECORDS AT ISSUE

- [13] As this review considers if Education complied with section 7 of FOIP, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[14] Education is a “government institution” as defined by subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review under FOIP.

2. Did Education comply with subsection 7(2) of FOIP?

[15] Subsection 7(2) of FOIP sets out the time in which a government institution shall respond to an access to information request and the way in which a head shall respond to the request. That subsection states:

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

[16] In calculating the due date for a response required by section 7(2) of FOIP, the rules set out in *The Legislation Act* section 2-28 govern the computation of time. These rules state:

- The first day the access request is received is excluded in the calculation of time [s. 2-28(3)].
- If the due date falls on a holiday, the time is extended to the next day that is not a holiday [s. 2-28(5)].
- If the due date falls on a weekend, the time is extended to the next day the office is open [s. 2-28(6)].
- As FOIP expresses the time in a number of days, this is interpreted as 30 calendar days, not business days.

(*Guide to FOIP*, Chapter 3, “Access to Records”, updated June 29, 2021 [*Guide to FOIP*, Ch. 3], p. 28)

[17] In its submission, Education acknowledged that it did not issue a decision to the Applicant within the 30-day time period as required by subsection 7(2) of FOIP. As Education received the Applicant’s request on August 11, 2022, it should have issued its decision

pursuant to subsection 7(2) of FOIP on September 10, 2022. In these circumstances, I find that Education did not comply with subsection 7(2) of FOIP.

[18] Education asserted that it continues to release records as soon as possible. It estimated that the following responsive records still need to be reviewed and released where appropriate: 3000-3500 pages of emails, 113,000 pages of documents and numerous multi-page attachments to the emails and documents (note yet estimated). Education stated that it is nearing the end of its review of records for the first decade and estimated that a minimum of six months will be required to complete its response to the request.

[19] As to why it did not respond within the legislated timeline, Education asserted:

- The scope of the request is broad – there are tens of thousands of pages of records.
- In mid-September, it obtained an additional resource to assist with developing a response.
- It worked to develop a fee estimate but by the end of the first 30 days, records were still being identified and it was not able to prepare a fee estimate in time.
- It did not retrieve all responsive records until late October 2022.
- It estimated that it will require 6 additional months to respond to this request.

[20] I recognize that Education must review a large number of records to process this access to information request. In circumstances such as these, FOIP provides a number of tools to government institutions to support processing requests in a timely manner. For example, government institutions can provide a notice of extension of the time to respond pursuant to subsection 12(1) of FOIP or seek to clarify or narrow the scope of the request pursuant to subsection 5.1(1) of FOIP. They can also issue a fee estimate pursuant to subsection 9(2) of FOIP.

[21] In its submission, Education stated that it will review its processes and procedures relating to access to information requests, especially in the context of requests for a large volume of older records. It should also consider a review of its record management practices so that it can search for responsive records in an efficient manner.

IV FINDINGS

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

[23] I find that Education did not comply with subsection 7(2) of FOIP.

V RECOMMENDATIONS

[24] I recommend that Education complete its processing of the Applicant's access to information request.

[25] I recommend that Education conduct its proposed review of the processes and procedures relating to access to information requests and consider a review of its records management practices.

Dated at Regina, in the Province of Saskatchewan, this 29th day of March, 2023.

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