



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## REVIEW REPORT 264-2023

### Ministry of Immigration and Career Training

January 25, 2024

#### Summary:

The Applicant submitted an access to information request to the Ministry of Immigration and Career Training (Immigration). Immigration responded to the Applicant's request 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 conducted a reasonable search and recommended that it take no further action regarding search. The Commissioner did, however, recommend that Immigration release an available report to the Applicant it believes may be partially responsive to the Applicant's access request, and that it also direct the Applicant to online statistical information that may also be responsive. The Commissioner also urged Immigration to turn its mind towards the limitations of its application system, OASIS, and Immigration's apparent inability to respond to access requests based on OASIS' limitations.

#### I BACKGROUND

[1] On October 2, 2023, the Ministry of Immigration and Career Training (Immigration) received the Applicant's access to information request for the following records for the timeframe of "January 1, 2020 until August 31, 2023":

Please send me a breakdown of how many files have been received, and how many files approved, from the following countries (Principal Applicant holds passport of this country): Czechia, Germany, Indian, Ireland, Lithuania, Poland, Slovakia and Ukraine. Break out by year. No need to break out by stream type.

[2] On October 11, 2023, Immigration responded to the Applicant's request advising that the requested records did not exist pursuant to subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On October 12, 2023, the Applicant submitted a request for review to my office.

[4] On November 22, 2023, my office notified the Applicant and Immigration that my office would be undertaking a review.

[5] On January 10, 2024, Immigration provided its submission to my office. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

[6] This review is about Immigration's claim that records did not exist; therefore, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

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

[7] 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?**

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

With respect to [Immigration file number], which is basically a request for an overview of applications received/approved from a variety of countries (there was a rationale behind my decision to include each country, though I don't believe this rationale is relevant to the matter at hand), it's hard to fathom how the same department that

requires one's passport details (in fact requires a copy of a valid passport) for any application does not have any record of, well, the country of citizenship of said passport. Attached is a copy of a Nomination Certificate and Work Permit Support letter, that is issued by this same office, when approving an application. You can see there that this document includes, among other pertinent details, the 'Country of Citizenship' as a field.

So the question now is, where did that office find the Country of Citizenship information to put on that form? Do they have a 'record' somewhere, perhaps?

Attached is an email from SINP that confirms that a passport is required before issuance of a Nomination.

Attached is the checklist provided by SINP to applicants, so they are aware of the required documents for a complete file. "Passport" is listed on this document.

I suppose by now we can conclude that SINP has copies of passports of applicants on file.

...

I have spent far too many hours doing my due diligence in ensuring my information requests are within reason, ensuring my requests are fair, reasonable, and not frivolous.

...

The process is broken, and the people of Saskatchewan should be concerned that their own government is hiding information from them so easily and so regularly.

[9] 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.

[10] The *Guide to FOIP*, Chapter 3, "Access to Records", (*Guide to FOIP*, Ch. 3) at page 3, provides that 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.

[11] Page 12 of the *Guide to FOIP*, Ch. 3, provides that 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.

- [12] In Immigration's section 7 decision letter, 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;

- [13] Pages 56 and 57 of the *Guide to FOIP*, Ch. 3, provides that a statement by a government institution 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 government institution 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.

- [14] To claim that the search did not produce records, the search should be one that is reasonable. The *Guide to FOIP*, Ch. 3 at pages 12 to 15, provide that 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.

- [15] The *Guide to FOIP*, Ch. 3 at page 28, provides that government institutions are not obligated to create records which do not exist. A government institution's "duty to assist" (section 5.1 of FOIP) does not include an obligation to create records which do not exist at the time the access to information request is made. However, if a government institution has records containing the raw information that is sought by an applicant that can be produced, then those records would be responsive to the applicant's access request. FOIP does not require a government institution to create records in response to an access to information request.
- [16] In other past reports (e.g., [Review Report 043-2022](#), [Review Report 004-2022](#)), in addition to a description of search efforts, I have also considered if public bodies have provided reasonable explanations for why records would not exist. At the same time, I am mindful that public bodies do not need to prove beyond a reasonable doubt that records do not exist.
- [17] Immigration provided my office with a copy of its *Responsive Records Search Log* stating the employee conducting the search spent approximately 60 minutes conducting the search and yielded no results. Immigration outlined the search terms it used, such as "country", "birth", etc., and explained that its OASIS application system is the one used for the Saskatchewan Immigrant Nominee Program (SINP). OASIS, apparently, has built-in queries and reports, or reports that would be pre-defined. Immigration added that there is "no query within the application system that would facilitate the creation of a report of this specific nature."

- [18] The Deputy Minister (DM) provided additional context about the systems capabilities and reports that are available from the system:

Our system can create some records – depending on the search field (commonly used for reporting purposes, like application status for example), but the information that is being requested by the applicant in this case is not something that can be automatically generated. Unfortunately, passport information is an example of a search field that does not exist. This means we would have to manually go through each application to create the spreadsheet that would be needed to develop the report that is being requested by the applicant.

At the time, the system was the first-of-its-kind online immigration application system in Canada – but it has not substantially changed in over 10 years. It is purpose-built, not an off-the-shelf product (like Microsoft Access, for example).

...

In response to the access to information application... I can confirm this record does not exist.

The request is very specific and not a report the Ministry of Immigration and Career Training has created or is able to generate in the OASIS legacy system. There is no ability to provide substantive raw data from the OASIS online application system without significant and substantial investment of time and financial resources.

However, we are able to provide the applicant with a table of the top ten source countries for immigrant landings and permanent resident approval rates broken out by: SINP Nominees and Family Members, Federal Economic, Family and Refugee Classes and other Federal Immigration Streams. This is a report that is generated by the Ministry of Immigration and Career Training incorporating inputs from Immigration, Refugees and Citizenship Canada (IRCC). Additional information on immigration statistics is available at no cost online in the Immigration, Refugees and Citizenship Canada Open Data website – this would allow the applicant full access to raw data for the purpose of subsequent analysis.

- [19] 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 databases managed by each public body. 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, however, 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.

[20] In my office's [Review Report 078-2023, 092-2023, 093-2023](#), I found that data in OASIS qualified as a record and recommend that Immigration release the raw data from OASIS, severing identifiable personal information.

[21] Based on the clarification the DM provided about the capabilities of OASIS, it does not appear that it has a ready ability to produce raw data from any field within the system, nor is there the ability to query and produce the raw data based on the Applicant's access request. In this matter, I consider the DM's statement to be a statement of fact, and that they are in a position of authority to provide such a statement to my office. This includes what they state about the limitations of OASIS and how it affects Immigration's ability to respond to the access request.

[22] Given the above information, I am satisfied that Immigration's search was reasonable and recommend that it take no further action regarding search.

[23] However, I note that the DM has identified an available report that could be provided to the Applicant. The DM described this as "a table of the top ten source countries for immigrant landings and permanent resident approval rates broken out by: SINP Nominees and Family Members, Federal Economic, Family and Refugee Classes and other Federal Immigration Streams". In addition, the DM has also identified that statistical information is available online at no-cost. If there is information or records in the possession or under the control of a public body that it determines is or could be responsive to an access request, then it does have responsibility to provide that information or records to an Applicant. This includes identifying for the Applicant any information that is available online. I recommend, then, that Immigration provide these records to the Applicant, and also advise where some responsive information may be found online. Immigration should do this within 30 days of the issuance of this Report.



[24] I am also mindful that, as the DM explains, OASIS appears to have its limits based on its age and how it was purpose built. In my office's [Review Report 057-2019](#) concerning an information application system used by the Ministry of Corrections and Policing (as it was then known), I stated the following:

[15] I understand millions of taxpayer's dollars were used to create CJIMS, and that it is a large database containing a lot of data. I would find it disappointing to think that such a system would not have functionality that allows for the extraction of subsets of information. In our society today, we cannot use as a reason for denying access that the information is in a large database and that providing access to it will impact operations. If citizens cannot access information held in databases, whatever the size, then our access world is taking a major step backwards. As well, we cannot use a reason for denying access that doing something on our computer such as querying would create another record. If something is stored electronically and a citizen requests some information, of course the public body will need to take some steps to reproduce that information. This existed in the paper world - if you ask for a paper record, a photocopy would have to be made. As we switch from a paper world to a digital world, government at all levels, is storing more information in databases. I ask the Ministry and all Ministries to approach this issue creatively because such access to information requests will recur.

[25] Similarly, OASIS contains a lot of data that I have previously found to qualify as a "record". As I stated in Review Report 057-2019, public bodies are turning towards electronic storage of data, and the public has a right of access to that data. Public bodies cannot rely on technology limitations as a reason or means to deny access to records, subject of course to any exemptions found to apply. I strongly urge Immigration to turn its mind towards how it will accommodate requests for information of this nature in the future, and OASIS' apparent limitations in accommodating such requests. Immigration cannot continue to use as an excuse the limitations imposed by OASIS as a reason for denying access.

#### **IV FINDINGS**

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

[27] I find that Immigration has conducted a reasonable search.

**V RECOMMENDATIONS**

[28] I recommend that Immigration take no further action regarding the search for responsive records.

[29] I recommend that Immigration release the available report to the Applicant it believes may be partially responsive to the Applicant's access request, and that it also direct the Applicant to online statistical information that may also be responsive, within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 25th day of January, 2024.

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