



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 265-2023

Ministry of Immigration and Career Training

January 18, 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 in this matter.

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 present":

SINP [Saskatchewan Immigrant Nominee Program] recently announced their intent to reserve spots for preferred candidates from mostly white European countries. Please provide a complete overview of the materials, studies, research, discussions, meetings, etc that were held and discussed while coming up with this policy. Include any consultations done with outside parties. Also include any instructions given to SINP staff and Management, formal or not, which respect to this new policy.

[2] On October 12, 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] 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.

- [9] 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.

[10] 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.

[11] 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;

[12] 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.

[13] To claim that the search did not produce records, the search should be one that is reasonable. The *Guide to FOIP*, Ch. 3, 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.

[14] Given how the Applicant worded their access request, it was not initially clear what they sought. That is, they asked for a “complete overview of the materials, studies, research, discussions, meetings, etc.” An overview is not a specific request for access to records. However, the Applicant did also add that it “seems preposterous to me that a government body can make a national announcement on a special program like this, and have no supporting or working docs...” The Applicant (and Immigration) also referred a [CTV news article](#) in which Immigration’s Deputy Minister describes an apparent program change that they characterize as a “pilot project”. It seems apparent, then, that the Applicant sought records in relation to this “pilot project”.

[15] Immigration did provide my office with an explanation of how it searched its record holdings based on the Applicant’s use of “reserve spots” in their access request. Immigration stated that using this search term yielded no results. This was likely the case because, as Immigration explained, the “pilot project” is a “small-scale initiative that uses existing program policy... to coordinate an Expression of Interest draw with in-person employer-driven ability to test the success...” There was no specific policy or program change, then, or no “reserve spots”. To this, the Deputy Minister responded to my office as follows:

We used the program tools differently - it was the first time we invited applicants in our expression of interest pool to apply to the SINP based on our ability to interview them in person and connect to pre-arrival support (which is something we used to do many years ago before we had the express entry category). The invitation to apply is not a nomination.

We had a meeting to discuss how to most effectively leverage our support of in-person employer driven recruitment missions in or adjacent to a number of countries.

Our director suggested the approach. And we decided to proceed. We invited the candidates to apply and as is our policy every time we draw, we published it on our website. This prompted media calls to which we responded.

With respect to the access request we didn't generate any discussion papers, briefing notes, background for the minister etc. as it was within our existing policy and required no direction/approval. There was no news release or communication material as there was no announcement.

- [16] In other review 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] In this matter, I consider the Deputy Minister's statement to be a statement of fact, and that they are in an acceptable position of authority to provide such a statement to my office. This includes their assertion that no records were generated, such as discussion papers or briefing notes, because the "pilot project" was undertaken within existing policy and did not require approval. I am also mindful that it does not appear, as the Deputy Minister states, that there was an announcement or communication on the so-called "pilot project"; rather, it appears the media picked up on something it believed was newsworthy and reported on it.
- [18] Given these factors, I am satisfied with Immigration's response and find that its search was reasonable. I recommend Immigration take no further action in this matter.

IV FINDINGS

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

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

V RECOMMENDATION

[21] I recommend that Immigration take no further action in this matter.

Dated at Regina, in the Province of Saskatchewan, this 18th day of January, 2024.

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