



REVIEW REPORT 281-2024

Ministry of Education

March 20, 2025

Summary: The Applicant submitted an access to information request to the Ministry of Education (Education) under *The Freedom of Information and Protection of Privacy Act* (FOIP). Education responded by indicating that the requested records did not exist. The Applicant requested a review by the A/Commissioner. The A/Commissioner found Education's search efforts were reasonable for the purposes of FOIP and recommended that Education take no further action.

I BACKGROUND

[1] On December 2, 2024, the Ministry of Education (Education) received an access to information request from the Applicant under *The Freedom of Information and Protection of Privacy Act* (FOIP) for the following:

All correspondence (emails, letters, text messages, etc.) between the Ministry of Education and the Conseil des écoles Fransakoises [CEF], regarding the levying of fees for pre-kindergarten and kindergarten.

All correspondence (emails, letters, text messages, etc.) between the Ministry of Education and the Conseil des écoles francsaskoises, regarding the funding and purchase of land for a new francophone elementary school in Saskatoon.
[January 2023 to present day].

[2] Later that day, the Applicant received an email from Education noting:

In reviewing your request, this appears to be two separate requests on two different topics. As such, the Ministry will be separating this into two requests. You will receive formal acknowledgement emails for each request separately.

- [3] The focus of this review is on the first portion of the access to information request from the Applicant on the correspondence between Education and CEF regarding levying of fees for pre-kindergarten and kindergarten.
- [4] On December 9, 2024, Education provided its section 7 decision to the Applicant indicating that, pursuant to subsection 7(2)(e) of FOIP, that the requested records did not exist.
- [5] On December 10, 2024, the Applicant asked my office to review Education's response. The Applicant requested the A/Commissioner review Education's search efforts for responsive records.
- [6] Between January 3 and January 20, 2025, Education shared additional search information with my office which, with consent, was shared with the Applicant in hopes of an early resolution of the access to information request. After sharing the information provided by Education with the Applicant, the Applicant indicated that they were still unsatisfied with Education's search efforts and asserted that they "submitted the same request to the CEF and [CEF] stated...that records exist but are protected by privilege" and to proceed to formal notice of review.
- [7] On January 20, 2025, my office notified the Applicant and Education that I would be undertaking a review of Education's search efforts. Both parties were invited to provide submissions by February 19, 2025.
- [8] On February 12, 2025, Education provided its submission to my office and consented to share their submission with the Applicant. The Applicant responded indicating they were still not satisfied with Education's search efforts. The Applicant did not provide my office with a submission by the due date.

II RECORDS AT ISSUE

- [9] This review is about Education's claim that records do not exist and its efforts to search for the records requested. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Did Education conduct a reasonable search for records?

[11] In Education’s section 7 decision letter, it advised the Applicant that the records they were seeking did not exist at Education 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] It is important to note that FOIP does not require a government institution to prove with absolute certainty that records responsive to an access to information request do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

[13] 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*, Chapter 3, “Access to Records”, updated October 18, 2023 [*Guide to FOIP*, Ch. 3], pp. 12-15).

[14] 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.

[15] When a government institution receives a notice of a review 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):

- 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).

- Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
- For electronic folders – indicate what key terms were used to search if applicable.
- On what dates did each employee search?
- How long did the search take for each employee?
- What were the results of 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 our website.

(*Guide to FOIP*, Ch. 3, pp. 14-15).

[16] In an email to my office on December 18, 2024, Education provided the following regarding its first search of the “Early Years Branch” and the “Strategic Policy and Planning Branch”:

- a. Specifically in the Early Years Branch, there is one consultant who works directly with the Conseil des écoles Fransaskois. Her emails and records were searched using the following search terms: Conseil des écoles Fransaskois; prekindergarten; kindergarten; CEF; Fees. This individual was specifically looking for emails, letters and text messages between the Ministry of Education and the Conseil des écoles Fransaskois (also known as CEF). No records were located.
- b. Strategic Policy and Planning Branch has one unit, Strategic Policy, who is responsible for French language instruction, and is a direct contact for CEF. Records within the unit were searched using the same search terms as above, specifically for emails, letters and text messages between the Ministry of Education and the Conseil des écoles Fransaskois (also known as CEF). No records were located.

[17] In an email to my office on January 7, 2025, the Applicant requested an additional search of Education as the “request specifically mentioned **all correspondence between the Ministry and the CEF**, not just correspondence between smaller branches or individual employees, and the CEF.” [Emphasis in original].

[18] As indicated in the background of this Report, Education conducted a second search at my office's request at the early stages of this review. Following its second search, Education provided five search logs and checklists to explain the steps it took in its additional search for records on January 14, 2025, noting the original branches (Early Years and Strategic Policy and Planning) were included in addition to the Education Funding Branch and the Deputy Minister's Office. The details of this search are outlined in the next paragraph.

[19] In its submission to my office, Education outlined the details of the first and second searches it conducted. Its details included the following:

- As most of these terms would be commonly used within the ministry, any records located as a result of the search were then analyzed to determine if they were related to the request.
- When the request was submitted, [Education] reached out to the Early Years Branch and the Strategic Policy and Planning Branch. These two branches were the most likely to have had the records responsive to this request.
 - Specifically in the Early Years Branch, there is one consultant who works directly with the [CEF]. Her emails and records were searched using the following search terms: [CEF; prekindergarten; kindergarten; CEF; Fees].
 - Strategic Policy and Planning Branch has one unit, Strategic Policy, who is responsible for French language instruction, and is a direct contact for CEF. Records within the unit were searched using the same search terms as above.
- On January 8, 2025, the OIPC asked the ministry if it was willing to conduct an additional search for records and expand the search to include other branches. The ministry agreed to expand the search to include the Deputy Minister's Office and the Education Funding Branches.
- Education provided search logs for three Assistant Deputy Ministers (ADM), one Deputy Minister (DM), and one consultant who works directly with the CEF.
- Searches were conducted on January 9 and 10, 2025, by Executive Coordinators of the ADMs and DM, and the Executive Director of Education Funding and provided as follows:
 - ADM #1:
 - She searched her government email folders including her "Inbox" and archive folder which took approximately 13 minutes.

- She conducted a search using the search terms provided by the Applicant.
- The search resulted in no responsive records.
- DM:
 - He searched the G: drive which took approximately 30 minutes.
 - He searched his government email folders including his “Inbox” and archive folder which took approximately one hour.
 - The search resulted in no responsive records.
- ADM #2:
 - He searched the G: drive.
 - He searched his government email folders including his “Inbox” and archive folder which took approximately one hour and 45 minutes.
 - The search resulted in no responsive records.
- ADM #3:
 - She searched her government email folders including her “Inbox” and archive folder which took approximately 15 minutes.
 - She conducted a search using the search terms provided by the Applicant.
 - The search resulted in no responsive records.
- Consultant:
 - She searched the G: drive which took approximately three minutes.
 - She searched her government email folders including her “Inbox” and archive folder which took approximately 32 minutes.
 - She conducted a search using the search terms provided by the Applicant.
 - The search resulted in no responsive records.

[20] I applaud Education for its use of the *Responsive Record Search Log*. However, if the *Responsive Record Search Log* is sent to senior officials and they do not complete it, it does not help. I encourage the use of this document by all staff who conduct searches. The more detail provided in that log, the more likely my office will find the search was reasonable and adequate for purposes of FOIP.

[21] On February 12, 2025, the Applicant stated as follows regarding why responsive records should exist:

...

1. I provided the CEF (Conseil des écoles fransaskoises) with the same request and they mentioned in their response that records did exist but were protected by privilege. I believe that the CEF would have written the government with regard to this matter;

2. In the same vein, the Ministry/Minister exercise very close oversight over school division budgets (revenues/expenditures) in virtue of the School Division Administration Regulations. The CEF publicly stated that these fees are a significant revenue stream for the school board. It is highly unlikely that the Ministry would not have been aware of the CEFs intentions to levy such fees, and I believe they even suggested and supported it;

3. The Ministry's response to your request for review demonstrates that they did not treat my initial request in good faith. I worded my request broadly and they truncated it as much as possible. This is not only a violation of the spirit of the LAFOIP [sic] legislation, it is grounds for suspicion that something is being hidden.

[22] As stated in paragraph [13] of this Report, what constitutes a "reasonable search" depends on the request and related circumstances. Education conducted a search of the locations reasonably expected to store records as some branches may not be involved in related matters. "Reasonableness" does not mean perfection, but rather an effort that is objectively diligent in the circumstances.

[23] The Applicant appears to believe that the entire ministry should be searched based on the explicit broadly worded access to information request. In addition, the Applicant asserted that CEF has records relating to the levying of fees for pre-kindergarten and kindergarten that are "protected", however, does not provide further evidence to support this argument. This, in and of itself, does not prove that Education should have responsive records or that

its search was not reasonable. Finally, a search of the entire ministry is not efficient or necessary to meet the reasonableness standard.

[24] On February 25, 2025, Education clarified with my office that the search was “conducted by the individuals within the branch that were most likely to have the records.” Noting that:

if there had been any communication with Education funding... that communication would have been with the Executive Director... if records had been located by the Executive Director, we would have requested additional searches within the branch.

[25] Based on what has been provided to my office by Education and the Applicant, I find Education has demonstrated that its search for the requested records was reasonable for the purposes of FOIP.

IV FINDINGS

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

[27] I find Education has demonstrated that its search for the requested records was reasonable for the purposes of FOIP.

V RECOMMENDATION

[28] I recommend that Education take no further action.

Dated at Regina, in the Province of Saskatchewan, this 20th day of March 2025.

Ronald J. Kruzeniski, KC
A/Saskatchewan Information and Privacy
Commissioner