



REVIEW REPORT 303-2021

Ministry of Health

January 25, 2022

Summary:

The Ministry of Health (Health) received an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) from the Applicant. Health extended the timeline for responding to the request. Health did not respond to the request within that timeline and the Applicant made a request for review to the Commissioner. In this review, the Commissioner found that Health's decision to extend the time for responding to the request complied with section 12(1)(a)(i) of FOIP. He also found that Health failed to provide a response to the Applicant within the time required under section 12(3) of FOIP. The Commissioner recommended that Health take steps to ensure it has adequate resources to process access to information requests in compliance with FOIP.

I BACKGROUND

[1] On August 11, 2021, the Applicant made an access to information request to the Saskatchewan Health Authority (SHA) for information relating to inpatient detox treatments. The request was for access to:

- Deidentified information
- Timeframe for all specifics – 2000 to 2020, by year
- All points refer to inpatient detox (requiring facility admission) – by former health region
- Ages ranges by year
- Ave length of stay by health region, by year
- Number/percentage of repeat patients (i.e., more than 1 admission to detox) vs unique patients, by year
- Concurrent disorders by year
- What number/percentage are first nations, by year

- Substances for which detox patients are being treated (i.e., alcohol, opiates, etc.), by year
- [2] Following some discussion with the Privacy Office of the SHA about payment of fees, on August 16, 2021, the Applicant was advised by SHA by email that it was transferring the request to the Ministry of Health (Health) pursuant to section 11 of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Applicant was also advised that the 30-day timeline for responding to the request would be reset.
- [3] On August 25, 2021, Health wrote to the Applicant acknowledging receipt of the request from SHA. On September 9, 2021, Health wrote to the Applicant advising that it was extending the 30-day timeline for a response to the request to October 15, 2021, pursuant to sections 12(1)(a)(ii), (b) (c) and (2) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] On October 13, 2021, Health sent an email to the Applicant stating that it was still processing the file. On November 2, 2021, a Senior Policy Analyst with Health sent an email to the Applicant stating that Health was not able to provide a concrete date when the Applicant can expect to receive the responsive records.
- [5] On November 19, 2021, my office received a request for a review from the Applicant indicating that they had not received a response to their access to information request.
- [6] My office attempted to resolve the matter from November 19 to December 6, 2021. On December 6, 2021, Health sent an email to my office which stated, “We are hopeful to have a response to the Applicant in a month.”
- [7] On December 8, 2021, my office notified Health of my intention to conduct a review. In the notification email, my office requested that Health provide a submission explaining why it had not responded within the legislated timelines pursuant to section 7 of FOIP. We also requested that it explain the need to extend the response time by an additional 30 days pursuant to sections 12(1)(a)(ii), (b) and (c) of FOIP and whether the notice complied with

these provisions. The due date for the submission was January 7, 2022. My office also notified the Applicant of my intention to conduct a review and invited them to provide our office with a submission by January 7, 2022.

[8] Health provided a submission to my office on January 7, 2022. The Applicant did not provide a submission.

[9] On January 12, 2022, Health advised my office that it issued a section 7 response to the Applicant on January 10, 2022. My office received a copy of the section 7 response on January 13, 2022.

II RECORDS AT ISSUE

[10] As this is a review of Health's decision to extend the response time and its failure to respond within the appropriate timeframe, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] Health is a "government institution" pursuant to section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did Health's extension of the response deadline satisfy the criteria set out in section 12 of FOIP?

[12] Section 7(2) of FOIP provides that government institutions must respond to an access to information request within 30 days of receiving it. Section 12 of FOIP gives government institutions, in defined circumstances, the right to extend the initial 30-day deadline for responding to access to information requests for a maximum of 30 additional days. If the deadline is extended, the government institution has 60 days in total to respond. The

circumstances when a government institution can extend the time are set out in section 12(1) of FOIP.

[13] As noted above, Health's notice of the extension stated it was relying on sections 12(1)(a)(ii), (b) and (c) of FOIP. However, in its submission it clarified that it was only relying on section 12(1)(a)(i) of FOIP.

[14] Sections 12(1)(a)(i) and (2) of FOIP provide 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:

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records;

...

and completing the work within the original period would unreasonably interfere with the operations of the government institution;

...

(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.

[15] Section 12(1)(a)(i) of FOIP permits an extension where two criteria are met:

- there are a large number of records responsive to the request that require processing or where a search through a large number of records is required in order to respond to the request and,
- completing this work within the original 30 days would unreasonably interfere with the operations of the government institution.

(*IPC Guide to FOIP*, Chapter 3: "Access to Records", updated: June 29, 2021, at pp. 73-74 (*Guide to FOIP*, Ch. 3))

[16] Section 12(2) of FOIP provides that notice of an extension must be provided to an applicant within the first 30 days after an application is received by the government institution. In this case, I note Health provided its notice to extend the time within 30 days following the

date of the transfer of the request from SHA to Health. Therefore, Health's notice of an extension complied with section 12(2).

1. Are there a large number of records requested or needing to be searched?

[17] The factors to be considered in relation to the first criteria include the number of pages of responsive records, whether the records require special handling, and whether the type of record requires a different type of searching or handling.

[18] In [Review Report F-2014-003](#), the Commissioner found that the Ministry of Justice appropriately applied an extension for the purposes of processing a large number of records. In that report, the Commissioner found that, generally speaking, more than 500 records constitute a large number of records for the purposes of section 12(1)(a)(i) of FOIP.

[19] In its submission, Health stated that it does not have a record that includes all of the information that would be responsive to the Applicant's request. Recognizing that the raw data from other data sets could be compiled in the format requested by the Applicant, when it received the request, Health decided to undertake the exercise of compiling the data rather than responding that "no record exists."

[20] Health also stated that the information responsive to this request is contained in multiple databases covering a period of twenty years. It stated that a "large number of records" needed to be accessed and searched to identify the responsive information. It added that once found, the data needed to be manipulated to provide the information in the format requested by the Applicant and this would require a "significant amount of work." This work required discussions with the program area and a search for a data analytic staff who could carry out the work.

[21] Health's submission also provided a description of the staffing challenges that supported its claim for an extension. It stated that the Health Information and Privacy Unit (HIPU) is normally comprised of one Director, two Senior Policy Analysts and one Policy Analyst. At the time this request was received, the HIPU had one Director, one Senior Policy

Analyst and one Policy Analyst who was preparing to be deployed to assist with the pandemic response. At the time the responsive records were received in the HIPU, the Policy Analyst had been redeployed, which meant that one Senior Policy Analyst was processing all the open requests for Health. Health stated that given these circumstances, the first criteria for the application of section 12(1)(a)(i) of FOIP was met.

[22] I note that Health did not provide any specific information about the number of pages of records and databases that it was required to review and manipulate to respond to this request. It only stated that there are a “large number of records” and “multiple” databases. It would have been more helpful to have detailed information about the number of records, databases, and time spent reviewing the databases. Despite that, I am satisfied, given the breadth of the information requested in this case and the scope of the request, that the responsive information is contained in more than one database, and it was necessary to compile the information in the format requested by the Applicant. I accept that the records required special searching and handling to compile the raw data and therefore the first part of the test for the application of section 12(1)(a)(i) of FOIP has been met.

2. Will meeting the original time limit unreasonably interfere with Health’s operations?

[23] “Unreasonably interfere” means going beyond the limits of what is reasonable or equitable in time, resources and impact on the government institution’s day-to-day activities (*Guide to FOIP*, Ch. 3, p. 76).

[24] Factors that may support a finding of unreasonable interference include:

- a significant increase in access to information requests (e.g. sharp rise over 1-4 months)
- significant increase in access to information caseloads
- computer or technical problems
- unexpected turnover of staff
- unusual number of new staff in training
- cross-government requests
- discovery of significant number of additional records

- type of records
- number of program areas searched and
- location of records.

(Guide to FOIP, Ch. 3, p. 75).

[25] Factors that would not be considered include:

- insufficient allocation of resources
- long-term or systemic problems
- vacations
- office processes (e.g. sign off or review)
- personal commitments
- pre-planned events (e.g. retirements)
- no work done during initial 30 days and
- type of applicant (e.g. media, political, etc.).

(Guide to FOIP, Ch. 3, p. 77).

[26] With respect to the second criteria for the application of section 12(1)(a)(i) of FOIP, Health stated:

As identified earlier, the Ministry does not have a central data analytics group to pull data, therefore the search to identify a Ministry analyst that could search, extract, and compile the requested data contributed to the unreasonable interference with the operations of the Ministry. The combination of staff turnover, search parameters, and extraction of responsive records from multiple databases further contributed to the unreasonable interference the government institution faced in completing this request within 30 days.

[27] I am satisfied that given the nature of the request, the circumstances within the HIPU arising from the redeployment of the Policy Analyst and the work required to respond to this request, that the second criteria have been met. Therefore, I find that it was reasonable for Health to extend the 30-day deadline for responding to the Applicant's access to information request pursuant to section 12(1)(a)(i) of FOIP.

3. Did Health respond to the Applicant's access to information request pursuant to section 12(3) of FOIP?

[28] Section 12(3) of FOIP states that once extended, the government institution must respond to the access to information request within the period of the extension. In this case, Health was required to respond to the Applicant on or before October 15, 2021.

[29] Section 12(3) provides:

12(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[30] Health responded to the Applicant's request on January 10, 2022, which was over 90 days after the deadline and provided my office with a copy of the letter on January 13, 2022. Health acknowledges that it did not respond within the legislated timeline. I find that Health did not meet the statutory deadline to respond to the Applicant's request pursuant to section 12(3) of FOIP.

[31] I am sympathetic to the circumstances of the staff in Health's HIPU, including Health's need to respond to the pandemic. However, the expectation to comply with FOIP remains in effect. We are two years into the pandemic and by this time Health should have appropriate processes and technologies in place to be able to respond efficiently and in a timely manner. If limited resources are impacting Health's ability to respond to access to information requests within the legislated timeframes, Health must take steps to address that issue.

[32] Further, I have stated many times in past reports that public bodies cannot use, as an excuse, a lack of resources as a reason for excessive response times. If Health's HIPU is short of resources or expecting one person to respond to 28 active access to information requests, then Health needs to address its resource issues so that the public is not negatively impacted by such lengthy delays. I find it concerning that, over the past several years, my office has continually needed to remind Health of its statutory obligation to meet legislated timelines. My office has done so, for example, in the following Review Reports: [Review Report 082-](#)

[2019, 083-2019](#), [Review Report 036-2018](#), [Review Report 209-2015 to 213-2015](#), [Review Report 063-2015 to 077-2015](#), [Review Report 115/2014](#), and [Review Report 090-2014](#).

[33] I recommend that Health take its history of late responses seriously, and complete a review of its processes and staffing resources, and take steps to ensure it has adequate resources to help it meet its obligations under FOIP.

V FINDINGS

[34] I find that Health appropriately extended the timeline for responding to the access to information request in accordance with section 12(1)(a)(i) and within the time required by section 12(2) of FOIP.

[35] I find that Health did not respond to the Applicant's access to information request within the extended deadline.

V RECOMMENDATION

[36] I recommend that Health complete a review of its processes and staffing resources and take steps to ensure that it has adequate resources to help it meet its obligations under FOIP.

Dated at Regina, in the Province of Saskatchewan, this 25th day of January, 2022.

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