



REVIEW REPORT 369-2021

Ministry of Government Relations

August 5, 2022

Summary: The Applicant submitted an access to information request to the Ministry of Government Relations (Government Relations). Government Relations responded by indicating that there are no records responsive to the access request. The Applicant appealed to the Commissioner. Then, in the course of the review, Government Relations located records. The Commissioner found that Government Relations' initial search for records was not reasonable, but that it had taken steps to locate additional records in order to respond accurately to the Applicant's access request. He recommended that going forward, Government Relations communicate its understanding of the Applicant's request and ask that the Applicant confirm its understanding.

I BACKGROUND

[1] On November 9, 2021, the Ministry of Government Relations (Government Relations) received the following access to information request from the Applicant:

Requesting all vouchers and supporting documentation of financial transactions in which Northern Municipal Trust Account has provided grants to, or made payments to others on behalf of:

- (1) the Northern Village of Pinehouse, and/or
 - (2) the Village's mayor and members of council,
- beyond the regular annual transfers made directly to all northern municipalities, January 1, 2019 to present.

[2] In a letter dated December 9, 2021, Government Relations responded to the Applicant pursuant to section 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Government Relations explained:

There are no responsive records to this request, as all payments made to the Village during this time period consisted of Northern Municipal Revenue Sharing, Northern Capital Grants, Safe Restart Grant, and transfers of lease revenues for crown leases within the Village's municipal boundaries. All northern municipalities annually receive these types of payments as per the standard operations of the NMTA. Any payments made to other parties were project expenditures to deliver the NMTA's Northern Water and Sewer program, the Northern Residential Subdivision program, the Disaster Mitigation and Adaptation Fund, and Waterworks System Assessment deliverables. All northern municipalities receive equitable consideration in project delivery as per the NMTA's standard operating procedures. There were no NMTA payments provided to Village officials, or others on their behalf.

[3] On December 27, 2021, the Applicant appealed to my office.

[4] On January 5, 2022, my office notified Government Relations and the Applicant that it would be undertaking a review.

[5] While preparing its submission for my office's review, Government Relations realized it had misinterpreted the Applicant's access request (which I will explain later in this Report). Government Relations conducted another search for records and located 241 pages of records responsive to the Applicant's access request.

[6] Within their submission for my office, the Applicant specified precisely the records they sought as follows:

Cheques issued on behalf of the NMS/NMTA for services rendered to (or on behalf of) the Northern Village of Pinehouse to: 1) Robertson-Stromberg (law firm in Saskatoon), 2) R. Anderson & Associates in Lumsden (Roy Anderson), and 3) [Name of Individual], independent municipal advisor in Regina.”

[7] With the Applicant's consent, my office contacted Government Relations to determine if it would be willing to conduct another search for records based on what the Applicant had clarified in their submission to my office. Government Relations agreed to conduct another search for records.

[8] On July 5, 2022, Government Relations advised my office that it located a one-page record responsive to the Applicant's clarified access request.

[9] On July 6, 2022, my office contacted Government Relations to determine if it would be willing to release the one-page record to the Applicant in an effort to informally resolve the issues on this file. Government Relations agreed.

[10] On July 14, 2022, Government Relations released the one-page record to the Applicant without any redactions.

[11] On July 18, 2022, my office contacted the Applicant. The Applicant indicated they wished for my office to continue with the review. On that same day, my office notified Government Relations that the review was proceeding.

II RECORDS AT ISSUE

[12] As described in the background, Government Relations located 241 pages of records while preparing its submission. Throughout the 241 pages of records, Government Relations redacted portions pursuant to section 29(1) and 19(1)(b) of FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[13] Government Relations is a “government institution” pursuant to section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did Government Relations undertake a reasonable search for records?

[14] Section 5 of FOIP provides an applicant with a right of access to records in the possession or control of a government institution. It states:

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.

- [15] Section 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 efforts 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 (*Guide to FOIP*, Chapter 3, "Access to Records", updated June 29, 2021 [*Guide to FOIP*, Ch. 3], p. 7).
- [16] If a search does not produce any records or some records are produced but a specific record has not been found, government institutions shall give a written notice to the applicant in accordance with section 7(2)(e) of LA FOIP. That section provides:
- 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;
- [17] The threshold to 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.
- [18] A reasonable search is one in which an employee, experienced in the subject matter of the records, 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*, Ch. 3, p. 7).
- [19] When an applicant requests a review of the government institution's search efforts, the government institution should provide my office with detailed information about its efforts to conduct a search. The following examples of the type of information that can be provided to my office that are relevant are:

- 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).
- 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 my office’s resource, *Using Affidavits in a Review with the IPC*, available on my office’s website.

(Guide to FOIP, pp. 9-10)

[20] Below is a quote of the Applicant’s access to information request. I have re-produced the formatting of the Applicant’s access request as that is pertinent to Government Relation’s interpretation of the access request. The Applicant’s access request was:

Requesting all vouchers and supporting documentation of financial transactions in which Northern Municipal Trust Account has provided grants to, or made payments to others on behalf of:

(1) the Northern Village of Pinehouse, and/or

(2) the Village's mayor and members of council,

beyond the regular annual transfers made directly to all northern municipalities, January 1, 2019 to present.

- [21] In its submission, Government Relations interpreted the phrase, "beyond the regular annual transfers made directly to all northern municipalities January 1, 2019 to present" to be attached to the two itemized elements of the Applicant's access request. In other words, it interpreted the Applicant's access request to be:

Requesting all vouchers and supporting documentation of financial transactions in which Northern Municipal Trust Account has provided grants to, or made payments to others on behalf of:

(1) the Northern Village of Pinehouse, beyond the regular annual transfers made directly to all northern municipalities, January 1, 2019 to present and/or

(2) the Village's mayor and members of council, beyond the regular annual transfers made directly to all northern municipalities, January 1, 2019 to present.

- [22] Government Relations explained its initial search for records as follows:

The Ministry searched the Northern Municipal Services (NMS) Branch because this Branch administers the Northern Municipal Trust Account (NMTA). The NMTA is a special account established under *The Northern Municipalities Act, 2010* and it is this account that makes payments or grants to the Village. Therefore, NMS Branch was the only branch that was searched.

...

The initial search determined that all payments made to the Village during the time period were annual or routine. The Village received the following annual grants: Northern Revenue Sharing, Northern Capital Grant, Safe Restart Grant and revenues from Crown land leases which every northern municipality receives. Routine payments included payments to a third party on behalf of the Village through Northern Water and Sewer infrastructure projects and to other parties for project expenditures for the following: NMTA Northern Water and Sewer, Northern Residential Subdivision, Disaster Mitigation and Adaptation Fund, and Waterworks System Assessment deliverables. These payments were initially considered non-responsive to the Applicant's access request.

[23] Therefore, Government Relations concluded there were no records responsive to the Applicant's access request.

[24] However, in the course of the review, Government Relations realized that it had misinterpreted the Applicant's request. It explained:

During the review, it became clear that the Ministry misinterpreted the search parameters for the first point of the Applicant's access request. The Ministry applied the limitation mentioned in the second point to the first point of the Applicant's access request and also misinterpreted the limitation to include routine or annual payments. The Ministry recognizes that its search should have included annual or routine payments to the Northern Village of Pinehouse as well as payments made on behalf of the Villages' other interests.

[25] After the realization, Government Relations conducted another search for records, which resulted in it locating 241 pages of records. Government Relations explained:

As a result, another search was conducted during the review for routine and/or annual payments made to the Northern Village of Pinehouse. This subsequent search included all payments made by the NMTA to third parties for work conducted on behalf of the Village as well as annual or routine payments. This further search has produced numerous records which the Ministry feels are responsive to the scope of the initial request. All annual payments provided to Northern Municipalities are entered and generated through the electronic NMTA Accounts Payable system. This method does not generate any electronic or physical documents showing payments, therefore there are no responsive records. There were no NMTA payments provided to Village officials, or others on the village's behalf.

[26] Government Relations provided my office with a copy of 241 pages of records. Portions of the records were redacted pursuant to sections 29(1) and 19(1)(b) of FOIP.

[27] It is not ideal that Government Relations realized its misinterpretation of the Applicant's access to information request only after the Applicant requested an appeal to my office. As I have noted earlier, government institutions must respond to access requests accurately as part of their duty to assist an applicant pursuant to section 5.1(1) of FOIP. To respond accurately means to understand every part of an access to information request and to clarify the request if necessary. This should occur soon after it receives an Applicant's access request. Since it does not appear that Government Relations' initial response to the

Applicant's access request was accurate, I find that Government Relations' initial search for records was not reasonable.

[28] However, I note that Government Relations made efforts to adjust for its lack of clarifying the Applicant's access request in the course of my office's review by conducting an additional search for records, which resulted in 241 pages of records.

[29] Furthermore, I note that Government Relations willingly conducted another search for records once the Applicant clarified precisely what they were seeking with my office. This search resulted in a one-page record which Government Relations released to the Applicant in full.

[30] Therefore, I find that Government Relations has taken steps to locate additional records to respond accurately to the Applicant's access request. I recommend that Government Relations take no further action regarding the search for records responsive to this access request.

[31] Going forward, I recommend that Government Relations clarify access requests with applicants. I encourage the Applicant to be as precise as possible as to what they are seeking when submitting access to information requests to Government Relations.

[32] Regarding Government Relations redacting portions of the 241 pages of records pursuant to section 29(1) of FOIP, I note that the redacted portions contained "business card information". In my office's [Review Report 049-2021](#), I had discussed Government Relations applying section 29(1) of FOIP to business card information. In that report, I found that such information did not qualify as "personal information" as defined by section 24(1) of FOIP and that Government Relations did not properly apply section 29(1) of FOIP to such information. Similarly, I find that Government Relations did not properly apply section 29(1) of FOIP to the "business card information" that was redacted throughout the 241 pages of records.

[33] Regarding the redactions pursuant to section 19(1)(b) of FOIP, I note that the redacted portions are any information that identifies third party organizations, including headers and footers of letters that contains the names and addresses of the third party organizations. Such information also appears in letters between Government Relations, Saskatchewan Water Corporation, and/or the third party organizations. In my office's [Review Report 311-2017 et al.](#), I said that when third parties conduct business with government institutions, they should be aware that their information may be released under FOIP:

One of the purposes of FOIP is to ensure government institutions are transparent and accountable to the public. **While third parties are not subject to FOIP, a risk to third parties for entering into agreements with government is that information exchanged may be released under FOIP. This risk may be perceived as a harm by third parties. Third parties...should not have an expectation that it can conduct business with government institutions in a vacuum without public scrutiny that is facilitated by FOIP.** The purpose of FOIP would be defeated if information could be legitimately withheld simply because an applicant may publish information the applicant has received under FOIP. Individuals' rights under FOIP cannot be taken away based on what the individual may or may not do with the information.

[Emphasis added]

[34] In order for section 19(1)(b) of FOIP to apply, my office uses a three-part test to determine if the exemption applies. Government Relations did not provide any arguments to my office as to how the three-part test is met. On the face of the record, I find that information that identifies third party organizations having conducted business with government institutions does not qualify for exemption pursuant to section 19(1)(b) of FOIP.

[35] I recommend that Government Relations release the 241 pages of records in full to the Applicant.

IV FINDINGS

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

- [37] Since it does not appear that Government Relations' initial response to the Applicant's access request was accurate, I find that Government Relations' initial search for records was not reasonable.
- [38] I find that Government Relations has taken steps to locate additional records to respond accurately to the Applicant's access request.
- [39] I find that Government Relations did not properly apply section 29(1) of FOIP to the "business card information" that was redacted throughout the 241 pages of records.
- [40] I find that information that identifies third party organizations having conducted business with government institutions does not qualify for exemption pursuant to section 19(1)(b) of FOIP.

V RECOMMENDATIONS

- [41] I recommend that Government Relations take no further action regarding the search for records responsive to this access request.
- [42] I recommend that Government Relations clarify access requests with applicants going forward.
- [43] I recommend that Government Relations release the 241 pages of records in full to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 5th day of August, 2022.

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