



## **REVIEW REPORT 050-2024**

### **Saskatchewan Health Authority**

**August 21, 2024**

**Summary:** The Applicant submitted an access to information request to the Saskatchewan Health Authority (SHA) requesting access to records related to a “No Hire List”. The SHA in its section 7 decision to the Applicant, indicated that no records exist. The Applicant requested that the A/Commissioner review the SHA’s response that no records exist. The A/Commissioner found that SHA did not conduct a reasonable search and recommended it conduct a new search for records within 30 days of the issuance of this Report.

#### **I BACKGROUND**

[1] On June 21, 2023, the Saskatchewan Health Authority (SHA) received an access to information request from the Applicant requesting access to:

Reasons to list me in the no hire list. All communications pertaining to this action from the management.

[2] In a letter dated July 25, 2023, the SHA responded to the Applicant indicating that no responsive records exist pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On February 21, 2024, my office received a request dated February 9, 2024, from the Applicant to review the SHA’s assertion that no records exist.

[4] In correspondence on March 27, 2024, the Applicant confirmed that they were requesting a review of the SHA's attempts to search for records responsive to their access to information request.

[5] On April 23, 2024, my office sent notices to the SHA and the Applicant advising of my office's intent to undertake a review of the SHA's search efforts. My office invited both parties to provide submissions on the matter by May 23, 2024.

[6] In correspondence with my office on May 14, 2024, the SHA provided a submission to my office. The Applicant's only submission was provided along with their request for review dated February 9, 2024.

## **II RECORDS AT ISSUE**

[7] This review is about SHA's search efforts; therefore, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

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

[8] The SHA qualifies as a "local authority" as defined by subsection 2(1)(f)(xiii) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

### **2. Did the SHA conduct a reasonable search for responsive records?**

[9] As described in the background of this Report, the SHA had indicated pursuant to subsection 7(2)(e) of LA FOIP that no records exist that are responsive to the Applicant's access to information request.

[10] The Applicant, on the other hand, provided my office with an email dated June 13, 2023, from a third party indicating that an SHA employee told the third party that the Applicant was listed on an SHA "do not hire list".

[11] Subsection 7(2)(e) of LA FOIP 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;

[12] Section 5 of LA FOIP provides a right of access to records 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.

[13] The *Guide to LA FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023 (*Guide to LA FOIP*, Ch. 3), at page 3, explains that section 5 of LA FOIP establishes a right of access by any person to records in the possession or control of a local authority, subject to limited and specific exemptions, which are set out in LA FOIP.

[14] Page 12 of the *Guide to LA FOIP*, Ch. 3, provides that subsection 5.1(1) of LA FOIP requires a local authority to respond to an applicant’s access to information request openly, accurately, and completely. This means that local authorities 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.

[15] The question that then arises is whether the SHA conducted a reasonable search. Page 12 of the *Guide to LA FOIP*, Ch. 3, defines a “reasonable search” as one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records reasonably related to the access to information 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.

[16] The *Guide to LA FOIP*, Ch. 3 at pages 14 and 15, outline examples of information a local authority can provide my office to support its search efforts:

- For personal information requests – explain how the individual is involved with the local authority (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 and/or 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 local authority’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.

The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

- [17] In other reports by my office (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 local authorities do not need to prove beyond a reasonable doubt that records do not exist.
- [18] Page 13 of the *Guide to LA FOIP*, Ch. 3, provides that applicants must establish the existence of a reasonable suspicion that a local authority is withholding a record or has not undertaken a reasonable search for a record. Sometimes this takes the form of having possession of or having previously seen a document that was not included with other responsive records or media reports regarding the record. An applicant is expected to provide something more than a mere assertion that a document should exist.
- [19] I note that for context, the Applicant in this case provided a chronology of events leading up to the access to information request under consideration. Importantly, as indicated in paragraph [10] of this Report, the Applicant provided my office with an email justifying their belief that records should exist.
- [20] In response to my office's [Review Report 011-2024](#), the SHA clarified that the "Do Not Hire List" is not a synonym for the Cautionary Hire List and that, the SHA only refers to the list as the "Cautionary Hire List". Therefore, I would want to establish that the record at issue in this Report is the SHA's Cautionary Hire List.
- [21] The SHA in correspondence with my office clarified that the Human Resource Business Partner for the Prince Albert area, after an exhaustive search, determined that the Applicant was not named on the Cautionary Hire List. The SHA further indicated that this is why no records were found responsive to the Applicant's request.
- [22] Further, the SHA in describing its search efforts explained:

To conduct the search efforts, our office engaged with the SHA staff who is responsible for maintaining the Cautionary Hire List within the Health Authority. Specifically, the Human Resources department. **The Provincial Cautionary Hire List is generated and maintained for use within the entire Saskatchewan Health Authority. This list is used as an example and is not all inclusive, and it varies based on circumstances.**..Human Resources confirmed that the Applicant is not on the cautionary hire list, and that [identifier removed] is “welcome to apply to positions with the SHA of which he is qualified for”. There were no other search efforts, as only one list is maintained for the entire Health Authority.

[Emphasis added]

- [23] The SHA has not provided my office with specific details, beyond the fact that a search was conducted. Particularly, the submission provided by the SHA lacks the granular details and any evidence of its search efforts. For instance, there is no indication before me whether an electronic or physical copy of the Cautionary Hire List was searched, the search parameters engaged, and whether any attempts were made to search for communications that discussed whether or not to include the Applicant on the Cautionary Hire List.
- [24] Additionally, the SHA’s assertion that “this list is used as an example and is not all inclusive, and it varies based on circumstances” suggests there could be decisions or communications surrounding a person’s lack of suitability for future employment within the SHA that is not reflected on the list. If that is the case and within the context of the access request under consideration, the SHA has not demonstrated the efforts taken to determine if the Applicant has ever been flagged for cautionary hire.
- [25] I note also that the *Cautionary Hire List Maintenance and Additions/Removals Work Standard* provided to my office indicates varying timelines for the removal of persons placed on the list. It appears also that beyond the timelines provided, there could be other reasons for which a person would be removed from the list. With this knowledge, there is the possibility that the Applicant could have previously been on the list but was subsequently removed. Under the circumstances, the SHA has not demonstrated the efforts made to determine if the Applicant was previously on the list and, if they were, the circumstances surrounding their removal.

[26] Based on the information provided to my office, I find that SHA did not conduct a reasonable search for records. I recommend that within 30 days of the issuance of this Report, SHA conduct a new search for records and complete my office's [Responsive Records Search Checklist](#) (Checklist), provide a copy of the completed Checklist to the Applicant and if it locates any additional records that are responsive to the Applicant's access to information request, it provide those records to the Applicant subject to any exemptions.

#### **IV FINDINGS**

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

[28] I find that the SHA did not conduct a reasonable search for records.

#### **V RECOMMENDATION**

[29] I recommend that the SHA within 30 days of the issuance of this Report, conduct a new search for records by completing my office's [Responsive Records Search Checklist](#), provide a copy of the completed Checklist to the Applicant and if it locates any additional records that are responsive to the Applicant's access to information request, it provide those records to the Applicant subject to any exemptions.

Dated at Regina, in the Province of Saskatchewan, this 21<sup>st</sup> day of August, 2024.

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