



REVIEW REPORT 196-2022

Saskatchewan Health Authority

January 25, 2023

Summary:

The Applicant submitted an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Saskatchewan Health Authority (SHA). SHA extended the time for responding to the request pursuant to subsection 12(2) of LA FOIP. It subsequently issued a decision letter pursuant to subsection 7(2) of LA FOIP. The Applicant asked the Commissioner to review SHA's time extension and the timeliness of its response. As SHA's time extension did not comply with subsection 12(2) of LA FOIP, the Commissioner found that SHA did not comply with section 12 of LA FOIP. He also found that SHA did not respond to the Applicant within the time required by subsection 7(2) of LA FOIP. He recommended that SHA review its policies and procedures for responding to access to information requests and make any changes necessary to ensure that it processes access requests within the legislated timelines. The Commissioner also recommended that SHA consider making the responsive policies and procedures available to the public pursuant to subsection 53.1(1) of LA FOIP.

I BACKGROUND

[1] The Saskatchewan Health Authority (SHA) received an access to information request from the Applicant on June 14, 2022, under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant sought access to the following records, dated from November 1, 2019 to July 31, 2022:

- PCR testing records of accuracy with respect to SARS-COVID- 2, COVID-19, and all variants.
- Whole Genome Sequencing Test records of accuracy with respect to SARS-COVID- 2, COVID-19, and all variants.

- SARS-Cov-2 Variant of Concern (NAAT) N501Y records of accuracy.
- SARS-Cov-2 Variant of Concern Confirmation (sequencing) records of accuracy.
- Policy and procedures for conducting COVID-19 PCR test.
- Primer sequences that were used in COVID-19 PCR test.
- Policy and procedures for conducting COVID-19 Whole Genome Sequencing test.
- Policy and procedures for conducting SARS-Cov-2 Variant of Concern (NAAT) N501Y test.
- Primer sequences for conducting SARS-COV-2 variant of Concern testing.
- Policy and procedures for conducting SARS-Cov-2 Variant of Concern Confirmation (sequencing) test.

[2] On July 6, 2022, SHA sent an email to the Applicant advising that it “is working on [their] LA FOIP request.” On July 30, 2022, the Applicant sent an email to SHA advising that they had not received a response to the request.

[3] On August 12, 2022, SHA sent a letter to the Applicant extending the time for responding to the request for an additional 30 days. SHA relied on subsections 12(1)(a)(i), (ii) and (b) of LA FOIP to support its claim for an extension.

[4] By October 17, 2022, SHA had not responded to the request and the Applicant asked the Commissioner to conduct a review. My office sent notice of the review to the Applicant and SHA on November 21, 2022, inviting them to provide a submission.

[5] On November 28, 2022, SHA issued a decision pursuant to section 7 of LA FOIP denying access to portions of the records pursuant to subsections 14(1)(m), 16(1)(c) and 17(1)(b) of LA FOIP, and subsection 27(1) of *The Health Information Protection Act* (HIPA). It also denied access to some information on the basis that it was not obligated to create a record to respond to the request.

[6] The Applicant asked my office to proceed with the review of the timeliness of SHA’s decision. SHA provided its submission to our office on January 13, 2023.

II RECORDS AT ISSUE

[7] As this review considers the timeliness of SHA's response to the access to information request, 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(f)(xiii) of LA FOIP. The SHA is also a "trustee" pursuant to subsection 2(t)(ii) of *The Health Information Protection Act* (HIPA). Therefore, I have jurisdiction to conduct this review.

2. Did SHA comply with section 12 and subsection 7(2) of LA FOIP?

[9] Subsection 7(2) of LA FOIP requires local authorities to respond to access to information requests within 30 days after the request is made. This requirement is set out in subsection 7(2) of LA FOIP which provides, in part:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

[10] Subsection 12(1) of LA FOIP gives local authorities the right to extend the time to respond for a reasonable period not exceeding 30 days. If a local authority extends the deadline for the maximum amount, the local authority has 60 days in total to respond.

[11] Subsection 12(2) of LA FOIP states that a local authority must provide notice of its extension within 30 days after the access to information request is received. Section 12 of LA FOIP provides:

12(1) The head of a local authority 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; or

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the local authority;

(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.

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

[12] *The Legislation Act* (LA) establishes the rules that govern the interpretation of all statutory instruments in the province. According to section 2-28 of the LA, the timelines set out in LA FOIP are calculated as follows:

- The first day the access request is received is excluded in the calculation of time
- If the due date falls on a holiday, the time is extended to the next day that is not a holiday
- If the due date falls on a weekend, the time is extended to the next day the office is open and
- As LA FOIP expresses the time in a number of days, this is interpreted as 30 calendar days, not business days.

(*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated: June 29, 2021 [*Guide to LA FOIP*, Ch. 3] at page 29)

[13] Since SHA received the access to information request on June 14, 2022, then June 15, 2022 is treated as first day for the calculation of timelines. Therefore, according to subsection 7(2) of LA FOIP, SHA’s response to the access to information request was due on July 14, 2022.

[14] If SHA wanted to extend the time for responding to the request, pursuant to subsection 12(2) of LA FOIP, SHA was required to do so within 30 days after the date of the request. Therefore, the time extension should have been sent by July 14, 2022.

- [15] As noted above, SHA sent its notice of time extension on August 12, 2022. This was 29 days after the 30-day deadline for providing the notice had expired, or 59 days following the date of the request.
- [16] As SHA's time extension did not comply with subsection 12(2) of LA FOIP, I find that it did not comply with section 12 of LA FOIP. In these circumstances, I need not consider SHA's reasons for extending the time pursuant to subsections 12(1)(a)(i), (ii) and (b) of LA FOIP.
- [17] Given that the time extension was not valid, the time for delivery of the decision letter is governed by subsection 7(2) of LA FOIP. Under subsection 7(2) of LA FOIP, SHA's decision was due 30 days after receipt of the access to information request.
- [18] In this case, SHA sent its decision letter on November 28, 2022 – over three months following the date of the request. SHA's submission acknowledged that it received the Applicant's access to information request on June 14, 2022, and it did not meet the legislated timeline. SHA apologized to the Applicant for the delay in its submission.
- [19] For these reasons, I find that SHA did not comply with subsection 7(2) of LA FOIP. I recommend that SHA review its policies and procedures for responding to access to information requests and make any changes necessary to ensure that it processes access requests within the legislated timelines.
- [20] As noted above, the Applicant's request included a request for access to the following policies and procedures:
- Policy and procedures for conducting COVID-19 PCR test.
 - Primer sequences that were used in COVID-19 PCR test.
 - Policy and procedures for conducting COVID-19 Whole Genome Sequencing test.
 - Policy and procedures for conducting SARS-Cov-2 Variant of Concern (NAAT) N501Y test.
 - Primer sequences for conducting SARS-COV-2 variant of Concern testing.
 - Policy and procedures for conducting SARS-Cov-2 Variant of Concern Confirmation (sequencing) test.

[21] Subsection 53.1(1) of LA FOIP requires local authorities to make reasonable efforts to make available their manuals, policies, guidelines or procedures used in decision-making where they affect the public in terms of administering or carrying out its programs or activities. The manuals, policies, guidelines and procedures should be available on the local authority's website (*Guide to LA FOIP*, Ch. 3, p. 146). The purpose of the provision is to promote openness and transparency.

[22] Subsection 53.1(1) of LA FOIP provides:

53.1(1) Every local authority shall make reasonable efforts to:

(a) make available on its website all manuals, policies, guidelines or procedures that are used in decision-making processes that affect the public by employees of the local authority in administering or carrying out programs or activities of the local authority; or

(b) provide those documents when requested in electronic or paper form.

[23] SHA asserted that subsection 53.1(1) of LA FOIP did not apply to the policies and procedures because "they do not affect the public in terms of administering or carrying out the programs or activities of the SHA." My office asked for more detailed information about this claim such as information about how SHA uses the policies and what decisions it makes using the policies. SHA's response stated that the policies are made available on request, but they are not publicly available on its website at this time. I recommend that SHA consider making the policies described in paragraph [20] above, available to the public pursuant to subsection 53.1(1) of LA FOIP.

IV FINDINGS

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

[25] I find that SHA did not comply with section 12 of LA FOIP.

[26] I find that SHA did not comply with subsection 7(2) of LA FOIP.

V RECOMMENDATIONS

[27] I recommend that SHA review its policies and procedures for responding to access to information requests and make any changes necessary to ensure that it processes access to information requests within the legislated timelines.

[28] I recommend that SHA consider making the policies described in paragraph [20] above, available to the public pursuant to subsection 53.1(1) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 25th day of January, 2023.

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