



REVIEW REPORT 216-2022

Saskatchewan Health Authority

May 1, 2023

Summary:

The Applicant made 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) for information relating to its monitoring of EMS resources during the COVID-19 pandemic. In response, SHA issued a fee estimate and requested payment of a deposit. The Applicant paid the deposit and SHA issued a late decision letter pursuant to subsection 7(2) of LA FOIP on some of the records. Subsequently, SHA issued a second late decision letter on the remaining records. The Applicant asked the Commissioner to review the timeliness of SHA's response. The Commissioner found that SHA did not respond to the Applicant within the time required by subsection 7(2) of LA FOIP. He recommended that, within 30 days, 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.

I BACKGROUND

- [1] The Saskatchewan Health Authority (SHA) received an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) from the Applicant on March 18, 2022. The Applicant sought access to the following information:

The Saskatchewan Health Authority implemented a program to monitor the availability of provincial EMS resources during the COVID-19 pandemic. The program consisted of a daily morning conference call with all ambulance services to collect information as the number of staffed ambulances available by each participating ambulance service for each day. The report is called the Daily Operational Report.

The information request is a copy of each Provincial Daily Operational Report since the inception of the program to the current day.

For the period January 1, 2020, to current, all digital and hard copies of correspondence, emails and phone texts between the Saskatchewan Health Authority (including but not limited to [named individual] and [named individual]) with officials from the City of Lloydminster, Alberta Health Services and the Ministry of Health discussing operational staffing, funding and contractual issues pertaining to Dutchak Holdings Limited operating as WPD Ambulance Lloydminster.

- [2] On March 18, 2022, SHA sent an email to the Applicant requesting payment of the application fee of \$20.00.
- [3] On April 14, 2022, the Applicant paid the application fee by cheque again having forgotten that their access to information request included a cheque for the application fee. On April 19, 2022, the cheque was returned to the Applicant because SHA discovered that the application fee had already been paid.
- [4] On May 17, 2022, SHA sent an email to the Applicant seeking clarification of their request. On May 18, 2022, the Applicant telephoned the SHA's Privacy Office to provide the clarification of the request. The SHA stated that during that call, it advised the Applicant that an extension of time was required to respond to the request. However, SHA acknowledged that it did not set this out in writing.
- [5] On May 19, 2022, SHA issued a fee estimate in the amount of \$1,110.00 and requested payment of a deposit of \$555.00.
- [6] On May 27, 2022, the Applicant paid the deposit. According to SHA's Privacy Officer, during a telephone call with the Applicant, the parties entered into an "arrangement" whereby SHA would respond to the access to information request in two stages. The first batch of records would include the Monthly Summary Reports, in lieu of Daily Operational Reports, and the additional responsive records "could be provided later."
- [7] On June 8, 2022, SHA issued a decision pursuant to section 7 of LA FOIP releasing Monthly Summary Reports for the period from 2020-2022.

- [8] On June 20, 2022, the Applicant and SHA exchanged emails clarifying the scope of the outstanding portions of the request.
- [9] Between August 10, 2022 and November 14, 2022, SHA sent notices to six third parties who it believed may have an interest in the outstanding responsive records.
- [10] On November 9, 2022, the Applicant filed a request for a review with my office.
- [11] On December 7, 2022, SHA issued a section 7 decision granting access to the second batch of responsive records. It claimed that portions of the second batch were exempt pursuant to subsections 14(1)(m), 15(1)(b)(i) and (ii), 16(1)(a), (b), (c), (d), 17(1)(d), 18(1)(b), (c), 21(a), (b), (c), and 28(1) of LA FOIP and subsection 27(1) of *The Health Information Protection Act* (HIPA).
- [12] On December 20, 2022, my office sent a notice of review to SHA and the Applicant. The notice invited the parties to provide a submission on the timeliness of SHA's section 7 decision and whether it was deemed to have refused access to the outstanding records.
- [13] On December 21, 2022, SHA confirmed to my office that all of the responsive records had been released subject to exemptions pursuant to its two section 7 decisions referred to above and that there were no outstanding records. In these circumstances, and after discussion with the Applicant, my office confirmed to SHA that the only issue in this review is the timeliness of its section 7 decision.
- [14] On January 27, 2023, the SHA provided my office with its submission.
- [15] The Applicant did not provide a submission. However, they explained in correspondence with my office that the responsive records related to an arbitration process. They added that the alleged failure to respond within the timelines set out in LA FOIP meant that they had to postpone the arbitration several times.

II RECORDS AT ISSUE

[16] As this is a review of 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?

[17] The SHA qualifies as a "local authority" as defined by subsection 2(f)(xiii) of LA FOIP. The SHA qualifies as a "provincial health authority" as defined by section 1-2 of *The Provincial Health Authority Act*. Therefore, SHA is also a "trustee" pursuant to subsection 2(t)(ii) of HIPA. As such, I have jurisdiction to conduct this review.

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

[18] 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:

[19] Subsections 9(2), (3) and (4) of LA FOIP set the rules for calculating the timeline for responding to an access to information request where the local authority issues a fee estimate. Pursuant to subsection 9(3) of LA FOIP, the 30-day deadline to respond to an access request is suspended once the fee estimate is sent and remains suspended until the applicant notifies the local authority that the applicant wishes to proceed with the application (*Guide to LA FOIP*, Chapter 3, "Access to Records", updated: June 29, 2021 [*Guide to LA FOIP*, Ch. 3], at page 57).

[20] When an applicant pays the 50% deposit referred to in subsection 9(4) of LA FOIP, this qualifies as an indication that they wish to proceed. When the applicant indicates they wish

to proceed, the clock is no longer suspended, and the local authority has whatever days are left within its original 30 days to complete the work and issue the response (*Guide to LA FOIP*, Ch. 3, at page 57).

[21] Subsections 9(2), (3) and (4) of LA FOIP state:

9(2) Where the amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

(4) Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced for the records for which access is sought.

[22] *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)

[23] Since SHA received the access to information request on March 18, 2022, then March 19, 2022 is treated as the 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 and fee

estimate was due 30 days after it received the access to information request. Applying section 2-28 of the LA, the due date for these steps was April 19, 2022.

[24] In this case, SHA sent its fee estimate on May 19, 2022 – approximately one month after the due date. As I said in my office’s [Review Report 037-2017](#), local authorities should issue fee estimates within the first three to 10 days of receipt of an access request so they have time to process the request once a deposit is received.

[25] The Applicant paid the deposit on May 27, 2022. Portions of the responsive records were released by SHA on June 8, 2022, and it was not until December 7, 2022 that SHA provided a second decision letter dealing with the remaining responsive records.

[26] Accordingly, SHA’s fee estimate was not issued within the time required by subsection 7(2) of LA FOIP. The delays were compounded when SHA took over six months following payment of the deposit to issue a decision on all of the responsive records.

[27] SHA’s submission acknowledged that it received the Applicant’s access to information request on March 18, 2022, and it did not meet LA FOIP’s legislated timeline. It added that the delay in responding was a result of a number of factors including the number of responsive records, identifying documents for third party review, the need for clarifications, the issuance of the fee estimate, the need for legal consultation and summer holidays. SHA asserted that it understands the importance of the timelines set out in LA FOIP and apologized to the Applicant for the delay in its submission.

[28] For these reasons, I find that SHA did not comply with subsection 7(2) of LA FOIP.

[29] This is the second report issued in four months where my office has found that SHA has failed to respond to an access to information request within the time required by LA FOIP. In my office’s [Review Report 196-2022](#), issued in January 2023, I 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. In response to that report, the SHA agreed to comply with the recommendation.

[30] It is not clear why it took SHA two months to issue a fee estimate. For guidance on how to process requests involving clarifications of the scope of the request, fee estimates, time extensions and third party consultations, SHA should consult my office's [Guide to LA FOIP, Chapter 3, Best Practices for Responding to Access Requests](#) and [Steps to Charging Fees](#).

[31] I will repeat the recommendation made in Review Report 196-2022 below and add that SHA's review of the policies and procedures should take into account the circumstances surrounding SHA's response to the access to information at issue in this Report.

IV FINDINGS

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

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

V RECOMMENDATIONS

[34] I recommend that, within 30 days, 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.

[35] The SHA's review of its policies and procedures referred to above should take into account the circumstances surrounding SHA's response to the access to information request at issue in this Report.

Dated at Regina, in the Province of Saskatchewan, this 1st day of May, 2023.

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