



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 233-2023**

### **Saskatchewan Health Authority**

**January 12, 2024**

**Summary:**

The Applicant submitted an access to information request to the Saskatchewan Health Authority (SHA). The SHA responded advising that the requested records do not exist citing subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review of the SHA's search efforts for responsive records. The Commissioner found that the SHA conducted a reasonable search, and recommended that the SHA take no further action regarding the search for responsive records.

## **I BACKGROUND**

- [1] On August 23, 2023, the Saskatchewan Health Authority (SHA) received the Applicant's access to information request for the following:

The information that I am requesting is based on the following documents:

- a) On August 2, 2011, an email was sent to [name withheld] at Prairie North Regional Health Authority with an enclosure of employee information for the 2009 fiscal year. This information was to be submitted by the health authority to the Ministry of Health. Document is enclosed.
- b) On August 2, 2011, an email was sent to [name withheld] at Prairie North Regional Health Authority with an enclosure of employee information for the 2009 fiscal year. This information was to be submitted by the health authority to the Ministry of Health. Document is enclosed.

c) Around September 29, 2011, the Ministry of Health emailed the various health authorities with financial information pertaining to the recent HSAS agreement. Sample document enclosed.

The information request is as follows:

1) What information did Prairie North Regional Health Authority submit to the Ministry of Health upon receipt of the information in (a) and (b) above, including the form and any other notes or emails pertaining to the form.

2) What information did Prairie North Regional Health Authority receive from the Ministry of Health regarding the submission(s) as per (1) above from August 2, 2011, to September 30, 2011, including emails, notes, reports, etc. pertaining to the HSAS Agreement and the submitted employee information form.

[2] On September 8, 2023, the SHA responded to the Applicant's access to information request advising that the requested records do not exist pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On September 25, 2023, the Applicant submitted a request for review to my office.

[4] On November 29, 2023, my office notified the SHA and the Applicant that my office would be undertaking a review.

[5] On December 21, 2023, the SHA provided its submission to my office. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

[6] This review is about SHA's claim that records do not exist; therefore, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

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

- [7] The SHA qualifies as a “local authority” pursuant to subsections 2(1)(f)(xiii) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

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

- [8] Section 5 of LA FOIP provides 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 local authority.

- [9] The *Guide to LA FOIP*, Chapter 3, “Access to Records” (*Guide to LA FOIP*, Ch. 3) at page 3, provides 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.

- [10] Page 7 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. The threshold that must 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.

- [11] SHA responded to the Applicant that the records they sought do not exist pursuant to subsection 7(2)(e) of LA FOIP, which provides as follows:

**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] The *Guide to LA FOIP*, Ch. 3 at pages 57 and 58 outlines that a statement made by a local authority that records do not exist does not mean that records do not exist at all. It means

that: 1) a search was conducted and did not produce results, or 2) a record may exist, but is not in the possession or under the control of the local authority. In coming to either conclusion, a local authority needs to demonstrate that it undertook reasonable search efforts to locate records.

[13] The *Guide to LA FOIP*, Ch. 3 at pages 9 and 10, provides that the focus of a search review, including when a local authority states no records exist, is whether the local authority conducted a reasonable search. A reasonable search is 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. Examples of information to support its search efforts that local authorities can provide to my office include the following:

- 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
  - 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. For more on this, see *Using Affidavits in a Review with the IPC*.

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

[14] In an email to my office, the Applicant questioned how the Ministry of Health was able to identify records responsive to a similar request ([Review Report 232-2023](#)), while the SHA concluded that no responsive records exist. The Applicant added:

My issue is that the SHA Privacy Officer said to me that [name redacted] did the review and said there were no records.

In previous interactions, [they were] directly involved in providing information and willfully denied the access to information that I was requesting.

I had to submit a LA FOIP in order to receive the information.

Additionally, the information that [they] provided to me was using the Ministries [sic] formatted schedule and [they] changed the numbers.

At best uncooperative and deceitful.

So, when I hear [they] did the review, I am very suspicious as to [their] intent and desire to provide me with the information.

- [15] The SHA's submission provided the following regarding its search efforts and its conclusion that no responsive records exist:

One of the former PNRHA [Prairie North Regional Health Authority] staff members is no longer with the SHA and the other staff member named has moved to another department. To conduct our search for responsive records, we engaged the SHA staff who was working in Emergency Health Services Department from the former PNRHA during the time period that records were requested from.

Given that the information being requested was for correspondence of what was provided to the Ministry of Health (Ministry) and correspondence in response to what was submitted, the search was conducted in two parts both in Outlook and in the local drive where documentation of the former department is stored. The employee searched all items in Outlook for the correspondence requested and no submission and any subsequent response from the Ministry were found. A search was also conducted in the local drive where files of the department were stored and there were no items saved in the teams folder or subfolders that were responsive to this request.

...

The SHA conducted a reasonable search for records in processing this request for access to information. The search was carried out by an employee formerly working in the department that would have held records responsive to this request who is knowledgeable and experienced with the subject matter. The employee conducted the search for responsive records in both locations (Outlook and local drive/department files) where the type of records requested would reasonably be expected.

- [16] SHA clarified that the employee in question conducted their search of Outlook and the local/department drive on August 28, 2023, and searched for approximately six hours. The search terms used to identify responsive records were "HSAS Contractor" and "HSAS". The SHA indicated that:

The keywords were utilized as these terms would reasonably have been expected in the document(s) and/or emails provided to the Ministry of Health as well as occurring in any correspondence in response. When speaking to the employee who conducted the search, they mentioned that in addition to those keywords they also searched using the names of leadership of Emergency Health Services. They used the names of the former Manager of Emergency Health Services, the Director of Emergency Health Services, and the Chief Financial Officer as Management would have reasonably been the

individuals expected to provide communications to the Ministry and receive any responses.

- [17] My office also asked the SHA to clarify if its records management system is solely electronic records, and if paper records were considered. The SHA responded as follows:

...the staff member advised that information submitted to the Ministry of Health would have been sent via email and their correspondence back also utilized email. Given that these exchanges occur electronically, there would not be any expected responsive records to this request in paper form. This is why the search efforts were directed to Outlook and to the local drive where emails responsive would potentially be stored.

- [18] My office also asked the SHA to indicate if the records could have been disposed of, given the age of the records requested. The SHA's submission stated:

The records requested are twelve years old and the leadership of the department in the former PNRHA are no longer employed with the SHA. While it is possible that the records have been disposed of, the SHA cannot confirm whether the records existed or were destroyed. There is no documentation related to any such disposal.

- [19] As there is no record of destruction regarding these records, it is unknown if any responsive records existed and were subsequently destroyed in the former Prairie North Regional Health Authority (PNRHA). While it is unknown if the former PNRHA had a policy on records retention and disposal, I note that the SHA has a policy on its website that outlines the SHA's current records retention and destruction practices. The [\*Policy: Corporate and Clinical Information Governance \(SHA-07-004\)\*](#), effective June 6, 2019, includes a records retention schedule that outlines the number of years to retain records, based on the classification the SHA has assigned to the records, and the requirement to document the destruction of records when their retention period is met. The SHA did not speculate on how records could have been classified, if they existed. However, I note that the current retention period for records documenting financial activities, including funds, grants and procurement, is seven years. While this policy pre-dates the amalgamation of PNRHA and SHA, it does somewhat support that SHA could have already destroyed the records in question given their age. I do not know for certain, but a local authority is not required to retain all records permanently, and the threshold in this circumstance is what is reasonable given all the factors.

[20] A local authority does not need to prove beyond a reasonable doubt that a record does not exist, but it needs to be able to demonstrate its efforts to search for it. In this matter, it appears that the SHA engaged the appropriate subject matter expert, searched appropriate repositories, and utilized appropriate keywords to identify if responsive records exist. Based on retention and destruction policies, it is also possible that SHA has already destroyed responsive records given their age, although I do not know this for certain. Based on all this, I find that the SHA's search efforts were reasonable. I recommend that the SHA take no further action regarding the search for responsive records.

#### **IV FINDINGS**

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

[22] I find that the SHA has conducted a reasonable search for responsive records.

#### **V RECOMMENDATION**

[23] I recommend that the SHA take no further action regarding the search for responsive records.

Dated at Regina, in the Province of Saskatchewan, this 12th day of January, 2024.

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