



REVIEW REPORT 075-2019

Saskatchewan Health Authority

December 20, 2019

Summary: The Applicant requested a review of the Saskatchewan Health Authority's (SHA) response to an access to information request for records related to noise level testing. The Commissioner reviewed whether the SHA's search efforts were adequate. The Commissioner found that the SHA's search efforts were adequate but that they had not provided the Applicant with a reasonable explanation as to why the records do not exist. The Commissioner recommended that the SHA follow best practices for records management when entering into contracts with third parties.

I BACKGROUND

[1] On February 22, 2019, the Applicant made a request for information to the Saskatchewan Health Authority (SHA) for the time period of 1992 to 2001 as follows:

OH&S hearing tests/noise level tests that indicate a decibel rating of 85 or greater in the Yoirkton [sic] Regional Health Centre Kitchen/food & utensil preparations [sic] and cleaning areas

[2] On February 22, 2019, the SHA responded indicating that a search for the records was conducted but none were found. The SHA advised that the 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 March 6, 2019, my office received a request for review from the Applicant.

[4] On March 19, 2019, my office provided notification to both the Applicant and the SHA of my intent to undertake a review.

II RECORDS AT ISSUE

[5] There are no records at issue as the SHA has taken the position that the record does not exist.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Did the SHA conduct an adequate search?

[2] Section 5 of LA FOIP, establishes an individual’s right to access records of a local authority, it provides:

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.

[3] Section 5 of LA FOIP makes it clear that access to records must be granted if they are in the possession or under the control of the local authority subject to any applicable exemptions under Part III of LA FOIP.

[4] 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. LA FOIP does not require the local authority to prove with absolute certainty that records do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

- [5] A reasonable search is one in which an employee, experienced in the subject matter, 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.
- [6] When conducting a review of a local authority's search efforts, details are requested that help my office understand the level of effort made to locate the records. Examples of the type of information that can be provided are found in my office's resource *IPC Guide to Exemptions for FOIP and LA FOIP*.
- [7] The SHA's response to the Applicant advised that access to the responsive record was denied pursuant to subsection 7(2)(e) of LA FOIP which 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;
- [8] The Applicant's submission provided that subsection 111(3) of *The Occupational Health and Safety Regulations 1996* (OH&S Regs), requires an employer to keep results of any noise level measurements conducted at the place of employment as long as the employer operates in Saskatchewan and subsection 111(4) of the OH&S Regs states that this information must be available to workers. The Applicant indicated that if the record does not exist, the SHA would not be in compliance with the OH&S Regs.
- [9] The Applicant indicated that, while he was employed with the SHA, hearing protection was provided and signs were posted indicating the requirement.
- [10] In the SHA's submission, it indicates that, the search was performed by the SHA Workplace Health and Safety Coordinator for the Yorkton Regional Health Centre. I was advised that they searched all records in the Dietary Department, Workplace Health and

Safety Office, Staff Health Office and in the Human Resources personnel files. No records were located in these areas.

[11] The SHA also indicated that:

The applicant also mentioned to me in a phone conversation that he recalled a manager named [Name removed] conducting some type of testing in the kitchen area during the time period the applicant worked in the kitchen.

[12] The SHA also contacted the employee in question, who searched his own records, but could not find any records related to noise level testing for the Yorkton Regional Health Centre kitchen area.

[13] I am satisfied that the SHA has performed a reasonable search for responsive records.

3. Did the SHA provide a reasonable explanation for why the record does not exist?

[14] After consultation with my office, the SHA further investigated the reason that no records exist and, on November 27, 2019, provided my office with the following response:

- Marriott Management Services (Marriott) had a contract with the East Central Health District (ECHD) (1994-2003) & Sunrise Health Region (SHR) (2004-2006) to supply Managers in Food & Nutrition and Laundry from 1994 – 2006 at the Yorkton Regional Health Centre, Yorkton & District Nursing Home and Regional Laundry.
- All workers were employed by ECHR and SHR during this period, while the Managers in these years were employed by Marriott.
- Marriott was responsible for managing the Food & Nutrition and Laundry departments. If audiometric testing was required in those areas, it would have been handled by Marriott.
- In 2004 – 2005, a proposal was put together to terminate the Marriott contract and transfer services over to the SHR.
- Between 2005 and 2006, notice was given to Marriott to terminate the existing contract.

- In 2007, SHR took over the services.

[15] Given the facts above, it is reasonable to conclude that the records the Applicant is seeking, would have been in the possession of Marriott and not the SHA. I find that the SHA had not provided a reasonable explanation to the Applicant as to why the records do not exist.

[16] It is important for public bodies to follow best practices for records management when the public body is entering into a contract for services with third parties. This would dictate that all records relevant to the contract are in the control of the public body and are accessible to the public body upon request. Records should be returned to the public body on expiration of the contract and the public body follow its records management and retention policies with regards to those records.

IV FINDINGS

[17] I find that the SHA performed a reasonable search for responsive records.

[18] I find that the SHA had not provided the Applicant with a reasonable explanation as to why the records do not exist.

V RECOMMENDATION

[19] I recommend that the SHA follow best practices for records management when entering into contracts with third parties.

Dated at Regina, in the Province of Saskatchewan, this 20th day of December, 2019.

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