



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 141-2021, 192-2021

Ministry of Social Services

March 24, 2022

Summary:

The Applicant submitted an access to information request to the Ministry of Social Services (Social Services). Social Services notified the Applicant it was extending its response time by an additional 30 days pursuant to section 12(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Ministry failed to respond to the Applicant within the extended timeline. The response to the Applicant was not issued for 116 days. The Applicant requested the Commissioner review Social Services' need for an extension, failure to respond within the legislated timeframe, as well as its search efforts as it claimed no responsive records exist. The Commissioner found that Social Services did not meet the legislated timelines pursuant to sections 7(2) and 12(3) of FOIP. The Commissioner also found that while Social Services' notice of extension was provided in accordance with the timeline in section 12(2) of FOIP, the extension applied by Social Services pursuant to section 12(1)(b) of FOIP was not appropriate. The Commissioner recommended Social Services review and amend its policies and procedures to ensure requests are processed within legislated timeframes and provide guidance in which circumstances it has the authority to extend the legislated timeline pursuant to section 12 of FOIP. The Commissioner also found that Social Services had conducted a reasonable search for responsive records and recommended Social Services take no further action regarding the search for responsive records.

I BACKGROUND

- [1] On February 18, 2021, the Applicant emailed an access to information request to the Ministry of Social Services (Social Services). The Applicant requested access to the following records for the time period of January 1, 2019 to January 31, 2021:

1. Job description for SWAP [Street Workers Advocacy Project]/RH [Raising Hope] Executive Director including but not limited to: job duties and responsibilities, educational requirements, strategic planning, formal documentation with respect to updates to the board, adherence to all policies and bylaws, fiscal responsibilities, legislative requirements in the province, confidentiality, legal and ethical requirements, human resources requirements, performance requirements, yearly performance reviews, and respectful community stewardship.
 2. The total compensation for all full-time employees (management and other) including but not limited to [names of three employees]. Including salary, wages, benefits, pension, bonuses, overtime pay, travel, meal or housing allowance and per diems.
- [2] On March 22, 2021, Social Services emailed a letter to the Applicant advising that the 30 days response period had been extended an additional 30 days pursuant to section 12(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The letter noted the response deadline would be extended from March 22, 2021 to April 20, 2021.
- [3] On May 20, 2021, the Applicant submitted a request for review to my office as they had not received a response within the legislated timeline and objected to the need for Social Services to apply the extension pursuant to section 12(1)(b) of FOIP.
- [4] On May 25, 2021, my office followed up with Social Services inquiring when the Applicant should anticipate receiving a response to this request.
- [5] On June 2, 2021, Social Services indicated to my office it hoped to have an answer by the following day. On June 7, 2021, my office followed up with Social Services as no response had been provided. On June 9, 2021, Social Services advised that the responses to the Applicant's requests were being finalized and would be "released shortly," but it was unable to provide a specific date. On June 10, 2021, my office requested Social Services issue responses to each of the Applicant's request by July 5, 2021. The Intake Officer with my office advised Social Services that if no responses were issued by this date, the files would be discussed with the Commissioner and our office may proceed to conduct a review.

[6] On July 6, 2021, my office followed up with the Applicant and Social Services to determine if responses to the Applicant's requests had been issued. On the same day, the Applicant responded advising they had received a response to this request and provided a copy of the response. Social Services' June 14, 2021, section 7 response to the Applicant advised that the records the Applicant was seeking did not exist within Social Services and referenced section 7(2)(e) of FOIP.

[7] On July 8, 2021, my office emailed the Applicant to clarify if the Applicant wanted to proceed with the review of timelines of Social Services' processing of their request now that a response had been provided. As well, my office inquired if the Applicant was satisfied with the response provided. On July 22, 2021, the Applicant responded advising they would like a review of Social Services' search efforts for the requested records, the legislated timelines to respond to their request and the need for an extension pursuant to section 12(1)(b) of FOIP.

[8] On July 27, 2021, my office notified the Applicant and Social Services of my intention to undertake a review.

II RECORDS AT ISSUE

[9] This review relates to the timelines surrounding Social Services' processing of the Applicant's request and search efforts to arrive at the conclusion that no responsive records exist. As such, there are no records at issue in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] Social Services is a "government institution" pursuant to section 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, I have jurisdiction to conduct this review.

2. Did Social Services respond to the Applicant within the legislated timelines?

[11] Section 7(2) of FOIP requires that a government institution respond to an applicant within 30 calendar days of receiving an access to information request, unless the response deadline was extended pursuant to section 12 of FOIP.

[12] Section 12 of FOIP is clear that a government institution can extend the initial 30-day response deadline for a maximum of 30 more days. This means 60 days in total. However, this is only in limited circumstances, which are outlined in section 12(1) of FOIP (*Guide to FOIP*, Chapter 3: “Access to Records”, updated: June 29, 2021, at page 72 (*Guide to FOIP*, Ch. 3)).

[13] Social Services advised the Applicant it was relying on section 12(1)(b) of FOIP to extend its deadline to respond. Section 12 of FOIP provides as follows:

12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

...

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period;

...

(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.

[14] My office’s [Review Report 152-2020](#) provides the following regarding the calculation of time:

[11] ...In terms of calculating the due date, *The Legislation Act* establishes general rules that govern the interpretation of all statutory instruments in the province. Section 2-28 of *The Legislation Act* provides guidance on the computation of time and can be applied to the 30 day calculation 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 [and FOIP] expresses the time in a number of days, this is interpreted as 30 calendar days, not business days.

[15] Section 12(2) of FOIP states that a notice of an extension must be provided to an applicant within the first 30 days after the government institution receives an access to information request. On March 22, 2021, Social Services sent the Applicant an extension of time notification, extending the response time to April 20, 2021, pursuant to section 12 of FOIP. On March 22, 2021, 32 days would have passed since the Applicant's access to information request was received. However, as the 30-day due date would have fallen on a Saturday, the due date is extended to the next day the office is open, which would be Monday, March 22, 2021.

[16] While Social Service's notice of extension was provided within 30 days in accordance with the timeline in section 12(2) of FOIP, best practice would be to take steps to notify an applicant of an extension as soon as it is able, rather than waiting until the due date to provide such notice.

[17] Social Services advised the Applicant that the 30-day extension pursuant section 12(1) of FOIP extended the response due date to April 20, 2021.

[18] Section 12(3) of FOIP requires a government institution to respond within the period of extension. Section 12(3) of FOIP provides:

12(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[19] Social Services did not respond to the Applicant until June 14, 2021, 116 days after the Applicant submitted their request.

[20] I find that Social Services did not meet the legislated timelines pursuant to sections 7(2) and 12(3) of FOIP.

[21] Social Services has a legal obligation under FOIP to respond to access requests within the legislated timelines. As such, it must organize itself to ensure it is doing so.

[22] Social Services' submission regarding the processing of the request provided as follows:

The Ministry acknowledges this request was not processed within the legislated timelines. To ensure requests are processed within the legislated timeframes, the Ministry has improved its tracking system to ensure prompt follow-up on outstanding requests, and additional staff have been trained to ensure there is capacity in the unit to process general requests. Additional training is also being provided to Ministry staff to ensure their understanding of legislative requirements.

[23] These steps were mentioned in Social Services' submission in my office's Review Report 137-2021. That report reviewed Social Services' processing of another one of the Applicant's requests. As noted in that report, I commend Social Services for taking steps to address the issue. I will also reiterate my recommendation from that report which was, I recommend Social Services also review and amend its policies or procedures for access to information requests to ensure it reflects its legal obligations under FOIP to process requests within the legislative timeline.

3. Did Social Services' extension of the response deadline satisfy the criteria set out by section 12(1)(b) of FOIP?

[24] As determined above, Social Services failed to respond to the Applicant within the legislative timelines. However, the notice of extension issued to the Applicant was provided within 30 days in accordance with the timeline in section 12(2) of FOIP. As such, I will consider if Social Services' reasons for extending the deadline satisfies the criteria set out by section 12(1)(b) of FOIP.

- [25] Section 12(1)(b) of FOIP provides that an extension can be applied where the government institution needs more time to consult in order to process the request. The consultations must be necessary in order to comply with the application (*Guide to FOIP*, Ch. 3, p. 78).
- [26] “Comply with” means to act in accordance with or fulfil the requirements (*Guide to FOIP*, Ch. 3, p. 78).
- [27] The following two-part test can be applied:
1. Was the government institution consulting a third party or other public body?
 2. Was it not reasonable for the consultations to be completed within the first 30 days?
- (*Guide to FOIP*, Ch. 3, pp. 78 to 79)
- [28] The government institution should be able to explain why it was necessary to consult with a third party or other public body in order to make a decision about access, including how the third party or other public body is expected to assist (*Guide to FOIP*, Ch. 3, p. 78).
- [29] “Public body”, in this context, means a separate government institution or local authority as defined by *The Local Authority Freedom of Information and Protection of Privacy Act* or health trustee as defined by *The Health Information Protection Act* (*Guide to FOIP*, Ch. 3, p. 78).
- [30] Some valid reasons for consulting include that a third party or other public body has an interest in the records, and that those records were created or controlled jointly. Consultations with staff, program areas or branches within the government institution processing the access to information request do not qualify for this provision. Internal consultations are part of every government institution’s routine responsibilities when responding to access to information requests. Therefore, activities that constitute consultations should be those outside of intrinsic and routine obligations of any government institution. (*Guide to FOIP*, Ch. 3, p. 79)

[31] Social Services' submission did not provide any explanation or reasons for how it reached the conclusion that an extension was necessary to process this request. On March 7, 2022, my office emailed Social Services to inquire if it intended to provide a submission to address this item. On March 9, 2022, Social Services responded that it did not intend to provide any reasons or explanations for the need for the extension. Social Services referred my office to the portion of the submission that acknowledged the request was not responded to within the legislated timeline and noted the steps taken to prevent future delays with processing.

[32] As Social Services has failed to provide any reasons or explanations for how it reached the conclusion that an extension pursuant to section 12(1)(b) of FOIP was necessary, I am unable to find that the first part of the test was met. As such, I find that Social Services' extension was not applied in accordance with section 12(1)(b) of FOIP.

[33] In Social Services' letter to the Applicant notifying them of the extension, it advised the Applicant that, "there are consultations that are necessary to comply with the application which cannot reasonably be completed within the original period." In the future, when Social Services is processing requests and determining if an extension pursuant to section 12 of FOIP is necessary, it must ensure it has authority to extend the timeline pursuant to one of the subsections of section 12 of FOIP.

[34] I recommend Social Services review and amend its policies or procedures for access to information requests to provide guidance in which circumstances it has the authority to extend the legislated timeline pursuant to section 12 of FOIP.

4. Did Social Services perform a reasonable search for records?

[35] As noted earlier, Social Services advised that the records the Applicant was seeking did not exist within Social Services and quoted section 7(2)(e) of FOIP. The Applicant requested my office conduct a review of Social Services' search efforts that resulted in the conclusion that no responsive records exist.

[36] The following are guidelines my office uses when reviewing a public body's search efforts for records responsive to a request:

An IPC review involving search efforts can occur in two situations:

- the government institution issued a section 7 response indicating records do not exist; or
- the applicant believes there are more records than what the government institution provided.

The focus of an IPC search review is whether the government institution conducted a reasonable search. As noted above, 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.

It is difficult to prove a negative, therefore FOIP does not require a government institution to prove with absolute certainty that records do not exist.

When a government institution receives a notification letter or email from the IPC requesting details of its search efforts, some or all of the following can be included in the government institutions' submission (not exhaustive).

Outline the search strategy conducted:

- For personal information requests – explain how the individual is involved with the government institution (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches 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 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 government institution'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 the IPC resource, *Using Affidavits in a Review with the IPC* available on the IPC website.

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

(Guide to FOIP, Ch. 3, pp. 8 to 10)

[37] Social Services' submission provided the following regarding its efforts to locate the responsive records:

Street Workers Advocacy Project (SWAP) is a community based organization (CBO) that receives funding from the ministry through an agreement for services. The CBO Contract Administration unit, Finance and Corporate Services (FACS), is responsible for the administration of the ministry's Agreements for services (agreement) with CBOs, including preparing agreements, monitoring agreement compliance and processing payments. The CBO Contract Administration unit are the ministry's experts related to the financial reporting requirements under the agreement. Child and Family

Program (CFP) Community Services unit is responsible for the direct relationship with SWAP, related to the specific services identified in the agreement. CFP Community Services unit is responsible for ensuring CBOs providing services for children and families are meeting the requirements for services detailed in the agreement and therefore have a firm knowledge of the agreement requirements related to the services provided by the CBO, including reporting requirements.

Therefore, the CBO Contract Administration unit and CFP Community Services unit were contacted to conduct a search for responsive records. Records and Privacy had discussions with management from both units to ensure staff understood the records they were looking for and to determine if any clarification from the applicant was required. Staff from both areas are subject matter experts whose jobs focus on dealing with CBOs.

The applicant initially requested a large amount of information on January 12, 2021. When an estimate was issued, the applicant resubmitted the 10 requests at the same time individually. The search for responsive records for all of those access requests occurred at the same time. As the requests covered a broad range of documents, the search for records related to SWAP was thorough (i.e. all records related to SWAP). Where appropriate, the searches included both electronic files, including emails, and paper files (i.e. notebooks etc.).

The search for records completed in FACS was overseen by [name of Manager, CBO Contract Administration], Manager, CBO Contract Administration. FACS's filing system is based on the specific CBO with sub-folders for that CBO. Their search included electronic folders - scanned contracts-amendments, correspondence, policies, and audit analysis for both fiscal years (2019-20 and 2020-21). Within the SWAP folder, they also searched for key words including governance, strategic, planning, financial controls, petty cash, mandate, mission, values, vision, goals, guiding, objectives, policy, board, chairperson, elected, members, committees, membership, reports, stakeholders, agenda, AGM, reporting, minutes, meetings, harassment, ethical, whistleblower, privacy, human resources, breach, insurance, liability, stewardship, and nominations. FACS did not locate any documents related to a job description for the Executive Director nor anything related to compensation for SWAP employees.

In CFP Community Services unit, the staff that completed searches included [name of Manager, Community Services], Manager, Community Services, [name of Director], Director of the unit and [name of Executive Director], Executive Director. Electronic record searches of CFP electronic files and emails included the following key words: Raising Hope, RH, SWAP, Street Worker's Advocacy, [name of SWAP employee], and RHMFF. Records were also not identified in any paper files while searching SWAP records for the other access requests.

No responsive records were located during the search efforts in both units. The Ministry submits that the search conducted by the Ministry was reasonable given it was thorough and was conducted by subject matter experts in both units.

[38] Based on the details provided by Social Services, I find that the search conducted by Social Services was reasonable as it appears to be thorough and involved the right people.

[39] I recommend Social Services take no further action regarding the search for responsive records for this request.

IV FINDINGS

[40] I find that Social Services did not meet the legislated timelines pursuant to sections 7(2) and 12(3) of FOIP.

[41] I find that the notice of extension was provided in accordance with the timeline in section 12(2) of FOIP.

[42] I find that Social Services' extension was not applied in accordance with section 12(1)(b) of FOIP.

[43] I find that the search conducted by Social Services was reasonable.

V RECOMMENDATIONS

[44] I recommend Social Services also review and amend its policies or procedures for access to information requests to ensure it reflects its legal obligations under FOIP to process requests within the legislative timeline.

[45] I recommend Social Services review and amend its policies or procedures for access to information requests to provide guidance in which circumstances it has the authority to extend the legislated timeline pursuant to section 12 of FOIP.

[46] I recommend Social Services take no further action regarding the search for responsive records for this request.

Dated at Regina, in the Province of Saskatchewan, this 24th day of March, 2022.

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