



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 137-2021

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 92 days. The Applicant requested the Commissioner review Social Services' need for an extension and failure to respond within the legislated timeframe. 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.

I BACKGROUND

[1] On February 18, 2021, the Applicant submitted 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. Contract for Services – Street Workers Advocacy Project (SWAP)/Raising Hope AND Government of Saskatchewan including but not limited to the Ministry of Social Services, Ministry of Health, and the Ministry of Mental Health and Addictions.

2. Contract for Services – Street Workers Advocacy Project (SWAP)/Raising Hope/Government of Saskatchewan and [name of Future Quest Consulting founder] and/or Future Quest Consulting.

- [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 11, 2021, the Applicant emailed Social Services asking when they should expect a response. On May 14, 2021, Social Services responded to the Applicant advising it could not provide an estimated response date.
- [4] 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 an extension pursuant to section 12(1)(b) of FOIP.
- [5] On May 25, 2021, my office followed up with Social Services inquiring when the Applicant should anticipate receiving a response to this request.
- [6] On June 7, 2021, the Applicant notified my office that after submitting their request for review, the Applicant advised that they had received Social Services' section 7 response, dated May 20, 2021. The Applicant advised that they were satisfied with the response, but wanted to proceed with a review of Social Services' timelines to respond and the application of the extension.
- [7] On June 11, 2021, my office notified the Applicant and Social Services of my intention to undertake a review.

II RECORDS AT ISSUE

- [8] This review relates to the timelines surrounding Social Services' processing of the Applicant's request. As such, there are no records at issue in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [9] Social Services is a “government institution” pursuant to section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

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

- [10] 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.

- [11] 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 (*IPC Guide to FOIP*, Chapter 3: “Access to Records”, updated: June 29, 2021, at page 72 (*Guide to FOIP*, Ch. 3)).

- [12] 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.

- [13] 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.

[14] 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.

[15] While Social Services' 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.

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

[17] 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.

[18] Social Services did not respond to the Applicant until May 21, 2021, 92 days after the Applicant submitted their request.

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

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

[21] I note that Social Services' submission provides the following on steps it has taken for the processing of future requests:

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 understanding of legislative requirements.

[22] I commend Social Services for taking steps to address the issue. I recommend Social Services 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?

[23] 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.

- [24] 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).
- [25] “Comply with” means to act in accordance with or fulfil the requirements (*Guide to FOIP*, Ch. 3, p. 78).
- [26] 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)
- [27] 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).
- [28] “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).
- [29] 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)
- [30] Social Services submitted:

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. On February 18, 2021, an access request was received for contracts for services between the Ministry of Social Services and the Street Workers Advocacy Project (SWAP), and the contract for services between the ministry, SWAP and [name of Future Quest Consulting founder] and/or Future Quest Consulting for the time frame January 1, 2019 to January 31, 2019.

...

The CBO Contract Administration unit, Finance and Corporate Services (FACS) is responsible for the administration of these Agreements. Child and Family Program (CFP) Community Services unit is responsible for the direct relationship with SWAP regarding the specific services being funded. Proper consultation was required from both areas to ensure that all sensitive information was appropriately identified and assessed in the responsive records for this request, as well as a number of additional requests pertaining to SWAP.

An extension was issued in March 2021 pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) section 12(1)(b) as the consultations with both divisions could not be reasonably completed within the original 30 days.

[31] Based on Social Services' submission, it appears the consultations that occurred were areas within Social Services. As noted above, consultations that occur within the government institution do not qualify for this provision. As such, the first part of the test is not met.

[32] As the first part of the test is not met, I find that the extension applied by Social Services pursuant to section 12(1)(b) of FOIP was not appropriate.

[33] 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.

IV FINDINGS

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

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

[36] I find that the extension applied by Social Services pursuant to section 12(1)(b) of FOIP was not appropriate.

V RECOMMENDATIONS

[37] I recommend Social Services 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.

[38] 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.

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

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