



REVIEW REPORT 018-2017

Saskatchewan Power Corporation

March 8, 2017

Summary: Saskatchewan Power Corporation (SaskPower) applied subsection 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to two information items provided to its Board of Directors and Executives. The Commissioner agreed that subsection 17(1)(a) of FOIP applied and recommended that SaskPower take no further action.

I BACKGROUND

[1] On January 5, 2017, Saskatchewan Power Corporation (SaskPower) received an access to information request for the following records:

The report or briefing note (or other) document that serves as an analysis of Prime Minister Trudeau's carbon tax that was the culmination of all interdepartmental work.

[2] On January 17, 2017, SaskPower responded to the Applicant indicating that responsive records were being withheld in full pursuant to subsection 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] The Applicant was dissatisfied with SaskPower's response and requested a review by my office on January 19, 2017. On January 23, 2017, my office provided notice to both the Applicant and SaskPower of my intention to undertake a review.

II RECORDS AT ISSUE

[4] The responsive record consists of two documents. The first is an Information Item that was presented to the SaskPower Board of Directors on October 13, 2016. It is 12 pages. The second is an Information Item that was presented to SaskPower Executive on October 18, 2016. It is 10 pages.

[5] SaskPower has withheld both documents in their entirety pursuant to subsection 17(1)(a) of FOIP.

III DISCUSSION OF THE ISSUES

[6] SaskPower qualifies as a government institution for the purpose of subsection 2(1)(d)(ii) of FOIP.

1. Does subsection 17(1)(a) of FOIP apply to the record?

[7] Subsection 17(1)(a) of FOIP states:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[8] My office has considered this exemption many times in the past. The exemption is meant to allow for candor during the policy-making process, rather than providing for the non-disclosure of all forms of advice. The established test that my office uses to determine the applicability of this exemption is as follows:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. The advice, recommendations, proposals, analyses and/or policy options must:

- i) be either sought, expected, or be part of the responsibility of the person who prepared the record; and
- ii) be prepared for the purpose of doing something, for example, taking an action or making a decision; and
- iii) involve or be intended for someone who can take or implement the action.

3. Was the advice, recommendations, analyses and/or policy options developed by or for the public body?

[9] SaskPower's submission indicates that the information in the records qualify as analyses or policy options.

[10] My office has defined proposals, analyses and policy options generally. They are closely related to advice and recommendations and refer to the concise setting out of the advantages and disadvantages of particular courses of action.

[11] Order F2008-032 of the Office of the Information and Privacy Commissioner of Alberta adopted the following definition of analyses:

“Advice” then, is the course of action put forward, while “analyses” refers to the examination and evaluation of relevant information that forms, or will form, the basis of the advice, recommendations, proposals, and policy options as to a course of action.

[12] The records in question consider policy options as a result from the federal government's announced carbon tax policy. SaskPower must decide which option is best for its organization for the purpose of lobbying the provincial government. The majority of the record examines and evaluates the different policy options based on the information that was available at the time the record was created. It also makes a conclusion with respect to the preferred policy option.

[13] I have stated that this provision is not meant to protect the bare recitation of facts, without anything further. Upon review of the record, facts are intertwined with the analyses in such a manner that their disclosure would reveal the nature of the analyses. Further, the record notes that not all of the details of either option have been announced by the federal

government. As a result, the author of the records was required to make several different assumptions to complete the analysis. Additionally, the information is also based on future performance information that is only projected by SaskPower.

[14] I am persuaded that the first part of the test is met and the information in the record qualifies as analyses and policy options.

[15] SaskPower indicated the Board of Directors requested this information and that it was the responsibility of the Vice-President of Planning, Environment and Sustainable Development to oversee the preparation of the record.

[16] It is evident, upon review of the record, that it was prepared for making an eventual decision with respect to lobbying the provincial government regarding carbon tax policy. I do note that it is not a decision that SaskPower will need to make immediately. I am conscious of the fact that more information will need to be gathered and presented before a decision is made. Nevertheless, the record likely will shape subsequent discussions and analyses leading up to the decision.

[17] Further, SaskPower indicated that its Board of Directors and Executive are responsible for SaskPower's business plan and strategies. They are also in a position to influence the Government of Saskatchewan on the policy options for climate change strategy. I am satisfied that the second part of the test is met.

[18] Finally, the analyses were developed by and for SaskPower. The third part of the test is met. Therefore, subsection 17(1)(a) of FOIP applies to the record.

IV FINDING

[19] I find subsection 17(1)(a) of FOIP applies to the record.

V RECOMMENDATION

[20] I recommend that SaskPower take no further action with respect to the record.

Dated at Regina, in the Province of Saskatchewan, this 8th day of March, 2017.

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