



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 019-2017

Ministry of Justice

April 3, 2018

Summary:

The Applicant submitted an access to information request to the Ministry of Justice (Justice). Justice responded denying partial access pursuant to subsections 15(1)(m), 17(1)(a), 17(1)(b)(i), 17(1)(d) and 17(1)(g) of FOIP, however through the course of the review, it released additional records to the Applicant. The Commissioner found that subsection 17(1)(a) of FOIP applied to portions of the information, but not all. The Commissioner further found subsection 15(1)(m) applied to some of the information. Finally, the Commissioner found that subsections 17(1)(b)(i), 17(1)(d) and 17(1)(g) did not apply to portions of information. The Commissioner recommended that Justice continue to withhold some of the record in full and in part, but that Justice should fully release some of the pages.

I BACKGROUND

[1] The Applicant submitted an access to information request pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) to the Ministry of Justice (Justice) on November 8, 2016 requesting access to the following:

All reports prepared for the Ministry of Justice by [name] and/or K. Calder and Associates since 2000, including:

- Security and Workplace Violence Risk Assessments

And

- Security and Threat Management Program Development

[2] By letter dated January 12, 2017, Justice responded to the request denying access in part pursuant to subsections 15(1)(m), 17(1)(a), 17(1)(b)(i), 17(1)(d) and 17(1)(g) of FOIP.

[3] The Applicant requested a review of this decision by my office on January 23, 2017. My office provided notification to Justice and the Applicant of our intention to conduct the review on January 24, 2017 and invited both parties to make a submission. Both parties provided a submission to my office.

[4] On October 10, 2017, Justice released additional records to the Applicant. The Applicant advised our office that he wished to continue with the review based upon the portions of the record that Justice continues to withhold.

II RECORDS AT ISSUE

[5] The record at issue is the following five documents totalling 151 pages:

- Workplace Violence Assessment and Security Review Report
- Perimeter Screening Security Assessment
- Court Security Threat Risk Assessment Framework
- Saskatchewan Sheriff Service Threat Management Unit Implementation Plan
- Court Services WPV and Security Review Briefing Document

[6] I would like to note that in most cases Justice has applied multiple exemptions to each page or portions of a page it has withheld from the Applicant. If I find an exemption applies to portions of the information, I will not be considering the other exemptions Justice may have applied to that same portion of information.

III DISCUSSION OF THE ISSUES

[7] Justice is a “government institution” as defined by subsection 2(1)(d)(i) of FOIP.

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

[8] Justice applied subsection 17(1)(a) of FOIP in part to pages 3, 10, 94, 98, 100, 113, 116 and 145 and in full to pages 6 to 9, 15 to 16, 23 to 55, 58 to 71, 74 to 92, 97, 101 to 109, 117 to 125, 128 to 143 and 147 to 151.

[9] Subsection 17(1)(a) of FOIP is a discretionary exemption and provides:

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;

[10] This exemption is meant to allow for candor during the policy-making process, rather than providing for the non-disclosure of all forms of advice or all records related to the advice. The object of the provision includes maintaining an effective and neutral public service capable of producing full, free and frank advice.

[11] In order for this exemption to be found to apply, all three parts of the following test must be met:

1. The information must qualify as advice, proposals, recommendations, analyses and/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. The advice, recommendations, proposals, analyses and/or policy options must have been developed by or for the public body.

[12] I will now consider each of these parts of the test for the withheld record.

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

- [13] *Advice* includes the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. *Advice* has a broader meaning than recommendations. *Recommendations* relate to a suggested course of action as well as the rationale for a suggested course of action and are generally more explicit and pointed than advice. Finally, *proposals*, *analyses* and *policy options* are closely related to advice and recommendations and refer to the concise setting out of the advantages and disadvantages of particular courses of action.
- [14] In other words, advice 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.
- [15] Justice provided several arguments in support of its use of subsection 17(1)(a) of FOIP. In its submission, Justice advised that the records in question contain advice, recommendations, policy options and analyses related to workplace violence and security in the provincial courthouses in Saskatchewan. Specifically, Justice advised that all the records were sought by the Ministry and were meant to provide information to make decisions relating to workplace violence and security, and were intended to be used by someone who could make the decision to implement changes. The records were prepared with the intention of informing decisions made by Ministry officials to ensure and improve provincial court security.
- [16] From a review of the record it is clear that some of the information qualifies as advice, proposals, analyses and/or policy options. K. Calder and Associates were hired by the Ministry of Justice to review court security. Through this process it produced reports that analyzed the present state, and provided recommendations and policy options to officials with Justice.

[17] The first part of the test has been met where subsection 17(1)(a) of FOIP has been applied on pages 8, 10, 15, 16, 25 – 29, 31 – 42, 44, 46 – 55, 97, 98, 100, 102 – 109, 113, 116 – 125, 128 – 130, 133 – 143 and 147 – 151. The first part of the test has also been met for portions of information on pages 6, 7, 9, 24, 30, 43, 45, 101, 131 and 132. However, there are portions of information on these pages that the first part of the test has not been met.

[18] The following are examples of information found in these pages that would not qualify as advice, proposals, recommendations, analyses and/or policy options. The first paragraph of the *Executive Summary* found on page 6, outlines why the assessment was performed. Portions of pages 7, 24 and 43 described methodologies used at a very high level. In addition, there is a factual incident quoted from a newspaper that has been referenced and contact information of Justice Officials that are involved in this project.

[19] Justice has applied subsection 17(1)(a) of FOIP to portions of tables of contents. In its submission, the Applicant referenced my offices Review Report 154-2015, at paragraph [13]:

Page one of the record is a cover page from the report, page two is a table of contents that refers to eight general sections found of the report and page three is a notice to readers and confidentiality clause. The information on these pages of the record appear to be general in nature and do not appear to contain any information that would qualify as advice, recommendations, proposals, analyses or policy options. It is not clear how these pages would qualify under subsection 17(1)(a) of FOIP.

[20] The withheld information on these pages also includes a table of contents. In response to my office's draft report, Justice disagreed that my office characterized the information on pages 3, 94 and 145 as a table of contents. It asserts that this information is not just a table of contents, but a summary of the recommendations under consideration.

[21] As noted above, *recommendations* relate to a suggested course of action as well as the rationale for a suggested course of action and are generally more explicit and pointed than advice. What is included in the table of contents may be the title of a suggested course of action at a high level but it does not provide the rationale or substance for the

suggested course of action. Therefore, the first part of the test has not been met for the withheld table of contents found on pages 3, 94, and 145.

[22] The information that has been withheld on page 23 outlines the overall scope of the project, states factual information and outlines methodologies and how the review was conducted at a high level. This type of information does not qualify as advice, recommendations, analyses or policy options and therefore the first part of the test has not been met for these pages.

[23] Justice also applied this exemption to pages 58 to 71 and 74 to 92. These pages are the results of surveys that focused on the experience of Court employees related to workplace violence. Subsection 17(2)(d) of FOIP provides:

17(2) This section does not apply to a record that:

...

(d) is a statistical survey;

[24] Therefore any of the exemptions provided for in subsection 17(1) of FOIP do not apply to these pages. I note that Justice has applied only subsections 17(1)(a) and 17(1)(b)(i) to pages 58 - 65, 69 - 71, 74 - 76, 78, 80, 82, 91 and 92. As 17(1) does not apply to statistical surveys, I find that that subsections 17(1)(a) and 17(1)(b)(i) of FOIP do not apply to pages 58 to 66, 69 to 71, 74 to 76, 78, 80, 82, 91 and 92.

[25] As Justice has also claimed subsection 15(1)(m) of FOIP to pages 66 to 68, 77, 79, 81 and 83 to 90, I will be assessing that provision on those pages later in this report.

2. The advice, recommendations, proposals, analyses and/or policy options must:

i) be either sought, expected, or 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.

- [26] I will now assess if the second part of the test has been met for pages 8, 10, 15, 16, 25 – 29, 31 – 42, 44, 46 – 55, 97, 98, 100, 102 – 109, 113, 116 – 125, 128 – 130, 133 – 143 and 147 – 151 and portions of information on pages 6, 7, 9, 24, 30, 43, 45, 101, 131 and 132.
- [27] In its submission, Justice advised the records were developed by K. Calder & Associates who was contracted to evaluate, assess, analyze and make recommendations and provide policy options to Justice with respect to the issue of workplace violence and security.
- [28] From a review of this information, I agree. K Calder & Associates was clearly contracted for this purpose and the information was prepared for the purpose of addressing the issue of workplace violence and security within Saskatchewan Courts. Therefore, the information identified above on pages 8, 10, 15, 16, 25 – 29, 31 – 42, 44, 46 – 55, 97, 98, 100, 102 – 109, 113, 116 – 125, 128 – 130, 133 – 143 and 147 – 151 and portions of information on pages 6, 7, 9, 24, 30, 43, 45, 101, 131 and 132 meet the second part of the test.
- [29] I will now assess if the third part of the test has been met for these pages.

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

- [30] As noted under part two of the test, K. Calder & Associates was contracted to prepare the reports for Justice. Therefore, these pages meet the third part of the test.
- [31] I find that subsection 17(1)(a) of FOIP applies fully to pages 8, 10, 15, 16, 25 – 29, 31 – 42, 44, 46 – 55, 97, 98, 100, 102 – 109, 113, 116 – 125, 128 – 130, 133 – 143 and 147 – 151 and partially to the information on pages 6, 7, 9, 24, 30, 43, 45, 101, 131 and 132.

2. Does subsection 15(1)(m) of FOIP apply to this record?

[32] I will now assess if subsection 15(1)(m) of FOIP applies to information withheld on pages 3, 6, 7, 9, 14, 15, 24, 30, 43, 45, 66 – 68, 77, 79, 81, 83, 84 – 90, 94, 101 and 145.

[33] Subsection 15(1)(m) of FOIP is a discretionary exemption and provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[34] In order for subsection 15(1)(m) of FOIP to be found to apply, the release of the information would reveal security arrangements (of particular vehicles, buildings, other structures or systems). In this context, *security* means a state of safety or physical integrity. The security of a building includes the safety of its inhabitants or occupants when they are present in it. Examples of information relating to security include methods of transporting or collecting cash in a transit system, plans for security systems in a building, patrol timetables or patterns for security personnel, and the access control mechanisms and configuration of a computer system.

[35] Alternatively, the public body must demonstrate that the release of the information would reveal security methods employed to protect the particular vehicles, buildings, other structures or systems.

[36] In its submission, Justice argues that the records deal with the safety and security of various provincial courthouses in Saskatchewan. Further, Justice has indicated that the records contain specific information about how provincial courthouses classify and approach varying threat levels and manage security risks.

[37] In his submission, the Applicant referenced Review Report 022-2015 in the context of the meaning of the word “reveal”. He outlined there is no element of “revealing”

information within a record to the extent it is already publicly available or publicly observable.

[38] I note that, like its submission for subsection 17(1)(a) of FOIP, Justice has argued subsection 15(1)(m) of FOIP at a high level, and has not pointed to how it specifically applies to each of the pieces of information it has withheld under this exemption.

[39] Justice applied subsection 15(1)(m) of FOIP to a portion of information on pages 9, 14, 15, 30 and 101. The information that has been withheld on these pages, if released, would reveal security arrangements or methods. These pages describe specific security methods and specific security and violence training provided to Deputy Sheriffs. It also identifies some potential security gaps. Therefore, I find subsection 15(1)(m) of FOIP applies to the portion of the information on pages 9, 14, 15, 30, and 101.

[40] Pages 66 – 68, 77, 79, 81, 83, 84 – 90 are the results of court employee surveys related to workplace violence. These reports do not reveal specific security arrangements or methods to protect vehicles, buildings, other structures or systems. The results represent how employees answered the survey. A lot of the questions dealt with incident responses and general locations of where incidents occurred. But, from a review of these pages they would not reveal how any given court specifically addresses security in its facility. Even where employees detailed issues in his or her own words, as was found on page 89, none of it revealed the actual security arrangements. Therefore, subsection 15(1)(m) of FOIP does not apply to these pages.

[41] The information withheld on pages 6, 7, 24, 43 and 45 would not reveal security arrangements or methods. This information includes high level methodologies, factual information and information that would be available publicly. Further, the withheld information found on pages 3, 94 and 145 are tables of contents and there is no information that would reveal security arrangements or methods of protection. Therefore, subsection 15(1)(m) of FOIP does not apply to the information withheld on these pages.

3. Does subsection 17(1)(b)(i) of FOIP apply to this record?

[42] I will now assess if subsection 17(1)(b)(i) of FOIP applies to information withheld on pages 3, 6, 7, 9, 23, 24, 43, 45, 94, 101, 131, 132 and 145.

[43] Subsection 17(1)(b)(i) of FOIP is a discretionary exemption and provides:

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

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[44] This provision is meant to permit public bodies to consider options and act without constant public scrutiny. A *consultation* occurs when the views of one or more officers of a public body are sought as to the appropriateness of a particular proposal or suggested action. A *deliberation* is a discussion or consideration, by the persons described in the section, of the reason for and against an action. It refers to discussions conducted with a view towards making a decision.

[45] For this exemption to apply, the consultations or deliberations must involve officers or employees of a government institution. In addition, the following two part test must be met:

1. The opinions solicited during a consultation or deliberation must be either sought, expected, or be part of the responsibility of the person who prepared the record; and
2. The opinions solicited during a consultation or deliberation must be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[46] The provision is not meant to protect the bare recitation of facts, without anything further. Further, the exemption does not generally apply to records or parts of records that in themselves only reveal that a consultation or deliberation took place at a particular place or time; that particular persons were involved; or that a particular topic was involved.

[47] I will now assess if the first part of the test has been met.

1. The opinions solicited during a consultation or deliberation must be either sought, expected, or be part of the responsibility of the person who prepared the record.

[48] The remaining portions of information I am considering under this exemption (see paragraph [6]) are found on pages 6, 7, 9, 23, 24, 43, 45, 101, 131, 132. The types of information that has been withheld includes high level methodologies, factual information, information that would be available publicly, and contact information of Justice officials. This information would not qualify as opinions solicited during a consultation or deliberation.

[49] Justice has also applied this exemption to portions of tables of contents, found on pages 3, 94 and 145. There is no information included in these tables of contents that would qualify as opinions solicited during a deliberation or consultation.

[50] Therefore, the first part of the test has not been met.

[51] As the first part of the test has not been met, I find that subsection 17(1)(b)(i) of FOIP does not apply to portions of information found on pages 3, 6, 7, 9, 23, 24, 43, 45, 94, 101, 131, 132 and 145.

4. Does subsection 17(1)(d) or (g) of FOIP apply to this record?

[52] Justice also applied subsections 17(1)(d) and (g) of FOIP to portions of information found on pages 3, 6, 7 and 145. I note that I am considering a small amount of information that has not been found to fall under other exemptions in earlier parts of this Review Report.

[53] Subsections 17(1)(d) and (g) of FOIP are discretionary exemptions and provide:

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

...

(d) plans that relate to the management of personnel or the administration of a government institution and that have not yet been implemented;

...

(g) information, including the proposed plans, policies or project of a government institution, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

[54] Subsection 17(1)(d) of FOIP covers plans relating to the internal management of public bodies, including information about the relocation or reorganization of government departments and agencies, as well as reorganization of local authorities. In order for this exemption to be found to apply, the following three part test must be met:

1. Does the records contain a plan(s)?
2. Does the plan(s) relate to the management of personnel or the administration of the public body?
3. Has the plan(s) been implemented by the public body?

[55] Subsection 17(1)(g) of FOIP is meant to allow public bodies to prevent premature disclosure of a policy or budgetary decision. Once a policy or budgetary decision has been taken and is being implemented, the information can no longer be withheld under this exemption. In order for this exemption to be found to apply, the following two part test must be met:

1. Is the information that of a government institution?
2. Could the disclosure reasonably be expected to result in disclosure of a pending policy or budgetary decision?

[56] These exemptions have been applied to tables of contents, or portions of tables of contents. In addition, these exemptions have been applied to information that the Applicant would already have been made aware of through information Justice has already provided to him through this request.

[57] Therefore, I find that subsections 17(1)(d) and (g) of FOIP do not apply to the portions of information found on pages 3, 6, 7 and 145.

IV FINDINGS

[58] I find that subsections 17(1)(a) and 17(1)(b)(i) of FOIP do not apply to pages 58 to 66, 69 to 71, 74 to 76, 78, 80, 82, 91 and 92.

[59] I find that subsection 17(1)(a) of FOIP applies fully to pages 8, 10, 15, 16, 25 – 29, 31 – 42, 44, 46 – 55, 97, 98, 100, 102 – 109, 113, 116 – 125, 128 – 130, 133 – 143 and 147 – 151 and partially to the information on pages 6, 7, 9, 24, 30, 43, 45, 101, 131 and 132.

[60] I find subsection 15(1)(m) of FOIP applies to portions of the information on pages 9, 14, 15, 30, and 101.

[61] I find that subsection 17(1)(b)(i) of FOIP does not apply to portions of information found on pages 3, 6, 7, 9, 23, 24, 43, 45, 94, 101, 131, 132 and 145.

[62] I find that subsections 17(1)(d) and (g) of FOIP do not apply to the portions of information found on pages 3, 6, 7 and 145.

V RECOMMENDATIONS

[63] I recommend that Justice continue to withhold pages 8, 10, 14 – 16, 25 – 42, 44, 46, 47 – 55, 97, 98, 100, 102 – 109, 113, 116 – 125, 128 – 130, 133 – 143 and 147 - 151

[64] I recommend that Justice fully release the withheld information on pages 3, 23, 58 – 71, 74 – 92, 94 and 145.

[65] I recommend that Justice release the portions of information that I have identified on pages 6, 7, 9, 24, 43, 45, 101, 131 and 132.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of April, 2018.

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