

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 023/2014

Ministry of Justice (Corrections & Policing)

Summary: In January 2014, an Applicant submitted an access to information request to the Ministry of Justice (Corrections and Policing) (Justice). Justice advised the Applicant that it was withholding the record pursuant to subsections 16(1)(a), 17(1)(a), (d), 18(1)(b)(ii), (d),(e) and (h) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant proceeded to request a review by the Office of the Information and Privacy Commissioner (OIPC). Upon review, the Commissioner found that Justice appropriately applied subsection 16(1)(a) of FOIP to the record. The Commissioner recommended Justice continue to withhold the record.

I BACKGROUND

[1] On January 17, 2014, the Ministry of Justice (Corrections & Policing) (Justice) received an access to information request from the Applicant requesting the following:

Food Services Review report of the ministry's facilities in corrections and youth detention centers, either completed internally or through a consultant, completed sometime in late 2013/early 2013.

[2] Justice advised the Applicant by a letter dated February 12, 2014, that access to the records were denied in full pursuant to subsections 16(1)(a), 17(1)(a), (d), 18(1)(b)(ii), (d), (e) and (h) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On February 25, 2014, my office received a Request for Review from the Applicant.

[4] In a letter dated March 10, 2014, my office notified both parties of our intention to conduct a review. My office requested Justice provide a copy of the record, Index of Records (Index) and submission in support of the above exemptions.

[5] On April 28, 2014, my office received a copy of the record and an Index from Justice. Its submission was received June 6, 2014. On August 8, 2014, my office received a submission from the Applicant.

II RECORDS AT ISSUE

[6] The record at issue is one document consisting of a 53 page report.

III DISCUSSION OF THE ISSUES

[7] Justice is a government institution pursuant to subsection 2(1)(d)(i) of FOIP.

1. Does subsection 16(1)(a) of FOIP apply?

[8] Subsection 16(1)(a) of FOIP is a mandatory exemption and provides:

16(1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council, including:

(a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

[9] Justice applied subsection 16(1)(a) of FOIP to all 53 pages of the report.

[10] *Executive Council* consists of the Premier and Cabinet Ministers. Executive Council is also referred to as “Cabinet”. (Government of Saskatchewan, Cabinet Secretariat, Executive Council, *Executive Government Processes and Procedures in Saskatchewan: A Procedures Manual*, 2007, at p. 16)

[11] *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.

[12] *Recommendations* include suggestions for a course of action as well as the rationale for a suggested course of action.

[13] *Proposals* and *analyses or 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] British Columbia's *Freedom of Information and Protection of Privacy Act Policy and Procedures Manual* listed a number of examples considered to qualify as a cabinet confidence:

- an agenda, minute or other record that documents matters addressed by Cabinet (e.g., a list of issues tabled at Cabinet that reflects the priorities of Cabinet);
- a letter from Cabinet or a Cabinet committee that relates to the discussion or consideration of an issue or problem, or that reflects a decision made but not made public (e.g., a letter from Treasury Board to a ministry executive stating a decision that affects the ministry's budget but which has not been announced);
- a briefing note placed before Cabinet or one of its committees;
- a memo from a deputy minister to an assistant deputy minister in a ministry that informs them when Cabinet will consider an issue;
- a briefing note from a deputy minister to a minister concerning a matter that is or will be considered by Cabinet;
- a draft or final Cabinet submission; and
- draft legislation or regulations.

(British Columbia Government Services, *Freedom of Information and Protection of Privacy Act Policy and Procedures Manual* at section C.4.2)

[15] In its submission, Justice indicated that the report was prepared as analyses of current food services delivery methods in Correctional Centers for Cabinet in order for Cabinet to

- make a decision on how to proceed. The report also presents recommendations to Cabinet.
- [16] Documentation reflecting analyses and recommendations developed from sources outside of the Executive Council for presentation to the Executive Council are intended to be covered by the provision. Further, a draft memorandum that was created for the purpose of presenting proposals and recommendations to Cabinet but that was never actually presented to Cabinet remains a confidence. Equally, a memorandum in final form is a confidence even if it has not been presented to Cabinet. (Treasury Board of Canada Secretariat, *Confidences of the Queen's Privy Council for Canada (Cabinet confidences)* available at <http://www.tbs-sct.gc.ca/atip-aiprp/tools/qpcc-cprc-eng.asp>)
- [17] From a review of the report, it appears to be a document drafted by a contracted third party for Justice and indicates it was prepared for the Government of Saskatchewan. From a review of its contents it appears to contain analyses and recommendations as defined above. Further, the report indicates it is a draft, is confidential and is dated August 20, 2013.
- [18] On August 22, 2014, our office consulted with Justice to discuss the nature of the report and the process of it reaching Cabinet. We were advised that Cabinet requested the report be completed. The objective of the report is to inform Cabinet in its decision-making process.
- [19] On September 11, 2014, Justice provided a copy of an Action Items List for briefing the Minister of Corrections and Policing. On the list is a Cabinet Decision Item (CDI) which lists the food services topic. Justice advised that the report and the food services issue are still in the process of making its way to Cabinet.
- [20] In conclusion, I find that the report would qualify for exemption pursuant to subsection 16(1)(a) of FOIP because it is a report created to present analyses and recommendations to Executive Council and its release would disclose a confidence of Executive Council.

However, once a decision has been made by Executive Council regarding the report, the status of the report would change and subsection 16(1)(a) of FOIP would no longer apply.

[21] As subsection 16(1)(a) of FOIP has been found to apply, there is no need to consider the other exemptions relied on by Justice.

IV FINDINGS

[22] I find that subsection 16(1)(a) of FOIP applies to the record.

V RECOMMENDATIONS

[23] I recommend that Justice continue to withhold the record.

Dated at Regina, in the Province of Saskatchewan, this 10th day of October, 2014.

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