

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT 036-2015**

**Ministry of Parks, Culture and Sport**

**Summary:** The Ministry of Parks, Culture and Sport applied section 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to two memorandums prepared by a Special Advisor. The Commissioner agreed that the exemption applied and recommended that the Ministry take no further action.

**I BACKGROUND**

[1] On December 23, 2014, the Ministry of Parks, Culture and Sport received an access request for “All documents, proposals, publications and projects created by [name of individual] since he began his job as Special Advisor.” It responded to the Applicant on January 22, 2015 indicating that the records were being withheld pursuant to subsection 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[2] The Applicant was dissatisfied with the Ministry’s response and requested a review by my office on February 23, 2015. The Applicant specifically questioned whether portions of the record could be released pursuant to section 8 of FOIP. On March 5, 2015, my office provided notification to both the Applicant and the Ministry of our intention to undertake a review.

## **II RECORDS AT ISSUE**

[3] The record at issue consists of two documents. The first record is a five page memorandum dated October 6, 2014 from the Special Advisor to the Deputy Minister regarding the creation of a Provincial Historian. The second document is a two page memorandum dated October 9, 2014 from the Special Advisor to the Deputy Minister regarding the Provincial Canada 150 Committee. Subsection 17(1)(a) of FOIP has been applied to both memorandums in their entirety.

## **III DISCUSSION OF THE ISSUES**

### **1. Did the Ministry properly apply subsection 17(1)(a) of FOIP?**

[4] 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;

[5] 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, such as 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 a government institution or a member of the Executive Council?

[6] The Ministry provided a submission to my office on March 25, 2015. The submission only specifically addressed one part of the test for 17(1)(a) of FOIP that was provided to the Ministry in the notification letter. Conclusions for other parts of the test were based upon review of the record.

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

[7] The submission of the Ministry indicates that the memorandums contain briefing note material as well as recommendations and policy options. My office has previously defined recommendations as information that “relate to a suggested course of action as well as the rationale for a suggested course of action. Recommendations are generally more explicit and pointed than advice.” My office has said that 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.

[8] In reviewing both memorandums, I agree that they constitute recommendations and policy options and the first part of the test is met.

***2. i) Were the recommendations and policy options either sought, expected, or be part of the responsibility of the person who prepared the record?***

[9] The memorandums were prepared by the Special Advisor. I believe the creation of such a memorandum would be consistent with the responsibilities of a Special Advisor.

***ii) Were the recommendations and policy options prepared for the purpose of doing something, such as taking an action or making a decision?***

[10] The recommendations and policy options presented in these memorandums involve taking specific action.

*iii) Were the recommendations and policy options intended for someone who can take or implement the action?*

[11] Both memorandums were prepared for the Deputy Minister. In my opinion the recommendations and policy options contained in the memorandums would normally be directed to someone in a deputy minister level. Therefore, the second part of the test has been met.

*3. Were the recommendations and policy options developed by or for a government institution or a member of the Executive Council?*

[12] Upon review of the record, the memorandums were developed both by and for the Ministry. Therefore, the third part of the test has been met.

[13] The Applicant specifically raised the issue of severing. More specifically, he was concerned that subsection 17(1)(a) might only apply to portions of the record. After a review of the record, my office posed the question to the Ministry whether the background section of the Provincial Historian memorandum would qualify under this exemption. The Ministry indicated that the background section describes a policy option. I have been persuaded that section 17(1)(a) of FOIP applies.

**IV FINDINGS**

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

**V RECOMMENDATIONS**

[15] I recommend that the Ministry take no further action with regard to these records.

Dated at Regina, in the Province of Saskatchewan, this 17th day of April, 2015.

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