

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 037-2015

Ministry of the Economy

Summary: The Applicant made a request for certain records. The Ministry of the Economy applied subsections 17(1)(a), (b)(i), (c), (g), 18(1)(d), (e), (f) and (g) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to the record. The Commissioner found that subsection 17(1)(a) of FOIP applied to the record.

I BACKGROUND

[1] On December 23, 2014, the Ministry of the Economy received an access to information request for “All correspondence related to *Bill 608 – The Fairness for Saskatchewan Business in Government Procurement Act*, since October 1, 2014.” The Ministry responded to the Applicant in a letter dated January 28, 2015 indicating that the records were being withheld pursuant to the following subsections of *The Freedom of Information and Protection of Privacy Act* (FOIP): 17(1)(a), (b)(i), (c), (g), 18(1)(d), (e), (f) and (g).

[2] The Applicant made a request for review to my office on February 24, 2015. On February 26, 2015, my office provided notification to both the Ministry and the Applicant of our intention to undertake a review.

II RECORDS AT ISSUE

[3] The Ministry has applied subsections 17(1)(a), (b)(i), (c), (g), 18(1)(d), (e), (f) and (g) of FOIP to all withheld portions of the record.

- [4] The record is six pages in total and consists of two e-mail trains. Both e-mail trains begin with an e-mail from a Senior Vice President (VP) of SaskBuilds to an Associate Deputy Minister (ADM) of the Ministry asking if there are “any line entries/recommendations that either ECON supports and/or was/may be the genesis of” with respect to Bill 608.
- [5] The first e-mail train (A) is two pages with three e-mails. In the second e-mail, the ADM asks another Ministry employee for a response. A large portion of the third e-mail, which is the employee’s response, has been withheld pursuant to the above noted exemptions.
- [6] The second e-mail train (B) has four pages and four e-mails. The second e-mail is the ADM’s response to the VP. A large portion of this e-mail is withheld pursuant to the noted exemptions; another portion because the Ministry indicated it is non-responsive to the Applicant’s request. The third e-mail is the VP’s response back to the ADM. A large portion of it is also withheld pursuant to the exemptions. The last e-mail has been withheld as the Ministry has indicated it is non-responsive to the request.

III DISCUSSION OF THE ISSUES

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

- [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) must 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 a government institution or a member of the Executive Council?

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

[9] The Ministry's submission indicates that the material redacted from the record constitutes analyses. My office has stated that 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.

[10] Upon review of the record, I agree that the redacted portion of the third e-mail in train A and the second e-mail in train B would constitute analyses of Bill 608. The redacted portion of the third e-mail in train B would constitute advice based on the content of the other withheld e-mails.

2. i) Was the analyses either sought, expected, or be part of the responsibility of the person who prepared the record?

[11] With respect to the third e-mail in train A, the employee was asked by the ADM of the Ministry to provide a response. Therefore, it was part of his responsibility. Likewise, in the others, the VP asked the ADM for information. The Ministry has indicated that both individuals sit on a steering committee reviewing government procurement policies. As such, providing such analyses and advice would be the responsibility of these individuals as well. This part of the test is met.

ii) Was the analyses prepared for the purpose of doing something?

[12] The Ministry has indicated the following:

The records were developed in response to a question asking for early analysis on some proposed legislation and we expect the analysis to help develop the basis for future recommends as the Bill proceeds through the House. The analysis and recommendations will also provide direction on work currently being done on the government's procurement policy.

[13] Based on review of the records, I accept the Ministry's explanation and it passes this test.

iii) Was the analyses intended for someone who can take or implement the action?

[14] The Ministry indicated that the "analyses was developed for someone who can and/or will develop and/or implement the recommendations". It is clear that the VP and ADM who are on the steering committee could take action.

3. Was the analyses developed by or for a government institution or a member of the Executive Council?

[15] Upon review of the record, the redacted portion of the third e-mail in train A and the second e-mail in train B were developed by the Ministry. The third e-mail in train B was developed for the Ministry. Therefore, the last portion of the test has been met.

[16] There is no need to consider any of the other exemptions.

IV FINDINGS

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

V RECOMMENDATIONS

[18] I recommend that SRC take no further action with regard to this record.

Dated at Regina, in the Province of Saskatchewan, this 7th day of April, 2015.

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