



REVIEW REPORT 039-2018

Ministry of Energy and Resources (formerly the Ministry of Economy)

November 2, 2018

Summary: The Applicant submitted an access to information request to the Ministry of Energy and Resources (Energy and Resources), which was formerly the Ministry of Economy. Energy and Resources provided its response to the Applicant indicating that access to the record was denied pursuant to subsections 18(1)(b)(i), (ii) and (d) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the Commissioner. Upon review, the Commissioner found that Energy and Resources appropriately applied subsection 18(1)(b) of FOIP. The Commissioner recommended the record continue to be withheld until Energy and Resources can make it publicly available.

I BACKGROUND

[1] At the time of the access to information request, the Ministry of Economy was a single ministry. However, at the time of the review, the Ministry of Economy had split into three ministries: the Ministry of Energy and Resources, the Ministry of Export and Trade Development and the Ministry of Immigration and Career Training. My office has been advised that the records involved in this review are with the Ministry of Energy and Resources.

[2] On February 8, 2018, the Ministry of Energy and Resources (Energy and Resources) received the following access to information request from the Applicant:

Map showing survey area, with survey specifications, as mentioned in this January 31, 2018 CBC article. <http://www.cbc.ca/news/canada/saskatoon/creighton-mine-exploration-flin-flon-1.4512485>.

- [3] By letter dated February 28, 2018, Energy and Resources provided its response to the Applicant indicating that access to the record was denied pursuant to subsections 18(1)(b)(i), (ii) and (d) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] On March 1, 2018, my office received a Request for Review from the Applicant in which the Applicant disagreed with Energy and Resources' application of the above provisions.
- [5] On March 7, 2018 my office notified Energy and Resources and the Applicant of my office's intent to undertake a review and invited all parties to provide submissions. A submission was received from the Applicant on March 20, 2018. A copy of the record and a submission was received from Energy and Resources on April 3, 2018. In its submission, Energy and Resources added subsection 18(1)(a) of FOIP to the list of exemptions it applied to the record.

II RECORDS AT ISSUE

- [6] The record is a map totaling one page. Energy and Resources withheld the map in full citing subsections 18(1)(a), (b) and (d) of FOIP.

III DISCUSSION OF THE ISSUES

1. Does the Commissioner have jurisdiction?

- [7] Energy and Resources is a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. Thus, the Commissioner has jurisdiction to conduct this review.

2. Did Energy and Resources properly apply subsection 18(1)(b) of FOIP?

- [8] Subsection 18(1)(b) of FOIP is a discretionary exemption and provides:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use; and

(ii) that has monetary value or is reasonably likely to have monetary value;

[9] In order for subsection 18(1)(b) of FOIP to be found to apply, all three parts of the following test must be met:

1. Does the information contain financial, commercial, scientific, technical or other information?

2. Does the public body have a proprietary interest or a right to use it?

3. Does the information have monetary value for the public body or is it likely to?

[10] Energy and Resources applied subsection 18(1)(b) of FOIP to all of the information on the one page map.

1. Does the information contain financial, commercial, scientific, technical or other information?

[11] In its submission, Energy and Resources asserted, “the survey areas are based on scientific and technical data”.

[12] *Scientific information* is information exhibiting the principles or methods of science. The information could include designs for a product and testing procedures for an engineering project.

[13] *Technical information* is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project.

[14] In support of its position, Energy and Resources explained that the record in question is a map, which depicts an area over which a geophysical survey is being planned. The survey to be conducted is an airborne electromagnetic survey. The proposed geophysical surveys

will provide new multiparameter geoscience data to encourage and facilitate the exploration for and development of base metals. The map itself, profiles an area of the province where there is high mineral potential.

[15] In Ontario Information and Privacy Commissioner Order PO-2478, the Commissioner found that maps and surveys created for the development of a wind power generating facility qualified as technical information. The case before me deals with a similar type of map in that the map is a plan for a geographical survey project that helps to focus mineral exploration activity. It is an airborne survey and provides the size of the survey and the exact location of the survey.

[16] I agree with Energy and Resources that the map depicts survey areas that are based on scientific and technical data. Therefore, the first part of the test is met.

2. Does Energy and Resources have a proprietary interest or a right to use the information?

[17] To meet this part of the test, Energy and Resources must be able to demonstrate rights to the information. For example, a municipality may have a proprietary interest in geographical information systems, mapping data or statistical data.

[18] *Proprietary interest* is the interest held by a property owner together with all appurtenant rights, such as a stockholder's right to vote the shares.

[19] In its submission, Energy and Resources asserted that the map was developed by and for Energy and Resources, solely for the purposes of this project.

[20] Because Energy and Resources developed the map for its own purposes, I find that Energy and Resources has met the second part of the test.

3. Does the information have monetary value for Energy and Resources or is it likely to?

[21] *Monetary value* may be demonstrated by evidence of potential for financial return to the government institution. An example of information that is reasonably likely to have monetary value might include a course developed by a teacher employed by a school board. The mere fact that a government institution incurred a cost to create the record does not mean it has monetary value for the purposes of this section.

[22] In its submission, Energy and Resources asserted that growing and sustaining the economy in the province is a high priority for the Government of Saskatchewan. Further, the information in the map is critical with high monetary value, both real and potential. Facilitating exploration for base metal deposits will help sustain and potentially grow Saskatchewan's mineral sector while benefitting local communities.

[23] I agree with Energy and Resources that the map contains information of monetary value. Therefore, I find that the third part of the test has been met.

[24] In conclusion, as all parts of the test have been met, I find that Energy and Resources appropriately applied subsection 18(1)(b) of FOIP to the map in question. As I have found this provision applies, there is no need to consider subsections 18(1)(a) or (d) of FOIP.

[25] I note that Energy and Resources indicated in its submission that once the surveys are complete and the quality of the data has undergone proper quality assurance/control the survey results will be available through Mineral Administration Registry Saskatchewan (MARS). MARS is a database the public can access. Energy and Resources indicated that this ensures fair market competition for all interested companies.

IV FINDING

[26] I find that Energy and Resources appropriately applied subsection 18(1)(b) of FOIP.

V RECOMMENDATION

[27] I recommend Energy and Resources continue to withhold the record until it is able to make it publicly available via MARS.

Dated at Regina, in the Province of Saskatchewan, this 2nd day of November, 2018.

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