

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT 041-2015**

**Ministry of Finance**

**Summary:** The Applicant made a request for records that contained cabinet confidences. The Ministry of Finance applied subsections 16(1)(a), (b) and 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to the record. The Commissioner found that the exemptions applied.

**I BACKGROUND**

[1] On January 13, 2015, the Ministry of Finance received an access to information request for “Any analysis, briefing notes or correspondence related to the impact on provincial finances of changing the liquor retailing system conducted since January 1, 2012.” The Ministry responded on February 11, 2015 indicating that the records were being withheld pursuant to subsections 16(1)(a), (b) and 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[2] The Applicant was dissatisfied with this response and requested a review by my office on February 24, 2015. On March 13, 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 responsive record totals 310 pages and 23 different documents. Some of the documents include drafts with comments. Further, the Ministry has indicated that only

portions of certain documents would be responsive to the request. The following table depicts the types of responsive records and the exemptions applied to each category.

[4]

<b>Type of Document</b>	<b>Document #</b>	<b>Pages</b>	<b>Exemptions Applied (FOIP)</b>
Treasury Board Exhibit	A	1-4	16(1)(a)
	I	45-48	
Treasury Board Minute	B	5-6	16(1)(b)
	K	58-69	
DocShare Comments	C	7	16(1)(a), 17(1)(a)
	E	30	
	G	42	
Saskatchewan Liquor and Gaming Authority (SLGA) Budget Review	D	8-29 (Only portions are responsive)	16(a)
	L	70-91 (Only portions are responsive)	
	M	92-119 (Only portions are responsive)	
SLGA Treasury Board Finalization	F	31-41 (Only portions are responsive)	16(1)(a)
	J	49-57 (Only portions are responsive)	
	N	120-125(Only portions are responsive)	
	O	126-132 (Only portions are responsive)	
	P	133-143 Drafts 144-165 (Only portions are responsive)	
Cabinet Briefing Note	H1	43-44	16(1)(a), 17(1)(a)
	T	261-271 Drafts 272-283	
Ministry comments on Cabinet agenda	H2	252-260	16(1)(a), 17(1)(a)
E-mails	Q	166-170	17(1)(a)
Cabinet Decision Item	R	171-192 Drafts 193-238	16(1)(a)
Presentation to Treasury Board	S	239-251	16(1)(a), 17(1)(a)
Budget Sensitivities	U	284-289 (Only portions are responsive)	16(1)(a), 17(1)(a)
Memorandum	V	290-310 (Only portions are responsive)	16(1)(a), 17(1)(a)

### III DISCUSSION OF THE ISSUES

#### 1. Did the Ministry properly apply subsection 16(1)(a) of FOIP to the record?

[5] Subsection 16(1)(a) of FOIP states:

**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;

[6] The Ministry has applied subsection 16(1)(a) of FOIP to many of the documents that make up the responsive record.

[7] The Ministry's submission indicates that all of these documents provide advice, proposals, recommendations, analyses or policy options to Executive Council or the Treasury Board.

[8] Section 3 of *The Financial Administration Act, 1993* establishes the Treasury Board as a committee of the Executive Council. Therefore, the Treasury Board would qualify as a committee referred to in subsection 16(1).

[9] My office has determined that documentation reflecting advice, proposals, recommendations, analyses or policy options developed from sources outside of the Executive Council for presentation to the Executive Council is intended to be covered by the provision.

[10] Advice includes the analysis of a situation or issue that may require action and the presentation of options for future action.

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

[12] 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.

[13] Upon review of these portions of the record, I agree that all of them reflect advice, proposals, recommendations, analyses or policy options and would disclose a cabinet confidence. I find that subsection 16(1)(a) of FOIP applies to all the records in question.

**2. Did the Ministry properly apply subsection 16(1)(b) of FOIP to the record?**

[14] Subsection 16(1)(b) of FOIP states:

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

...

(b) agendas or minutes of the Executive Council or any of its committees, or records that record deliberations or decisions of the Executive Council or any of its committees;

[15] The Ministry applied subsection 16(1)(b) of FOIP to two documents – both Treasury Board Minutes. As noted above, the Treasury Board is a committee of Executive Council.

[16] Upon review of these documents, I agree that both would qualify for exemption under subsection 16(1)(b) of FOIP as both are minutes of the Treasury Board.

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

[17] 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;

[18] The Ministry has applied this exemption to many documents, however subsection 16(1)(a) applies to the majority of them. The only document that remains is a series of e-mails (Document Q).

[19] 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?

[20] The Ministry indicates that the information contained in the e-mails constitute advice. Upon review of the record, I agree. The first test is met.

[21] The e-mails are between senior officials of Executive Council, the President and Chief Executive Officer of SLGA and senior officials in the Ministry of Finance. In the e-mails, the advice is requested in the form of comments to a draft document. The response is an explanation of the comments that had been provided. From a review of the record, I believe that it was part of the responsibility of those that prepared the record and that the comments in the e-mails were for the purpose of taking action and intended for those persons who can take action. The second part of the test has been met.

[22] Finally, the advice in the e-mails was both prepared by and for a government institution and Executive Council. This test is met and therefore the exemption applies.

**IV FINDINGS**

[23] I find that subsections 16(1)(a), (b) or 17(1)(a) apply to the responsive record.

**V RECOMMENDATIONS**

[24] I find that the Ministry of Finance take no further action with regard to this record.

Dated at Regina, in the Province of Saskatchewan, this 12th day of May, 2015.

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