

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 047-2015

Ministry of Environment

Summary: The Ministry of Environment was set to release the responsive record to the Applicant; however the Third Party objected and requested a review from the Commissioner. The Third Party did not provide a submission to the Commissioner. The Commissioner recommended release of the record.

I BACKGROUND

[1] On December 16, 2015, the Ministry of Environment received an access to information request for information regarding the environmental contamination on a specific parcel of land. On January 15, 2015, pursuant to section 34 of *The Freedom of Information and Protection of Privacy Act* (FOIP), the Ministry provided notice to a Third Party that would have an interest in the record indicating that it was considering releasing the record. The Ministry did not receive a response from the Third Party within the legislated 20 day period outlined in the letter. It followed up with a second letter to the Third Party, dated February 9, 2015, indicating that the record would be released in accordance with subsection 19(3) of FOIP; however the Third Party could still request a review by my office within 20 days.

[2] On March 4, 2015, the Third Party requested a review by my office. On March 12, 2015, my office provided notification of our intention to undertake the review to the Applicant, the Third Party and the Ministry. We requested submissions from all three parties by March 26, 2015.

II RECORDS AT ISSUE

- [3] The responsive record consists of eight documents. Three are letters from the Ministry to the Third Party concerning environmental issues on the property in question. Three are reports about the property prepared by an engineering firm on behalf of the Third Party. One is a letter from the engineering firm to the Ministry. The last document is an e-mail train among and between Ministry employees.
- [4] Prior to commencing the review, the Third Party indicated that the records qualify for exemption pursuant to subsections 19(1)(c)(i), (ii) and (iii) of FOIP.

III DISCUSSION OF THE ISSUES

1. Does the record qualify for exemption pursuant to subsections 19(1)(c) (i), (ii) or (iii) of FOIP?

- [5] As noted above, prior to commencing this review, the Third Party indicated to my office that it believed that the records qualified for exemption pursuant to subsection 19(1)(c) of FOIP which states:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

- ...
- (c) information, the disclosure of which could reasonably be expected to:
- (i) result in financial loss or gain to;
 - (ii) prejudice the competitive position of; or
 - (iii) interfere with the contractual or other negotiations of;
- a third party;

- [6] In our notification e-mails, we asked for submissions from all the parties by March 26, 2015. In its submission, the Ministry informed my office that, it was relying on the Third Party to make the case that exemptions applied to the record. It did not receive any representations from the Third Party. The Ministry did not provide any representations to my office.

- [7] My office did not receive a submission from the Third Party by the March 26, 2015 deadline. On April 13, 2015, my office e-mailed the Third Party asking again for a submission by April 17, 2015. No response was received. On April 20, 2015, my office left a voicemail for the Third Party. The Third Party did not respond. In my opinion, the Third Party has had ample opportunity to provide a submission.
- [8] Subsection 19(1)(c) of FOIP is a harm based exemption. In the past, my office has determined that harm based exemptions required the decision-maker to analyze whether the release of information could be prejudicial to the interests articulated in the exemption. We have said that for harm-based exemptions, it must be demonstrated that the harm contemplated by the exemption is likely to occur.
- [9] I cannot determine from a review of the record what harm is contemplated by the Third Party, nor the likelihood that harm would occur. Without a submission from the Third Party, I cannot find that subsections 19(1)(c)(i), (ii) or (iii) apply to the record.

IV FINDINGS

- [10] I find that subsections 19(1)(c)(i), (ii) and (iii) of FOIP do not apply to the record.

V RECOMMENDATIONS

- [11] I recommend that the Ministry release the record to the Applicant 30 days after giving its written decision to the Third Party pursuant to section 57 of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of April, 2015.

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