

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 051-2015

Ministry of Finance

Summary: The Ministry of Finance identified 36 records responsive to the Applicant's access request. It applied subsections 16(1)(a), 16(1)(c) and 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to the records. The Commissioner found that the exemptions only applied to 31 of the records and recommended release of the responsive portions of the other 5 records.

I BACKGROUND

- [1] On January 5, 2015, the Ministry of Finance received an access request for "Any analysis or briefing materials on royalty rates, since January 1, 2012." In a letter dated March 5, 2015 to the Applicant, the Ministry indicated that responsive records were being withheld pursuant to subsection 16(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 March 9, 2015. On March 24, 2015, my office provided notification to both the Ministry and the Applicant of our intention to undertake a review.
- [3] The Ministry provided a submission on April 14, 2015. It indicated that it was also relying on subsection 17(1)(a) of FOIP to withhold responsive records. During the course of the review, subsection 16(1)(c) was raised.

II RECORDS AT ISSUE

[4] The Ministry has identified 36 responsive records that it has summarized in the following table:

Record & Page Number(s)	Item Description	Section (s)
Record A Page 1-3	Draft version of Record B	16(1)(a)
Record B Page 4-6	Draft of "Uranium Royalty Reform" briefing note Later version of Record A	16(1)(a)
Record C Page 7-12	Draft of "Uranium Royalty Structure" briefing note for Cabinet Budget Finalization	16(1)(a)
Record D Page 13-15	Draft Version of Record B	16(1)(a)
Record E Page 16-20	"Uranium Royalty Reform" (version of Record B) with handwritten comments	16(1)(a)
Record E.1 Page 21-27	"Uranium Royalty Structure" (version of Record C) with handwritten comments	16(1)(a)
	Handwritten comments	16(1)(c)
Record E.2 Page 28	Draft of note, "Uranium Royalty Structure Status of Review" with handwritten comments	16(1)(a)
	Handwritten comments	16(1)(c)
Record F Page 29	Comments from Ministry of Finance official on draft Cabinet Decision Item (Record G)	17(1)(a)
Record G Page 30-39	Draft of Cabinet Decision Item (authored by the Ministry of the Economy)	16(1)(a)
Record H.1 Page 40-41	E-mail discussing draft of briefing note "Lean review of Crude Oil and Natural Gas Royalty/Tax Classification Structure"	17(1)(a)
Record H.2 Page 42-53	Draft of briefing note "Lean review of Crude Oil and Natural Gas Royalty/Tax Classification Structure"	16(1)(a)
Record I Page 54-56	Draft Version of Record G	16(1)(a)
Record J Page 57-59	Draft of Cabinet Information Item	16(1)(a)
Record K Page 60-61	"Saskatchewan Resource Credit" briefing note for Cabinet	16(1)(a)
Record L Page 62-64	Drafts of public backgrounders on changes to uranium royalty structure	17(1)(a)
Record M Page 65-66	Briefing note on potential issues for Committee discussion on the Ministry of Finance Estimates	17(1)(a)
Record N Page 67-68	Email with attached financial analysis and policy options related to uranium royalties for Treasury Board Finalization	17(1)(a)
Record O Page 69	Email correspondence on status of uranium royalty review	17(1)(a)

Record & Page Number(s)	Item Description	Section (s)
Record P Page 70-81	2015-16 Caucus Briefing presentation	17(1)(a)
Record Q Page 82-91	Email with attached draft of slides for the Premier on the uranium royalty reform	17(1)(a)
Record R Page 92-109	Q&A's for Cabinet's 2013-14 Budget Briefing Book	16(1)(a) 17(1)(a)
Record S Page 110-132	Draft Version of Record R	16(1)(a) 17(1)(a)
Record T Page 132-150	Draft Version of Record R	16(1)(a) 17(1)(a)
Record U Page 151-155	Draft Version of Record R	16(1)(a) 17(1)(a)
Record V Page 156-161	Draft news release including Q&A's on December, 2014 Land Sale	17(1)(a)
Record W Page 162-181	"Resource Revenue Volatility" presentation prepared for Cabinet committees	17(1)(a)
Record X Page 182-183	Email correspondence on October 28, 2014, respecting oil revenue forecasts	17(1)(a)
Record Y Page 184-247	Q2 Revenue and Economic Forecast	17(1)(a)
Record Z Page 248-327	Q3 Revenue and Economic Forecast	17(1)(a)
Record AA Page 328-346	Saskatchewan Plan for Growth (October 2013 Update)	16(1)(a) 17(1)(a)
Record AB Page 347-365	Draft Version of Record AA	16(1)(a) 17(1)(a)
Record AC Page 366-383	Growth Plan Strategy Table	16(1)(a) 17(1)(a)
Record AD Page 384-386	Notes on Mineral, Oil and Gas Royalty Stability	16(1)(a) 17(1)(a)
Record AE Page 387-389	Draft Version of Record AD	16(1)(a) 17(1)(a)
Record AF Page 390-393	Email correspondence between July and August 2012, respecting the development of the Saskatchewan Plan for Growth	17(1)(a)
Record AG Page 394-404	Email respecting the Growth Strategy with attached "Plan for Growth Focus on Outcomes" note for Cabinet	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 22 of the 36 Records (A, B, C, D, E, E.1, E.2, G, H.2, I, J, K, R, S, T, U, AA, AB, AC, AD, AE and AG).

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

[8] 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.

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

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

[11] 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.

[12] Upon review of these Records, I agree that all of them reflect advice, proposals, recommendations, analyses or policy options and would disclose a cabinet confidence.

Also, I am satisfied that all of the records were developed for the Executive Council and/or Treasury Board, which is a committee of Executive Council.

[13] Subsection 16(1)(a) of FOIP also applies to Record W which was a presentation for committees of Executive Council. It contains advice.

[14] 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)(c) of FOIP to the record?

[15] Subsection 16(1)(c) of FOIP states:

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

...

(c) records of consultations among members of the Executive Council on matters that relate to the making of government decisions or the formulation of government policy, or records that reflect those consultations;

[16] Records E.1 and E.2 contain substantial handwritten notes. The Ministry indicated that the handwritten notes were made by the Director, Resource Policy and Intergovernmental Affairs. It described these notes as “the [Director’s] speaking notes for the presentations to [Treasury Board] and Cabinet, as well as the results of the consultations among the ministers.” Upon review of the notes, I agree that the notes reflect speaking notes as well as consultations among members of Executive Council following the presentation. Subsection 16(1)(c) applies to the record.

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: 5

(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 24 of the records, however, subsection 16(1)(a) applies to 11 of them. Therefore, 13 Records remain to be considered (F, H.1, L, M, N, O, P, Q, V, X, Y, Z and AF).

[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) 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?

[20] My office has established the following definitions:

Advice includes the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice has a broader meaning than recommendations.

Recommendations 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.

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.

E-mails

[21] Records H.1, N, O, Q, and AF are e-mails. Records N and Q have attachments. Upon review, all of the e-mails and attachments would constitute advice, recommendations or policy options. As such, they meet this part of the test.

Presentations

[22] Record P is a presentation. It lays out potential budget revenue measures which are policy options and provides advice on how to implement them. It meets this part of the test.

Economic Forecasts

[23] Records Y and Z are economic forecasts. Only portions of these records are responsive to the Applicant's request.

[24] The Ministry indicated in its submission that the responsive portions of the record contain advice and analysis. However, upon review, the record contains only projections of future royalty revenue and explanations of the breakdown. Without any sort of written context there is no way of knowing what advice is being given or what policy options have been proposed, if any. I see nothing that would qualify as advice. Although the Ministry may refer to this data as analysis, it is mostly numerical data. It projects revenue based on certain royalty rates. It would not qualify as analysis in the context of this subsection because it does not set out advantages or disadvantages or reference any particular course of action.

[25] As such, Records Y and Z do not meet this part of the test.

Other Documents

[26] Document F is comments on a Cabinet Decision Item. Upon review of the record, it constitutes advice and recommendations and meets this part of the test.

- [27] Document L is described as a draft of a “public backgrounder” on changes to the uranium royalty structure. The basis of the document does not qualify as advice, recommendations, policy options, proposals or analyses. However, the comments on the document do qualify as advice. As such, only the comments would meet this part of the test.
- [28] The Ministry has described document M as a briefing note for the Committee of Finance. Its submission indicates that it presents advice. However, upon review it appears to be purely presentation of facts or forecasts. It would not qualify as advice in the context of this subsection because it is not the analysis of a situation or issue that may require action or the presentation of options for future action. It does not meet this part of the test.
- [29] Finally, Record V is described as a “Draft news release including Q&A’s” and indicated that it presents advice. Upon review, it would not qualify as advice in the context of this subsection because it is not the analysis of a situation or issue that may require action or the presentation of options for future action. After providing the Ministry with a draft copy of this report, the Ministry noted that the Q&A’s were meant to provide advice to the Minister on how to respond to questions. Consistent with decisions from other jurisdictions, such as Ontario Information and Privacy Commissioner Order PO-2087-I, Q&A type documents would only qualify for this exemption if the record would reveal actual advice, as opposed to disclosing mere information. In this case, Record V provides information and does not meet this part of the test.

- 2. Was the advice, recommendations, proposals, analyses and/or policy options:**
- i) either sought, expected, or part of the responsibility of the person who prepared the record?*
 - ii) prepared for the purpose of doing something, for example, taking an action or making a decision?*
 - iii) intended for or involve someone who can take or implement the action?*

E-mails

- [30] Upon review of all of the e-mails, I am satisfied that they meet this second part of the test. The preparation of the e-mails was all part of the responsibility of the individuals who prepared the advice, recommendation or policy options. The e-mails were prepared for the purpose of taking an action or making a decision. Finally, it involved someone who could take or implement the action.

Presentations

- [31] Record P was a presentation prepared by the Ministry of Finance. It was part of the responsibility of the person who prepared the presentation. It was prepared for the purpose of making decisions about the budget. Finally, it was prepared for elected officials (Saskatchewan Party Members of the Legislative Assembly) who could make the decisions regarding the budget. As such, this part of the test has been met.

Other Documents

- [32] The Ministry has indicated that the comments in Record F are “Finance’s collaboration comments”. As such, I am satisfied it was part of the responsibility of all the people who contributed. The comments were prepared for the purpose of taking an action or making a decision. Finally, it involved a person who could take or implement the action or make a decision. This part of the test has been met.
- [33] Finally, the comments in Record L meet this second part of the test. It was part of the responsibility of the person who made the comments. It was prepared for the purpose of editing the document. It involved a person who could take or implement the changes.

3. Was the advice, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?

[34] In all cases, the Records were developed by government institution. This part of the test is met.

IV FINDINGS

[35] I find that subsection 16(1)(a) applies to Records A, B, C, D, E, E.1, E.2, G, H.2, I, J, K, R, S, T, U, W, AA, AB, AC, AD, AE and AG.

[36] I find that subsection 16(1)(c) applies to Records E.1 and E.2.

[37] I find that subsection 17(1)(a) does not apply to Records M, V, Y, Z, and the main body of Record L.

[38] I find that subsection 17(1)(a) applies to Records F, H.1, N, O, P, Q, AF, and the comments found on Record L.

V RECOMMENDATIONS

[39] I recommend the Ministry release the responsive portions of Records M, V, Y, Z, and the main body of Record L to the Applicant.

[40] I recommend the Ministry continue to withhold Records A, B, C, D, E, E.1, E.2, F G, H.1, H.2, I, J, K, N, O, P, Q, R, S, T, U, W AA, AB, AC, AD, AE, AF, AG and the comments found on Record L.

Dated at Regina, in the Province of Saskatchewan, this 2nd day of July, 2015.

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