



REVIEW REPORT 051-2017

Executive Council

June 7, 2017

Summary: The Applicant appealed to the Information and Privacy Commissioner (IPC) when Executive Council withheld portions of records pursuant to subsections 13(1)(a), 13(1)(b), 13(1)(c), 17(1)(a), and 29(1) of FOIP. The IPC found that none of the exemptions that Executive Council relied upon applied to the records at issue. The IPC recommended that Executive Council release the portions of the records it withheld from the Applicant.

I BACKGROUND

[1] On November 16, 2016, Executive Council received the following request:

Please provide any documents, including itineraries, briefing notes, memos, prep materials, or correspondence related to the premier's travel to Texas in November 2016.

[2] In a letter dated February 10, 2017, Executive Council responded to the Applicant by releasing some of the records while withholding others pursuant to subsections 13(1)(b)(c)(d), 17(1)(a), 17(1)(b)(i), 17(1)(b)(iii), 17(1)(g) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On March 15, 2017, the Applicant requested a review by my office. She requested that my office review the portions of a record that Executive Council withheld pursuant to subsections 13(1)(b)(c)(d) and another portion of another record that Executive Council withheld pursuant to subsection 29(1) of FOIP.

- [4] In its submission, Executive Council indicated it was no longer relying on subsection 13(1)(d) of FOIP but that it was relying on subsection 13(1)(a) of FOIP, in addition to subsections 13(1)(b) and 13(1)(c) of FOIP to withhold a portion of the record. In the course of the review, Executive Council indicated it was also relying on subsection 17(1)(a) of FOIP to withhold this particular portion of the record.

II RECORDS AT ISSUE

- [5] The first record at issue is a record entitled “North America Competitiveness Working Group”. Executive Council is relying on subsections 13(1)(a), (b), and (c) of FOIP to portions of this record which were withheld pursuant to subsections 13(1)(b)(c)(d) of FOIP.

- [6] The second record at issue is a chain of emails. The majority of this email chain was released to the Applicant but the contents of the “To” field in an email was withheld pursuant to subsection 29(1) of FOIP.

III DISCUSSION OF THE ISSUES

- [7] Executive Council is a government institution as defined by subsection 2(d)(i) of FOIP.

1. Do subsections 13(1)(a), (b), and (c) of FOIP apply?

- [8] Subsections 13(1)(a), (b), and (c) of FOIP provides as follows:

13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

(a) the Government of Canada or its agencies, Crown corporations or other institutions;

(b) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;

(c) the government of a foreign jurisdiction or its institutions; or

...

unless the government or institution from which the information was obtained consents to the disclosure or makes the information public.

[9] Subsection 13(1) of FOIP is meant to protect information received in confidence both formally and informally from other governments or their institutions.

[10] The first record at issue is a document that provides background information on the George W. Bush Institute's North America Competitiveness Working Group initiative (working group). In its submission, Executive Council describes this working group as having 75 representatives from North American governments, businesses and institutions. It also provides that the North American Strategy for Competitiveness (NASCO) includes representatives from over 130 member organizations. It provided my office with a link to a list of its member organizations at <http://nasconetwork.publishpath.com/members>. Based on a review of the list, members are from governments in Canada, the United States, and Mexico. There are also members from the private sector as well. NASCO's website states:

NASCO fosters a desire for collaboration between the public and private sectors across cities, states, provinces, regions, and international borders which enables NASCO to engage our members and partners in tangible projects and research that deliver meaningful, useful, actionable results.

[11] In order for subsection 13(1)(a) of FOIP to apply, the following test must be met:

1. Was the information obtained from the Government of Canada or its agencies, Crown corporations or other institutions?
2. Was the information obtained implicitly or explicitly in confidence?

[12] While the members of NASCO may include representatives of governments, NASCO itself is not an entity that acts on behalf of, or under the authority of, the Government of Canada, its agencies, Crown corporations or other institutions. Therefore, the first part of the test is not met. I find that subsection 13(1)(a) of FOIP does not apply.

[13] In order for subsection 13(1)(b) of FOIP to apply, the following test must be met:

1. Was the information obtained from the government of another province or territory of Canada?

2. Was the information obtained implicitly or explicitly in confidence?

[14] NASCO is also not an entity that acts on behalf of any government of another province, territory of Canada or its agencies, Crown corporations or other institutions. Therefore, the first part of the test is not met. I find that subsection 13(1)(b) of FOIP does not apply.

[15] In order for subsection 13(1)(c) of FOIP to apply, the following test must be met:

1. Was the information obtained from the government of a foreign jurisdiction?
2. Was the information obtained implicitly or explicitly in confidence?

[16] NASCO is also not an entity that acts on behalf of, or under the authority of any government of a foreign jurisdiction or its institutions. Therefore, the first part of the test is not met. I find that subsection 13(1)(c) of FOIP does not apply.

2. Does subsection 17(1)(a) of FOIP apply?

[17] As noted in the background section, Executive Council indicated it was relying on subsection 17(1)(a) of FOIP as an additional reason to withhold a portion of the first record at issue. Subsection 17(1)(a) of FOIP provides as follows:

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] In order for subsection 17(1)(a) of FOIP to apply, all three parts of the following test must be met:

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 the public body?

[19] For the first part of the test, Executive Council asserts that information is recommendations. Recommendations relate to a suggested course of action as well as the rationale for a suggested course of action. Based on a review of the record, I find that information qualifies as recommendations.

[20] For the second and third parts of the test, Executive Council asserts that the recommendations are made by the NASCO working group to the Government of Saskatchewan as a member of NASCO. It says the recommendations contain policy options that were developed for a government institution to assist it in decision making in its role as a member of NASCO. Based on a review of the record, the recommendations appear to be for NASCO members, but not specifically to the Government of Saskatchewan. I find the second and third parts of the test are not met.

[21] I find that subsection 17(1)(a) of FOIP does not apply.

3. Does the domain name of the email address qualify as “personal information” as defined by subsection 24(1) of FOIP?

[22] As described earlier, the second record at issue is an email chain. The email chain was disclosed entirely except the contents of the “To” field. In its submission, Executive Council indicated that the redacted contents are a personal email address and that the information fits within the definition of personal information and cannot be disclosed.

[23] The Applicant has clarified for my office that she is interested in the domain name portion of the email address. She is not interested in the first portion of the email address.

[24] Subsection 24(1) defines “personal information” as follows:

24(1) Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form,...

[25] In order to determine if the information is personal, I need to consider the following:

1. Is there an identifiable individual?
2. Is the information personal in nature?

[26] When I review the email chain, I believe there to be an identifiable individual. It is the second part of the above test that what will determine whether this information is personal.

[27] At issue is the domain name of the email address. The domain name does not reveal any information that is personal in nature to the identifiable individual. In fact, other individuals in a professional capacity would also have email addresses with the same domain name. I find that the domain name of the email address does not qualify as personal information pursuant to subsection 24(1) of FOIP.

[28] As noted in Hansard on May 15, 2017, the Premier revealed the email account’s domain name:

Hon. Mr. Wall: — Mr. Speaker, I want to share with members of the House that the server is provided by a Regina company that’s housed at the Sask Party headquarters. It’s a Sask Party domain name that has been my email, this particular email account that I’ll use from time to time

[29] At this point, the domain name of email address became public. Since this disclosure in Hansard has made the domain name public, I recommend that Executive Council disclose the domain name of the email address to the Applicant.

[30] Questions about security and records management arise if and when government leaders or employees use non-government email accounts to do government-related activities. I note in Hansard on May 15, 2017 that the Premier has asserted that the private email account he uses is indeed secure and that the emails will be transferred to the Provincial Archives when that transfer is appropriate:

Hon. Mr. Wall: — Mr. Speaker, it could well be the case because I have used that private account, as all members of this Assembly have used their private accounts for — and sometimes party accounts — for government business.

Mr. Speaker, I appreciate the fact that the Leader of the Opposition asked the questions in estimates last week. I hadn't thought much about the whole issue of the email accounts I'm using because the one I use is secure. It's never been breached, Mr. Speaker. I can share that with members of the House. It's also password protected so I'm the only one that has access to it.

It's FOI [freedom of information]-able actually, as the members opposite know because they were reading from an email that they received as a result of a freedom of information request. And, Mr. Speaker, also like any communication from members of the government to anyone else on government business, it's going to be the product of a transfer to Archives when that is appropriate.

[31] I note that in a statement issued to the media, Executive Council's Chief of Operations and Communications stated:

...[the] Premier has indicated he will be using a government of Saskatchewan email account for government business.

Some of you in the media have the Premier's personal email address which he has used from time-to-time to respond to work-related emails from members of the media. Please refrain from doing so in the future and direct all work-related inquiries through the Premier's office.

[32] I strongly encourage government leaders and employees to use the Government of Saskatchewan email system that is supported by the Ministry of Central Services (Central Services) to do government-related activities. Central Services' has the mandate, resources, and expertise to support and manage the Government of Saskatchewan email system, including ensuring the security of email accounts. The public can also be reassured that Central Services' practices are adequate through audits conducted by the Provincial Auditor. Obviously, if there are any inadequacies in the management of the Government of Saskatchewan email system, then these inadequacies should be addressed immediately.

IV FINDINGS

[33] I find that subsection 13(1)(a) of FOIP does not apply.

[34] I find that subsection 13(1)(b) of FOIP does not apply.

[35] I find that subsection 13(1)(c) of FOIP does not apply.

[36] I find that subsection 17(1)(a) of FOIP does not apply.

[37] I find that the domain name of the email address does not qualify as personal information pursuant to subsection 24(1) of FOIP.

V RECOMMENDATIONS

[38] I recommend that Executive Council release the portions of the record it withheld pursuant to subsections 13(1)(a), 13(1)(b), 13(1)(c), and 17(1)(a) of FOIP.

[39] I recommend that Executive Council release the domain name of the email address that was withheld pursuant to subsection 29(1) of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 7th day of June, 2017.

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