



REVIEW REPORT 081-2019

Ministry of Government Relations

July 6, 2020

Summary: An Applicant made an access to information request to the Ministry of Government Relations under *The Freedom of Information and Protection of Privacy Act* in which a third party had an interest in the records. The third party objected to the release of the records and requested a review. The Commissioner found that none of the exemptions raised by the third party applied to the withheld records. Accordingly, the Commissioner recommended that the records be released to the Applicant.

I BACKGROUND

[1] On December 12, 2018, the Ministry of Government Relations (Ministry) received an access to information request from the Applicant for the following:

The application for a subdivision made by the Marean Valley Lake Resort and Golf Ltd. for titled lots at Marean Lake. NE S12 TWP 41 W2 Ext53.

[2] The request was suspended until payment was received from the Applicant towards a fee estimate on January 15, 2019.

[3] On January 24, 2019, 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 it. The Ministry received a response from the Third Party on February 7, 2019, indicating that the records should be withheld in full. On March 4, 2019, the Ministry responded to the Third Party indicating that it intended to grant access to the records.

[4] On March 20, 2019, the Third Party requested a review by my office.

[5] On March 22, 2019, my office provided notification to the Applicant, the Third Party and the Ministry of my intent to undertake a review.

II RECORDS AT ISSUE

[6] The responsive records consists of an Application to Subdivide Land (3 pages), and a Certificate of Approval (10 pages).

[7] The Ministry has not applied any third party exemption; however, 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. Do I have jurisdiction to conduct this review?

[8] The Ministry is a government institution pursuant to subsection 2(1)(d)(i) of FOIP. The Third Party involved is a third party pursuant to subsection 2(1)(j) of FOIP. Therefore, I have jurisdiction to conduct this review.

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

[9] As noted above, the Third Party indicated that it believed that the records qualified for exemption pursuant to subsection 19(1)(c) of FOIP which provides:

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;

[10] Subsection 19(1)(c) of FOIP is a mandatory, harm-based provision. It permits refusal of access in situations where disclosure could reasonably be expected to result in the harms outlined at sub-clauses (i), (ii) and (iii).

[11] In its submission, the Third Party indicated that it is involved in a lawsuit with a tenant, and disclosing the information would result in financial loss and would interfere with negotiations of the Third Party pursuant to subsection 19(1)(c)(i) and 19(1)(c)(iii) of FOIP. The Third Party indicated that financial loss would result, as the lawsuit involves a land transaction matter in which the Third Party and a tenant disagree on the value of the land. The Third Party provided in their submission that:

Disclosing this information would provide them with an unfair advantage in the court room and would circumvent the courts as this information should only be provided in a court forum through the document discovery process, which contains specific rules on relevance and lawful exemptions for production. Should this applicant be involved in litigation with [Third Party] they should request the information under *The Queen's Bench Rules* through the court. Additionally, it will lessen [Third Party's] power of privity to them.

[12] The Third Party also indicated that release of the Transform Approval Certificate (Certificate of Approval) would prejudice the Third Party's competitive position pursuant to subsection 19(1)(c)(ii) of FOIP as this information would affect its marketability and sales should a competitor learn of the information in this record.

[13] The Ministry provided my office with a submission in which it indicated that it has determined that the information should be released based on the following:

The issuance of the Certificate of Approval for subdivision is a public document. When issued, the Certificate of Approval indicating the Directory of Community Planning's

(the Director) decision is forwarded to the developer, the municipality in which the subdivision is located and any other referral agency/authority or person the Director considers has a direct interest in the proposed subdivision in accordance with section 131(2) of *The Planning and Development Act, 2007* (PDA).

The subdivision application and certificate of approval are documents that become publicly available once GR [Ministry] staff commence undertaking the review of the subdivision application...

[Emphasis added]

[14] The Ministry determined that the Applicant had direct interest in the proposed subdivision and had also completed its review of the subdivision application, and thus determined the record was a publically available document.

[15] The Ministry also indicated in its submission:

Where someone with a direct interest in the subdivision requires a copy of the Certificate of Approval or where the Director considers the person has a direct interest in the subdivision decision, section 13(2) of the PDA states that the Director **shall send copies of its decision** to the person with direct interest.

[16] Subsection 13(2) of *The Planning and Development Act* (PDA) provides:

13(2) The approving authority shall send copies of its decision to:

- (a) the applicant for subdivision approval;
- (b) the council of the municipality in which the land proposed to be subdivided is situated, except where the council is the approving authority; and
- (c) any department, agency or person who or that the approving authority considers to have a direct interest in the proposed subdivision.

[17] The Ministry also indicated that, once the Certificate of Approval is issued, the plan is then registered with the Information Services Corporation (ISC) and is made available to the public through the ISC website for a small fee.

[18] Subsection 3(1) of FOIP provides:

3(1) This Act does not apply to:

- (a) published material or material that is available for purchase by the public;
- (b) material that is a matter of public record; or

[19] It is clear that the Certificate of Approval is a publically available document as contemplated by subsection 3(1) of FOIP above.

[20] FOIP further provides that information normally available to the public is not subject to the exemptions provided by FOIP. Section 4 of FOIP provides:

4 This Act:

...

- (b) does not in any way limit access to the type of government information or records that is normally available to the public;

[21] Given that this information is publically available, I find that subsection 19(1)(c) of FOIP does not apply to the Certificate of Approval.

[22] Upon reviewing the Application to Subdivide Land, I note that the information contained within it is similar information to that included in the Certificate of Approval and again, I find that subsection 19(1)(c) of FOIP does not apply.

[23] I recommend that both of the records be released to the Applicant.

IV FINDING

[24] I find that subsection 19(1)(c) of FOIP does not apply to the record.

V RECOMMENDATION

[25] I recommend that the Ministry release the records to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 6th day of July, 2020.

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