

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 086/2013

Ministry of Government Relations

Summary:

The Applicant submitted an access to information request to the Ministry of Government Relations (Government Relations). Government Relations withheld the responsive records in their entirety, citing subsections 16(1)(a) and 17(1)(f)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant appealed to the Information and Privacy Commissioner (IPC). In the course of the review, Government Relations released portions of the responsive records but continued to withhold the remainder pursuant to subsection 16(1) of FOIP. The IPC found that the records at issue were exempt from release pursuant to subsection 16(1)(d). In spite of the finding, though, the IPC recommended that Government Relations consider releasing some portions of the records since the matter was already revealed through an Order in Council and published on the Government of Saskatchewan website.

I BACKGROUND

- [1] On July 26, 2013, the Ministry of Government Relations (Government Relations) received an access to information request from the Applicant.
- [2] In an undated letter, Government Relations refused the Applicant access to the records by citing subsections 16(1)(a) and 17(1)(f)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] On September 4, 2013, my office received a request for review from the Applicant.

II RECORDS AT ISSUE

- [4] The records in question consist of three pages.
- [5] The top half of page 1 lists eight agenda items for the Minister's briefing on January 18, 2013. The bottom half lists cabinet items and regulations scheduled for review at future meetings.
- [6] The top half of page 2 lists six agenda items for the Minister's briefing on January 23, 2013. The bottom half lists cabinet items for future meetings.
- [7] Page 3 lists seven briefing items.
- [8] Initially, all three pages were withheld in their entirety pursuant to subsections 16(1)(a) and 17(1)(f)(i) of FOIP. However, in the course of the review, Government Relations released some portions of the records but continued to withhold the remainder pursuant to subsection 16(1) of FOIP.

III DISCUSSION OF THE ISSUES

1. Did Government Relations properly apply subsection 16(1) of FOIP?

- [9] Subsection 16(1) of FOIP provides:

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

...

(d) records that contain briefings to members of the Executive Council in relation to matters that:

(i) are before, or are proposed to be brought before, the Executive Council or any of its committees;

- [10] In a letter dated September 23, 2014 to my office, Government Relations advised that it would be releasing portions of the records but withholding the remainder of the records pursuant to subsection 16(1) of FOIP.
- [11] Government Relations asserted that its position was that subsection 16(1) is a “blanket exemption” for all Cabinet documents and other confidences that, not only is before or proposed to be before Executive Council, but also has been considered by Executive Council. It stated that subsections 16(1)(a) to 16(1)(d) are examples of Cabinet confidences but is not an exhaustive list. Further, it asserted this was an interpretation that is consistent with the Supreme Court of Canada (SCC) decision *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23. In that decision, the SCC stated that public access to certain records may prevent full and frank deliberation and discussions that are required for the proper functioning of Cabinet and therefore these records should be exempt. This SCC decision does not state that records containing matters already considered by Cabinet should be exempt.
- [12] At issue are three pages, as described earlier in this report. Government Relations released some, but not all, portions of the pages.
- [13] Subsection 16(1) of FOIP applies to Cabinet confidences. The *Federal Access to Information and Privacy Legislation Annotated 2015* defines Cabinet confidences as:
- ...in the broadest sense, the political secrets of Ministers individually and collectively, the disclosure of which would make it very difficult for the government to speak in unison before Parliament and the public.
- (Federal Access to Information and Privacy Legislation Annotated 2015 (Canada: Thomas Reuters Canada Limited, 2014) at page 1-644.4.)*
- [14] I find that the records at issue, agendas for Minister briefings, would qualify for exemption pursuant to subsection 16(1) of FOIP.
- [15] In spite of this finding, I recommend that Government Relations consider releasing some of the withheld portions of the records. This would include agenda item number 6 on the

first page and agenda item number 2 on the second page. These two agenda items relate to a matter that has already been revealed through an Order in Council and published on the Government of Saskatchewan website.

IV FINDINGS

[16] I find that subsection 16(1) of FOIP applies to the records at issue.

V RECOMMENDATIONS

[17] I recommend that Government Relations consider releasing agenda item number 6 from the first page, and agenda item number 2 from the second page.

Dated at Regina, in the Province of Saskatchewan, this 10th day of November, 2014.

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