

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 100/2013

Executive Council

Summary: The Applicant submitted a request to Executive Council for records related to tweets by a columnist at a newspaper. Executive Council responded by stating no records exist. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that the records were not in the possession or control of Executive Council. Therefore, he did not have any recommendations regarding access.

I BACKGROUND

[1] On September 10, 2013, a columnist for the Leader-Post sent out the following three tweets on Twitter:

A bizarre note attached to SP ex-council media e-mail saying media has “requested” reax to Broten’s speech to fed NDP excluding KXL.

Here’s what it said. Ex-council: “this needs to be retweeted..a lot. And maybe the Jedi need to get in Cam’s grill.”

A day after cordial meeting between Wall and Mulcair, there seems to a decided effort by SP gov’t to drive wedge between Mulcair/Broten.

[2] On September 13, 2013, Executive Council received the following access to information request from the Applicant:

All email correspondence containing the terms “Jedi” or “Cam’s grill” since March 9, 2013.

- [3] In a letter dated October 11, 2013, Executive Council responded to the Applicant by stating the records do not exist pursuant to subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act*. It also advised the Applicant that “the Legislative Assembly Office or offices of members of the Assembly or members of the Executive Council as per section 2(2)(b) of the *Act* do not fall within the definition of “government institution”.
- [4] In a letter dated October 15, 2013, the Applicant requested a review by my office. Attached to the Applicant’s request for review was a copy of three tweets by the columnist. Further, he asserted that the role of Executive Director of Communications at Executive Council is a “bureaucratic position”. To support that assertion, the Applicant attached a job description (dated October 15, 2013) from the Government of Saskatchewan website.

II RECORDS AT ISSUE

- [5] Executive Council stated that no records exist because the records are not in its possession or control. In its submission to my office, dated March 19, 2014, Executive Council stated that the responsive records – two emails - were created by a member of the Executive Council to the Executive Director of Communications “for the Premier”, and the second one was an email sent by the Executive Director of Communications for the Premier to the media and other third parties. It cited subsection 2(2)(b) of FOIP, which states that a government institution does not include the Legislative Assembly Service or offices of members of the Assembly or members of the Executive Council. Therefore, it argued that the records are not in its possession or control.

III DISCUSSION OF THE ISSUES

- 1. Are the responsive records in the possession or control of a government institution as defined in FOIP?**

[6] FOIP applies to government institutions. Executive Council qualifies as a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP, which states:

2(1)(d) “**government institution**” means, subject to subsection (2):

(i) the office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan;

[7] However, subsection 2(2)(b) of FOIP states that an office of a member of the Executive Council does not qualify as a government institution:

(2) “**Government institution**” does not include:

...

(b) the Legislative Assembly Service or offices of members of the Assembly or members of the Executive Council;

[8] The Applicant asserts that the Executive Director of Communications at Executive Council holds a “bureaucratic position”, and therefore, the responsive records would be subject to FOIP. Executive Council argues that the Executive Director of Communications is a part of the Premier’s office so the responsive records are not subject to FOIP.

[9] The Government of Saskatchewan website provides the following description of the Executive Director of Communications:

- The Executive Director of Communications oversees the fulfilment of policies, procedures and standards in strategic communications across government to ensure information on government programs and services is provided to the public, media and other audiences in a timely, accurate and effective manner.
- Media Services/Media Relations prepares and distributes news releases and provides assistance to ministries, agencies and Crown corporations in the preparation of news releases and news conferences. It also co-ordinates the day-to-day media relations for the Premier’s Office and Members of Executive Council.

(<http://www.gov.sk.ca/executive-council/communications>, accessed on October 28, 2014)

- [10] Based on the above, it would seem that a portion of the Executive Director of Communication's role, including overseeing the fulfilment of policies, procedures, and standards in strategic communications across government, and providing assistance to ministries, agencies and Crown corporations in the preparation of news releases and news conferences, would qualify her as an employee of a government institution. The records which the Executive Director of Communications creates fulfilling these duties would be subject to FOIP.
- [11] However, her duty to coordinate the day-to-day media relations for the Premier's Office and Members of Executive Council would mean she also would be a part of an office of a member of Executive Council. Records she creates in fulfilling these duties would not be subject to FOIP.
- [12] I have to determine if the records were created or received by the Executive Director of Communications when she was fulfilling her duties as an employee of a government institution, or if she was coordinating the "day-to-day media relations for the Premier's Office and Members of Executive Council". Such a determination would enable me to make a finding if the records are subject to FOIP or not. However, I face the challenge of making such a determination without having the records before me.
- [13] In its submission dated May 1, 2014, Executive Council states that the emails were created in response to a comment by the leader of the Opposition. When I consider the tweets that were described earlier, it is reasonable to believe that these emails were created in response to the leader of the Opposition. The tweets themselves refer to an email sent to the media, and a "bizarre note" that was attached to the email. Conceivably, these are the responsive records. If this is the case, then I find that the records were created or received by the Executive Director of Communications in her duty to coordinate the day-to-day media relations for the Premier's Office and Members of Executive Council. In other words, I find that these records are not in the possession or control of Executive Council.

IV FINDINGS

[14] I find that the records are not in the possession or control of Executive Council.

V RECOMMENDATIONS

[15] As the responsive records are not within the possession or control of Executive Council, I have no recommendations regarding access.

Dated at Regina, in the Province of Saskatchewan, this 12th day of December, 2014.

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