



REVIEW REPORT 106-2017

Ministry of the Economy

September 13, 2017

Summary: The Ministry of the Economy applied subsections 15(1)(a), (c), (d), (j) and (k) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to records responsive to the Applicant's request. The Commissioner found that subsection 15(1)(c) of FOIP applied to the record and recommended no further action.

I BACKGROUND

- [1] On March 23, 2017, the Ministry of the Economy (the Ministry) received an access to information request for "The report on the Husky Energy spill that was turned over to the public prosecutions branch of the Ministry of Justice."
- [2] On April 4, 2017, the Ministry responded to the Applicant indicating that access was denied pursuant to subsections 15(1)(a), (c), (d), (j) and (k) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] The Applicant was dissatisfied with the Ministry's response. On May 19, 2017, she requested a review by my office.
- [4] On May 25, 2017, my office provided notification to both the Applicant and the Ministry of my intention to undertake a review.

II RECORDS AT ISSUE

[5] The record at issue is an 80 page report. In response to the oil spill that occurred in July 2016, the Ministry initiated an investigation into the incident pursuant to section 23 of *The Pipelines Act, 1998* and section 7.2 of *The Oil and Gas Conservation Act*. It appears that a third party firm was engaged to conduct the investigation and it produced this report.

[6] The Ministry has applied subsections 15(1)(a), (c), (d), (j) and (k) of FOIP to the entire record.

III DISCUSSION OF THE ISSUES

1. Does subsection 15(1)(c) of FOIP apply to the record?

[7] Subsection 15(1)(c) of FOIP provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[8] The Ministry applied subsection 15(1)(c) of FOIP to the record because it submits that its release could disclose information with respect to a lawful investigation.

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

1. Does the public body's activity qualify as a "lawful investigation"?

2. Does one of the following exist?

a. The release of information would interfere with a lawful investigation, **or**

b. The release of information would disclose information with respect to a lawful investigation.

Does the public body's activity qualify as a "lawful investigation"?

[10] First, I must determine if there is a lawful investigation. A lawful investigation is an investigation that is authorized or required and permitted by law.

[11] The Ministry's submission explained that, because of the pipeline spill that occurred in Saskatchewan, the Ministry initiated an investigation into the spill and Husky's "full Integrity Management Programs". The Ministry indicated that this investigation has been launched pursuant to subsection 23(1) of *The Pipelines Act, 1998* which states:

23(1) The minister may, on the minister's own motion or on the application of any person, order the board to hold a hearing, investigation or inquiry with respect to any matter related to this Act or the regulations and make recommendations to the minister.

[12] Section 2(a) of *The Pipelines Act, 1998* points to *The Oil and Gas Conservation Act* to define "the board". Some of the relevant sections are as follows:

7.2(1) The minister may direct an official of the ministry to do any of the things mentioned in subsection 7.11(1) if:

- (a) a board has not been established pursuant to section 7; or
- (b) the minister considers it advisable.

(2) For the purposes of carrying out a minister's direction pursuant to subsection (1), the official has all the powers conferred on the board pursuant to sections 7 to 7.9 and is subject to all of the duties imposed on the board pursuant to these sections.

[13] The Ministry's submission indicated that the Assistant Deputy Minister, Petroleum and Natural Gas Division had been appointed to investigate Husky's full Integrity Management Program pursuant to section 7.2 of *The Oil and Gas Conservation Act*. The Ministry had previously provided us with a copy of the Minister's Order regarding this investigation signed on August 15, 2016. I am persuaded that this qualifies as a lawful investigation.

[14] I also note that the Ministry indicated that the report has been turned over to the Public Prosecutions division of the Ministry of Justice to determine whether charges are appropriate.

Would release of information disclose information with respect to a lawful investigation?

[15] The entire report is about the Ministry's lawful investigation into the oil spill. Therefore, I find that 15(1)(c) of FOIP applies.

[16] The Ministry indicated that it has intentions to publicly release the report once any prosecution processes and any appeals have been concluded.

[17] There is no need to consider the other exemptions.

IV FINDING

[18] I find that subsection 15(1)(c) of FOIP applies to the record.

V RECOMMENDATION

[19] I recommend the Ministry take no further action.

Dated at Regina, in the Province of Saskatchewan, this 13th day of September, 2017.

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