



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 110-2015

Saskatchewan Police Commission

October 14, 2015

Summary:

The Applicant submitted an access to information request to the Ministry of Justice, Corrections and Policing for records related to an investigation. The Saskatchewan Police Commission (SPC) provided portions of the responsive records and refused access to the remainder of the records pursuant to subsections 15(1)(c), (f), (k), 16(1)(a), 17(1)(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 27(1) of *The Health Information Protection Act* (HIPA). The Commissioner found that SPC had appropriately applied subsection 15(1)(c) and (k) of FOIP to withhold portions of responsive records. The Commissioner recommended that SPC continue to withhold portions of the record where 15(1)(c) and 15(1)(k) of FOIP applied and release the remainder of the records. The Commissioner also recommended that SPC release the portions of the records that contain information that was provided by the Applicant.

I BACKGROUND

- [1] On December 23, 2015, the Ministry of Justice, Corrections and Policing received an access to information request from the Applicant requesting:

Investigative report derived from ‘Notice of Inquiry’ regarding the matter of the “[a Board of Police Commissioners] and Chief [name of chief] of the [name of police service] Dated 22 March 2012 – [name of investigator] Investigator Requesting: Investigative report submitted by [name of investigator], Investigation conducted between March 2012 and October 2012. Include but not limited to, copies, original tape recordings of interviewed witness/subjects involved, transcripts, notes and any evidentiary documents/materials established by [name of investigator] during this investigation.

- [2] In a letter dated March 16, 2015, the Saskatchewan Police Commission (SPC) provided portions of the records and advised that the remainder of the records would be withheld pursuant to subsections 15(1)(c), (f), (k), 16(1)(a), 17(1)(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and 27(1) of *The Health Information Protection Act* (HIPA).
- [3] On May 4, 2015, my office received a request for review from the Applicant.
- [4] In emails dated June 10, 2015, my office advised both SPC and the Applicant of the review and requested SPC provide the records, index of records and submission.
- [5] Due to the volume and similarity in portions of the record, SPC requested that our office consider a representative sample of the record for our review. My office agreed to this request.
- [6] My office received submissions from the Applicant and SPC. My office requested SPC provide further details relating to the Applicant's request for "original tape recordings of interviews" and "any evidentiary documents/materials established by [name of investigator] during this investigation."
- [7] My office received a second submission that addressed these portions of the request on August 11, 2015. It advised that additional records had been located but that "the noted records were not specifically established by [the investigator] as stated in the request but were provided to him and taken into consideration when preparing the final report." Therefore, SPC's representative indicated that SPC was taking the position that the records were not responsive. If the records were to be found responsive, SPC indicated that subsections 15(1)(c), (f) and (k) of FOIP would apply to refuse access to these records.
- [8] As well, SPC took the position that a transcription copy of the interview audio recordings was a sufficient manner of providing access.

II RECORDS AT ISSUE

- [9] The records at issue are a report consisting of 117 pages and 1,266 pages of interview transcriptions and interview summaries.
- [10] During the course of the review, SPC also identified 183 pages of allegations submitted by individuals (including the Applicant), a 22 page occurrence report and a one page email.

III DISCUSSION OF THE ISSUES

- [11] SPC qualifies as a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP.

1. Are the additional records located by SPC responsive to the Applicant’s request?

- [12] SPC indicated in their August submission to my office that:

the interviews were the primary source of evidence and information used in the creation of the report. However, the Head notes that in addition to the records already provided the following records were located in the inquiry files... The noted records were not specifically established by [the investigator] as stated in the request but were provided to him and taken into consideration when preparing the final report. The Head, applies subsection 15(1)(c)(f)(k)...

- [13] As noted earlier in this Report, SPC took the position that these records were not responsive to the request.
- [14] When a public body receives an access to information request, it must determine what information is responsive to the access request. The purpose of FOIP is best served when a public body adopts a liberal interpretation of a request.
- [15] The *IPC Guide to Exemptions* provides that:

When determining what information is relevant to an access request, consider the following:

The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. Relevancy means “responsive”... The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant’s request for access will be “non-responsive” to the applicant’s request.

A public body can remove information as non-responsive only if the applicant has requested specific information, such as his or her own personal information...

[16] SPC identified seven records that they indicate the investigator took into consideration. The first five records are allegations made by five different individuals. The sixth record is an email between the Applicant and another individual. And the seventh record is an occurrence report for the police service.

[17] Based on the Applicant’s request for information, it appears he is seeking a variety of information related to the investigation. It would be reasonable to conclude that the additional documents located by SPC would be responsive to the Applicant’s request.

[18] I will consider the application of exemptions to these records later in this report.

2. Was it appropriate for SPC to provide the Applicant with a copy of a transcription of the audio recordings?

[19] SPC noted that the audio recordings of the interviews had been transcribed and retained as part of their records. As the audio recordings had been transcribed, SPC saw the audio recordings as being transitory and did not retain the recordings.

[20] According to the Saskatchewan Archives Board’s *Guidelines for the Management of Transitory Records* (the Guidelines), one of the categories of transitory records is “Intermediate Records.” These records are defined as “records that are used only in the preparation of other records and are not needed once the preparation of other records is completed.” The Guidelines lists types of documents that would fit this definition, including “audio records or voice mail messages that have been transcribed.”

[21] The Guidelines also indicate that “provided the original is not required to meet statutory obligations or to sustain administrative or operational functions, these records may be disposed of.” The retention period indicated for these records is “destroy upon successful replacement or incorporation into the subsequent or final record.”

[22] Section 10(3) of FOIP, regarding manner of access to a record, states as follows:

10(3) A head may give access to a record that is a microfilm, film, sound recording, machine-readable record or other information stored by electronic means:

(a) by permitting the applicant to examine a transcript of the record;

(b) by providing the applicant with a copy of the transcript of the record; or

(c) in the case of a record produced for visual or aural reception, by permitting the applicant to view or hear the record or by providing the applicant with a copy of it.

[23] FOIP does not require public bodies to provide both audio and transcription copies of a record.

[24] Therefore, I find that transcriptions of audio recorded interviews to be an appropriate manner to access this type of record.

3. Does subsection 15(1)(c) of FOIP apply to the responsive records?

[25] Subsection 15(1)(c) of FOIP states:

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;

[26] In order for a this exemption to apply, the following test must be considered:

1. Does the public body’s activity qualify as a “lawful investigation” under the Act?
and

2. One of the following must 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.

[27] I will consider the two part test in relation to the records.

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

[28] The record indicates that the investigation was conducted pursuant to section 89 of *The Police Act, 1990*:

89(1) Subject to the approval of the minister, the commission may:

(a) conduct an inquiry respecting:

- (i) the extent of crime or standard of law enforcement in any municipality;
- (ii) the competency or adequacy of personnel of a police service;
- (iii) the adequacy and standard of equipment used by a police service;
- (iv) the suitability of accommodation, including lock-up facilities, provided by a police service; or
- (v) any other matter which is related to the standard of policing and law enforcement provided within a municipality; and

(b) take any action arising from the inquiry that it considers appropriate.

(2) The commission may appoint any person it considers appropriate to conduct an inquiry pursuant to subsection (1).

(3) Where the commission conducts an inquiry pursuant to subsection (1), the commission:

(a) shall make a report to the minister and the affected board; and

(b) may in its report made pursuant to clause (a) make any recommendations to the board that the commission considers appropriate.

(4) Where the board has:

- (a) failed within a reasonable time to respond; or
- (b) responded inadequately;

to a report of the commission pursuant to subsection (3), the commission or the board may refer the matter to the minister.

(5) On consideration of the report of the commission made pursuant to subsection (3), the minister may take any action that the minister considers necessary.

(6) All expenses incurred by the minister pursuant to subsection (5):

- (a) are a debt due from the municipality to Her Majesty in Right of Saskatchewan; and

- (b) may be:

- (i) deducted from any grant payable to the municipality by the Government of Saskatchewan; or

- (ii) recovered by an action in any court of competent jurisdiction as a debt due to Her Majesty in right of Saskatchewan.

[29] *The Police Act, 1990* defines the “commission” for the purposes of this Act as:

2 In this Act:

...

- (d) “**commission**” means the Saskatchewan Police Commission continued pursuant to section 3;

[30] According to SPC’s website:

The Saskatchewan Police Commission works with police services and Boards of Police Commissioners to promote effective policing throughout the province...The Commission is empowered to conduct audits and review, and to provide information to Boards of Police Commissioners. The Commission is the final appeal body in disciplinary and dismissal matters.

[31] Therefore, I find that the investigation would qualify as a “lawful investigation.”

2. Would the release of the information interfere with a lawful investigation or disclose information with respect to a lawful investigation?

[32] The *IPC Guide to Exemptions* provides that “it is only necessary for the public body to demonstrate that the information in the record is information with respect to a lawful investigation to meet this part of the test.”

[33] The interview transcriptions and summaries, as well as the allegations submitted by individuals were created or used in consideration during this investigation. Based on this, it is reasonable to conclude that the information would disclose information with respect to a lawful investigation.

[34] As SPC has provided sufficient information to conclude that both parts of the test have been met, I find that SPC has appropriately applied subsection 15(1)(c) of FOIP to these records.

[35] SPC had applied subsections 15(1)(c) and 29(1) of FOIP and subsection 27(1) of HIPA to portions of the Applicant’s own interview transcription. In their submission they provided that:

If fully disclosed the interview would reveal identifying personal information or individuals involved in or related to the investigation being conducted, as well as other police matters, including but not limited to names, race, home address, employment histories, and criminal histories. Personal Health Information regarding injury would also be disclosed. Additionally, information regarding lawful investigation would be revealed...

[36] SPC also withheld allegations that the Applicant had submitted and were provided to the investigator for consideration during the investigation pursuant to 15(1)(c), (f) and (k) of FOIP.

[37] The Applicant’s own interview and allegations he submitted was information he had supplied based on his account of what occurred. It is unclear how the release of this information would reveal information related to a lawful investigation as the Applicant would already be aware of the information he provided in the course of the investigation.

[38] As well, although the interview contains information that may qualify as personal information and/or personal health information of another individual, it is my understanding that the transcript is a verbatim account of the Applicant's recollection of what had occurred. Based on this understanding, the Applicant provided the information contained in the record and therefore already aware of the information.

[39] SPC should consider releasing the transcript of the Applicant's interview and the allegations submitted by the Applicant.

3. Does subsection 15(1)(k) of FOIP apply to the responsive records?

[40] Subsection 15(1)(k) of FOIP states:

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

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[41] The *IPC Guide to Exemptions* provides the following test for subsection 15(1)(k) of FOIP:

1. Does the public body's activity qualify as a "law enforcement matter" under the Act? **and**

Law enforcement means:

- i. Policing, including criminal intelligence operations, or
 - ii. Investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment
2. One of the following must exist:
 - a) The release of information would interfere with a law enforcement matter, **or**

- b) The release of information would disclose information with respect to a law enforcement matter.

[42] The email between the Applicant and another individual and occurrence report that were provided to the investigator are records that appear to be from the police service and relate to matters being dealt with by that police service. It appears that releasing the information found in these records would disclose information with respect to a law enforcement matter.

[43] However, there are portions of the email that contain information regarding the Applicant's performance at the police service and do not appear to qualify as a law enforcement matter.

[44] I find that SPC has appropriately withheld portions of the record pursuant to subsection 15(1)(k) of FOIP, however those portions of the email that do not qualify should be released to the Applicant.

[45] After reviewing the Draft Review Report, SPC advised my office that they intended to comply with my recommendations.

IV FINDINGS

[46] I find that a transcription copy of an audio recording is an appropriate manner of access pursuant to subsection 10(3) of FOIP.

[47] I find that subsection 15(1)(c) of FOIP applies to some of the responsive records.

[48] I find that subsection 15(1)(k) of FOIP applies to some portions of the responsive records.

V RECOMMENDATIONS

[49] I recommend that SPC take no further action regarding the request for audio recordings.

[50] I recommend that SPC continue to withhold the portions of records where 15(1)(c) of FOIP has been appropriately applied.

[51] I recommend SPC release those records where the information contained was supplied by the Applicant, such as the Applicant's interview transcription and allegations submitted by the Applicant.

[52] I recommend that SPC continue to withhold the portions of the responsive records where 15(1)(k) of FOIP has been appropriately applied and release the portions of the record where 15(1)(k) was found not to apply.

Dated at Regina, in the Province of Saskatchewan, this 14th day of October, 2015.

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