

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 113/2014

Ministry of Health

Summary: The Applicant submitted an access to information request to the Ministry of (Health) but did not receive a response within the legislated timelines. She appealed to the Information and Privacy Commissioner (IPC). 83 days after Health received the request, the Applicant received a response from Health. Health withheld some information pursuant to subsection 16(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner recommended that Health make the necessary changes to its processes so that it can respond to access to information requests within the legislated timelines. He also recommended that Health continue to withhold some information pursuant to subsection 16(1) but release the remainder of the information.

I BACKGROUND

[1] On July 8, 2014, the Ministry of Health (Health) received the following access to information request:

All written records (including correspondence, reports, briefing notes, and meeting notes) between the Strategy and Innovation Branch concerning the 2013 Health Facilities Assessments report conducted by Vanderwiell Assessors (VFA) and Executive Council between October 1, 2013 and present. Please include records of phone calls.

[2] In a letter dated September 29, 2014, Health responded to the Applicant. It provided the Applicant with some records but withheld the remainder and cited subsections 16(1)(a), 16(1)(d)(i), 17(1)(a), and 17(1)(g) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] The Applicant requested a review by my office. In a letter dated October 16, 2014, my office notified Health of the review and requested a submission be provided to my office by October 31, 2014.

[4] As of February 12, 2015, my office had not received a submission from Health. As a result, I am proceeding with the review.

II RECORDS AT ISSUE

[5] There were 37 pages of responsive records. However, after reviewing the Index of Records by Health, the Applicant advised that she was only interested in pages 1 and 37 of the responsive records. She was not interested in pages 2 to 36.

[6] Page 1 has three emails between Health and Executive Council. The subject line in each email were withheld under section 16(1)(d)(i) of FOIP. The body of each email were withheld under subsections 16(1)(a) and 16(1)(d)(i) of FOIP. The attachment line was withheld under subsections 16(1)(a) and 16(1)(d)(i) of FOIP.

[7] Page 37 has one email between Health and Executive Council. The subject line was withheld under 16(1)(d)(i) of FOIP. Of the two sentences in the email, a portion of the first sentence was withheld under subsections 16(1)(a) and 16(1)(d)(i) of FOIP.

III DISCUSSION OF THE ISSUES

1. Did Health respond to the Applicant's access to information request within the legislated timeline?

[8] Subsection 7(2) of FOIP requires government institutions to respond to access to information requests within 30 days after the request is made. Subsection 7(2) provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:...

[9] Subsection 12(1) of FOIP enables government institutions to extend the 30 days for a reasonable period not exceeding 30 days.

[10] It took Health 83 days to respond to the Applicant's access to information request. I find that Health did not respond to request within the legislated timelines.

2. Does subsection 16(1) of FOIP apply?

[11] Subsection 16(1) of FOIP is a mandatory class-based exemption. Subsections 16(1)(a) through (d) is not an exhaustive list of the type of records that would be captured by this class-based exemption. 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:

(a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

...

(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;

[12] In order for subsection 16(1) of FOIP to apply, I must determine if the information is a confidence of the Executive Council.

a. Page 1

[13] As described earlier, page 1 has three short emails between Health and Executive Council. Health had removed the subject line of each email, and the body of the emails. In its Index of Records, Health asserts that the subject line was redacted because it identifies the title of a cabinet document. The document contains briefings to members of the Executive Council.

- [14] When I review the subject lines, I find that it could reveal the subject of a Cabinet Information Item (CII), which is a record that contains briefings to members of the Executive Council. Therefore, the subject lines of the emails on page 1 would qualify as a confidence of Executive Council.
- [15] When I review the body of the emails on page 1, I find that they do not contain any information that would qualify as a Cabinet confidence.
- [16] When I review the attachment line that appears on the email dated November 4, 2013 (time stamped 4:43pm) I find that it would reveal the subject of a discussion item of a Cabinet meeting. Therefore, I find that the attachment line qualifies as a confidence of Executive Council.
- [17] I find that subsection 16(1) of FOIP only applies to the subject line of the email on page 1 and the attachment line of the email dated November 4, 2013 (time stamped 4:43pm).
- [18] In my office's draft Review Report, my office recommended that Health continue to withhold the subject lines and the attachment line of the email dated November 4, 2013 but that it release the body of the emails. However, Health responded by stating that the release of the information in the emails would disclose a confidence of the Executive Council. It provided the following:
- Redactions were applied to prevent disclosure of the content within a cabinet document including:
1. confidential records created to specifically present proposals and policy options to the Executive Council and its sub-committees;
 2. confidential records created to specifically present recommendations to the Executive Council and its sub-committees; and,
 3. discussion between Health officials related to confidential records that were created to provide briefings to members of the Executive Council and its sub-committee (in this case, a confidential cabinet document).
- [19] In light of Health's response, I re-reviewed the body of the email. I still find that disclosing the bodies of the email would not disclose a Cabinet confidence.

b. Page 37

[20] As described earlier, page 37 has an email between Health and Executive Council. Health removed the subject line and a portion of the first sentence of the two sentence email. In its Index of Records, Health asserts that the sentence was redacted since it was discussions related to a CII.

[21] When I review the redacted information on page 37, I find that none of the information would qualify as a confidence of Executive Council. In its draft Review Report, my office recommended that Health release page 37 in its entirety.

[22] I find that subsection 16(1) of FOIP does not apply to page 37.

IV FINDINGS

[23] I find that Health did not respond to the access to information request within the legislated timelines.

[24] I find that subsection 16(1) of FOIP applies to the subject lines of the emails that are on page 1.

[25] I find that subsection 16(1) of FOIP applies to the attachment line of the email dated November 4, 2013 (time stamped 4:43pm).

[26] I find that subsection 16(1) of FOIP does not apply to the body of the emails on page 1.

[27] I find that subsection 16(1) of FOIP does not apply to page 37.

V RECOMMENDATIONS

[28] I recommend that Health make the changes to its processes by regularly evaluating whether it is achieving timely responses. It should continue to make necessary changes at least until it is able to respond to requests within legislated timelines.

[29] I recommend that Health release the body of the emails that are on page 1 but continue to withhold the subject lines and the attachment line of the email dated November 4, 2013 (time stamped 4:43pm).

[30] I recommend that Health release page 37 in its entirety.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of March, 2015.

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