



REVIEW REPORT 113-2019

Ministry of Energy and Resources

August 6, 2019

Summary:

The Applicant made an access to information request for information in the Ministry of Energy and Resources' (the Ministry) Mineral Administration Registration Saskatchewan (MARS) system. The Ministry denied access pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) because the information was personal information. The Commissioner found that the information requested from MARS was not subject to FOIP as it was a matter of public record pursuant to subsection 3(1)(b) of FOIP. As such, the Ministry cannot withhold pursuant to subsection 29(1) of FOIP. The Commissioner recommended release of the record. He also recommended that the Ministry undertake a privacy impact assessment (PIA) exercise to determine what personal information is stored in MARS, what personal information should be publicly available and any legislative amendments that may be necessary to remove certain personal information from the registry or declare the information as personal information subject to FOIP.

I BACKGROUND

- [1] On March 7, 2019, the Ministry of Energy and Resources (the Ministry) received an access to information request for “Contact information not available in the MARS IRC claim registry database for the following individuals 1) [Name of Individual A] 2) [Name of Individual B]”. The time period of the request was January 1, 2019 to March 7, 2019.
- [2] The Ministry responded to the Applicant on April 12, 2019. It indicated that it would withhold responsive records pursuant to subsection 29(1) of *The Freedom of Information*

and Protection of Privacy Act (FOIP) because it believed the information qualified as personal information of Individuals A and B.

[3] On April 12, 2019, the Applicant requested a review by my office. On April 15, 2019, my office notified both the Applicant and the Ministry of my intention to undertake a review.

II RECORDS AT ISSUE

[4] The record consists of two pages. They are printouts from the Ministry's Mineral Administration Registration Saskatchewan (MARS) system. The Ministry has withheld the two pages in their entirety pursuant to subsection 29(1) of FOIP. One page relates to Individual A; and the other to Individual B. Both include full name, user name, telephone number, email address, identification number, mailing address and billing address.

III DISCUSSION OF THE ISSUES

1. Does FOIP apply in these circumstances?

[5] The Ministry qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct a review of the Ministry's response to the Applicant's access request made in accordance with FOIP.

[6] Subsection 3(1)(b) of FOIP provides:

3(1) This Act does not apply to:

...

(b) material that is a matter of public record;

[7] In Review Report LA-2007-002, my office stated that "a matter of public record" relates to documents that one would typically find in a public register that the members of the public have ready access to. In other words, a matter of public record would be information

collected and maintained specifically for the purpose of creating a record available to the general public.

- [8] The Applicant requested information from the Ministry's web-based MARS database. MARS is a registry established by subsection 27.33(1) of *The Crown Minerals Act* which provides in part:

27.33(1) The Crown minerals electronic registry is established

...

(4) The registry is to be used in the manner set out in this Act.

(5) The registry is a public registry of the people of Saskatchewan.

(6) All information in the registry is the property of the Government of Saskatchewan.

(7) Access to and disclosure of information in the registry is to be provided only in accordance with this Act.

- [9] I must then determine if the responsive information is a part of the registry. The information in question appears to be information one would provide to sign up to search the registry such as name and contact information. It also appears to include information that would be assigned after someone has registered such as user name and identification number.

- [10] *The Mineral Tenure Registry Regulations* provide additional information about the MARS registry as follows:

12(1) A person must be registered to search the registry, acquire or transfer a mineral disposition, register any instrument or make any application or submission pursuant to these regulations.

(2) A person who intends to register to use the registry must:

(a) submit to the registry his, her or the corporation's:

(i) name;

(ii) phone number;

(iii) address for service; and

(iv) email address for service;

(b) if the person is a corporation, submit to the registry the corporation's entity number in the register of corporations established pursuant to section 282 of *The Business Corporations Act*; and

(c) pay the fee set out in Table 2 of the Appendix.

[11] Further, subsection 15(1) of *The Mineral Tenure Registry Regulations* provides:

15(1) On payment of the fee set out in Table 2 of the Appendix, a registered user may conduct an electronic search of the information contained in the registry.

[12] The Applicant indicated that, before making the access to information request to the Ministry, they attempted to search for the responsive information directly in MARS. It was not available to the Applicant.

[13] In Review Report 235-2016, I considered a similar issue where the responsive records contained application information in MARS that was not available to the Applicant through a search.

[14] I found that the Applicant was entitled to the information pursuant to subsection 15(1) of *The Mineral Tenure Registry Regulations*. I said that any technical limitations or design of MARS should not prevent the Applicant from gaining information that is contained within the registry.

[15] In Review Report 235-2016, I also noted that if a person becomes a registered user of MARS, they must agree to the Terms of Use. Within those terms, it provided that information about individuals is not subject to FOIP. It provided:

MARS is a public registry and may contain information about individuals and corporate bodies that is a matter of public record, and therefore not subject to *The Freedom of Information and Protection of Privacy Act*. By submitting your registration information, you agree and acknowledge that all or portions of the registration information become part of the public record, subject to the terms and conditions of the Minister stated herein. In using the search functions contained in the MARS website,

you are permitted to copy electronically and print hard copy of pages for your own lawful use, accordance with the "Trademarks and Copyright" provisions contained herein.

[16] I recommended that the Ministry release the withheld application information to the Applicant. I also recommended that the Ministry continue to develop MARS so that it is compliant with subsection 15(1) of *The Mineral Tenure Registry Regulations*.

[17] On February 21, 2017, the then Ministry of the Economy, agreed to comply with these recommendations.

[18] However, in this case, the Ministry contends that the information in question qualifies as personal information. It provided my office with an excerpt of its privacy policy as follows:

When you voluntarily send the Minister electronic information via the MARS website that includes identifying information about yourself, the Minister will keep a record of this information in order to respond to your inquiry and or communicate with you generally. The personal information you provide to the Minister is kept in strict confidence and will only be used by authorized personnel to fulfill the purpose for which it was originally collected or for a use consistent with that purpose. The Minister will not disclose your information to other public bodies or individuals except as authorized by law or with your consent.

[19] The Ministry contends that while MARS is a public registry, the MARS Terms of Service acknowledges that only some of the information may be a matter of public record and therefore not subject to FOIP. It stated that not all of the information contained within MARS is a matter of public record.

[20] Subsections 12(1) and (2) of *The Mineral Tenure Registry Regulations* are clear that an individual must “submit to the registry”, not the Ministry, name and contact information in order to search the registry for information. Subsection 15(1) of *The Mineral Tenure Registry Regulations* is clear that a registered user may conduct an electronic search of the information contained in the registry. I am uncertain what authority the Ministry is relying on to create policies that contradict *The Mineral Tenure Registry Regulations*. Generally, a policy cannot override a statute or regulation.

[21] The information responsive to the Applicant's request is part of the MARS registry and, as such, it is a matter of public record. Therefore, pursuant to subsection 3(1)(b) of FOIP, FOIP does not apply in these circumstances. Further, subsection 29(1) of FOIP does not apply to the record.

[22] I recommend that the Ministry provide the record to the Applicant.

[23] I regret reaching the conclusion above and as a result the recommendation made. I question what purpose it serves to make public the personal information required from an individual to sign up to search a registry. I can appreciate the Ministry's attempt to protect potential personal information in this case, but *The Mineral Tenure Registry Regulations* clearly makes this information public. I recommend that the Ministry undertake a privacy impact assessment (PIA) exercise to determine what personal information is stored in MARS, what personal information should be publicly available and any legislative amendments that may be necessary to remove certain personal information from the registry.

IV FINDINGS

[24] I find that, pursuant to subsection 3(1)(b), FOIP does not apply in these circumstances.

[25] I find that subsection 29(1) of FOIP does not apply to the record.

V RECOMMENDATIONS

[26] I recommend that the Ministry provide the record to the Applicant.

[27] I recommend that the Ministry undertake a PIA exercise to determine what personal information is stored in MARS, what personal information should be publicly available and any legislative amendments that may be necessary to remove certain personal information from the registry.

Dated at Regina, in the Province of Saskatchewan, this 6th day of August, 2019.

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