



REVIEW REPORT 117-2018

Ministry of Agriculture

May 3, 2019

Summary:

In response to an access to information request, the Ministry of Agriculture (the Ministry) released partially redacted records. It withheld portions of the records under subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). It also marked other portions of the records as non-responsive to the access request. The Information and Privacy Commissioner (IPC) found that some (but not all) of the information that had been marked as non-responsive was responsive to the access request. He also found that some of the information that had been withheld under subsection 29(1) of FOIP qualifies as “business card information”. Therefore, such information cannot be withheld under subsection 29(1) of FOIP. He also found that subsection 19(1)(b) of FOIP applied to a piece of information that appeared in one of the records.

I BACKGROUND

[1] On April 26, 2018, the Ministry of Agriculture (the Ministry) received the following access to information request pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP):

Please provide any documents related to a license or permit application for waterworks submitted by or approved for Bill Boyd, Regan Boyd, Boyd Seed Farm Ltd, or 101140208 Sask Ltd from January 2017 to date.

[2] In a letter dated June 18, 2018, the Ministry responded to the access to information request by providing access to redacted records. The Ministry indicated that the records “has been redacted because it contains personal information as defined under section 24 of the Act”. The Ministry provided the Applicant records where portions are redacted and marked as non-responsive.

[3] In a letter dated June 21, 2018, the Applicant requested a review by my office. Specifically, the Applicant requested that my office review the portions of the record that were redacted and marked as non-responsive to the access request.

[4] On July 5, 2018, my office notified both the Ministry and the Applicant that it would be undertaking a review.

II RECORDS AT ISSUE

[5] In total, there are nine records at issue.

Record #	Description of record	Number of pages	Type of information that was marked as “non-responsive”	Type of information redacted under subsection 29(1) of FOIP
1	Request for Technical Assistance application form	6	Each page contained a name of an individual who was not named in the Applicant’s access request.	<p>Page 1 – The post office box number, city/town, province, postal code, cell phone of Regan Boyd and the individual who was not named in the Applicant’s access request was redacted.</p> <p>Further, the middle initial of the individual who is not named in the Applicant’s access request is redacted.</p> <p>Finally, Bill Boyd’s email address and telephone number is redacted.</p> <p>Page 4 – a business number was redacted.</p>
2	An internal email that lists the applications that had been entered into the Sales Logix system. The email lists 8 applications.	1	<p>In the first six applications listed, only the name of the individual not named in the Applicant’s access request was redacted.</p> <p>Details of the seventh and eighth application were redacted entirely.</p>	

3	An email from the Water Security Agency to Bill Boyd.	2		Bill Boyd's email address was redacted.
4	An email from Bill Boyd to the Ministry.	2		Bill Boyd's email address, his phone number, and mailing address was redacted.
5	An internal email detailing the updating on the certification process.	1	Initially, the Ministry redacted two bullet points as "non-responsive". However, in the course of this review, the Ministry indicated that this record can be released.	
6	An internal email detailing about the soil fees paid for two locations.	1	The information about a company other than Boyd Seed Farm was redacted.	
7	An email from the Ministry to Bill Boyd.	2		Bill Boyd's email address is redacted.
8	Internal emails.	2	The last name of an individual not named in the Applicant's access request is redacted from the subject line.	
9	An email from the Ministry to Bill Boyd.	2		Bill Boyd's email address is redacted.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to undertake a review?

[6] The Ministry qualifies a "government institution" as defined by subsection 2(d)(i) of FOIP. Therefore, my office has jurisdiction to review this matter.

2. Are portions of the records non-responsive?

[7] Responsive means relevant. 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 would be considered non-responsive.

[8] The Ministry cited a point from my office's *IPC Guide to Exemptions*. This point says the following:

The request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

[9] The Ministry indicated that the Applicant “was very specific about the nature of the information the Applicant was seeking, and who they were requesting information about. The specificity of the request is the reason for the redaction of names that did not fit the conditions “submitted by or approved for Bill Boyd, Regan Boyd, Boyd Seed Farm Ltd., or 101140208.” In other words, unless the Applicant specified the name of the person or business in the access request, the Ministry determined that the information is non-responsive.

[10] My office’s *IPC Guide to Exemptions* also provides the following:

- The public body may treat portions of a record as not-responsive if they are clearly separate and distinct and entirely unrelated to the access request. However, use it sparingly and only where necessary.
- If it is just as easy to release the information as it is to claim “not responsive”, the information should be released (i.e. releasing the information will not involve time consuming consultations nor considerable time weighing discretionary exemptions).

[11] Further, on July 14, 2017, my office published a blog entry entitled [What About the Non-Responsive Record?](#) It is about how public bodies should provide Applicants the non-responsive information in a record to the applicant. However, if the public body sees the non-responsive information as being exempt from disclosure, then the public body should advise the applicant that there is information that is non-responsive but is also exempt from disclosure under a particular section of FOIP.

[12] In records 1, 2, and 8, the name of an individual that was not named in the Applicant’s access request was marked as non-responsive. Further, one sentence in record 8 was marked as non-responsive as it mentions this individual’s name. This name appears in “documents related to a license or permit application for waterworks submitted by or approved for Bill Boyd, Regan Boyd, Boyd Seed Farm Ltd, or 101140208 Sask Ltd from January 2017 to date.” As such, this name is not “clearly separate and distinct and entirely

unrelated to the access request”. I find that the name of the individual that was not named in the Applicant’s access request that appears in records 1, 2, and 8 is responsive to the access request. In the next section of this report, I will have to determine if subsection 29(1) of FOIP applies to this name.

[13] Next, in record 2, information about two Requests for Technical Assistance applications are listed were redacted and marked as non-responsive. On the face of the record, I can determine that these two applications are not related to “documents related to a license or permit application for waterworks submitted by or approved for Bill Boyd, Regan Boyd, Boyd Seed Farm Ltd, or 101140208 Sask Ltd from January 2017 to date.” As such, I find that the Ministry properly marked this information as “non-responsive.”

[14] In record 6, information about a business not related to Bill Boyd, Regan Boyd, Boyd Seed Farm Ltd, or 101140208 Sask Ltd appears. I find that the Ministry properly marked this information as “non-responsive.”

3. Did the Ministry appropriately apply subsection 29(1) of FOIP?

[15] Subsection 29(1) of FOIP provides:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[16] In order to apply subsection 29(1) of FOIP, the information in question must qualify as personal information. Personal information is defined by subsection 24(1) of FOIP. Subsection 24(1) of FOIP provides a list of examples of personal information but the list is not exhaustive. In order to determine if information qualifies as personal information, the information must be 1) about an identifiable individual, and 2) the information is personal in nature. *Personal in nature* means that the information reveals something personal about the individual. Information that relates to an individual in a professional,

official or business capacity does not generally qualify unless it revealed something personal about the individual.

[17] *Business card information* is the type of information found on a business card (name, job title, work address, work phone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information ([Review Report 277-2016](#)).

[18] In records 1, 3, 4, 7, and 9, the following information was redacted by the Ministry under subsection 29(1) of FOIP:

- Regan Boyd's post office box number, city/town, province, postal code, cell phone number,
- An individual's (who is not named in the access request) post office box number, city/town, province, postal code, cell phone number,
- Bill Boyd's email address,
- Bill Boyd's telephone number, and
- Business Number.

[19] Also, as discussed in paragraph [12] of this report, I must also determine if subsection 29(1) of FOIP applies to the name of the individual who is not named by the Applicant in the access request.

[20] In its submission, the Ministry indicated that the information such as an individual's personal address, telephone number, and email address under subsection 29(1) of FOIP is because the information qualifies as personal information as defined by subsection 24(1)(e) of FOIP:

24(1) Subject to subsections (1.1) and (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:

...

(e) the home or business address, home or business telephone number or fingerprints of the individual;

[21] Based on a review of the records, I find that the information listed at paragraph [18] to qualify as business card information (except for the business number that appears in record 1, which will be discussed later). This is because it appears that Regan Boyd, Bill Boyd,

and the individual who is not named in the access request is acting in the professional, business capacities. My office's Review Report 277-2016 provided that the name and contact information of non-government employees, professionals and corporate officers is treated the same as the name and contact information of government employees. In other words, the name and contact information is "business card information" and would not be information that is personal in nature:

[42] For the names and contact information of lawyers, Economy asserted that names and contact information of the lawyers is personal information about the lawyers and they are not government employees.

[43] Decisions issued by this office dealing with non-government employees, professionals and corporate officers have treated the issue of personal information in much the same way as those dealing with government employees. From a review of the pages, it is clear the lawyers are acting in their professional capacities, including a lawyer acting as legal counsel for a government institution. This type of information is considered business card information.

[22] As such, I find that subsection 29(1) of FOIP cannot be applied to the information listed at paragraph [18] except for the business number, which will be discussed below.

[23] A business number is a "nine-digit number that Canada Revenue Agency will assign to a business (or other organization such as a charity) for tax matters related to business in Canada," according to the Information Services Corporation's website. As such, the business number that appears in record 1 does not qualify as "personal information" as defined by subsection 24(1) of FOIP. I find that the Ministry cannot apply subsection 29(1) of FOIP to the business number in record 1. I will consider whether or not subsection 19(1)(b) of FOIP applies to the business number.

4. Does subsection 19(1) of FOIP apply to the business number?

[24] Subsection 19(1)(b) of FOIP is a mandatory exemption. Therefore, I must consider it even when a government institution has not raised it. In order for subsection 19(1)(b) of FOIP to apply, the following three part test must be met:

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?
2. Was the information supplied by the third party to a public body?
3. Was the information supplied in confidence implicitly or explicitly?

[25] Below I will determine if the three part test is met:

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?

[26] First, I note that the Ontario Office of the Information and Privacy Commissioner (ON OIPC) found that business numbers assigned by the Canada Revenue Agency as financial information in [Order PO-2174](#). This Order provided as follows:

In my view the withheld portions of the records at issue contain technical, commercial and financial information, including

- information about the log retrieval procedures and methodologies of affected parties
- descriptions of log and logging locations (including, in some cases, maps, side-scan sonar readings and D-GPS readings)
- **registrations** (including Workplace Safety and Insurance Board clearance certificates, Notices for Diving Operations under the Occupational Health and Safety Act, articles of incorporation, and **Revenue Canada business numbers**)
- descriptions of fish and habitat conditions
- equipment to be used for underwater logging activities
- estimated volume and species of logs to be retrieved

[emphasis added]

[27] I also find that business numbers assigned by the Canada Revenue Agency qualifies as financial information.

2. Was the information supplied by the third party to a public body?

[28] Subsection 2(1)(j) of FOIP defines “third party” as follows:

2(1) In this Act:

...
(j) “third party” means a person, including an unincorporated entity, other than an applicant or a government institution.

[29] The business number appears on a Request for Technical Assistance form, filled out by the individual that was not named in the access request. This individual qualifies as third party as defined by subsection 2(1)(j) of FOIP.

[30] Further, in order for information to have been “supplied” by the third party, the information must not have been created or generated by the Ministry. In this case, this business number was not created or generated by the Ministry. It was assigned by the Canada Revenue Agency to the individual’s business. The individual then provided the business number to the Ministry.

[31] Based on the above, I find that the business number was supplied by the third party to the Ministry.

3. Was the information supplied in confidence implicitly or explicitly?

[32] On the face of the records, I cannot determine that the information was supplied in confidence explicitly. Therefore, I must determine if the information was supplied in confidence implicitly.

[33] As noted in my office’s *IPC Guide to Exemptions* some factors to consider when determining whether a document was supplied in confidence implicitly are below. The list below is not exhaustive:

- What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the third party or public body?

- Was the information treated consistently in a manner that indicated a concern for its protection by the third party and the public body from the point at which it was supplied until the present time?
- Is the information available from sources to which the public has access?
- Does the public body have any internal policies or procedures that speak to how records such as the one in question are to be handled confidentially?
- Was there a mutual understanding that the information would be held in confidence?

[34] When I consider the above questions and the nature of a business number, I am satisfied that a reasonable person would treat a business number assigned by the Canada Revenue Agency as confidential for the following reasons:

- Business numbers are not available from sources to which the public has access. In Saskatchewan, the Information Services Corporation (ISC) is Canada Revenue Agency's partner for managing the business number program for the province of Saskatchewan. If a business lost its business number, an individual would need to answer security questions to verify the individual's authorization to have the business number. ISC's website says as follows:

Lost Business Number?

Please contact ISC's Customer Support Team by email at corporateregistry@isc.ca. They can retrieve and/or re-send out the BN as needed. Please note, you will be required to verify your authorization by answering some security questions. Third parties operating on behalf of clients requiring a BN will be subject to additional security questions.

- According to *Practice Note No. 16 – Notice Regarding Privacy and Public Access to Court Files*, the Tax Court of Canada (TCC) encourages parties to refrain from including confidential information including business numbers assigned by the Canada Revenue Agency in documents filed with the TCC. This is because documents filed with the TCC are generally public records and open to inspection by the public. The practice note provides as follows:

Parties are encouraged to refrain from including the following information from all pleadings and documents filed with the Court, except as otherwise directed by the Court:

1. Social Insurance Number and employee identification number;
2. **Business number**, GST/HST account number;
3. Sensitive medical information ;
4. Dates of birth. If a date of birth is provided, only the year should appear;

5. Names of minor children. If a minor child is identified, only the minor child's initials should appear; and
6. Bank and financial account numbers. If a financial account number is provided, only the last four digits of the number should appear.

[emphasis added]

- [35] The above practice note by the TCC suggests that the business number assigned by Canada Revenue Agency should be treated as confidential.
- [36] Based on the above, a reasonable person would supply his/her business number implicitly in confidence when communicating with a public body.
- [37] On the face of the records, I find that the three-part test for subsection 19(1)(b) of FOIP is met. I recommend that the Ministry withhold the business number in record 1 under subsection 19(1)(b) of FOIP.

IV FINDINGS

- [38] I find that the name of the individual that was not named in the Applicant's access request that appears in records 1, 2, and 8 is responsive to the access request.
- [39] I find that the Ministry properly marked the information about two Requests for Technical Assistance applications as non-responsive in record 2.
- [40] I find that the Ministry properly marked information about a business not related to Bill Boyd, Regan Boyd, Boyd Seed Farm Ltd or 101140208 Sask Ltd as non-responsive in record 6.
- [41] I find that that the following information qualifies as "business card information" so subsection 29(1) of FOIP cannot be applied to the following information:

- Regan Boyd's post office box number, city/town, province, postal code, cell phone number,
- An individual's (who is not named in the access request) post office box number, city/town, province, postal code, cell phone number,
- Bill Boyd's email address, and
- Bill Boyd's telephone number,

[42] I find that subsection 19(1)(b) of FOIP applies to the business number that appears in record 1.

[43] **V RECOMMENDATIONS**

[44] I recommend that the Ministry release the name of the individual that was not named in the access request but appears in records 1, 2, and 8.

[45] I recommend that the Ministry continue to withhold the information about the two Requests for Technical Assistance applications that is not related to Bill Boyd, Regan Boyd, Boyd Seed Farm Ltd or 101140208 Sask Ltd.

[46] I recommend that the Ministry release the following information that appears in records 1, 3, 4, 7, and 9:

- Regan Boyd's post office box number, city/town, province, postal code, cell phone number,
- An individual's (who is not named in the access request) post office box number, city/town, province, postal code, cell phone number,
- Bill Boyd's email address, and
- Bill Boyd's telephone number.

[47] I recommend that the Ministry withhold the business number that appears in record 1 under subsection 19(1)(b) of FOIP.

[48] I recommend that the Ministry release record 5 in its entirety to the Applicant as the Ministry determined that the redacted information could be released.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of May, 2019.

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