



REVIEW REPORT 122-2015

Ministry of Health

September 9, 2015

Summary: The Applicant submitted an access to information request to the Ministry of Health (Health). Health provided some information but withheld portions of the record, citing subsections 17(1)(a) and 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that neither subsections applied so he recommended the release of the information.

I BACKGROUND

[1] On November 12, 2014, the Ministry of Health (Health) received the following access to information request:

All and any analysis, reports and briefing notes related to the costs or change to the cost and funding structure of the road ambulance service. Please also include any correspondence, analysis or reports related to alternative service delivery models (including STARS). As discussed with [name of Health Senior Policy Analyst], the timeframe in which you are seeking this information is from January 1, 2011 to present date.

[2] In a letter dated May 25, 2015, Health responded to the Applicant. Health cited several exemptions to withhold portions of the record, including subsection 17(1)(a) and subsection 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] The Applicant was not satisfied with the response so she appealed to my office. Specifically, she was concerned about the fourth line of a table that appears on pages 9,

27, 33, 38, and 157. The fourth line of the table was withheld pursuant to subsections 17(1)(a) and 19(1)(b) of FOIP.

[4] On June 23, 2015, my office notified the Applicant and Health that it would be undertaking a review.

II RECORDS AT ISSUE

[5] The same table appears on pages 9, 27, 33, 38 and 157 of the record. The fourth line of the table was severed on each of these pages. Initially, Health applied subsections 17(1)(a) and 19(1)(b) of FOIP only to the fourth line of the table that is on page 9. It applied only subsection 19(1)(b) of FOIP to the fourth line of the table that is on the remainder of the pages. However, in its submission, it said that it would be applying both subsections 17(1)(a) and 19(1)(b) of FOIP to the fourth line of the table on all five pages.

III DISCUSSION OF THE ISSUES

1. Does subsection 17(1)(a) of FOIP apply?

[6] Subsection 17(1)(a) of FOIP provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[7] The test that must be met in order for subsection 17(1)(a) of FOIP to apply is:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. The advice, recommendations, proposals, analyses and/or policy options must:
 - i) must be either sought, expected, or be part of the responsibility of the person who prepared the record; and
 - ii) be prepared for the purpose of doing something, for example, taking an action or making a decision; and
 - iii) involve or be intended for someone who can take or implement the action.

3. Was the advice, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?

[8] For the first part of the test, Health argues that the information in the fourth line qualifies as advice by the third party and is an option for a future action. It states that the third party conducted analysis and “presented an option for future consideration of a rate increase”. Then it argues that the option formed part of Health’s analysis of rate increases.

[9] In the past, my office has defined advice as follows:

Advice includes the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice has a broader meaning than recommendations.

[10] When I review the table, I find that the information does not qualify as advice. It was merely a request from the third party regarding ambulance fees. It is a mere presentation of fact but is neither advice nor analysis.

[11] Since I find that the first part of the test is not met, I find that subsection 17(1)(a) of FOIP does not apply.

2. Does subsection 19(1)(b) of FOIP apply?

[12] Subsection 19(1)(b) of FOIP provides as follows:

19(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

[13] The three-part test that needs to be met in order for subsection 19(1)(b) of FOIP to apply is as follows:

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

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

[14] For the first part of the test, Health asserts that the information qualifies as financial information. The third party asserts that the information qualifies as financial information and commercial information.

[15] In the past, my office has defined financial information and commercial information as follows:

Financial information is information regarding the monetary resources of a third party, such as the third party's financial capabilities, and assets and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements.

...

Commercial information is information relating to the buying, selling or exchange of merchandise or services

[16] For financial information, Health argues that the information would reveal pricing practice of the third party based on addressing rising operating costs for ambulance company owners. The third party asserts that "the financial information provided should speak to itself on the sensitivity of this information".

[17] Further, the third party asserts that this information relates to commercial information. It asserts in its submission the following:

In regards to the commercial information this relates to, we feel it falls well within the definition with our organizations' membership and services provides as per the *IPC Guide to Exemptions for FOIP and LA FOIP*:

- offers of products and services a third-party business proposes to supply or perform;
- a third-party business' experiences in commercial activities where this information has commercial value;
- terms and conditions for providing services and products by a third party;

[18] When I review the information, I find that the information is a request by the third party to Health to peg the ambulance fee guidelines at a certain dollar amount. I find this request does not qualify as financial information as defined above. It does not reveal the monetary resources of a third party.

[19] Also, I find that the information itself does not qualify as commercial information. Further, on the face of the record, I find that the information would not reveal commercial information of the third party.

[20] I find that subsection 19(1)(b) of FOIP does not apply.

IV FINDINGS

[21] I find that subsection 17(1)(a) of FOIP does not apply.

[22] I find that subsection 19(1)(b) of FOIP does not apply.

V RECOMMENDATIONS

[23] I recommend Health release the fourth line of the table that appears on pages 9, 27, 33, 38 and 157 of the record.

Dated at Regina, in the Province of Saskatchewan, this 9th day of September, 2015.

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