



REVIEW REPORT 126-2015

Saskatchewan Police Commission

November 17, 2015

Summary:

The Applicant submitted an access to information request for records related to an investigation. The Saskatchewan Police Commission (SPC) denied access to the responsive records in full pursuant to subsections 16(1)(a), 17(1)(a), and 17(1)(b)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP). SPC clarified in their submission that they were applying all of subsection 16(1) of FOIP and raised subsections 15(1)(b), 15(1)(c), 15(1)(j) and 15(1)(k) of FOIP to support the denial of access. The Commissioner found that it was reasonable for SPC to apply a time extension to respond to the Applicant's request pursuant to subsection 12(1)(a)(ii) of FOIP. The Commissioner also found that SPC had appropriately applied subsection 15(1)(c) of FOIP to withhold the responsive records.

I BACKGROUND

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

Investigation reports derived from 'notice of inquiry regarding the matter of [a police service] Board of Police Commissions Inc. and Chief [name of chief] of [a police service] dated 22 March 2012. Requesting: inquiry report approved and discussed in approximately January 2013 released by the SK Police Commission to outside parties ie/ RCMP, [a police service], Counsel for [a police service], [other police service]. This should include any and all addendums, attachments, accompanying letters and any other official correspondence, appendices involved in the document(s) structure as full and complete.

- [2] In an undated letter, the Saskatchewan Police Commission (SPC) advised the Applicant they would be applying a time extension to their response pursuant to subsections 12(1)(a)(ii) and (b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Based on documentation provided by SPC's representative, it appears that the letter would have been mailed to the Applicant on January 31, 2015.
- [3] This letter also indicated that SPC or their representative had requested clarification on the request from the Applicant in a letter dated January 8, 2015. It appears that the Applicant contacted SPC to provide the clarification on January 13, 2015.
- [4] In a letter dated March 16, 2015, SPC advised the Applicant that the responsive record was being withheld in its entirety pursuant to subsections 16(1)(a), 17(1)(a) and 17(1)(b)(ii) of FOIP.
- [5] On May 31, 2015, my office received a request for review from the Applicant. Further documentation, such as the responses from SPC, was provided to my office in June.
- [6] In emails dated June 30, 2015, my office advised both SPC and the Applicant of the review and requested SPC provide the records, index of records and submission.
- [7] SPC's submission clarified that they were relying on subsection 16(1) of FOIP rather than only 16(1)(a) and raised subsections 15(1)(b), 15(1)(c), 15(1)(j) and 15(1)(k) of FOIP to support the denial of access.
- [8] The record provided to my office did not appear to include correspondence relating to the investigation as requested by the Applicant.
- [9] SPC's representative indicated that some of the correspondence requested was covered by another request submitted by the Applicant. As this correspondence is being reviewed under a different request by my office, these will not be considered in this review.

[10] My office was however provided two additional letters that related to the request that did not appear to be under review under any other requests. SPC chose to release these letters to the Applicant in a letter dated November 10, 2015. As SPC released these letters to the Applicant, they will not be considered in this review.

II RECORDS AT ISSUE

[11] The records at issue appear to be a four page final report that discusses conclusions, recommendations and comments regarding the investigation and a two page appendix that outlines the issues to be investigated regarding this matter.

III DISCUSSION OF THE ISSUES

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

1. Did SPC appropriately apply an extension of time to their response?

[13] Subsections 12(1)(a)(ii) and (b) of FOIP provides as follows:

12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

...

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the government institution;

(b) where consultations that are necessary to comply with the application cannot reasonable be completed within the original period;

[14] It is my understanding that the Ministry of Justice processes requests on behalf of SPC. The submission to my office, provided as follows:

At the end of December 2014, the Ministry [of Justice] had 64 Access to Information (ATI) Requests. This request was received December 23, 2014 and required clarification from the applicant, which was received January 13, 2015. By the end of January the number of open ATI requests had spiked to 108. Additionally, the staff member responsible for this request as well as several others left the branch at the end of January 2015. Due to these circumstances, the work assignments needed to be reallocated to the remaining staff. Through this process and in reference to the volume of requests opened in a very short period of time, consultations between the Freedom of Information and Privacy Branch and various other officials and program areas within the Ministry were extended to ensure requests were thoroughly searched...

[15] The Ministry of Justice indicated that at the time of the request, there were seven vacancies in the Freedom of Information and Privacy Branch when the number of open requests rose to over 100. The Ministry of Justice advised that normally the average number of open requests would be “somewhere between twenty five to fifty.”

[16] Both the Office of the Information and Privacy Commissioner for British Columbia and Nova Scotia’s Freedom of Information and Protection of Privacy Review Office have resources entitled *Time Extension Requests Guidelines for Public Bodies*. In these resources it lists circumstances that may contribute to unreasonable interference. The lists include: significant increase in requests, significant increase in analysts caseloads and unexpected analysts leave.

[17] Although a “large number of requests” is not defined, it is reasonable to consider at least double the amount of requests normally opened with the Ministry of Justice to be a large number of requests for that Ministry. Further, the fact that at that time Justice had seven vacancies in their Freedom of Information and Privacy Branch, supports the conclusion there was interference with the operations of the government institution to have been met.

[18] Based on the information provided to my office, it appears Justice has reasonably applied an extension of time to their response to the Applicant.

[19] As an extension of time pursuant to subsection 12(1)(a)(ii) of FOIP appears to have been applied appropriately, I will not consider the application of subsection 12(1)(b) of FOIP.

2. Does subsection 15(1)(c) of FOIP apply to the responsive record?

[20] 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;

[21] In order for 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.

[22] 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?

[23] 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.

[24] *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;

[25] 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?

[26] 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.”

[27] The record at issue was created based on this investigation undertaken by SPC. It is reasonable to conclude that the information would disclose information with respect to a lawful investigation.

[28] As subsection 15(1)(c) of FOIP was found to apply to the record, I will not consider the other exemptions raised in this review.

IV FINDINGS

[29] I find that SPC appropriately applied a time extension to this request pursuant to subsection 12(1)(a)(ii) of FOIP.

[30] I find that SPC appropriately applied subsection 15(1)(c) of FOIP to the records.

V RECOMMENDATION

[31] I recommend that SPC take no further action for this request.

Dated at Regina, in the Province of Saskatchewan, this 17th day of November, 2015.

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