



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 130-2015

Ministry of Environment

August 24, 2015

Summary: The Ministry of Environment applied subsections 19(1)(b), 19(1)(c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to a list of companies and individuals who had submitted mineral exploration proposals for a certain piece of land. The Commissioner found that none of the sections applied and recommended release of the record.

I BACKGROUND

[1] On May 19, 2015, the Ministry of Environment received an access to information request for: “a list of all individuals and companies who have submitted Mineral Exploration Proposals in NTS Map Area 63M from January 2011 to June 2015.” The Ministry replied to the Applicant on June 12, 2015 indicating that subsections 19(1)(b) and 19(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP) applied to the records.

[2] The Applicant was dissatisfied with the Ministry’s response and requested a review by my office on June 30, 2015. On July 10, 2015, my office provided notification of our intention to undertake the review to the Applicant and the Ministry. My office subsequently provided notice of the review to the third parties and invited them to make submissions.

II RECORDS AT ISSUE

[3] The record is a one page document which list ten companies or individuals. The Ministry has indicated that it created the record specifically for this review. The Ministry has applied subsections 19(1)(b) and (c) of FOIP to the entire record. It has also indicated that certain parts of the record qualify as personal information and subsection 29(1) of FOIP applies to the record.

III DISCUSSION OF THE ISSUES

1. Does subsection 19(1)(b) of FOIP of apply to the record?

[4] Subsection 19(1)(b) of FOIP states:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(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;

[5] The Ministry had indicated that subsection 19(1)(b) of FOIP applies to the record in its entirety.

[6] My office has established a three part test for subsection 19(1)(b) of FOIP 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?

1. Is the information financial, commercial, scientific, technical or labour relations information?

[7] The Ministry has indicated the record qualifies as technical information. My office has previously defined technical information as follows:

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts.

Examples of these fields would include architecture, engineering or electronics...it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information.

[8] The record is a list of names of companies or individuals and does not describe the construction, operation or maintenance of a structure, process, equipment or thing. Therefore, the record does not qualify as technical information.

[9] The first part of the test has not been met. Therefore, subsection 19(1)(b) of FOIP does not apply.

2. Does subsection 19(1)(c) of FOIP of apply to the record?

[10] Subsection 19(1)(c) of FOIP states:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with the contractual or other negotiations of;
a third party;

[11] The Ministry has indicated that subsections 19(1)(c)(i), (ii) and (iii) apply to the record.

[12] For these provisions to apply there must be objective grounds for believing that disclosing the information would result in an undue loss or gain measured in monetary or monetary-equivalent terms (e.g. loss of revenue, loss of corporate reputation or loss of good will) or would prejudice or cause detriment to the competitive position of a Third Party.

[13] To make this determination, my office applies the harms test as follows:

1. There must be a clear cause and effect relationship between the disclosure and the harm which is alleged;

2. The harm caused by the disclosure must be more than trivial or inconsequential;
and
3. The likelihood of harm must be genuine and conceivable.

1. Is there a clear cause and effect relationship between the disclosure and the harm which is alleged?

- i) *Could reasonably be expected to result in financial loss or gain to a third party*

[14] The Ministry's submission states:

Although the name alone does not disclose the amount of exploration, the details of the exploration activities related to the type of exploration, depth explored, methods and exact location, there is probable harm that disclosing names associated with particular locations could reasonably be expected to result in undue loss or gain measured in monetary or non-monetary equivalent terms.

[15] It is unclear how releasing the names of those who have submitted proposals for mineral exploration would result in undue loss described by the Ministry. Therefore, this first part of the test is not met as there is no cause and effect relationship. Subsection 19(1)(c)(i) of FOIP does not apply to the record.

- ii) *Could reasonably be expected to prejudice the competitive position of a third party*

[16] In its submission, the Ministry states:

When these companies or individuals submit Mineral Exploration Proposals to the ministry for a specific location, as in this case, the release of their name alone discloses their interests in a certain location. The fact that these companies applied to explore in this area also infers that there could be large mineral deposits to explore, which could also cause detriment to the competitive position of all third parties.

[17] The Ministry of the Economy has several documents on its website discussing this parcel of land and the minerals which are found there. Some include names of organizations that are actively mining there. An Internet search found websites of companies that are mining in this area. Further, the Applicant and two of the third parties indicated to my office that this type of information was proactively disclosed by Ministries in other provinces. As this information is publically available, there is no cause and effect

relationship between release of the information and prejudice of the competitive position of a third party.

iii) Could reasonably be expected to interfere with the contractual or other negotiations of a third party

[18] The Ministry did not specifically address subsection 19(1)(c)(iii) of FOIP in its submission and how the release of the record could reasonably be expected to interfere with the contractual or other negotiations of a third party. Again, no cause and effect relationship exists and this subsection does not apply.

3. Does subsection 29(1) of FOIP of apply to the record?

[19] Subsection 29(1) of FOIP states:

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.

[20] In order for the Ministry to be able to withhold this information under subsection 29(1) of FOIP, the information must qualify as personal information pursuant to section 24 of FOIP. The Ministry's submission indicates that the two names of individuals on the list of ten qualify as personal information pursuant to subsection 24(1)(b) of FOIP. It also indicates that all ten names qualify as personal information pursuant to subsection 24(3)(a) of FOIP.

[21] Section 24 of FOIP states:

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:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

(3) Notwithstanding clauses (2)(e) and (f), "**personal information**" includes information that:

- (a) is supplied by an individual to support an application for a discretionary benefit; and
- (b) is personal information within the meaning of subsection (1).

[22] The Ministry claims that the names of individuals on the record qualify as their employment history and therefore qualifies as personal information pursuant to subsection 24(1)(b) of FOIP. My office has defined personal information as follows:

Employment history is the type of information normally found in a personnel file such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job or leave transactions. It does not include work product.

[23] The fact that these individuals made a proposal for mineral exploration would not fit into the definition of employment history. Further, making a proposal would not reveal employment history. The proposal does fit the definition of work product. My office defined work product as information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. Work product is not considered personal information.

[24] The information in question does not qualify as personal information pursuant to subsection 24(1) of FOIP.

[25] The Ministry's submission indicates that subsection 24(3)(a) of FOIP applies to all of the companies and individuals listed on the record. Its view is that the mineral exploration proposals submitted by the eight companies and two individuals on the list would qualify as applications for discretionary benefits described in this subsection. However, subsection 24(3)(a) of FOIP is dependent on subsection 24(3)(b) of FOIP. The "application for a discretionary benefit" must first qualify as personal information pursuant to subsection 24(1) of FOIP. As discussed, it would qualify as work product, not personal information. Further, personal information is only that of an identifiable individual. Companies do not qualify as an identifiable individual.

[26] The record in question does not contain personal information pursuant to section 24 of FOIP. As such, the Ministry should not withhold it pursuant to subsection 29(1) of FOIP.

IV FINDINGS

[27] Subsections 19(1)(b) and (c) of FOIP do not apply to the record.

[28] The record does not qualify as personal information and subsection 29(1) of FOIP does not apply.

V RECOMMENDATIONS

[29] I recommend the Ministry release the entire record to the Applicant.

[30] I recommend that release occur 30 days after the Ministry gives its written decision to the Third Parties pursuant to sections 56 and 57 of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 24th day of August, 2015.

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