



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 136-2016 to 146-2016

Global Transportation Hub Authority

January 17, 2017

Summary:

The Applicant requested records from Global Transportation Hub Authority (GTH) related to a land transaction west of Regina. GTH provided the Applicant with its decision letter denying access to all of the records citing section 20 of *The Freedom of Information and Protection of Privacy Act* (FOIP). In addition, GTH advised the Applicant that it would continue the work on the requests after the Provincial Auditor's report was released. Upon review, the Commissioner found that the decision letter was unnecessary, inappropriate and unauthorized under FOIP. For these reasons, section 20 of FOIP was not upheld.

I BACKGROUND

[1] The Applicant submitted 15 access to information requests to the Global Transportation Hub Authority (GTH) on March 9, 2016. On April 6, 2016, the Applicant submitted another one. The requests were for information related to a land transaction west of Regina. Some of these requests were responded to and others went to review and are addressed in other Review Reports issued by my office. This Review Report addresses 11 of the 16 requests and are outlined below:

Access to information request #1 (Review file 136-2016)

Please provide all documentation/records related to the calculation of the cost per acre (gross and/or net acre) of servicing the GTH land --- please provide the requested documentation created between August 1, 2013 and April 5, 2016.

Access to information request #2 (Review file 078-2016 & 137-2016)

Please provide all internal records (emails, notes, reports etc.) which mention [Name], [Name] and/or their numbered company 101225232 Saskatchewan Ltd. from February 1, 2013 until June 30, 2014.

Access to information request #3 (Review file 080-2016 & 138-2016)

Please provide all records related to any and all appraisals of Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) from January 1, 2013 until April 30, 2014.

Access to information request #4 (Review file 081-2016 & 139-2016)

Please provide all correspondence between the Global Transportation Hub employees/executive or the Global Transportation Hub board and the Ministry of Economy related to Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and/or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) from January 1, 2012 to March 5, 2016.

Access to information request #5 (Review file 082-2016 & 140-2016)

Please provide all records (emails, reports, notes etc) related to the 204 acres of land the Global Transportation Hub purchased from 101225232 Saskatchewan Ltd. ie – Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) – from September 1, 2013 until June 30, 2014.

Access to information request #6 (Review file 083-2016 & 141-2016)

Please provide all correspondence between the GTH and Vertex from June 1, 2013 until March 6, 2016.

Access to information request #7 (Review file 084-2016 & 142-2016)

Please provide the contract between Vertex and the GTH signed August 2013.

Access to information request #8 (Review file 085-2016 & 143-2016)

Please provide all correspondence with the Ministry of Economy and/or Ministry of Highways related to Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and/or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) excluding any discussion of a land sale agreement between the entities involving this land from July 1, 2013 until June 30, 2014.

Access to information request #9 (Review file 086-2016 & 144-2016)

Please provide all correspondence related to an appraisal of Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) provided to the Global Transportation Hub and/or Ministry of Economy by [Name], [Name] and/or their numbered company 101225232 Saskatchewan Ltd. from March 1, 2013 until March 31, 2014.

Access to information request #10 (Review file 090-2016 & 145-2016)

Please provide all correspondence, including attachments, between the GTH and [Name], [Name] and/or their numbered company 101225232 Saskatchewan Ltd. from February 1, 2013 until June 30, 2014.

Access to information request #11 (Review file 091-2016 & 146-2016)

Please provide all records (emails, reports, briefing notes, etc.) related to a land sale agreement between the Global Transportation Hub and the Ministry of Highways – related to Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and or Surface parcel 166005862 (SW 20-17-20 W2 Ext 1) signed in March 2014 – including but not limited to drafts, emails, briefing notes etc. from July 1, 2013 to June 30, 2014.

- [2] By letter dated April 7, 2016, the GTH provided the Applicant with a single estimate of costs in the amount of \$111,842.50 for 15 of the 16 access requests. The Applicant requested a review by my office of the fee estimate. Issues related to the fee estimate are addressed in Review Report 078-2016 to 091-2016.
- [3] By letter dated May 24, 2016, GTH provided its response to the Applicant's requests indicating that "[y]our access request has been denied under s. 20" of *The Freedom of Information and Protection of Privacy Act (FOIP)*. Further, that "[u]pon release of the Provincial Auditor's report, it is our intention to continue the necessary work in order to respond to your requests..."
- [4] On June 6, 2016, my office received a Request for Review from the Applicant, in which he disagreed with GTH's interpretation of section 20 of FOIP and its decision to stop work on the Applicant's requests.
- [5] On June 24, 2016, my office provided notification to GTH and the Applicant of my office's intent to conduct 11 reviews. My office requested GTH provide an Index of Records, a copy of the records at issue and a submission in support of section 20 of FOIP. The Applicant was also invited to provide a submission for my office's consideration.
- [6] On June 24, 2016, the Applicant provided a submission to my office. On August 15, 2016, GTH provided my office with its submission and a representative sample of records.

II RECORDS AT ISSUE

[7] No records are addressed in this Review Report. Any records responsive to the access requests are addressed in other Review Reports.

III DISCUSSION OF THE ISSUES

[8] GTH is a “government institution” as defined by subsection 2(1)(d)(ii) of FOIP.

1. Did issuing the May 24th decision letter comply with FOIP?

[9] As noted above, in a letter dated April 7, 2016, GTH issued a fee estimate to the Applicant in the amount of \$111,842.50. In its fee estimate letter, GTH advised the Applicant of the following:

In order to proceed with your access request, our office will require a deposit of \$55,921.25, which is half the total amount required... We will continue to process your access request once this is received.

[10] Prior to the Applicant providing a deposit, GTH sent a decision letter to the Applicant dated May 24, 2016. The decision letter advised the Applicant that the “access request has been denied” pursuant to section 20 of FOIP. Further, that it would continue processing the Applicant’s requests after the Provincial Auditor’s report was released. In its submission, GTH indicated that:

...During May 2016 it was identified that much of the information responsive, both to the access requests under review and to many others, was information being reviewed by the Auditor. Accordingly, the GTH asked the auditor whether this posed any concerns for her.

On May 13, 2016 the Auditor emailed the GTH CEO and other government officials (Appendix M), suggesting that in assessing the access requests, section 20 of the Act be considered.

On May 24, 2016 the GTH sent letters to the applicant, related to each of these requests, outlining that the access requests were denied under section 20(a)(b) of the Act.

...information prepared for the Auditor did not include all records engaged by the access requests...

[11] When asked by my office if it relied on the representative sample or the entire responsive record to determine the application of section 20 of FOIP, GTH advised that:

...we had generated a representative sample of records from the information that we had provided to the Office of the Provincial Auditor of Saskatchewan during their review. While we felt these were the most relevant records responsive to the requests they were not exhaustive.

[12] Based on this, it appears that GTH did not make its decision based on the content of each record but rather based on the Provincial Auditor. GTH took a blanket approach to its application of section 20 of FOIP. When we look at the sequence of events at the time, negotiations between the Applicant, GTH and my office regarding the fee estimate and narrowing the scope of the access requests were ongoing. These negotiations were going in a positive direction. It is not clear why GTH issued this decision letter prior to the negotiations concluding and the Applicant paying the deposit requested by GTH.

[13] When it comes to processing an access request, the statutory 30 day timeline for responding to an applicant can only be stopped in the event of a fee estimate pursuant to subsection 9(3) of FOIP. This provision provides as follows:

9(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) **is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.**

[emphasis added]

[14] Subsection 9(4) of FOIP provides a discretionary authority for the head to require a deposit prior to commencing a search for records. Subsection 9(4) of FOIP provides:

9(4) Where an estimate is provided pursuant to subsection (2), the head **may** require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced for the records for which access is sought.

[emphasis added]

- [15] GTH cannot stop a clock that is already stopped. Once an applicant pays a deposit, GTH must continue processing regardless of what exemptions it intends to apply. Rather than waiting for the Applicant to indicate he wished to proceed via a deposit being paid, GTH issued a decision letter. Further, it indicated that it would not proceed with processing the requests. There was no authority under FOIP for GTH to have stopped processing the Applicant's 11 access requests based on section 20 of FOIP. Section 20 of FOIP is a discretionary exemption that should be applied like all others. All exemptions are to be determined in the first 30 days of processing the record (60 days if an additional 30 day extension is applied). In this case, GTH indicated that it applied section 20 and stopped processing even though it was in active negotiations.
- [16] The May 24th decision letter disrupted negotiations and created confusion. It served no purpose. Therefore, I find that the May 24th decision letter was unnecessary, inappropriate and unauthorized under FOIP. As a result, the decision to apply section 20 of FOIP cannot be upheld. Going forward, GTH should consult FOI experts when access requests arrive that involve sensitive issues.
- [17] On January 6, 2017, my office provided GTH with its preliminary findings as outlined below. In addition, my office recommended that GTH review and improve its processes with regards to processing access requests in accordance with FOIP.
- [18] On January 13, 2017, GTH responded indicating that it takes its obligations under FOIP very seriously and has been working consistently to improve. It provided my office with a copy of its recently developed policy and procedure. The policy and procedure has already been implemented and assists the GTH with applying a standard, consistent and compliant approach to dealing with access requests. GTH asserted that the new policy and procedure will assist it going forward with addressing its obligations under FOIP and it has already seen an improvement.

[19] I agree. My office has seen an improvement with how GTH is processing access requests. Given that GTH has recently gone through a process of review and improvement already, there is no need to repeat the process. I am satisfied with the implementation of the new policy and procedure for processing access requests.

IV FINDINGS

[20] I find that the May 24th decision letter was unnecessary, inappropriate and unauthorized under FOIP.

[21] I find that the decision to apply section 20 of FOIP cannot be upheld.

V RECOMMENDATIONS

[22] There are no recommendations to be made at this time.

Dated at Regina, in the Province of Saskatchewan, this 17th day of January, 2017.

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