



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 138-2015**

### **Ministry of Justice (Corrections & Policing)**

**September 30, 2015**

#### **Summary:**

The Applicant made an access to information request to the Ministry of Justice (Justice) for copies of video surveillance recordings from the entrances of the Court of Queen's Bench in Saskatoon for a particular date. Justice responded advising that it would allow the Applicant to attend to its office to view portions of the video recordings pursuant to subsection 10(3)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the Commissioner. Upon review, the Commissioner found that Justice was not obligated under FOIP to provide the Applicant with a copy of the video recordings pursuant to subsection 10(3)(c) of FOIP. Further, the Commissioner found that some of the information on the video recordings constituted personal information pursuant to subsections 24(1)(a),(b) and (d) of FOIP and recommended this information continue to be withheld pursuant to subsection 29(1) of FOIP.

#### **I BACKGROUND**

[1] On March 10, 2015, the Ministry of Justice (Justice) received an access to information request from the Applicant for:

I would like to obtain video surveillance recordings from the Court of Queens Bench in Saskatoon. I would like the video records from the 3 front entrance/metal detector cameras from the morning of Thursday March 5<sup>th</sup>, 2015 from approximately 9:00am to 10:00am.

- [2] Justice responded to the Applicant by a letter dated April 9, 2015 indicating that access was partially granted. Justice advised the Applicant that portions of the video recordings contained the personal information of other individuals and information related to security matters. Justice also advised the Applicant that the cost to provide partial access would be high and instead offered the opportunity to the Applicant to attend the office to view a severed version of the video. The alternative was also outlined which was for Justice to provide a fee estimate to the Applicant. Justice requested the Applicant advise which option he wished to pursue.
- [3] The Applicant and Justice continued correspondence following its April 9, 2015 letter. The Applicant proceeded to clarify what information in the video he was specifically interested in. As a result, the scope of the access to information request was narrowed to only include the portion of the video that included "...three (3) public employees (dressed in black with machine guns)...from the two (2) videos..."
- [4] In a letter to the Applicant dated May 27, 2015, Justice confirmed the narrowed scope and advised the Applicant it was prepared to waive the fees associated with access. Justice reiterated that access could be made available by arranging for the Applicant to view the two video recordings. The Applicant was advised of his right to request a review by my office. Justice requested the Applicant advise if he wishes to proceed with viewing the video recordings. Justice sent another letter dated June 25, 2015 inquiring if the Applicant wanted to view the video recordings.
- [5] On July 6, 2015, my office received a Request for Review from the Applicant.
- [6] My office notified Justice and the Applicant of our intention to undertake a review on July 15, 2015. A submission was received from the Applicant on July 30, 2015. A submission was received from Justice on September 4, 2015.

## II RECORDS AT ISSUE

[7] The record at issue consists of a portion of two video recordings. A particular mode of access to these videos (viewing in a specified location) has been granted, but it remains an issue as the Applicant is asserting a right to a mode of access which Justice has denied – that a copy of the video recording be sent to the Applicant.

## III DISCUSSION OF THE ISSUES

[8] Justice is a “government institution” pursuant to subsection 2(1)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

### 1. Does Justice have an obligation to provide the record in the format requested by the Applicant?

[9] Section 10 of FOIP provides:

10(1) Where an applicant is entitled to access pursuant to subsection 9(1), the head shall provide the applicant with access to the record in accordance with this section.

(2) A head may give access to a record:

(a) by providing the applicant with a copy of the record; or

(b) where it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record.

(3) A head may give access to a record that is a microfilm, film, sound recording, machine-readable record or other record of information stored by electronic means:

(a) by permitting the applicant to examine a transcript of the record;

(b) by providing the applicant with a copy of the transcript of the record; or

(c) in the case of a record produced for visual or aural reception, by permitting the applicant to view or hear the record or by providing the applicant with a copy of it.

[10] In its submission, Justice asserted that it was authorized to determine the appropriate manner of access pursuant to subsection 10(3)(c) and pointed to subsection 7(2)(a) of FOIP which provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

...

[11] Justice asserted that it chose the mode of access because of court security reasons. Due to a high profile court case taking place on the date in question, the court house was under high risk and security action in order to protect a witness. Justice was concerned that releasing copies of the video recordings would reveal the security arrangements of the court house, as well as methods employed to protect the court house and witnesses. Rather than apply subsection 15(1)(m) of FOIP, which would greatly limit access to the video, Justice opted to allow access in a restricted manner which enabled Justice to maintain control of its use and disclosure.

[12] Section 10 concerns how access will be given. Subsection 10(3)(c) clearly provides that the public body has the option to provide access by way of viewing when the record is produced for visual or aural reception. There is no qualifier that must be met by the public body when opting for this mode of access other than the record being produced for visual or aural reception. It is at the discretion of the public body. Therefore, I find that Justice is not obligated under FOIP to provide the Applicant with a copy of the video recordings in this case pursuant to subsection 10(3)(c) of FOIP.

[13] It is necessary to address the issue of Justice obscuring the faces of individuals in the video recordings prior to release or viewing. Justice argued in its submission that the faces of individuals was personal information pursuant to subsections 24(1)(a) and (d) of FOIP. Justice advised it would obscure the faces of individuals. However, it would release the faces of government employees pursuant to subsection 24(2) of FOIP and Saskatoon Police Service (SPS) members as it had received consent from SPS to reveal these identities.

[14] Subsections 24(1)(a), (b) and (d) provide:

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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(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;

...

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number as defined in *The Health Information Protection Act*;

[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] I agree with Justice on this point. The faces of individuals would constitute personal information and should be obscured pursuant to subsection 29(1) of FOIP. Should the Applicant decide to accept Justice’s offer to view the video, Justice should obscure the faces of those individuals.

#### **IV FINDINGS**

[17] I find that Justice is not obligated under FOIP to provide the Applicant with a copy of the record pursuant to subsection 10(3)(c) of FOIP.

[18] I find that the faces of individuals (except government employees and SPS members) in the video recordings constitutes personal information pursuant to subsections 24(1)(a), (b) and (d) of FOIP and should continue to be withheld pursuant to subsection 29(1) of FOIP.

**V RECOMMENDATIONS**

[19] I recommend that Justice continue to withhold the personal information in the video recordings pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act*.

Dated at Regina, in the Province of Saskatchewan, this 30<sup>th</sup> day of September, 2015.

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