



REVIEW REPORT 139-2015

Ministry of Education

November 16, 2015

Summary:

The Ministry of Education (Education) received an access request for records supporting a dollar figure reported in a news article. Education denied access to the record pursuant to subsection 16(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Education then indicated in the submission that the record identified did not fully support the dollar figure and therefore would only be partially responsive. The Commissioner found that the record identified by Education was not responsive to the request and records responsive to the request do not exist.

I BACKGROUND

- [1] On January 19, 2015, the Ministry of Education (Education) received an access to information request from the Applicant for: “The analysis or report(s) supporting the ‘1.5-billion backlog of school construction and renovation needs’ cited in the January 16, 2015 Star Phoenix article ‘Five rural schools structurally unsound’.”
- [2] On February 5, 2015, Education responded to the Applicant advising that their request for access was denied pursuant to subsection 16(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] On July 15, 2015, my office received the request for review from the Applicant.

[4] On July 16, 2015, my office notified both Education and the Applicant of the review. Education was asked to provide a copy of the record, index of records and submission. The Applicant was also invited to provide a submission for consideration.

[5] Education's submission claimed that it found no records existed to support the figure reported in the news article. Education had located a record that may partially support the \$1.5 billion figure but it had withheld the record pursuant to subsection 16(1)(a) of FOIP.

II RECORD AT ISSUE

[6] The record at issue consists of a two page PowerPoint presentation.

III DISCUSSION OF THE ISSUE

[7] Education qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP.

1. Is the record responsive to the request?

[8] Education's submission to my office provided as follows:

... management determined that any analysis to support the noted backlog would have been prepared and presented as advice to Cabinet and information for Treasury Board, thus would be exempt under section 16 of the Act... the coordinator responded that, while Infrastructure's conclusion was correct, it was still necessary to have an inventory of responsive records, both for internal purposes and in the event the applicant requested a review from the Privacy Commissioner's Office. In response, Infrastructure advised that physical records for the request do not exist within the branch; rather that capital requests received from school divisions would have been taken and estimated cost associated with the capital requested would have been totaled up... the coordinator prepared a "no records" response to send to the applicant. After further consideration of the request and non-physical nature of the responsive records with Communications officials the Director of Legislation and Privacy advised that a response denying access under section 16(1)(a) of the Act would be more appropriate...The ministry was initially unable to locate physical records to support the \$1.5 billion figure cited in the original request... The attached record, a PowerPoint presentation created in 2012 for the Treasury Board, was

withheld pursuant to section 16(1)(a) as this record was developed for the Minister...The record is only potentially responsive, as although it does provide some insight into a backlog of school construction and renovation needs, it is not supportive of the \$1.5B figure cited in the original request.

- [9] The referenced *Star Phoenix* article dated January 16, 2015 states that “at last count, the education ministry had a \$1.5-billion backlog of school construction and renovation needs across the province.”
- [10] The two PowerPoint slides displayed two graphs with data from 2008 to 2012. It is not clear how this information would be responsive to the Applicant’s request for a dollar amount reported in 2015. Further, the dollar amounts identified on the graphs do not appear to total the \$1.5 billion figure cited in the article. This record does not appear to be responsive to the request.
- [11] In its submission, Education also referred to a database “called Asset Planner that allows school divisions to keep track of structural deficiencies and create a three year plan to address. However, school divisions utilize this program to different degrees, and many are unlikely to detail deficiencies that they deem low priority and may be unlikely to successfully obtain funding for.”
- [12] My office met with Education and viewed the database. The database operator explained that the database tracks information of school and non-school facilities and that some school divisions would only use it for specific projects. For example, they may only use the database for tracking costs associated with the roof. The database operator explained that in order to calculate an actual number, the information in the database may be used, but there would likely also need to be communication with the school divisions to get an accurate number. The database operator stated that the \$1.5 billion figure could not be pulled from the database and provided a couple of graphs generated from the system to provide to our office as an example of the reports available.
- [13] While I would have assumed the information in the database would contain the data responsive to the request, it does not appear the information in this database can support

the \$1.5 billion figure. I do not find the reports from the database would be responsive to the Applicant's request.

[14] My office asked Education if there were any documents or emails that recorded the \$1.5 billion dollar figure or how Education had reached that number. Education advised that after conducting a search and being unable to locate records, they believed the briefings occurred verbally.

[15] As the record identified by Education does not appear to be responsive, I will not consider that application of subsection 16(1)(a) of FOIP.

IV FINDING

[16] I find that the record identified by Education does not appear to be responsive to the request and no records responsive to the request exist.

V RECOMMENDATION

[17] I recommend that Education take no further action.

Dated at Regina, in the Province of Saskatchewan, this 16th day of November, 2015.

Ronald J. Kruzeniski
Saskatchewan Information and Privacy
Commissioner