



REVIEW REPORT 154-2015

Saskatchewan Arts Board

February 10, 2016

Summary:

The Applicant submitted an access request to the Saskatchewan Arts Board (SAB) for work completed by a Third Party. The SAB responded to the request providing access to some responsive records and denying access to a Communications Report pursuant to subsection 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The SAB then advised during the review that it would also be applying subsection 17(1)(a) of FOIP to deny access. The Commissioner found that the SAB applied subsection 17(1)(a) of FOIP appropriately to portions of the withheld record. The Commissioner recommended that the SAB release those portions of the record where subsection 17(1)(a) of FOIP was found not to apply.

I BACKGROUND

[1] On June 19, 2015, the Saskatchewan Arts Board (SAB) received an access to information request from the Applicant for the following:

All contracts, reports, correspondence and invoices relating to the work of Fraser Strategy and [name of employee] for the Saskatchewan Arts Board; including the communications analysis/report prepared for the board in 2014.

[2] On June 30, 2015, the SAB responded to the Applicant providing access to some responsive records and denying access to the “Brand/Communications Report” pursuant to subsection 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On August 6, 2015, the Applicant submitted a request for review to my office.

[4] The SAB advised in its submission to my office that it would also be applying subsection 17(1)(a) of FOIP to the withheld record.

II RECORDS AT ISSUE

[5] The record at issue is a 19 page Communications Audit prepared for the SAB by Fraser Strategy.

III DISCUSSION OF THE ISSUES

1. Did the SAB properly apply subsection 17(1)(a) of FOIP to the record?

[6] Subsection 17(1)(a) of FOIP provides as follows:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[7] The SAB's submission provided the following regarding the application of this exemption:

...the Communications/Brand audit report specifically contains analysis of the current state of the internal and external conditions of the Saskatchewan Arts Board related to its brand and the impact of that brand on its stakeholders. The proposals go on to make specific proposals and recommendations related to that analysis.

...the Communications/Brand audit report was the primary responsibility of Fraser Strategy who sought the inputs and prepared the report. The report was commissioned by the board of the Saskatchewan Arts Board in order to make specific decisions related to its strategic plan and the day to day management of the Saskatchewan Arts Board and its staff.

[8] The test for applying subsection 17(1)(a) of FOIP is as follows:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. The advice, recommendations, proposals, analyses and/or policy options must:
 - i) be either sought, expected, or be part of the responsibility of the person who prepared the record; and
 - ii) be prepared for the purpose of doing something, for example, taking an action of making a decision; and
3. Was the advice, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?

[9] I will consider each of these parts of the test for the withheld record.

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?

[10] Advice includes the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice has a broader meaning than recommendations.

[11] Recommendations relate to a suggested course of action as well as the rationale for a suggested course of action. Recommendations are generally more explicit and pointed than advice.

[12] Proposals, analyses and policy options are closely related to advice and recommendations and refer to the concise setting out of the advantages and disadvantages of particular courses of action.

[13] Page one of the record is a cover page for the report, page two is a table of contents that refers to eight general sections found of the report and page three is a notice to readers and confidentiality clause. The information on these pages of the record appear to be general in nature and do not appear to contain any information that would qualify as

advice, recommendations, proposals, analyses or policy options. It is not clear how these pages would qualify for exemption under subsection 17(1)(a) of FOIP.

[14] Pages four through nineteen of the record contains observations made by the Third Party regarding the employees' views of the SAB's communication. The Third Party then provides SAB with conclusions based on these observations and provides SAB with recommendations for improvement.

[15] I find that the information contained on pages four through nineteen of the record would qualify as advice and recommendations.

[16] The first part of the test is met for pages four through nineteen.

2. The advice, recommendations, proposals, analyses and/or policy options must:

i) be either sought, expected, or be part of the responsibility of the person who prepared the record; and

ii) be prepared for the purpose of doing something, for example, taking an action or making a decision; and

[17] As noted earlier, SAB's submission indicated that the SAB's board contracted the Third Party to provide advice and recommendations on its communication issues. The SAB was looking for feedback on these issues in order to make decisions on its strategic plan and management of staff.

[18] Based on this, it appears that the second part of the test would be met for pages four through nineteen of the record.

3. Was the advice, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?

[19] The advice and recommendations found in this report were developed for the SAB. The SAB is considered to be a government institution under FOIP.

[20] Based on this, it appears the third part of the test is met for pages four through nineteen of the record.

[21] As all three parts of the test have been met, I find that subsection 17(1)(a) of FOIP was appropriately applied to pages four through nineteen of the record.

2. Did the SAB properly apply subsection 19(1)(b) of FOIP to the record?

[22] Subsection 19(1)(b) of FOIP provides as follows:

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;

[23] The SAB's submission provided the following regarding the application of this exemption:

The Saskatchewan Arts Board submits that the information contained in the Brand/Communications audit report is labour relations information... The report relates directly to the management of personnel... the report makes specific recommendation to the board of the Saskatchewan Arts Board regarding changes to the organizational structure.

[24] The SAB applied subsection 19(1)(b) of FOIP to all pages of the record. However, as I have already found subsection 17(1)(a) of FOIP to apply to pages four through nineteen of the record, I will only consider the application of subsection 19(1)(b) of FOIP to pages one through three of the record.

[25] As described earlier in this report, page one of the record is a cover page for the report, page two is a table of contents and page three is a notice to readers and confidentiality clause. These three pages of the record contain general information that does not appear to fit the definition of labour relations information, as indicated by the SAB. It is not

clear how pages one through three of the record would qualify for exemption pursuant to subsection 19(1)(b) of FOIP.

[26] I do not find that subsection 19(1)(b) of FOIP would apply to pages one through three of the record and therefore should be released.

IV FINDINGS

[27] I find that the SAB has appropriately applied subsection 17(1)(a) of FOIP to pages four through nineteen of the record.

[28] I find that subsection 19(1)(b) of FOIP does not apply to pages one through three of the record.

V RECOMMENDATION

[29] I recommend that the SAB release pages one through three of the record to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 10th day of February, 2016.

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