



REVIEW REPORT 186-2019

Ministry of Central Services

February 7, 2020

Summary:

The Ministry of Central Services (the Ministry) provided the Applicant with records responsive to his request, but withheld certain information pursuant to subsections 17(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that subsection 29(1) of FOIP applied to some of the information and recommended the Ministry continue to withhold that information. The Commissioner found that subsections 17(1)(d) and 29(1) of FOIP did not apply to the remaining withheld information and recommended that the Ministry release those portions of the record.

I BACKGROUND

- [1] The Commissioner has identified a potential conflict with the subject material of the records in this review. The Commissioner has taken no part in this review and has delegated the Director of Compliance to make all decisions related to this review. The only thing that has occurred is that the final Report has been issued under the Commissioner's name after being reviewed and approved by the Director of Compliance.
- [2] On February 22, 2019, the Ministry of Central Services (the Ministry) received an access to information request for, "all correspondence between [the Deputy Minister of Central Services and Chairman of the Provincial Capital Commission (PCC)] and [the acting Executive Director of the PCC] (including CCs) related to Brand and/or CNIB and/or Brandt's Wascana building project and/or [names of two specific individuals related to Brandt]". The timeframe of the request was from August 22, 2018 to present.

[3] On April 23, 2019, the Ministry responded to the Applicant. It provided the responsive records to the Applicant, but indicated that some information was withheld pursuant to subsections 17(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[4] On May 28, 2019, the Applicant requested a review by my office of the exemptions applied. On June 19, 2019, my office notified the Applicant and the Ministry that the office would be undertaking a review.

II RECORDS AT ISSUE

[5] The record consists of 13 pages. The Ministry withheld information on five pages of the record pursuant to subsection 29(1) of FOIP. It also withheld the majority of information on one other page pursuant to subsection 17(1)(f) of FOIP. See Appendix A for details.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction in this matter?

[6] The Ministry qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction in this matter.

[7] I also note that PCC qualifies as a government institution pursuant to subsection 2(d)(1)(ii) of FOIP.

2. Does subsection 17(1)(f) of FOIP apply to the record?

[8] Subsection 17(1)(f) of FOIP provides:

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

...

(f) agendas or minutes of:

(i) a board, commission, Crown corporation or other body that is a government institution; or

(ii) a prescribed committee of a government institution mentioned in subclause (i); or

[9] Subsection 17(1)(f) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose agendas or minutes of a board, commission, Crown corporation or other body that is a government institution or a prescribed committee of a government institution.

[10] The following two part test can be applied:

1. Is the record an agenda of a meeting or minutes of a meeting?

2. Are the agendas or minutes of:

i) a board, commission, Crown corporation or other body that is a government institution? (See the Appendix at Part I of the *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) for bodies that qualify) or

ii) a prescribed committee of a board, commission, Crown corporation or other body that is a government institution? Currently, the FOIP Regulations do not list any committees of a board, commission, Crown corporation or other body that is a government institution

[11] The Ministry applied this exemption to the majority of an attachment to an email. The email itself was written by the acting Executive Director of the PCC to the Deputy Minister of Central Services. This email has been released in full to the Applicant.

1. *Is the record an agenda of a meeting or minutes of a meeting?*

[12] In its submission, the Ministry indicated that, in the email, the acting Executive Director of PCC shared an agenda item with the Deputy Minister in preparation for an upcoming PCC Board meeting scheduled for December 6, 2018. This is also reflected in the email released to the Applicant. Upon review of the record, I agree with the Ministry's description. The

information to which the Ministry has applied subsection 17(1)(f) of FOIP is an agenda item from the agenda of a meeting that had not yet occurred. Further, the “agenda item” contained background information and factual information.

[13] An agenda item is not the same as an agenda. My office’s resource *IPC Guide to FOIP – Chapter 4: Exemptions from the Right of Access* (December 10, 2019) defines “agenda” as a list of things to be done, as items to be considered at a meeting, usually arranged in order of consideration. I adopt this definition for the purpose of this Report. This definition suggests that an agenda is a list of things to be considered.

[14] Ontario Information and Privacy Commissioner Order PO-1725 made the following comment related to agendas of a Cabinet meeting:

I also want to comment on the important distinction between the term “agenda” as it appears in the exemption at section 12(1)(a) of the Act, and entries such as those appearing in the records at issue in these appeals. The word “agenda” in section 12(1)(a) refers to a specific record, created as an official document of Cabinet Office, which identifies the actual items to be considered at a particular meeting of Cabinet or one of its committees. In my view, an entry appearing in another record which describes the subject matter of an item considered or to be considered by Cabinet is not an “agenda” as this term is used at section 12(1)(a)...

[15] I apply the same reasoning here. The record in question is not the agenda, but an entry in the agenda.

[16] In Review Report 159-2016, I concluded that, ‘information items’ for particular agenda items to be discussed, presentations or notes of the President and Chief Executive Officer’s update or a project overview” were not agendas or minutes and did not qualify for exemption under subsection 17(1)(f) of FOIP.

[17] Further, the “agenda item” contained background information, and information about the current status of a project and next steps. This is factual information that is not usually covered under subsection 17(1) of FOIP.

[18] The information in question does not qualify as an agenda pursuant to subsection 17(1)(f) of FOIP. As such, I find that the first part of the test is not met and subsection 17(1)(f) of FOIP does not apply to the agenda item in question.

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

[19] 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.

[20] The Ministry has withheld the name, email address, home address and Internet Protocol (IP) address of a member of the public who wrote to the PCC about concerns. The Ministry has also withheld the same cellular telephone number of an employee of a third party business three times in the record. In order for subsection 29(1) of FOIP to apply, the information in the record must first qualify as “personal information” as defined by subsection 24(1) of FOIP; however, it is not an exhaustive list.

[21] Some relevant portions of subsection 24(1) of FOIP are as follows:

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:

...

(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*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[22] With respect to the name of the individual who wrote about their concerns to the PCC, the concerns of the individual qualifies as their personal information pursuant to subsection 24(1)(f) of FOIP, because the concerns qualify as this individual's personal opinions and views. The Ministry made the decision to release an apparent de-identified version of these opinions and views to the Applicant. In this case, the individual's name appeared with other information related to the individual. As such, it qualified as personal information pursuant to subsection 24(1)(k)(i) of FOIP.

[23] The home address of the individual who sent their concerns to PCC qualifies as personal information pursuant to subsection 24(1)(e) of FOIP. In Review Report LA-2013-003, my office established that IP addresses qualify as personal information pursuant to the equivalent to subsections 24(1)(e) and (k) of FOIP in *The Local Authority Freedom of Information and Protection of Privacy Act*. The IP address in question qualifies as personal information. The personal email address of the individual also qualifies as personal information pursuant to subsection 24(1)(e) and (k) of FOIP.

[24] I find that the Ministry has properly applied subsection 29(1) of FOIP to this personal information.

[25] However, the Ministry has also applied subsection 29(1) of FOIP to cellular telephone numbers of a third party business employee. In its submission, the Ministry indicated that the cellular telephone number was withheld because if released it would disclose personal information of an identifiable individual as the number is not publicly available.

[26] Business card information is the type of information found on a business card (name, job title, work address, work phone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. Further, in Review Report 149-2019, 191-209, I noted that business card

information does not qualify as personal information when found with work product. Work product is 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 also not considered personal information.

[27] In this case, the cellular telephone number is in the signature line of an email, which contains work product of an employee of a third party business.

[28] In Review Report F-2010-001, Review Report F-2012-006 and Review Report LA-2013-002, my office noted that section 4.01 the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which applies to every organization that collects, uses or discloses personal information in the course of “commercial activities”, carves out business contact information from the type of personal information that requires protection.

[29] Subsection 2.1 of PIPEDA defines “business contact information” as, “information that is used for the purpose of communicating or facilitating communication with an individual in relation to their employment, business or profession such as the individual’s name, position name or title, work address, work telephone number, work fax number or work electronic address.” This supports the conclusion that business card information is not meant to be personal information for the purposes of subsection 24(1) of FOIP when it appears in work product.

[30] The cellular telephone number, therefore, constitutes business card information and does not qualify as personal information in this instance. I recommend that the Ministry release it to the Applicant.

IV FINDINGS

[31] I find that subsection 17(1)(f) of FOIP does not apply to the record.

[32] I find that the Ministry has properly applied subsection 29(1) of FOIP to some personal information.

V RECOMMENDATION

[33] I recommend that the Ministry withhold and release records as described in Appendix A.

Dated at Regina, in the Province of Saskatchewan, this 7th day of February, 2020.

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

APPENDIX A

RECORD	PAGE OF THE RECORD	SECTION(S) APPLIED BY THE MINISTRY	DOES IT APPLY?	RELEASE OR WITHHOLD
Email chain 1	1	29(1)	Yes	Withhold
	2	29(1)	Yes	Withhold
Email Chain 2	3	Released in full		
	4	29(1)	No	Release
	5	29(1)	No	Release
Email chain 3	6	Released in full		
	7	29(1)	No	Release
Attachment to email chain 3	8	Released in full		
	9	Released in full		
	10	Released in full		
Email 4	11	Released in full		
Attachment to email 4	12	17(1)(f)	No	Release
	13	Released in full		