



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 194-2015

Ministry of the Economy

November 10, 2015

Summary: The Applicant made an access to information request to the Ministry of the Economy for certain records. The Ministry withheld the responsive record in its entirety pursuant to subsections 22(a) and (b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that subsection 22(b) of FOIP applied to the record.

I BACKGROUND

- [1] On September 16, 2015, the Ministry of the Economy received an access to information request for the following: “the legal opinion in its entirety that was provided to the Ministry of Economy when developing and finalizing the Foreign Worker Recruitment and Immigration Services Act (implemented Oct 11, 2013).”
- [2] On October 16, 2015, the Ministry replied to the Applicant and indicated that the entire record was being withheld pursuant to subsections 22(a) and (b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). On October 23, the Applicant requested a review by my office.
- [3] On October 26, 2015, my office provided notification to both the Ministry and the Applicant of our decision to undertake a review.

II RECORDS AT ISSUE

[4] The record is a 25 page document dated July 6, 2011. It is a memorandum from the Constitutional Law Division in Public Law at the Ministry of Justice. It was destined for a Director in the Immigration Services Division of Advanced Education, Employment and Immigration. The subject line is “Immigration: Regulation of Immigration Consultants.”

III DISCUSSION OF THE ISSUES

1. Did the Ministry properly apply subsection 22(b) of FOIP to the record?

[5] Subsection 22(b) of FOIP states:

22 A head may refuse to give access to a record that:

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel; or

[6] My office has established the following test for this exemption:

1. Were the records “prepared by or for” an agent or legal counsel for a public body?
2. Were the records provided in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

[7] In this case, the record was created by, a Crown Counsel at the Ministry of Justice who would qualify as an agent of the Attorney General. At the time, the immigration portfolio fell under the Ministry of Advanced Education, Employment and Immigration. This portfolio was transferred to the Ministry of the Economy in 2012. Both are government institutions. Therefore the first part of the test is met.

[8] My office has determined that legal advice includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.

[9] Upon review, the record contains legal analysis and recommendations regarding a legal issue. The document qualifies as legal advice and the second part of the test is met.

[10] Subsection 22(b) of FOIP applies to the record. There is no need to consider the application of subsection 22(a) of FOIP.

IV FINDING

[11] I find subsection 22(b) of FOIP applies to the record.

V RECOMMENDATION

[12] I recommend the Ministry take no further action with respect to this access request.

Dated at Regina, in the Province of Saskatchewan, this 10th day of November, 2015.

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