



REVIEW REPORT 200-2015

Ministry of Environment

November 23, 2015

Summary: The Applicant made an access request for information about fuel storage tanks on a certain property. The Ministry of Environment intended to release the information. A Third Party requested a review of the Ministry's decision. The Commissioner found that the record did not qualify as third party information pursuant to 19(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and recommended release of the record.

I BACKGROUND

- [1] The Applicant made an access to information request to the Ministry of Environment, for a report, dated December 23, 2009, related to the removal of underground fuel storage tanks on a certain property.
- [2] Pursuant to section 34 of *The Freedom of Information and Protection of Privacy Act* (FOIP), the Ministry provided notice to a Third Party that it believed may have an interest in the record. The Third Party objected to release of the record. On September 25, 2015, the Ministry notified that it intended to release the record despite the Third Party's objections as it would be in the public interest pursuant to subsection 19(3) of FOIP.
- [3] On November 3, 2015, the Third Party requested a review of the Ministry's decision to release the records. On the same day, my office provided notification of our intention to undertake a review to the Third Party, the Applicant and the Ministry.

II RECORDS AT ISSUE

- [4] The record is an 18 paged report entitled “Removal of Underground Fuel Storage Tanks [location information removed]”. The report includes letters from witnesses certifying the tanks had been removed as well as photographs of the event. The Ministry has indicated that the Third Party believed subsection 19(1)(c) of FOIP applies to the record; however, the Ministry is prepared to release it pursuant to subsection 19(3) of FOIP.

III DISCUSSION OF THE ISSUES

1. Does subsection 19(1)(c) of FOIP apply to the record?

- [5] Subsection 19(1)(c) of FOIP states:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with the contractual or other negotiations of;

a third party;

- [6] The Ministry noted in its submission that the Third Party had indicated that subsection 19(1)(c) of FOIP applied to the record. The Ministry intends, however, to release it anyway pursuant to subsection 19(3) of FOIP because it believes it would be in the public interest.

- [7] Before I can determine if subsection 19(3) of FOIP applies, I must first determine if the record qualifies as Third Party information, in this case pursuant to subsection 19(1)(c) of FOIP.

- [8] The Ministry’s submission did not specifically address how the record qualified for subsection 19(1)(c) of FOIP. It did note: “We believe that the arguments presented by the third party were not persuasive enough to satisfy the ministry's burden to prove that

the potential harms to the third party were likely to outweigh the applicant's right to know.”

[9] My office advised the Third Party that it had 14 days to make a submission which addressed subsection 19(1)(c) of FOIP. However, it did not do so.

[10] I am not persuaded that subsection 19(1)(c) of FOIP applies to the record.

IV FINDINGS

[11] I find subsection 19(1)(c) of FOIP does not apply to the record.

V RECOMMENDATIONS

[12] I recommend that the Ministry release the record to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of November, 2015.

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