



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 207-2016 TO 211-2016**

### **Ministry of the Economy**

**June 7, 2017**

#### **Summary:**

The Applicant requested records from the Ministry of the Economy (Economy) related to a land transaction west of Regina. Through the course of the review, it was determined there was significant overlap in the responsive records for these reviews and another review. Once we identified the records that had been reviewed previously, these reviews assessed if subsection 16(1), 17(1)(a), 17(1)(b) and 29(1) of FOIP applied to the record. In addition, the Commissioner assessed if Economy inappropriately had possession or control of an appraisal. The Commissioner found Economy may inappropriately have a copy of the appraisal and recommended Economy follow his recommendation in Review Report 077-2016 and 092-2016. The Commissioner found that subsections 29(1) and 17(1)(b) applied to a portion of the records and recommended that information continue to be withheld. The Commissioner also found subsection 16(1) did not apply to the record. Finally, the Commissioner found that Economy did not provide our office with enough details to demonstrate that subsections 17(1)(a), 17(1)(b)(i) and (ii) applied to two documents and recommended Economy undertake a line-by-line review pursuant to section 8 of FOIP and provide access to the documents subject to specific and limited exemptions.

#### **I BACKGROUND**

[1] The Applicant submitted the following five access to information requests received by the Ministry of the Economy (Economy) on March 8, 2016:

Please provide all internal records (emails, notes, reports, etc.) which mention [Name], [Name] and/or their number company 101225232 Saskatchewan Ltd. from February 1, 2013 until June 30, 2014.

Please provide all correspondence between Global Transportation Hub employees/executive or the Global Transportation Hub board and the Ministry of Economy related to Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and/or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) from January 1, 2012 to March 5, 2016.

Please provide all records (emails, reports, notes etc) related to the 204 acres of land the Global Transportation Hub purchased\* from 101225232 Saskatchewan Ltd. le-  
\*Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) –from September 1, 2013 until June 20, 2014.

Please provide all correspondence with the Ministry of Highways and/or Global Transportation Hub Authority related to Surface Parcel 165025414 (NW 20-17-20 Ext 1) and or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) excluding any discussion of land sale agreement between the entities involving this land from July 1, 2013 until June 30, 2014.

Please provide all correspondence, including attachments, between the Ministry and [Name], [Name] and/or their numbered company 101225232 Saskatchewan Ltd. From February 1, 2013 until June 30, 2014.

- [2] By email of March 30, 2016, Economy extended the 30 day response time an additional 30 days pursuant to subsection 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] By letter dated May 24, 2016, Economy responded to the Applicant's access to information requests denying access to the requested records until the Provincial Auditor's *Special Report: Land Acquisition Processes* was released. The Applicant did not request a review of the March 30, 2016 extension of time or May 24, 2016 response denying access pursuant to section 20 of FOIP.
- [4] By letter dated August 10, 2016, Economy provided a single response to the five requests providing access to a portion of the records. Further, Economy withheld a portion of the records in accordance with section 8 of FOIP under exemptions provided for in subsections 16(1), 17(1)(a), 17(1)(b)(i), 18(1)(b), 18(1)(d), 18(1)(f), 19(1), 19(1)(b), 19(1)(c)(i), 19(1)(c)(ii), 19(1)(c)(iii) and 29(1) of FOIP. In addition, Economy denied

access to a portion of the records in full pursuant to subsections 16(1), 17(1)(a), 17(1)(b)(i), 17(1)(b)(ii), 17(1)(f)(i), 18(1)(d), 18(1)(f), 18(1)(h), 19(1)(b), 19(1)(c) and 29(1) of FOIP.

[5] On August 17, 2016, my office received a Request for Review from the Applicant in which he disagreed with the application of the above provisions. On August 28, 2016, my office provided notice to Economy and the Applicant of my office's intention to undertake reviews of these requests and invited all parties to provide submissions. My office received submissions from both the Applicant and Economy.

[6] After reconsidering some of the exemptions it applied, on September 27, 2016 Economy released additional information to the Applicant.

## **II RECORDS AT ISSUE**

[7] Through the course of this review, my office identified significant overlap in the records which were the subject of review in Review Report 277-2016. As the Applicant was the same in these reviews, my office compared the records at issue for these reviews and Review Report 277-2016 to identify where there was overlap. In discussions with the Applicant, my office narrowed the scope of the review to those records which had not already been addressed in Review Report 277-2016.

[8] For the purposes of these reviews, my office will be reviewing six records, totalling 54 pages.

## **III DISCUSSION OF THE ISSUES**

[9] Economy is a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP.

**1. Should Economy be in the possession of one of the records that is subject to this review?**

[10] In Review Report 077-2016 and 092-2016 (Global Transportation Hub Authority (GTH)), my office reviewed a 42-page document entitled *Report on Appraisal of NW-20-7-20 W2 Regina, Saskatchewan as at February 12, 2013* (Appraisal) which was prepared by a third party for Royalty Developments Limited. In that Report, I concluded that the GTH was inappropriately provided with a copy of the Appraisal and recommended that the GTH destroy all copies of the Appraisal or return the copies to the appraisal firm. Further, I recommended that all provincial government institutions with a copy of the Appraisal without written authorization destroy those copies or return them to the appraisal firm.

[11] Paragraph [47] of Review Report 077-2016 and 092-2016 states:

[The appraisal firm] has assumed that the Appraisal was provided to the GTH by Royalty Developments Ltd. However, our office was advised by the GTH that the Appraisal was provided to them from an official with the Ministry of Economy by email on December 20, 2013. The GTH provided a copy of this email to my office which confirmed the date they received the Appraisal. This email does not address or identify how the Appraisal first came into the possession of the Ministry of Economy or if it was provided to the Ministry from another government institution.

[12] As the Appraisal was provided to the GTH by Economy, we provided Economy with a copy of Review Report 077-2016 and 092-2016 to consider the recommendation at paragraph [55] which stated:

I recommend provincial government institutions with a copy of the Appraisal without the written authorization destroys those copies or return them to [the appraisal firm].

[13] Economy advised my office on September 30, 2016 that it did possess a copy of the above-noted Appraisal and that it made up part of the responsive record for files 207-2016 to 211-2016. My office advised Economy not to destroy the Appraisal until we concluded these reviews.

[14] On November 17, 2016, Economy advised that it could not find any indication that at any time it had written authorization to have possession or control of this Appraisal.

[15] Therefore, as Economy has advised my office it did not have the written authorization to possess a copy of the Appraisal, Economy should act on my recommendation at paragraph [55] of Review Report 077-2016 and 092-2016 and destroy all copies of the Appraisal or return it to the appraisal firm.

[16] I will now assess the exemptions applied to the 12 remaining pages.

## 2. Did Economy properly apply subsection 29(1) of FOIP?

[17] When there is information in a record that appears to be personal information, the first step is to determine whether it fits the definition of personal information pursuant to subsection 24(1) of FOIP. Subsections 24(1)(a) through (k) of FOIP provide examples of personal information. However, the list is non-exhaustive.

[18] There are two elements that must be present in order to qualify as personal information:

1. An identifiable individual; and
2. Information that is personal in nature.

[19] The public body must then also consider subsection 29(1), which 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] Economy has withheld information on three pages under subsection 29(1) of FOIP. One of the pages contains email chains, and two of the pages are handwritten notes.

[21] The same name has been severed throughout the email chain. Economy has indicated in its submission that the name is that of a private citizen who was not involved in the

particular land deal that is the subject of the requests. I note that Economy has removed the individual's name, but has left in the content of the individuals dealings with the seller.

[22] An individual's name with other information that could be considered personal in nature would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP, which provides:

24(1) Subject to subsection (1.1) and (2), "**personal information**" means personal information about an identifiable individual that is recorded in and form, and includes:

...

(k) the name of the individual where:

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

[23] As Economy has redacted the name, it appears that the individual - a private citizen - can no longer be identified in connection with the information in which it appears. Therefore, I recommend Economy continue to withhold the severed name.

[24] In addition, names and a telephone number have been severed from the two pages of handwritten notes. There is an important distinction with the information that has been severed here to the name of the private citizen above. That is, these names and the telephone number appear to be those of individuals acting in their capacity as professionals and therefore that information would be considered business card information.

[25] *Business card information* is the type of information found on a business card such as name, job title, work address, work telephone numbers, etc. This type of information is generally not considered personal in nature and therefore would not be considered personal information.

[26] Economy has indicated in its submission that this information has been severed as the individuals are not involved in the land deal. This would also include the reasoning for

severing the telephone number. However I do not agree. My office conducted an online search of these names and the telephone number and found that the information is the names of individuals in their capacity as professional appraisers. Further, the telephone number that has been severed appears to be the main office contact number for one of the professional appraisers.

[27] In reviewing these names and where they appear with other information in the handwritten notes, it appears that Economy may have been considering seeking the professional opinions of these individuals.

[28] Therefore, I find that these names and the telephone number qualify as business card information and not personal information and recommend Economy release in full the information on the two pages of handwritten notes.

### **3. Did Economy properly apply subsection 16(1) of FOIP?**

[29] Economy applied subsections 16(1), 17(1)(a), 17(1)(b)(i), 17(1)(b)(ii) of FOIP in full to two documents which appear to be Decision Items prepared for a GTH board meeting. I will first assess if subsection 16(1) of FOIP applies to these records.

[30] Subsection 16(1) of FOIP is a mandatory class-based exemption, which provides:

**16(1)** A head shall refuse to give access to a record that discloses a confidence of the Executive Council...

[31] Subsections 16(1)(a) through (d) of FOIP provides types of records that would fall into the category of a confidence of Cabinet, however it is not an exhaustive list. Therefore, even if none of the subsections are found to apply, the introductory wording of subsection 16(1) of FOIP must still be considered. In other words, I must consider if the information is a confidence of Executive Council.

[32] In its submission, Economy asserts that the Minister responsible for the GTH sits on the board, making the board akin to Cabinet. As the Decision Items were dated December

2013, I reviewed the GTH's Annual Report for 2013-14 which listed its Board of Directors at that time. At that time, the Minister responsible for the GTH was also the Chair of the Board of Directors of the GTH. It appears there were six other board members at that time – one being the former Deputy Minister of the Ministry of Central Services and the remaining five being members of the public.

[33] The GTH's enabling legislation *The Global Transportation Hub Authority Act* (GTHA Act) establishes a board of directors. Subsection 13(1) of the GTHA Act, provides:

**13(1)** A board of directors, consisting of those persons who are appointed to constitute the authority pursuant to section 7, shall manage the affairs and business of the authority.

[34] Section 7 of the GTHA Act outlines the board member appointment requirements, and provides:

**7(1)** The authority consists of not more than nine persons appointed by the Lieutenant Governor in Council.

(2) A person appointed pursuant to this section:

(a) holds office at pleasure for a period not exceeding three years and until a successor is appointed; and

(b) may be reappointed.

(3) If a member of the authority dies or resigns, the person ceases to be a member of the authority on the date of death or on the date on which a written resignation is received by the authority, as the case may be.

(4) If the office of a member of the authority becomes vacant, the Lieutenant Governor in Council may:

(a) appoint another person for the remainder of the term of the person who vacated the office; or

(b) appoint another person for the term mentioned in subsection (2).

(5) A vacancy in the office of a member of the authority does not impair the power of the remaining members of the authority to act.



[35] The language of the GTHA Act does not require that one of the board members be a Minister or member of Executive Council. In fact, the Board of Directors of the GTH does not currently include a member of the Executive Council.

[36] Further, subsection 16(1) of FOIP is intended to protect a confidence of Executive Council. *Executive Council*, also referred to as Cabinet, consists of the Premier and Cabinet Ministers.

[37] The *Federal Access to Information and Privacy Legislation Annotated 2015* defines cabinet confidences as,

...in the broadest sense, the political secrets of Ministers individually and collectively, the disclosure of which would make it very difficult for the government to speak in unison before Parliament and the public.

[38] As the GTH Board does not qualify as a Cabinet committee, I find subsection 16(1) of FOIP to not apply to the records.

#### **4. Did Economy properly apply subsection 17(1)(a) of FOIP?**

[39] Economy also applied subsection 17(1)(a) of FOIP in full to the two documents which appear to be Decision Items prepared for a GTH board meeting.

[40] Subsection 17(1)(a) of FOIP is a discretionary exemption, which provides:

**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.

[41] This exemption is meant to allow for candor during the policy-making process, rather than providing for the non-disclosure of all forms of advice. When considering if this exemption applies, there is a three-part test that must be met. I will assess each part of the test to determine if the exemption applies.

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

[42] In its submission, Economy indicates that the documents contain recommendations for a member of Executive Council regarding deliberations with officers of a government institution and a member of Executive Council.

[43] *Recommendations* relate to a suggested course of action as well as the rationale for a suggested course of action. From language in these documents it does appear that recommendations are being put forward to the board of the GTH. Therefore, I find part one of the test to have been met.

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

- Be either sought, expected, or be part of the responsibility of the person who prepared the record; and
- Be prepared for the purpose of doing something, for example, taking an action or making a decision; and
- Involve or be intended for someone who can take or implement the action.

[44] It is not clear who authored these two documents. Based upon a review of the two records, it would appear that it would be documents that were authored by the GTH and not Economy. Therefore, based upon what has been provided by Economy, I find that the second part has not been met. As this part of the test has not been met, I find subsection 17(1)(a) of FOIP not to apply to the record.

## **5. Did Economy properly apply subsection 17(1)(b) of FOIP?**

[45] Economy applied subsection 17(1)(b) of FOIP to two paragraphs of an email chain and to the two documents which appear to be Decision Items prepared for a GTH board meeting.

[46] This provision is meant to permit public bodies to consider options and act without constant public scrutiny. Subsection 17(1)(b) 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:

...

(b) Consultations or deliberations involving:

- (i) officers or employees of a government institution;
- (ii) a member of the Executive Council; or
- (iii) the staff of a member of the Executive Council.

[47] A *consultation* occurs when the views of one or more officers or employees of a public body are sought as to the appropriateness of a particular proposal or suggested action. A *deliberation* is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. It refers to discussions conducted with a view towards making a decision.

[48] In order to qualify, the opinions solicited during a consultation or deliberation must:

1. Be either sought, expected, or be part of the responsibility of the person who prepared the record; and
2. Be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[49] I will first consider the two paragraphs in the email chain. In its submission, Economy outlined that the paragraphs redacted were a consultation between government institutions. I can confirm that an officer with Economy was provided a convenience copy of each of the emails that was sent and received. The sender of the email has engaged in a consultation with the recipients. It appears from the responses that the responses have been given in his capacity of an officer of a government institution. Therefore I find that subsection 17(1)(b)(i) of FOIP applies to the information within the email.

[50] I would note that a portion of one of the sentences appears to be information about an employee of one of the government institutions that is personal in nature. Therefore, subsection 29(1) of FOIP would also apply to a portion of a sentence that has already

been withheld from the Applicant. As I have found subsections 17(1)(b)(i) and, in part, subsection 29(1) of FOIP to apply, I recommend that Economy continue to withhold the two paragraphs.

[51] I will now consider if subsections 17(1)(b)(i) and (ii) of FOIP apply to the two documents which appear to be Decision Items prepared for a GTH board meeting

[52] An important element for subsection 17(1)(b) of FOIP to apply is that the opinions solicited during a consultation or deliberation must be sought, expected, or be part of the responsibility of the person who prepared the record. Economy has not provided my office with information that demonstrates who created the record. Based upon the headings of the document, it appears it may have been prepared by an official within the GTH, however Economy has not provided information that would indicate that was the case. Therefore, lacking some of the details that would support the arguments that this exemption would apply, at this time I am unable to find that subsections 17(1)(b)(i) and (ii) of FOIP apply to the record.

[53] It is possible that some of the exemptions outlined above could apply to portions of these two records, however Economy has not provided my office with enough details to support the exemptions it has applied. Section 61 of FOIP provides:

**61** In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[54] Further, based upon a review of the two documents which appear to be Decision Items prepared for a GTH board meeting, I would recommend that Economy undertake a line-by-line review of the record providing access to as much of the record, subject to specific and limited exemptions, as required by section 8 of FOIP:

**8** Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can be reasonably be severed without disclosing the information to which the applicant is refused access.

[55] In response to my office's draft Review Report, Economy indicated that it intends to comply with all Recommendations found in paragraph's [62] to [65]. Further, Economy advised it will provide the Applicant with the additional information it intends to release within 30 days of the issuance of this report.

#### **IV FINDINGS**

[56] Based upon information provided to my office by Economy, I find Economy may inappropriately have a copy of the Appraisal.

[57] I find that subsection 29(1) of FOIP applies to a portion of the records.

[58] I find that subsection 29(1) of FOIP does not apply to the information identified as business card information.

[59] I find that subsection 17(1)(b) of FOIP applies to a portion of the records.

[60] I find that subsection 16(1) of FOIP does not apply to the records.

[61] I find that Economy has not provided my office with enough details to show that subsections 17(1)(a) and 17(1)(b)(i) and (ii) apply to the two documents which appear to be Decision Items prepared for a GTH board meeting.

#### **V RECOMMENDATIONS**

[62] I recommend Economy follow my recommendation in Review Report 077-2016 and 092-2016 at paragraph [55] and if it has copies of the Appraisal without the written authorization, it destroys those copies or returns them to [the appraisal firm].

[63] I recommend Economy continue to withhold the individual's name found on the one page email chain pursuant to subsection 29(1) of FOIP.

[64] I recommend Economy release the names and telephone number found on the two pages of handwritten notes.

[65] I recommend Economy undertakes a line-by-line review pursuant to section 8 of FOIP of the two documents which appear to be Decision Items prepared for a GTH board meeting and provide the Applicant with access to the record subject to specific and limited exemptions, with a copy to my office.

Dated at Regina, in the Province of Saskatchewan, this 7th day of June, 2017.

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