



REVIEW REPORT 216-2017

Ministry of the Economy

October 31, 2017

SUMMARY: The Applicant submitted an access to information request to the Ministry of the Economy (Economy). Economy responded by providing the Applicant with some of the records but withheld others pursuant to subsections 17(1)(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). It also redacted a portion of a record because it claimed it was non-responsive to the Applicant's request. The Applicant appealed to the Information and Privacy Commissioner. The IPC found that Economy properly applied subsections 17(1)(a) and 29(1) of FOIP. He also found that the particular portion that was claimed as non-responsive is indeed non-responsive to the Applicant's access to information request.

I BACKGROUND

[1] On January 20, 2017, my office issued Review Report 235-2016. One of the recommendations in that review report was that the Ministry of the Economy (Economy) do the following:

I also recommend that Economy continue to develop MARS so that it is compliant with subsection 15(1) of *The Mineral Tenure Registry Regulations*.

[2] On July 25, 2017, Economy received the following access to information request:

Saskatchewan Information and Privacy Commissioner, Mr. Ron Kruzeniski recommended the Ministry of the Economy continue to develop MARS so that it is compliant with subsection 15(1) of *The Mineral Tenure Registry Regulations*.
<https://www.canlii.org/en/sk/skipc/doc/2017/2017canlii2194/2017canlii2194.html>

Please provide copies of all documentation, memos, emails and minutes of meetings showing all steps the Ministry of the Economy has taken to make MARS compliant with subsection 15(1) of the Mineral Tenure Registry Regulations.

- [3] On August 28, 2017, Economy responded to the Applicant by providing some records but withholding others. It cited subsections 17(1)(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as its reasons. Furthermore, it determined a portion of one page was “non-responsive”.
- [4] On August 29, 2017, the Applicant requested a review by my office.
- [5] On August 31, 2017, my office notified both Economy and the Applicant that it would be undertaking a review.

II RECORDS AT ISSUE

- [6] There are 49 pages of responsive records. 32 pages were released in full. The remainder of records are the records at issue. They include one page of handwritten notes and copies of a draft policy.

III DISCUSSION OF THE ISSUES

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

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

- [8] Economy applied subsection 17(1)(a) of FOIP to the copies of the draft policy, which are on pages 3 to 4, 7 to 8, 12 to 13, 20 to 21, 22 to 23, 24 to 25, 26 to 27, and 28.
- [9] 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;

[10] In order for subsection 17(1)(a) of FOIP to apply, the following three-part test must be met:

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

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.

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.

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.

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
 - iii) involve or be intended for someone who can take or implement the action.
3. Was the advice, recommendations, analyses and/or policy options developed by or for the public body?

[11] In its submission, Economy asserted that the policy is still being developed and there may be significant changes between the draft policy and a final policy. It asserted that to release the draft policies before they are finalized could potentially cause public confusion on the applicability of the policy. It indicated it intends to have the policy completed by October 31, 2017 and that it will provide the Applicant with the final policy at that time.

- [12] Based on a review of the records, the copies of the draft policy are attachments to emails. The emails themselves were released to the Applicant. They are emails between the Manager, Director, and Executive Director of the Lands and Mineral Tenure branch and the Chief Privacy and Access Officer within Economy. Edits were made to some of the copies of the draft policy using the “track changes” feature in Microsoft Word and inserting comments to the draft policy. Other copies of the draft policy included edits but the edits were done without using “track changes”. They then shared these edited draft policies with each other through email.
- [13] The edits and comments within the draft policies qualify as recommendations. Recommendations are a suggested course of action as well as the rationale for a suggested course of action. The edits and comments suggest changes to the draft policy and the reasons for the suggestions. Therefore, I find that the first part of the test is met.
- [14] I find that it is appropriate that the responsibility of the Manager, Director, and Executive Director of the Lands and Mineral Tenure branch and the Chief Privacy and Access Officer within Economy were involved in the developing and implementing a policy that relates to the Mineral Administration Registry Saskatchewan (MARS). Therefore, I find that the second and third parts of the test are met.
- [15] Since all three parts of the test are met, I find that Economy properly applied subsection 17(1)(a) of FOIP.

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

- [16] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to subsection 24(1) of FOIP. Part of that consideration involves assessing if the information has both of the following:
1. Is there an identifiable individual?
 2. Is the information personal in nature?

[17] If the government institution determines that if the information qualifies as personal information of someone who is not the Applicant, then it must consider applying subsection 29(1) of FOIP to withhold the personal information. 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.

[18] Economy applied subsection 29(1) to a portion of page 1 and to a portion of page 29. I will first deal with page 1.

[19] Page 1 is a handwritten record. It is a page taken from an employee's notebook. In its submission, Economy asserts that the information that it withheld under subsection 29(1) of FOIP is a personal note about the personal life of the employee and not about the access to information request. Based on a review of the record, I find that the handwriting could identify the author of the record and that the information is indeed personal in nature. I find that the information qualifies as personal information as defined by subsection 24(1) of FOIP, which provides:

24(1) Subject to subsections (1.1) and (2), "personal information" means personal information about an identifiable individual that is recorded in any form, ...

[20] I find that Economy properly applied subsection 29(1) of FOIP to page 1.

[21] Page 29 is an email, most of which was released to the Applicant. However, the email address in the "To" field was withheld under subsection 29(1) of FOIP. It is the personal email address of an employee. In Review Reports 157-2016 and 184-2016, I have found that personal email addresses qualify as personal information pursuant to subsections 24(1)(e) and (k) of FOIP, which provide 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:

...
(e) the home or business address, home or business telephone number or fingerprints of the 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] In this case, I also find that the personal email address on page 29 qualifies as personal information and that Economy properly applied subsection 29(1) of FOIP to page 29. I must note that, in previous reports, my office has raised concerns about security and records management when government-related activities are done using personal email accounts. I strongly recommend that Economy prohibit its employees from using their personal email addresses for government-related activities and require them to use their government-issued email accounts only.

3. Is a portion of page 1 non-responsive to the Applicant's request?

[23] Economy claimed that a portion of page 1 is non-responsive to the Applicant's request. As mentioned earlier, page 1 is a handwritten record. It is a page taken from an employee's notebook.

[24] Government institutions may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access to information request.

[25] In its submission, Economy explained that the employee used this particular notebook for multiple meetings. The information that was severed and claimed as "non-responsive" were notes from a subsequent meeting that has nothing to do with the records requested by the Applicant.

[26] Based on a review of the record, I note that the portion claimed as non-responsive is indeed not related to the records requested by the Applicant. I find that the information is non-responsive to the Applicant's request.

IV FINDINGS

[27] I find that Economy properly applied subsection 17(1)(a) of FOIP.

[28] I find that Economy properly applied subsection 29(1) of FOIP to page 1.

[29] I find that Economy properly applied subsection 29(1) of FOIP to page 29.

[30] I find that the redacted portion on page 1 is non-responsive to the Applicant's request.

V RECOMMENDATIONS

[31] I recommend that Economy take no further actions regarding this access to information request.

[32] I recommend that Economy provide the Applicant with a copy of the policy once it is finalized as discussed in paragraph [11].

[33] I strongly recommend that Economy prohibit its employees from using their personal email addresses for government-related activities and require them to use their government-issued email accounts only.

Dated at Regina, in the Province of Saskatchewan, this 31st day of October, 2017.

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