



REVIEW REPORT 217-2015

Ministry of Environment

December 18, 2015

Summary: A Third Party requested a review of a decision of the Ministry of Environment to release records pursuant to subsection 19(3) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that subsections 19(1)(c)(i) and (ii) of FOIP do not apply and recommended that the Ministry release the record to the Applicant.

I BACKGROUND

- [1] On September 28, 2015, the Ministry of Environment received a request for “environmental reporting for properties surrounding [a specific location]”. The Ministry provided notification to a Third Party business that might have an interest in the records. The Third Party objected to release of the record pursuant to subsection 19(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [2] On November 17 2015, the Ministry indicated that it planned to release the records pursuant to subsection 19(3) of FOIP. On November 23, 2015, the Third Party requested a review of the Ministry’s decision by my office.
- [3] On November 30, 2015, my office provided notification to the Ministry, the Third Party and the Applicant of our intention to undertake the review.

II RECORDS AT ISSUE

[4] The Ministry has provided the following description of the record:

Record	# of Pages	Description
1	16	Letter and Approval to Construct from an Environmental Protection Officer to the Third Party dated February 27, 2014 regarding the Ministry's review of the report "Corrective Action/ Decommissioning Plan" February 4, 2014 Letter from an environmental consulting firm to the Third Party dated February 10, 2014 and report "Corrective Action/Decommissioning Plan [name of Third Party]" dated February 4, 2014
2	67	Letter from an Environmental Project Officer to the Third Party dated February 1, 2008 regarding the ministry's review of the report "Phase II Environmental Site Assessment, [Location of site]" Letter from environmental consulting firm to the Ministry of Environment attaching report: "Phase II Environmental Site Assessment for [Location of site]" dated January 11, 2008
3	50	"Phase II Environmental Site Assessment for [Location of site]" dated June, 1996
4	147	Email from Environmental Protection Officer to self dated March 27, 2015. Letter from Environmental Management Technician to the Third Party dated July 7, 2014 regarding Ministry's review of the report "Site Activities Report, [Location of site]" dated June 16, 2014. Site Activities Report, [Location of site] dated June 13, 2014.
5	33	Corrective Action Plan, [Location of Site] dated February 5, 2015

[5] The Third Party has indicated that it believes that subsections 19(1)(c)(i) and (ii) of FOIP applies to the record in its entirety.

III DISCUSSION OF THE ISSUES

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

[6] 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

...

a third party;

[7] The Ministry noted in its submission that the Third Party had indicated that section 19(1) 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.

[8] 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.

[9] The Ministry's submission did not specifically address how the record qualified for subsection 19(1) 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."

[10] My office invited the Third Party to make a submission on this matter. It indicated that the responsive records qualify for exemption pursuant to subsections 19(1)(c)(i) and (ii) of FOIP.

[11] The Third Party's submission stated that the report contains "information regarding the type of petroleum products, and the inventory quantities stored in the underground storage tanks at the site." The Third Party states that the "information could be used by a competitor in the petroleum industry to assess [its] position in the petroleum marketplace and to create strategies based on [its] petroleum throughput". However, the Ministry has indicated that the Third Party advertises the products that are available for purchase at that site. Further, this size of the tank are not necessarily indicative of how much product

the Third Party has available at any given time. I am not persuaded that the release of this information could reasonably be expected to result in financial loss or prejudice the competitive position of the Third Party.

[12] The Third Party's submission also indicated that release of the entire record could result in financial loss or prejudice its competitive position if the Applicant uses the information "in a derogatory manner". It did not provide further explanation. The Third Party has not persuaded me that, in the petroleum industry, the release of these records could reasonably be expected to result in financial loss or prejudice its competitive position of the Third Party.

[13] Subsections 19(1)(c)(i) and (ii) of FOIP do not apply to the records.

IV FINDING

[14] I find subsections 19(1)(c)(i) and (ii) of FOIP do not apply to the record.

V RECOMMENDATION

[15] I recommend that the Ministry release the records to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 18th day of December, 2015.

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