



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 287-2017, 343-2017

Ministry of Trade and Export Development

November 1, 2018

Summary:

The Applicant submitted an access to information request to the former Ministry of the Economy, now the Ministry of Trade and Export Development (Trade and Export Development). Trade and Export Development denied access to a portion of the record pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by my office of the use of subsection 29(1) of FOIP and the search conducted by Trade and Export Development to locate the responsive records. The Commissioner found that the search conducted was adequate and that subsection 29(1) of FOIP applied to the withheld portion of the record. The Commissioner recommended that Trade and Export Development take no further action on these files.

I BACKGROUND

[1] At the time of the access to information request, the Ministry of the Economy was a single ministry. However, during the course of the review, the Ministry of the Economy was split into three ministries: the Ministry of Energy and Resources, the Ministry of Trade and Export Development and the Ministry of Immigration and Career Training. My office has been advised that the records involved with this review are now in the possession and under the control of the Ministry of Trade and Export Development (Trade and Export Development). Therefore, this report will refer to Trade and Export Development.

[2] The Applicant submitted an access to information request that was received by Trade and Export Development on May 26, 2017, requesting access to:

Please provide all emails to and from [Director, Greater China] related to Brightenvue and/or GTEC [Global Trade and Exhibition Centre] and/or the GTH [Global Transportation Hub Authority]. From December 1, 2015 to the present.

[3] By letter dated August 31, 2017, Trade and Export Development responded to the request. In its response, it indicated that it was denying access to a portion of the information pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). In addition, some of the records were marked as non-responsive to the request as the dates fell outside of the Applicant's specified date range.

[4] My office received a Request for Review from the Applicant on November 13, 2017. On the form, the Applicant indicated the reason for the review was that partial or full access to the record was denied.

[5] On November 21, 2017, my office notified the Applicant and Trade and Export Development of our intention to undertake a review of this matter pursuant to Part VII of FOIP and invited both parties to make a submission.

[6] On December 27, 2017, the Applicant advised my office that the original request for review also outlined that he would like the search efforts reviewed. Upon review of the covering email provided to our office by the Applicant, it was determined this was an oversight by my office.

[7] On December 28, 2017, my office notified the Applicant and Trade and Export Development that we would also be conducting a review of the search efforts undertaken to locate the records requested by the Applicant. My office invited both parties to make a submission.

[8] During the course of this review, my office contacted the Applicant about the pages that were marked as non-responsive to see if he wished to have those pages reviewed. The

Applicant advised my office that he did not want those pages included in the scope of the review.

II RECORDS AT ISSUE

[9] The record, including the non-responsive record, is 13 pages in length. Information found on pages seven to 13 have been marked as non-responsive and therefore will not be considered in this review. Trade and Export Development has withheld one piece of information on page six, and released the remainder of the record. This office will also review Trade and Export Development's search efforts.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] Trade and Export Development is considered a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. Thus I have authority to conduct this review.

2. Did Trade and Export Development conduct an adequate search?

[11] Section 5 of FOIP provides an individual's right to access records of a government institution. This section is clear that access to records must be granted if they are in the possession or control of a government institution subject to any exemptions under Part III of FOIP. Section 5 of FOIP provides:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[12] FOIP does not require a public body to prove with absolute certainty that records responsive to an access to information request do not exist. However, it must demonstrate that it has conducted a reasonable search in order to locate the records.

[13] The focus of a search review is whether or not the public body conducted a reasonable search. A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to located records related to the record. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

[14] When a public body is demonstrating search efforts, the following can be included in the public body's submission to outline its search strategy. I would like to note this is not an exhaustive list when demonstrating search efforts:

- For personal information requests – explain how the individual is involved with the public body (i.e. client, employee, former employee, etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper and electronic) in the departments/divisions/branches included in the search:
 - Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject
 - Consider providing a copy of your organizations record schedule and screen shots of the folders and sub-folders of the electronic directory. If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
 - Explain how you have considered records stored offsite.

- Explain how records that may be in the possession of a third party but in the public body's control have been searched such as contractor or information service provider.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
 - For electronic folders – indicate what key terms were used to search if applicable.
- On what dates did each employee search?
- How long did it take for each employee to search?
- What were the results of each employee's search?
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the IPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[15] The above list is meant to be a guide. Providing the above details is not a guarantee that this office will find that the search efforts are reasonable. Each case will require different search strategies and details depending on the records requested.

[16] I would like to note that the Applicant's request is limited to the Director, Greater China (employee), and emails to and from that employee related to Brightview, GTEC and/or the GTH.

[17] Trade and Export Development provided my office with a submission and a search log that was completed by the employee to detail the search efforts. In its submission, Trade and Export Development noted that this employee was the only person named in the access to information request and therefore was the only person requested to perform the search. Further, it noted that the emails and archived emails are saved in the employee's Outlook system.

- [18] The search log and submission indicated that the search of the Outlook email was conducted by the employee on June 7, 2017. The submission notes that the employee conducted the search using the search terms provided by the Applicant. The search log outlined that the search took approximately nine minutes to complete.
- [19] The length of time it took to conduct the search of three search terms is consistent with my office's guidance for searching email accounts. In the *IPC Guide to Exemptions*, this office has suggested that generally it should take three minutes to search one active email account and transfer the results to a separate drive. Given that the employee had three separate terms to search in the Outlook email account, it is reasonable that this search would take nine minutes to conduct.
- [20] Paper records were not searched as Trade and Export Development advised all of the employee's emails are retained in Outlook.
- [21] I would like to note that having employees complete search logs is a best practice, and I commend Trade and Export Development for including this step as part of its access to information processes. It is much easier to detail search efforts at the time the search is conducted than to have to go back based on memory to determine how the search was conducted in the event of a review by my office.
- [22] In regards to the employees experience in handling access to information requests, the submission further noted that the employee has been with the former Ministry of the Economy (now Trade and Export Development) and its previous designations for nine years. It also noted that the employee is very well versed in the handling of Access to Information requests as the employee has been involved in a large number of requests to date.
- [23] I am satisfied that Trade and Export Development conducted a reasonable search for records. Therefore, I find Trade and Export Development conducted an adequate search.

3. Is there personal information in this record?

[24] Trade and Economic Development has withheld an email address on page 6 of the record pursuant to subsection 29(1) of FOIP.

[25] In FOIP, there are protection of privacy requirements that must be considered. 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.

[26] In order for information to be found to be personal information, there must be an identifiable individual and the information must be personal in nature. Subsection 24(1) of FOIP provides examples of types of information that is considered personal in nature. Subsection 24(1)(k) of FOIP 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, and includes:

...

(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.

[27] The beginning portion of the email address that has been withheld does not match the name in the signature line of the email that has been released to the Applicant. Further, the domain portion of the email address is a domain name that is often used for personal email accounts. In its submission, Trade and Export Development has noted that there is no way for it to verify that this is a work email account or a personal email account.

[28] Therefore, I must err on the side of caution and assume that it is, in fact, a personal email account. As such, I am satisfied there is an identifiable individual. Because it appears this is a personal email account, this information can also be considered personal in nature. This type of information would be captured under subsection 24(1)(k) of FOIP.

[29] I find that subsection 29(1) of FOIP applies to the severed email address found on page 6 of the record.

IV FINDINGS

[30] I find Trade and Export Development conducted an adequate search.

[31] I find that subsection 29(1) of FOIP applies to the severed email address found on page 6 of the record.

V RECOMMENDATION

[32] I recommend that Trade and Export Development take no further action on these files.

Dated at Regina, in the Province of Saskatchewan, this 1st day of November, 2018.

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