



## **REVIEW REPORT 290-2016**

### **Ministry of the Economy**

**March 28, 2017**

**Summary:** The Applicant requested records from the Ministry of the Economy (Economy) related to a land transaction west of Regina. Economy provided the Applicant with some records but withheld information in other records citing subsections 17(1)(a), (b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Upon review, the Commissioner found that subsection 29(1) of FOIP did not apply to some of the information in the record and recommended it be released. In addition, the Commissioner found that subsection 17(1)(a) of FOIP applied to other information and recommended that it continue to be withheld.

### **I BACKGROUND**

[1] On September 19, 2016, the Ministry of the Economy (Economy) received the following access to information request from the Applicant:

Please provide all of the emails on the attached document which have the subject matter as follows: “On other matters, “Appraiser contact”, “Valuation Project”, “A couple of questions for the Minister” and “Step Announcement.”

[2] Attached to the access request was a 12 page document created by the Ministry of Central Services and provided to Economy. It lists emails involving Economy. The list of emails was generated as part of the audit of the Global Transportation Hub (GTH) land deal conducted by the Provincial Auditor. The list was previously provided to the Applicant in response to another access request.

- [3] By letter dated December 5, 2016, Economy provided its response to the Applicant indicating that access to the emails was partially granted. In addition, Economy advised that some of the information was being withheld pursuant to subsections 17(1)(a), (b)(i), (b)(ii) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] On December 12, 2016, my office received a Request for Review from the Applicant in which he disagreed with Economy's application of the above provisions.
- [5] On December 13, 2016, my office notified Economy and the Applicant of my office's intent to undertake a review and invited all parties to provide submissions.
- [6] On January 5, 2017, Economy provided my office with its submission and a copy of the records at issue.

## **II RECORDS AT ISSUE**

- [7] The record consists of 13 pages of emails. Economy severed information on all 13 pages.

## **III DISCUSSION OF THE ISSUES**

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

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

- [9] 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 the following two elements:

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

[10] Once identified as personal information, the public body needs to consider subsection 29(1) of FOIP 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.

[11] Economy withheld the cell phone numbers of two government employees on all 13 pages citing subsection 29(1) of FOIP. The records are all email chains. The severed information is repeated over all of the pages. The cell phone numbers are listed at the bottom of the emails in the signature lines of the employees. In its submission, Economy asserted that subsection 29(1) of FOIP is a mandatory exemption and was utilized throughout the responsive record. Economy advised that it was aware that my office considers cell phone numbers to be business card information and therefore not personal information. However, it had severed the information already in other records still under review by my office and had made its submissions on those reviews. As such, in order to not undermine arguments already put forward on other files, the redactions and consistency were maintained.

[12] In order to qualify as personal information, the information must be personal in nature. *Personal in nature* means that the information reveals something personal about the individual. Information that relates to an individual in a professional, official or business capacity could only qualify if the information revealed something personal about the individual for example, information that fits the definition of employment history.

[13] *Business card information* is the type of information found on a business card (name, job title, work address, work phone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information.

[14] As determined in my Review Report 277-2016, employer assigned cell phone numbers are not personal in nature and therefore not personal information. Therefore, I find that

the business cell phone numbers of the government employees does not qualify as personal information pursuant to subsection 24(1) of FOIP. As such, I find that subsection 29(1) of FOIP was not appropriately applied by Economy. I recommend Economy release this information.

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

[15] Subsection 17(1)(a) of FOIP is a discretionary exemption and 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;

[16] This exemption is meant to allow for candor during the policy-making process, rather than providing for non-disclosure of all forms of advice. The established test my office uses to determine the applicability of this exemption is as follows. All three parts of the test must be met in order for subsection 17(1)(a) of FOIP to be found to apply:

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

[17] Economy applied subsection 17(1)(a) of FOIP to all 13 pages of the record which constitute email chains. The severed information repeats itself over several emails.

- [18] For pages 19 and 20, Economy asserted that the email is from the then President and Chief Executive Officer (CEO) of Crown Investments Corporation (CIC) to another individual within CIC and the then Special Advisor to the Deputy Minister of Economy. The email contains a recommendation from CIC. The recommendation was for the purposes of hiring an appraiser for the unnamed project, and was sent to someone who could implement the action.
- [19] *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.
- [20] From a review of the severed information on pages 19 and 20, it appears the information qualifies as a recommendation. It contains a suggested course of action and the rationale. The first part of the test is met for these pages.
- [21] For pages 21 to 28, Economy asserted that the emails are three emails in a chain, in duplicate. The first email is from the then Special Advisor to the Deputy Minister of Economy to the then President and CEO of CIC. This email specifically requests advice from CIC on next steps on a project. The action in question is the next steps to be taken on an unnamed project, and involves someone who can implement the action. The email on page 21 is then repeated throughout the chain.
- [22] For pages 29 to 31, Economy asserted that the emails are from the then Special Advisor to the Deputy Minister of Economy to the then Chief of Staff to the Minister of Economy. The purpose of the email was to provide the Chief of Staff with some background information on the current state of the GTH project. It was also to seek advice from the Minister, for the purposes of taking an action, and involved someone who could implement the action (the Special Advisor). The email on page 29 is repeated throughout the chain.

- [23] *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.
- [24] From a review of the severed information on pages 21 to 31, it appears the Senior Advisor is seeking advice, specifically, options for future action. For example, on pages 29 to 31, the emails contain the statement that guidance is being sought. In addition, options for future action are presented. Based on this, I find that the information in pages 21 to 31 qualify as advice for the purposes of subsection 17(1)(a) of FOIP. The first part of the test is met.
- [25] For the second part of the test, the individuals involved in all of the emails on pages 19 to 31, are senior officials whose roles would involve the seeking and giving of advice on the issues being discussed. In all circumstances, the advice being sought is for the purpose of making a decision or taking an action. Finally, they involve or are intended for individuals who can take the actions. Therefore, the second part of the test is met.
- [26] Finally, for the third part of the test, the emails were all prepared by the senior officials noted above. Therefore, the third part of the test is met.
- [27] As all three parts of the test are met, I find that Economy appropriately applied subsection 17(1)(a) of FOIP.

#### **IV FINDINGS**

- [28] I find that subsection 29(1) of FOIP was not appropriately applied by Economy.
- [29] I find that subsection 17(1)(a) of FOIP was appropriately applied by Economy.

**V RECOMMENDATIONS**

[30] I recommend that Economy release the cell phone numbers of the government employees.

[31] I recommend that Economy continue to withhold the information on pages 19 to 31.

Dated at Regina, in the Province of Saskatchewan, this 28<sup>th</sup> day of March, 2017.

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