



## **REVIEW REPORT 308-2016 and 309-2016**

### **Global Transportation Hub Authority**

**June 13, 2017**

**Summary:** The Applicant requested records from the Global Transportation Hub Authority (GTH) related to a land transaction west of Regina. GTH provided the Applicant with a portion of the records but withheld information citing subsections 18(1)(d) and (f) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Upon review, the Commissioner found that subsection 18(1)(f) 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 18(1)(f) of FOIP applied to other information and recommended that it continue to be withheld.

### **I BACKGROUND**

[1] On May 26, 2016, the Applicant submitted two access to information requests to the Global Transportation Hub Authority (GTH) for:

***Access to information request #1 (Review file 308-2016)***

...the land sale agreements with SaskPower related to the sale of 145 acres to the crown corporation...

***Access to information request #2 (Review file 309-2016)***

...a copy of the purchase agreement and or contract between SaskPower and the GTH for the purchase of 145 acres of land in the GTH.

[2] By letters dated August 9, 2016, GTH provided its response to the Applicant's requests indicating that access was denied. In addition, GTH advised that the information was

being withheld pursuant to subsections 18(1)(b), (d), (f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

- [3] On December 22, 2016, my office received two Requests for Review from the Applicant, in which he disagreed with GTH's application of the above provisions.
- [4] On December 29, 2016, my office provided notification to GTH and the Applicant of my office's intent to conduct two reviews. My office requested GTH provide an Index of Records (Index), a copy of the records at issue and a submission. The Applicant was also invited to provide a submission for my office's consideration.
- [5] On January 20, 2017, GTH applied severing to the records and released additional information to the Applicant. In addition, it reduced the exemptions relied on to subsections 18(1)(d) and (f) of FOIP.
- [6] On May 12, 2017, GTH provided my office with its submission, an Index and a copy of the records.

## **II RECORDS AT ISSUE**

- [7] The record for both reviews is one 26 page document titled, *Agreement to Purchase and Sale of Real Property* (Agreement). It is an agreement between GTH and SaskPower.

## **III DISCUSSION OF THE ISSUES**

- [8] GTH is a "government institution" as defined by subsection 2(1)(d)(ii) of FOIP.

### **1. Did the GTH properly apply subsection 18(1)(f) of FOIP?**

- [9] Subsection 18(1)(f) of FOIP is a discretionary exemption and provides:

**18(1)** A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

[10] For this provision to be found to apply there must be objective grounds for believing that disclosing the information could result in prejudice. *Prejudice* in this context refers to detriment to economic interests.

[11] *Economic interest* refers to both the broad interests of a public body and for the government as a whole, in managing the production, distribution and consumption of goods and services. The term also covers financial matters such as the management of assets and liabilities by a public body and the public body's ability to protect its own or the government's interests in financial transactions.

[12] The public body does not have to prove that prejudice is probable, but needs to show that there is a "reasonable expectation" of prejudice if any of the information were to be released. All three parts of the following test must be met:

1. Is there a clear cause and effect relationship between the disclosure and the prejudice which is alleged?
2. Is the prejudice caused by the disclosure more than trivial or inconsequential?
3. Is the likelihood of prejudice genuine and conceivable?

[13] GTH applied subsection 18(1)(f) of FOIP to information on pages 5, 12, 13 and 14 of the record.

[14] For the information severed on page 5, GTH asserted in its submission that releasing the amount in the Payment section 3.02 (a) of the Agreement will provide details of this commercial transaction to other potential new clients. This could add a barrier to GTH's future negotiations. In addition, GTH pointed to Review Report 159-2016 in support of its position. In that case, I found that it was appropriate to redact the same type of

information in an Agreement between Brightenview Development International Inc. and GTH.

- [15] For the information severed on pages 13 and 14, GTH asserted in its submission that release of the information could erode GTH's marketing position, however, I cannot reproduce those arguments without revealing the information withheld. GTH also pointed to Review Report 159-2016 in which the same information was found to qualify for subsection 18(1)(f) of FOIP.
- [16] Based on GTH's submission and upon review of previous findings by my office in Review Report 159-2016, I find that subsection 18(1)(f) of FOIP applies to the information severed at section 3.02 (a) on page 5 and section 11.04 on pages 13 and 14 of the Agreement. The information is the same as that found to qualify for subsection 18(1)(f) of FOIP in Review Report 159-2016. As I have found that subsection 18(1)(f) of FOIP applies, there is no need to consider subsection 18(1)(d) of FOIP.
- [17] The only information remaining is that which has been severed at 11.01 (h), (j) and (k) on page 12. GTH asserted in its submission that the information withheld relates to the development of timelines. GTH explained in further detail how release of the information could prejudice SaskPower and GTH, however, I cannot reproduce those arguments without revealing the information withheld.
- [18] Based on the assertions made by GTH, it is not clear to me how the concerns raised in GTH's submission could result in prejudice to the economic interests of GTH and/or SaskPower. The concerns appear to be about public perceptions and public scrutiny. GTH did not make the connection between disclosure and the harm to economic interest. Therefore, the first part of the test has not been met. As such, I find that subsection 18(1)(f) of FOIP does not apply to the information on page 12. I recommend this information be released.

#### **IV FINDINGS**

[19] I find that subsection 18(1)(f) of FOIP applies to the information severed at 3.02 (a) on page 5 and section 11.04 on pages 13 and 14 in the Agreement.

[20] I find that subsection 18(1)(f) of FOIP does not apply to the information severed at 11.01 (h), (j) and (k) on page 12.

#### **V RECOMMENDATIONS**

[21] I recommend GTH release the information on page 12.

[22] I recommend GTH continue to withhold the information on pages 5, 13 and 14.

Dated at Regina, in the Province of Saskatchewan, this 13<sup>th</sup> day of June, 2017.

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