



REVIEW REPORT 311-2016

Ministry of Justice

April 12, 2017

Summary: The Applicant appealed to the Office of the Information and Privacy Commissioner (IPC) when he was refused access to a record by the Ministry of Justice (Justice). Justice withheld the record, in its entirety, pursuant to subsection 16(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The IPC found that Justice did not demonstrate that subsection 16(1) of FOIP applies.

I BACKGROUND

- [1] On October 26, 2016, the Ministry of Justice (Justice) received the following access to information request:
- Please provide a copy of the recently completed review report on the Office of the Chief Coroner.
- [2] In a letter dated November 18, 2016, Justice advised the Applicant that it was refusing the Applicant access to the record in its entirety. It cited subsection 16(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as its reason.
- [3] On December 22, 2016, the Applicant requested a review by my office.
- [4] On December 30, 2016, my office notified both the Applicant and Justice that it would be undertaking a review.
- [5] In its submission, Justice clarified it was relying on subsection 16(1), and not 16(1)(a), of FOIP to withhold the record in its entirety.

II RECORDS AT ISSUE

[6] The record at issue is the 8-page report issued by the Office of the Chief Coroner.

[7] Justice applied subsection 16(1) of FOIP to all 8 pages.

III DISCUSSION OF THE ISSUES

[8] Justice is a government institution as defined in subsection 2(d)(i) of FOIP.

1. Does subsection 16(1) of FOIP apply to the record?

[9] Justice applied subsection 16(1) of FOIP to withhold the record in its entirety. Subsection 16(1) of FOIP provides as follows:

16(1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council, including:

(a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

(b) agendas or minutes of the Executive Council or any of its committees, or records that record deliberations or decisions of the Executive Council or any of its committees;

(c) records of consultations among members of the Executive Council on matters that relate to the making of government decisions or the formulation of government policy, or records that reflect those consultations;

(d) records that contain briefings to members of the Executive Council in relation to matters that:

(i) are before, or are proposed to be brought before, the Executive Council or any of its committees; or

(ii) are the subject of consultations described in clause (c).

[10] In order for subsection 16(1) of FOIP to apply, Justice must demonstrate that this report was intended for Executive Council (Cabinet) or one of its committees.

- [11] Sometimes, on the face of the record, it is clear that records are intended for Cabinet or one of its committees. However, based on a review of the record, there is nothing within the report that would suggest that this report was intended for Treasury Board.
- [12] In its submission for this review, Justice asserted that the record is a report that is intended to proceed to Treasury Board, which is a committee of Executive Council. Materials prepared as a part of any Ministry's program review is that it is presented to the Performance, Accountability and Improvement Deputy Minister Committee (DM Committee). Then, it is the DM Committee that will determine what program reviews will proceed to the Treasury Board.
- [13] My office's Review Report 023-2014 provided that subsection 16(1) of FOIP applies to documents that were intended for Executive Council or one its committees, even if they were never actually presented. In that review, Justice provided my office with a copy of an Action Items List for briefing the Minister of Corrections of Policing. On that list is a Cabinet Decision Item (CDI) which showed the record at issue in that review was still in the process of making its way to Cabinet.
- [14] In this case, though, my office did not receive any documentation to support Justice's assertion that the report was intended for Treasury Board. At paragraph 80 of its submission, Justice had asserted that conversations between the Chief Coroner, Senior Policy Analyst, and Deputy Minister took place to determine whether the report should proceed to Treasury Board. Therefore, an example of supporting documents could have been records that documented these conversations. My office sought supporting documents from Justice in an email dated March 30, 2017. However, Justice responded by saying it does not have any more supporting documentation then what has been provided to my office.
- [15] Justice advised my office that the report was loaded onto an information technology system named DocShare for the DM Committee. It cited the April 16, 2014 edition of the Hansard Verbatim Report, which provides that DocShare is a system owned by Executive Council and is meant to modernize the cabinet document process. It asserts that since it is

through DocShare that documents are provided to Cabinet, and the report was loaded onto DocShare, then the report was intended for Cabinet.

[16] My office reviewed the April 16, 2014 edition of the Hansard Verbatim Report. The former Deputy Minister to the Premier explained that the DocShare is an online electronic cabinet agenda and document development system.

[17] Further, my office reviewed the April 28, 2014 edition of the Hansard Verbatim Report. The Deputy Minister of Central Services explained that DocShare is for all Government of Saskatchewan ministries to collaborate on and create cabinet documents. He explained that access to documents or links are no longer accessible soon after a cabinet meeting is over.

[18] I can see how asserting that a document was uploaded to DocShare can show to a degree that a document was intended for Cabinet. However, assertions are not enough. Justice has not provided my office with any evidence to support its assertions that this report was indeed uploaded onto DocShare. I acknowledge that it may be difficult to demonstrate that a document was indeed uploaded to DocShare if it is designed so that links to documents are no longer accessible after a period of time. However, it would be a dangerously low threshold to meet if my office agreed that subsection 16(1) of FOIP applied based on a government institution's mere assertion that a document was uploaded onto DocShare. Such a low threshold would mean that government institutions would only need to assert, with no evidence, that a record was uploaded to DocShare in order to refuse the applicant access to records.

[19] Therefore, Justice has not demonstrated that that subsection 16(1) of FOIP applies.

IV FINDING

[20] I find that Justice has not demonstrated that subsection 16(1) of FOIP applies.

V RECOMMENDATION

[21] I recommend that Justice release the record in its entirety.

Dated at Regina, in the Province of Saskatchewan, this 12th day of April, 2017.

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