

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT F-2014-003

Ministry of Justice

Summary:

In December 2011, an Applicant submitted an access to information request to the Ministry of Justice (Justice). Justice withheld records, citing subsections 13(1)(b), 14, 15(1)(d), 16(1)(a), (d), 17(1)(a), (b), (c), 19(1)(b), 22(a), (b) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review with the Office of the Saskatchewan Information and Privacy Commissioner (OIPC). In addition to reviewing the sections relied on to withhold the records, the Applicant requested the Commissioner review whether Justice's 30 day extension was in compliance with subsection 12(1)(a) of FOIP. In its submission to the OIPC, Justice stated it was no longer relying on subsection 19(1)(b) of FOIP. The Commissioner found that Justice's 30 day extension was in accordance with subsection 12(1)(a) of FOIP. The Commissioner also found that subsections 22(b), (c) and 17(1)(b)(i) of FOIP applied to the records. Therefore, the Commissioner recommended that Justice continue to withhold the records in question.

I BACKGROUND

[1] On December 13, 2011, the Ministry of Justice (Justice) received the following access to information request:

I request access to Saskatchewan's agreement with [law firm] concerning a legal action on behalf of Saskatchewan to recover health care costs from the tobacco industry. This is the agreement to which Saskatchewan's September 29, 2011 news release entitled *Saskatchewan Taking Steps to Recover Health Care Costs from Tobacco Industry* refers: see <http://www.gov.sk.ca...>

I also request access to all records (including, but not limited to, analyses, authorizations, briefing notes, correspondence, drafts, e-mails, inter- and intra-

- governmental communications, letters, memos, notes, presentations, reports and research papers) that relate to the agreement and that are in the possession or under the control of the Ministry of Justice and Attorney General.
- [2] On the same date, the Applicant also sent similarly worded requests to the Ministry of Finance (Finance) and the Ministry of Health (Health). Finance advised the Applicant by way of letter dated December 15, 2011, that it had transferred the request to Health.
- [3] Health advised the Applicant by a letter dated December 29, 2011, that it had transferred both his request and the one transferred from Finance to Justice.
- [4] On January 10, 2012, Justice responded to the Applicant confirming receipt of his access request and those transferred from Finance and Health. Justice advised the Applicant that it required an additional 30 days.
- [5] On February 13, 2012, Justice provided its response to the Applicant indicating that access was denied pursuant to subsections 13(1)(b), 14, 15(1)(d), 16(1)(a) and (d), 17(1)(a), (b) and (c), 19(1)(b) and 22(a), (b) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [6] On April 2, 2012, my office received a Request for Review from the Applicant.
- [7] My office notified both parties of its intention to undertake a review via letter dated June 21, 2012. At that time, my office requested that Justice provide a copy of the record and submission to my office supporting its reliance on the subsections noted in its response to the Applicant. My office also requested that Justice provide its submission as to why the 30 day extension was warranted pursuant to subsection 12(1)(a)(i) of FOIP.
- [8] On August 1, 2012, my office received a letter from Justice indicating that it had reviewed the record and concluded that it was no longer relying on subsection 19(1)(b) of FOIP.

[9] On January 11, 2013, my office received a copy of the record and the Index of Records (Index) from Justice. The record appeared to total 604 pages. However, upon review, it appeared 18 pages were duplicates or not responsive to the Applicant's access request and were removed by Justice.

[10] On January 29, 2013, my office received a copy of a letter Justice sent to the Applicant. The letter included copies of 13 additional pages being released to the Applicant.

II RECORDS AT ISSUE

[11] The record in question involves 573 pages (see Appendix A).

III DISCUSSION OF THE ISSUES

[12] Justice is a "government institution" within the meaning of subsection 2(1)(d) of FOIP.

1. Did the Ministry of Justice's extension of the response deadline satisfy the criteria set out in subsection 12(1)(a) of FOIP?

[13] Section 12 of FOIP provides as follows:

12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records; or

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the government institution;

[14] In its January 10, 2012 response, Justice informed the Applicant of the 30 day extension, the reasons for the extension and the new response deadline of February 11, 2012. Upon

review, Justice's response to the Applicant was dated February 13, 2012. Therefore, Justice was two days late in providing its response.

[15] I will now consider one of the reasons provided by Justice for the 30 day extension which was it involved a large volume of records. In this case, the responsive record was more than 500 pages. I find that generally more than 500 records constitute a large number of records. I am willing to allow any public body that has to review more than 500 records the additional time to review, process and develop its response under section 7.

[16] Therefore, I find that the 30 day extension was in accordance with subsection 12(1)(a) of FOIP.

2. Did the Ministry of Justice appropriately apply subsection 22(b) of FOIP to the record in question?

[17] Subsection 22(b) of FOIP states the following:

22 A head may refuse to give access to a record that:

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;

[18] Justice cited subsection 22(b) of FOIP on the majority of the record. The Applicant's submission did not speak specifically to subsection 22(b) of FOIP.

[19] In applying subsection 22(b) of FOIP there are two questions to be asked:

- i. Were the records "prepared by or for" an agent or legal counsel for a government institution?
- ii. Were the records provided in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

(Review Report F-2012-006 at [107])

[20] The majority of the records cited for exemption under subsection 22(b) of FOIP appear to be email exchanges, draft agreements and lawyers' notes. From a review of the record, many of the records appear to originate from Justice and/or the legal consortium representing the Government of Saskatchewan. For example, record 27a is an email from a Justice lawyer to lawyers in the consortium of lawyers representing the Government of Saskatchewan in the litigation. A further example is record 18 which appears to include a letter and an attachment from the consortium of lawyers to legal counsel at Justice.

[21] I find that the records qualify as records prepared by or for legal counsel for a government institution.

[22] In this case, legal counsel (with both Justice and the consortium of legal counsel) appears to have been providing legal services to the Government of Saskatchewan in relation to specific litigation. This included researching, consulting, drafting, and advising the government. These types of services appear to fit the definition of legal services.

[23] Therefore, I find that subsection 22(b) of FOIP applies to all of the records except a portion of records 150 and 156.

3. Did the Ministry of Justice appropriately apply subsection 22(c) of FOIP to the record in question?

[24] Subsection 22(c) of FOIP provides as follows:

22 A head may refuse to give access to a record that:

...

(c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other person in relation to a matter involving the provision of advice or other services by the agent or legal counsel

[25] There is one record remaining which Justice applies subsection 22(c) of FOIP to: record 156. Record 156 appears to be an email chain between officials at Health and legal

counsel at Justice. Justice applies subsection 22(c) to one portion of the email chain. The Applicant's submission did not speak to subsection 22(c) of FOIP.

[26] The two criteria that must be met are:

- i. The record must be correspondence between an agent or lawyer of the Minister of Justice and Attorney General or a public body and any other person; and
- ii. The information in the correspondence must be in relation to a matter involving the provision of advice or other services by the agent or lawyer...

(Review Report F-2014-001 at [405])

[27] Thus, this record would meet the first part of the test for subsection 22(c) of FOIP.

[28] The subject matter of the email information in question appears to pertain to issues regarding litigation. Thus, the information in the email appears to meet the second part of the test for subsection 22(c) of FOIP.

[29] As both parts of the test are satisfied, I find that subsection 22(c) of FOIP applies to the remaining withheld information in record 156. It should continue to be withheld from the Applicant.

4. Did the Ministry of Justice appropriately apply subsection 17(1)(b)(i) of FOIP to the record in question?

[30] Subsection 17(1)(b) of FOIP 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:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[31] Justice applies subsection 17(1)(b)(i) to three remaining records – records 41 (page 200, not 201), 150 and 154.

[32] I apply the following test for subsection 17(1)(b)(i) of FOIP:

The opinions solicited during a “consultation” or “deliberation” must:

- a) either be sought or expected, or be part of the responsibility of the person from whom they are sought;
- b) be sought for the purpose of doing something, such as taking an action or making a decision; and
- c) involve someone who can take or implement the action.

(Review Report F-2007-002 at [11])

[33] From a review of records 41 and 150, they appear to be email chains internal to Justice. In the Appendix provided by Justice the individuals who are involved in the email chain for record 150 have the roles of Director of Communications and Communications Officer at Justice. The roles of the individuals in record 41 are Director of Communications, Communications Officer, Chief of Staff and Ministerial Assistant at Justice. Record 154 also appears to be an email chain between the same individuals. The relevant portions of both of these emails appear to contain information that would constitute a ‘consultation’.

[34] In conclusion, I find that Justice appropriately applied subsection 17(1)(b)(i) of FOIP to records 41, 150 and 154. I recommend Justice continue to withhold these records.

IV FINDINGS

[35] I find that the Ministry of Justice’s extension of 30 days was in accordance with subsection 12(1)(a) of FOIP.

[36] I find that the Ministry of Justice appropriately applied subsections 22(b), (c) and 17(1)(b)(i) of FOIP to the records in question.

V RECOMMENDATIONS

[37] I recommend that the Ministry of Justice continue to withhold the information in the records that were found to qualify for exemption under subsections 22(b), (c) and 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act*.

Dated at Regina, in the Province of Saskatchewan, this 25th day of July, 2014.

RONALD J. KRUZENISKI, Q.C.
Saskatchewan Information and Privacy
Commissioner

Appendix A:

Record Number	Page Numbers	Description	Section
1	1-7	Draft Briefing Note	22(a)(b)
2	8-13	Email	22(b)(c)
3	14	Email	15(1)(d), 17(1)(b), 22(a), (b), (c)
4	15	Handwritten notes	22(a), (b)
5	16	Handwritten notes	22(a), (b)
6	17-23	Email	22(b), (c)
7	24	Email	22(b), (c)
8	25-26	Notes	14(a), 15(1)(d), 22(a), (b)
9	27	Email	22(b), (c)
10	28	Email	22(a), (b), (c)
11	29	Handwritten notes	15(1)(d), 22(a), (b)
12	36-41	Email	17(1)(a), 22(a), (b), (c)
13	42-44	Draft Questions & Answers	17(1)(a), 22(a),(b)
14		Not relevant to request - removed by Justice	
15	46-47	Email	22(b), (c)
16	48-50	Handwritten notes	14(a), 15(1)(d) & 22(a), (b)
17	51-52a	Email	17(1)(b) & 22(b), (c)
18	53-64a	Letter	15(1)(d), 22(a), (b), (c)
19	65	Email	22(b), (c)
20	66	Emails	22(b), (c)
21	67	Email	13(1)(b), 14(a), 22(a), (b), (c)
22	68	Handwritten notes	14(a), 22(a), (b)
23	69-72	Email	17(1)(b), 22(b), (c)
24	73	Email	22(b), (c)
25	74-77	Email	15(1)(d), 17(1)(a), 22(a), (b), (c)
26	78	Email	14(a), 22(b), (c)
27	79-82	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(a), (c), 22(a), (b), (c)
27a	83-85	Email	14(a), 15(1)(d), 22(b), (c)
28	86-88	Email	14(a), 15(1)(d), 22(a), (b), (c)
29	89-91	Handwritten notes	13(1)(b), 14(a), 22(a), (b)
30	92-105	Email	13(1)(b), 14(a), 15(1)(d), 22(a), (b), (c)
31	106-118	Letter	15(1)(d), 22(a), (b), (c)
32	119-121	Email	13(1)(b), 14(a), 17(1)(c), 15(1)(d), 22(a), (b), (c)
33	122-132a	Draft agreement	15(1)(d), 17(1)(c), 22(a), (b)
34	133-135	Email	13(1)(b), 14(a), 16(1), 17(b), 22(b), (c)
35	136-147	Draft agreement	15(1)(d), 17(1)(c), 22(a), (b)
36	148-158	Draft agreement	15(1)(d), 17(1)(c), 22(a), (b)
37	159-169	Draft agreement	15(1)(d), 17(1)(c), 22(a), (b)

38	170-171	Email	22(b), (c)
39	172-185	Email	15(1)(d), 17(1)(c), 22(a), (b), (c)
40	186-199	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
41	200-201	Email	17(1)(b), 22(b), (c)
42	203	Email	14(a), 17(1)(c), 22(a), (b), (c)
43	204	Email	13(1)(b), 14(a), 15(1)(d), 22(a), (b), (c)
44	205-206	Email	14(a), 22(b), (c)
45	207-209	Notes	14(a), 15(1)(d), 17(1)(c), 22(a), (b)
46	210-221	Email	15(1)(d), 17(1)(c), 22(a), (b), (c)
47	222	Handwritten notes	13(1)(b), 14(a), 22(b)
48	223	Email	14(a), 22(b), (c)
49	224	Handwritten notes	15(1)(d), 22(b)
50	225	Handwritten notes	13(1)(b), 14(a), 22(a), (b)
51	226	Email	22(a), (b), (c)
52	227	Email	14(a), 22(a), (b), (c)
53	228	Handwritten notes	13(1)(b), 14(a), 22(a), (b)
54	229-231	Handwritten notes	13(1)(b), 14(a), 17(1)(c), 22(a), (b)
55	234	Email	13(1)(b), 14(a), 17(1)(c), 22(b), (c)
56	235	Email	14(a), 22(b), (c)
57	236	Handwritten notes	22(a), (b)
58	237-238	Email	13(1)(b), 14(a), 22(b), (c)
59	239-240	Email	13(1)(b), 14(a), 22(a), (b), (c)
60	241	Email	13(1)(b), 14(a), 22(b), (c)
61	242	Handwritten notes	13(1)(b), 14(a), 22(b), (c)
62	243-245	Handwritten notes	13(1)(b), 14(a), 15(1)(d), 22(a), (b)
63	246	Handwritten notes	22(a), (b)
64	247	Handwritten notes	13(1)(b), 14(a), 22(a), (b)
65		Not relevant to request - removed by Justice	
66	251-252	Handwritten notes	13(1)(b), 14(a), 22(a), (b)
67	253	Email	13(1)(b), 14(a), 22(a), (b), (c)
68	254	Email	22(a), (b), (c)
69	255	Email	13(1)(b), 14(a), 22(a), (b), (c)
70	256-269	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
71	270-284	Draft agreement	14(a), 15(1)(d), 17(1)(c), 22(a), (b)
72	285-288	Email	15(1)(d), 17(1)(a), 22(a), (b), (c)
73	288(a)-289	Email	13(1)(b), 14(a), 22(a), (b), (c)
74	290-291	Handwritten notes	13(1)(b), 14(a), 17(1)(c), 22(a), (b)
75	292	Email	13(1)(b), 14(a), 22(a), (b), (c)
76	293-294	Email	13(1)(b), 14(a), 17(1)(c), 22(a), (b), (c)
77	295	Handwritten notes	13(1)(b), 14(a), 22(a), (b)
78	296	Handwritten notes	13(1)(b), 14(a), 22(a), (b)

79		Duplicate record – removed by Justice	
80	298	Handwritten notes	22(b)
81	299-303	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
82	304-313	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
83		Not relevant to request - removed by Justice	
84	318-321	Email	22(a), (b), (c)
85		Not relevant to request - removed by Justice	
86	325	Email	13(1)(b), 14(a), 22(b), (c)
87	326	Email	16(1), 22(b), (c)
88	327-330	Email	14(a), 22(b), (c)
89	331-335	Email	13(1)(b), 14(a), 16(1), 22(a), (b), (c)
90	336-348	Email	13(1)(b), 14(a), 15(1)(d), 22(a), (b), (c)
91	349-352	Email	14(a), 16(1), 17(1)(d), 22(a), (b), (c)
92	353-360	Checklist & Approval form	13(1)(b), 14(a), 16(1), 22(a), (b)
93	361-363	Draft Information Item	13(1)(b), 14(a), 16(1), 17(1)(b), 22(a), (b)
94	364-368	Portion of email	15(1)(d), 17(1)(b), 22(a), (b), (c)
95	369-371	Portion of email	15(1)(d), 17(1)(b), 22(a), (b), (c)
96	372-374	Email	15(1)(d), 17(1)(b), 22(a), (b), (c)
97-101		Duplicate or not relevant to request - removed by Justice	
102	384	Email	14(a), 22(a), (b), (c)
103-105		Duplicate – removed by Justice	
106	403-416	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
107	417-425	Email	13(1)(b), 14(a), 16(1), 22(a), (b), (c)
108		Not relevant to request - removed by Justice	
109	427-434	Draft Information Item	13(1)(b), 14(a), 16(1), 17(1)(b), 22(a), (b)
110	435-436	Email	13(1)(b), 14(a), 22(a), (b), (c)
111	438-446	Email	13(1)(b), 14(a), 22(b), (c)
112	447-451	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
113	452-454	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
114	455	Email	14(a), 22(b), (c)
115	456-471	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
116	472	Email	16(1), 22(b), (c)
117		Duplicate – removed by Justice	
118	480-491	Draft agreement	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b)
119	493-497	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)

120	498-501	Draft agreement	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b)
121	502-503	Email	13(1)(b), 14(a), 22(a), 22(b), (c)
122	504	Handwritten notes	22(a), (b)
123	505-508	Notes	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b)
124	509-517	Handwritten notes	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b)
125	518	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
126	519	Email	14(a), 17(1)(c), 22(a), (b), (c)
127	520	Email	14(a), 22(b), (c)
128	521	Email	14(a), 22(b), (c)
129		Duplicate – removed by Justice	
130	523-525	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
131	526-528	Email	13(1)(b), 14(a), 15(1)(d), 22(a), (b), (c)
132	529-531	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
133	532-536	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
134		Duplicate – removed by Justice	
135	540-541	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
136	542-543	Email	13(1)(b), 14(a), 15(1)(d), 17(1)(c), 22(a), (b), (c)
137	544	Email	22(b), (c)
138	545	Email	14(a), 22(a), (b), (c)
139	546-551	Handwritten notes	13(1)(b), 14(a), 17(1)(c), 22(a), (b)
140	552-554	Email	13(1)(b), 14(a), 22(b), (c)
141	555	Email	13(1)(b), 14(a), 22(a), (b), (c)
142		Duplicate – removed by Justice	
143	558-566	Email	13(1)(b), 14(a), 22(a), (b), (c)
144	567	Email	22(b), (c)
145	568	Email	22(b), (c)
146	569-579	Email	13(1)(b), 14(a), 15(1)(d), 22(a), (b), (c)
147	580-581	Email	22(a), (b), (c)
148	582-583	Email	22(b), (c)
149	584-585	Email	22(b), (c)
150	586-590	Email	17(1)(b), 22(a), (b), (c)
151	591-594	Email	14(a), 16(1), 17(1)(b), 22(b), (c)
152	595-596	Email	14(a), 15(1)(d), 22(a), (b), (c)
153	597-599	Email	15(1)(d), 16(1), 17(1)(a), 22(a), (b), (c)
154	600	Email	17(1)(b)
155	601-602	News release	Released by Justice
156	603-604	Email	13(1)(b), 14(a), 22(a), (b), (c)