



REVIEW REPORT 056-2024

Ministry of Environment

September 12, 2024

Summary: The Applicant sought from the Ministry of Environment (Environment) a copy of meeting minutes of one of its advisory committees. Environment withheld the record, in full, pursuant to subsection 17(1)(f)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant was not satisfied with Environment's response and asked the Commissioner to review it. The A/Commissioner found that Environment had not properly applied subsection 17(1)(f) of FOIP and recommended that Environment release the record to the Applicant within 30 days of the issuance of this Report.

I BACKGROUND

[1] On January 31, 2023, the Ministry of Environment (Environment) received the Applicant's access to information request for the following (time period January 1, 2022 – December 31, 2022):

Wildlife Advisory Committee minutes for all of 2022

[2] In correspondence dated March 1, 2023, Environment responded that it was withholding the record, in full, pursuant to subsection 17(1)(f)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On March 1, 2024, the Applicant asked my office to review Environment's decision.

[4] On April 22, 2024, my office notified the Applicant and Environment of my intent to undertake a review of Environment’s decision to withhold the record, in full, pursuant to subsection 17(1)(f)(i) of FOIP.

[5] Environment provided its submission June 14, 2024. The Applicant provided information with their request for review.

II RECORD AT ISSUE

[6] The record is a 16-page document that Environment describes as “Record – R1 Wildlife Advisory Committee Meeting Minutes”; Environment denied access, in full, pursuant to subsection 17(1)(f)(i) of FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] Environment is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP; therefore, I have jurisdiction to undertake this review.

2. Did Environment properly apply subsection 17(1)(f) of FOIP?

[8] Subsection 17(1)(f) 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:

...
(f) agendas or minutes of:

(i) a board, commission, Crown corporation or other body that is a government institution; or

(ii) a prescribed committee of a government institution mentioned in subclause (i); or

[9] Subsection 17(1)(f) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose agendas or minutes of a board, commission, Crown corporation or other body that is a government institution or a prescribed committee of a government institution. The provision is intended to protect agendas and/or meeting minutes as they relate to decision-making within the bodies listed (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 8, 202 [*Guide to FOIP*, Ch. 4], p. 153). My office applies the following two-part test to determine if a government institution properly applied this provision:

1. Is the record an agenda of a meeting or minutes of a meeting?
2. Are the agendas or minutes of a: 1) board, commission, Crown corporation or other body that is a government institution; or 2) a prescribed committee of a board, commission, Crown corporation or other body that is a government institution?

[10] Agendas and minutes of meetings can be revealed if the information itself consists of agendas or meeting minutes, or if the information, if disclosed, would permit the drawing of accurate inferences as to the content of the actual agendas or meeting minutes. “Agendas” are a list of things to be done, as items to be considered at a meeting, usually arranged in order of consideration. “Minutes” are memoranda or notes of a transaction, proceeding or meeting, approved by the assembly. It is the record of all official actions taken (*Guide to FOIP*, Ch. 4, p. 154).

[11] Environment submits as follows:

The record at issue is entitled “Wildlife Advisory Committee Meeting Minutes” and indicates the dates and times of the meetings as well as who was in attendance and what was discussed. As such, the ministry takes the position that the record meets the definition of minutes.

Turning to the second part of the test, the ministry takes the position that the record constitutes minutes of a government institution, as the Wildlife Advisory Committee (WAC) is an extension of the ministry.

Section 15 of *The Executive Government Administration Act*, SS 2014, c E-13.1, states as follows:

15) For the purposes of exercising any of the powers or performing any of the duties or functions conferred or imposed on the minister by or pursuant to this Act or any other law, a minister may, subject to the approval of the Lieutenant Governor in Council, appoint one or more advisory committees for a specific period and for a specific purpose.

Section 3 of *The Ministry of Environment Regulations*, 2007, G-5.1 Reg 125, states:

3) The objects and purposes of the Ministry of Environment are the following:

(a) to provide the structure wherein and whereby the powers, responsibilities and functions of the Minister of Environment may be exercised and carried out;

...

(c) to co-ordinate, develop, promote and enforce policies and programs of the Government of Saskatchewan relating to the conservation, preservation, management, protection and development of fish, wildlife, air, water, resource lands and other renewable resources in Saskatchewan;

...

The ministry submits that it has a broad mandate to appoint advisory committees and to rely on the advice and input from the appointed committees to carry out the objectives and purposes of the not only the ministry, but the Government of Saskatchewan as a whole.

Further authority to appoint advisory committees is found in section 8 of *The Wildlife Act*, SS 1998, c W13.12, which states:

8(1) The minister may appoint advisory committees, which shall meet on the request of the minister or the director.

(2) An advisory committee shall act in an advisory capacity to the minister or the director on matters of general interest respecting the provisions of this Act.

...

The ministry takes the position that as the ministry is a government institution pursuant to subsection 2(1)(d)(i) of FOIP, and not a prescribed board, commission, Crown Corporation, or other body pursuant to subsection 2(1)(d)(ii) of FOIP, a large, liberal, and more inclusive definition of a committee is warranted. Given that the WAC is a committee established by a government institution, with its members chosen entirely at the discretion of the Minister, it is not necessary for it to be prescribed in the regulations, pursuant to subsection 17(1)(f)(ii), but rather is afforded the exemption outlined in subsection 17(1)(f)(i) to meet the objectives of FOIP, to protect minutes as they relate to the decision making within a government institution. It is noteworthy that the wording of subsection 17(1)(f)(i) does not use the word “prescribed” and simply speaks to the agendas or minutes of a board,

commission, Crown corporation or other body that is a government institution. Thus, the ministry argues that this necessitates a broader interpretation.

Furthermore, the ministry argues that the minutes were minutes of a meeting convened by the ministry, a government institution. The TOR, at page 2, includes a recognition that the WAC is an advisory body, and that the ministry makes the final decision.

[12] Environment added that the Wildlife Advisory Committee (WAC) is established under a Ministers Order (Order) and provided a copy to my office. The Order lays out the effective dates being from January 21, 2021, to December 31, 2023. Given the Applicant's timeframe for all of 2022, the Order was in effect during that time.

[13] Based on a review of the record, I am satisfied that it meets the first part of the test. It is a record of the minutes of meetings of the WAC that lays out details such as date, time and place. The minutes also outline attendance and captures the questions and responses from meeting participants.

[14] On the second part of the test, Environment's argument appears to be that it is "not necessary for it [the WAC] to be prescribed in the regulations, pursuant to subsection 17(1)(f)(ii) [of FOIP]" and should instead be afforded protection pursuant to subsection 17(1)(f)(i) of FOIP as the minutes "relate to the decision making within a government institution." Environment further argues the meeting was convened by Environment, and that the Terms of Reference recognize the committee as an advisory board wherein Environment has the decision-making power. In other words, Environment's argument appears to be that the WAC is part of its larger decision-making process and therefore subclause 17(1)(f)(i) should be broadly interpreted to include the WAC. In making this argument, Environment further submits as follows:

In General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance, 1993 CanLII 9128 (SK CA), the Court of Appeal stated the following at paragraph 11:

There are specific exemptions from disclosure set forth in the Act, but these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act. That is not to say that statutory exemptions are of little or no significance. We recognize that they are intended to have a meaningful

reach and application. The Act provides for specific exemptions to take care of potential abuses. There are legitimate privacy interests that could be harmed by release of certain types of information. Accordingly, specific exemptions have been delineated to achieve a workable balance between the competing interests...

[15] The WAC is not a government institution as defined by subsection 2(1)(d) of FOIP, and it is not found in the Appendix, PART I of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) as a prescribed body. The question, then, is whether subclause 17(1)(f)(i) of FOIP can be, as Environment argues, broadly interpreted to include an advisory board convened by the Minister. In considering this, I turn towards [Report F-2006-001](#), where former Commissioner Dickson considered a broad interpretation of subsection 15(1)(c) of FOIP. At paragraphs [38] and [39] of that report, the former Commissioner stated as follows:

[38] I am therefore required to interpret the words “*disclose information with respect to a lawful investigation*” by giving them a meaning different than the other 13 specified circumstances enumerated in section 15(1). Many of the other 13 circumstances would be subsumed in the broad interpretation of section 15(1)(c) that is urged by CPS. **If section 15(1)(c) were to be given as expansive a meaning as urged by CPS and would capture “information with respect to a lawful investigation”, regardless of whether that investigation is current or has been completed, there would be little need for prescribing those 13 other circumstances.**

[39] Our interpretation must reflect the purposes of the Act as defined in our Reports 2004-003, [5] to [11]; 2005-003, [10]. The purposes our office has ascribed to the Act have been reinforced by court decisions such as the decision of the Federal Court in *Canada (Information Commissioner) v. Canada (Immigration & Refugee Board)* (1998), [1997 CanLII 5922 \(FC\)](#), 140 F.T.R. 140 (Fed. T.D.) at 150, that states:

“When Parliament explicitly sets forth the purpose of an enactment, it is intended to assist the court in the interpretation of the Act. The purpose of the Act is to provide greater access to government records. To achieve the purpose of the Act, one must choose the interpretation that least infringes on the public’s right of access.”

[Emphasis added]

[16] The above echoes *General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance* (General Motors) where it states that, “disclosure, not secrecy, is the dominant objective of the Act [FOIP].”

- [17] The Appendix, PART I of the FOIP Regulations includes specific bodies that appear to have some level of decision-making authority or power. For example, The Saskatchewan Highway Traffic Board is an “[independent quasi-judicial administrative tribunal](#)” that hears appeals for programs administered by the Saskatchewan Government Insurance. The Saskatchewan Labour Relations Board is another “[quasi-judicial tribunal](#)” that hears appeals from decisions rendered by adjudicators under *The Saskatchewan Employment Act*. The Saskatchewan Arts Board has [authority to provide grants, programs and services](#). Such powers or authorities are not unlike those held by ministries.
- [18] The WAC does not have a function beyond what would be considered an advisory role, and Environment has not stated that the WAC is even required to exist. *The Wildlife Act, 1998*, provides that the Minister may appoint such committees, which makes it discretionary on the Minister’s part and not required. Certainly, government institutions develop or implement numerous committees to consult with or to create advice, recommendations, policy options, etc., to help in their decision making, but such committees are not necessarily required to exist or have roles beyond consulting or providing advice. In this way, it appears that subsection 17(1)(f) of FOIP was not to be interpreted so broadly as to capture every little committee that a government institution may strike, but rather for bodies with some decision making authority or power. It may be that legislature was satisfied that other provisions found at PART III of FOIP may more appropriately apply to the information produced by committees with an advisory role.
- [19] I am not persuaded, then, by Environment’s arguments on the second part of the test and find that it did not properly apply subsection 17(1)(f) of FOIP. As such, I recommend it release the record to the Applicant within 30 days of the issuance of this Report.
- [20] I add that the Court in *General Motors* at paragraph [15] also advised that where there may be compelling reasons for nondisclosure, FOIP also “contemplates situations where a record must be edited” pursuant to section 8 of FOIP. A government institution still needs to turn its mind towards portions of a record it can release. Section 8 of FOIP reads as follows:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the appellant is refused access.

[21] Even if a government institution establishes reasons to deny access to a record, it also needs to consider what portions of a record can be released pursuant to section 8 of FOIP. For example, I have often said that government institutions should still release innocuous parts of a record or those that don't reveal the substance, which may include subject lines, headers, footers, dates, etc. Government institutions should also turn their minds towards portions of a record that may not be exempt, including information that may be publicly known. That did not occur in this matter. Going forward, I encourage Environment to be mindful of its obligation pursuant to section 8 of FOIP.

IV FINDINGS

[22] I find that I have jurisdiction to conduct this review.

[23] I find that Environment has not properly applied subsection 17(1)(f) of FOIP.

V RECOMMENDATION

[24] I recommend Environment release the record to the Applicant within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 12th day of September, 2024.

Ronald J. Kruzeniski, KC
A/Saskatchewan Information and Privacy
Commissioner