Office of the
Saskatchewan Information
and Privacy Commissioner

# REVIEW REPORT 093-2024

## Ministry of Immigration and Career Training

**November 4, 2024**

**Summary:** The Applicant made an access to information request to the Ministry of Immigration and Career Training (Immigration). In its section 7 decision, the Ministry denied access to portions of the record pursuant to subsections 17(1)(a), (g), 20(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant asked the Commissioner to review Immigration's decision. Immigration released previously withheld portions of the record to the Applicant, which meant it was no longer relying on subsection 17(1)(g) of FOIP. Further, subsection 17(1)(a) of FOIP was also no longer under consideration. The A/Commissioner found that Immigration did not properly apply subsections 20(a) and 29(1) of FOIP and recommended that Immigration release the withheld portions of the record to the Applicant within 30 days of the issuance of this Report. Lastly, the Commissioner found that Immigration met its obligations pursuant to section 8 of FOIP.

## I BACKGROUND

[1] On January 1, 2024, the Ministry of Immigration and Career Training (Immigration) received the Applicant's access to information request for the following for the time period "January 1, 2013 until present":

> SINP and Employer Services have 'internal policies' related to file assessment. See attached for proof. Please send me all internal policies at SINP in relation to job assessment, file assessment, applicant assessment, employer assessment, and any other policies that are not accessible to the general public.

[2] In correspondence dated February 26, 2024, Immigration advised the Applicant that it was extending its response time by 30 days pursuant to subsection 12(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] In correspondence dated March 26, 2024, Immigration issued is section 7 decision to the Applicant stating it was withholding portions of the record pursuant to subsections 17(1)(a), (g), 20(a) and 29(1) of FOIP.

[4] On March 27, 2024, the Applicant asked the Commissioner to undertake a review.

[5] On April 23, 2024, my office notified the Applicant and Immigration of my intention to undertake a review of Immigration's decision to withhold portions of the record pursuant to subsections 17(1)(a), (g), 20(a) and 29(1) of FOIP. My office also asked Immigration to comment on how it met its obligations pursuant to section 8 of FOIP.

[6] On May 16, 2024, Immigration provided my office with a copy of the records and its Index of Records. On June 24, 2024, Immigration provided its submission to my office. On the same date, Immigration released to the Applicant the portions of the records where it was relying on subsection 17(1)(g) of FOIP, stating it was no longer relying on this provision.

[7] On June 25, 2024, Immigration provided my office with an updated submission. The Applicant did not provide a submission.

## II RECORDS AT ISSUE

[8] The record is a 35-page document titled, "Job Approval Procedures". Immigration applied subsection 20(a) of FOIP to withhold portions of pages 7 to 10, 13 to 15, 18 to 20, and 26 to 29. It also applied subsection 29(1) of FOIP to a name and phone number on page 24. There are, therefore, 15 pages under review.

[9] As noted, Immigration is no longer relying on subsection 17(1)(g) of FOIP, and so it is not under review. Immigration did not mark the record with subsection 17(1)(a) of FOIP, nor

did it make arguments in support of subsection 17(1)(a) of FOIP, and so this provision is also not under review.

## III DISCUSSION OF THE ISSUES

### 1. Do I have jurisdiction?

[10] Immigration qualifies as a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I find that I have jurisdiction to conduct this review.

### 2. Did Immigration properly apply subsection 29(1) of FOIP?

[11] Immigration applied subsection 29(1) of FOIP to a name and a phone number on page 24 of the record. Portions released to the Applicant disclose that these data elements are associated with the "Manager Carrier Vehicle Services", who does not appear to be an employee of Immigration, but instead an employee of another government institution. Disclosure would then reveal the name of this individual plus their work number.

[12] Subsection 29(1) of FOIP provides as follows:

> **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.

[13] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure or if disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP. Section 29 only applies to information defined as personal information as defined by section 24 of FOIP, but section 24 of FOIP is not an exhaustive list. Section 29 of FOIP applies to information that is about an identifiable individual, and that reveals something personal in nature about them (*Guide to FOIP,* Chapter 6, "Protection of Privacy", updated February 27, 2023 [*Guide to FOIP*, Ch. 6], pp. 186 -187).

[14] One of Immigration's arguments to withhold this information centres on a matter involving my office's Review Report 298-2017 that was subject to an appeal (*D'arcy Hande v. University of Saskatchewan*) (Hande). In Hande, the Court of King's Bench found that the University of Saskatchewan employees in question were attending an event in a capacity where they could share "individual perspectives" and "offer opinions" to facilitate discussion, and so not in a personal capacity. Immigration contends that this appeal decision supports the application of subsection 29(1) of FOIP to professional information, which in this case would be the employee's name and business contact information on page 24.

[15] Immigration also advances the argument that in Review Report 186-2019, my office concluded that at paragraphs [25] to [30] of that report that my office incorrectly read into FOIP a carve out regarding "business card" information that exists in the federal *Personal Information Protection and Electronics Documents Act* (PIPEDA). Immigration adds that FOIP "specifically includes business addresses, phone numbers, email addresses or names of employers" as personal information. On this basis, Immigration concludes that subsections 24(1.1) and (2) of FOIP do not exclude business card information in the way PIPEDA does.

[16] My office's Review Report 186-2019 refers back to reviews by former Commissioner Gary Dickson, including Review Report F-2010-001 concerning the Ministry of Health (Health), and Review Report F-2012-006 concerning the Ministry of Justice (as it was then known).

[17] My office's Review Report F-2010-001 makes it clear that PIPEDA offered an "incomplete answer" in that review as the portion of the review in question dealt with organizations that were neither government institutions nor local authorities (under *The Local Authority Freedom of Information and Protection of Privacy Act*). To this end, it was considered that a couple orders from the Ontario Information and Privacy Commissioner (ON IPC) both viewed that as a "general rule", personal information must be about the individual in a personal capacity, and so information associated with a person in a "professional, official or business capacity" would not be "about the individual." That is, "business card"

information presented in a professional or work capacity relates to an employee's "employment or association…. and may more appropriately be described as being related to [their] employment or professional responsibilities…" For reference, see ON IPC Order MO-1550_F and Order PO-2420.

[18] My office's Review Report F-2012-006 further considered that business card information should not be considered personal information unless it links the employee's "name to other details of a personal nature contained within the record." That report went on to acknowledge the carve out for "business card" information found in PIPEDA, but stated this at paragraph [145] about the carve out:

> [145] PIPEDA has a similar purpose as Part IV of FOIP. The name of an employee is not personal information under PIPEDA. It would then be an absurd result to ignore that treatment under PIPEDA by considering it personal information under FOIP. Section 29(2)(i)(ii) of FOIP effectively incorporates by reference provisions in federal statutes. Surely in a nation with a federal system of government, and both federal and provincial laws dealing with similar areas and rights of citizens for similar purposes, there must be a genuine effort made to harmonize the interpretation of the rules to minimize inconvenience and confusion for citizens.

[19] In my office's Review Report 137-2024, which was recently issued regarding the Ministry of Education (Education), I continued my view that information such as the names of professionals, their job titles, and their contact information as they appear in a work context would not qualify as "personal information". These data elements relate to their jobs or job duties or are used for business-related purposes. For example, an employer may provide an employee with a company email address to use in a work-related capacity – the email address belongs to the employer. It is the same with other data elements an employee uses while conducting work-related duties, such as the phone number their employer assigns to them. Employers control how employees use this type of information in a work context. By contrast, an employee's home phone number is their personal information because it is personal to them or is personal in nature – an employer is obligated to withhold this type of information from disclosure unless certain provisions allow for the disclosure.

[20] It is absurd to say that an employee is given contact information by their employer, and that such information then becomes the employee's personal information; it is not, it is

assigned to them for work purposes. Not only do employers control how employees use this information, but employers also typically make this type of information publicly known and publicly associate such information with the employee. These arguments align with what is discussed in Review Report F-2012-006 and the notion that it is absurd to say that citizens can access one type of information under federal statutes but not provincial ones – there needs to be harmonization of the interpretation of rules so that citizens are not confused. Regardless, if the contact information is that of an employee of a provincial government institution, it is FOIP that applies, and it is not personal information. Again, I am not persuaded by Immigration's arguments, and find that it did not properly apply subsection 29(1) of FOIP to the name and phone number of the "Manager Carrier Vehicle Services" on page 24. I recommend Immigration release this information to the Applicant within 30 days of the issuance of this Report.

### 3. Did Immigration properly apply subsection 20(a) of FOIP?

[21] Immigration applied subsection 20(a) of FOIP to portions of pages 7 to 10, 13 to 15, 18 to 20, and 26 to 29. Subsection 20(a) of FOIP provides as follows:

> **20** A head may refuse to give access to a record that contains information relating to:
>
> (a) testing or auditing procedures or techniques; or
>
> ...
> if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

[22] Subsection 20(a) of FOIP is a discretionary, harm-based exemption. It permits refusal of access in situations where a record contains information relating to testing or auditing procedures or techniques if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits (*Guide to FOIP,* Chapter 4, "Exemptions from the Right of Access", updated April 8, 2024 [*Guide to FOIP*, Ch. 4], p. 248). My office applies the following two-part test to determine if a government institution properly applied this exemption:

1. Does the record contain information relating to testing or auditing procedures or techniques?

2. Could disclosure reasonably be expected to prejudice the use or results of particular tests or audits?

***1. Does the record contain information relating to testing or auditing procedures or techniques?***

[23] Immigration states that the withheld information on pages 7 to 10, 18 to 20 and 26 to 29 relates to "eligibility and assessment guidelines for assessing SINP applications". It adds that these pages disclose, "information on the evaluative standards which apply to various forms of application." In addition, Immigration further explains that its staff refer to pages 18 to 20 and 26 to 29 when reviewing and analyzing a candidate's documentation. The information, "outlines when certain documents are requested (pages 18 to 20) and what to look for in those documents (pages 18 to 20 and 26 to 29)." The steps are "used to assess the candidate's Job Approval Letter" and verify that they are "eligible for the SINP program." Immigration contends this meets the first part of the test for these pages.

[24] Regarding the withheld information on pages 13 to 15, Immigration states it relates to "distinguishing immigration services from foreign worker recruiting in circumstances where the distinction may be unclear for the purposes of the relevant legislation." As such, Immigration states it is an "evaluative guide" that assists with distinguishing, "the specific status of third-party representatives involved in SINP applications." Immigration argues it is similar to a testing procedure because it helps review "practical activities to measure either what someone knows or what someone or something is like or can do." Apparently, it helps distinguish if a third party is a consultant or a recruiter, and acts as an "informal audit." Immigration states this allows it to determine who are bad actors who may "game the system" and that if they knew the underpinning criteria would be able to "alter their practices." As such, Immigration also feels this meets the first part of the test.

[25] The *Guide to FOIP*, Ch. 4, offers the following definitions at pages 248 and 249:

- "Relating to" should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex

requirements (such as "substantial connection") for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. "Relating to" requires some connection between the information and the testing or auditing procedures or techniques.

- A "test" is a set of questions, exercises, or practical activities that measure either what someone knows or what someone or something is like or can do.

- An "audit" is the formal examination of an individual's or organization's accounting records, financial situation or compliance with some other set of standards. It is the systematic identification, evaluation and assessment of an organization's policies, procedures, acts and practices against pre-defined standards.

- "Procedures" are the manner of proceeding; a system of proceeding; conduct, behavior.

- "Techniques" are the manner of execution or performance in relation to mechanical or formal details; a skillful or efficient way of doing or achieving something.

[26] The terms "testing" and "auditing" cover a wide range of activities. Examples include environmental testing, language testing, personnel audits, financial audits, staffing examinations and program audits. The exemption applies to testing and auditing conducted by government institutions, consultants, and contractors (*Guide to FOIP*, Ch. 4, p. 249).

[27] As noted, Immigration claims pages 7 to 10, 13 to 15, 18 to 20 and 26 to 29 essentially contain eligibility and assessment guidelines. Upon review, I note the following:

- Portions of 7 to 10 released to the Applicant disclose that these pages contain "5.3.1 Assessment Ratio Guidelines" (page 7), "6.0 Eligibility Criteria" (page 7 to 9) and "6.2 Ineligible Positions" (pages 7 to 9). The section, "6.2 Ineligible Positions" contains what appears to be evaluative criteria to use to determine ineligibility. The other two sections contain what I would describe as eligibility criteria, which could be considered to "relate to" the evaluation of an applicant or representative.

- Portions of pages 13 and 14 released to the Applicant disclose that these pages contain steps regarding the use of third-party representatives under a section titled, "10.0 Use of Third-Party Representation." Page 15 contains a portion under a section titled, "11.0 Service Standards." It could be considered that these pages contain criteria that "relate to" the evaluation or audit of an applicant or representative.

- Portions of pages 18 to 20 released to the Applicant disclose that these pages contain when to request additional documentation for verification purposes and what to review under a section titled, "Appendix B: Additional Documentation Verification Request." The two columns Immigration withheld contain what type of information to request under certain circumstances and what to look for. It could be considered that these pages contain criteria that "relate to" the evaluation of an applicant or representative.

- Portions of pages 26 to 29 released to the Applicant disclose that these pages contain steps on document assessment contained in a section titled, "Appendix F: Document Assessment." As with pages 18 to 20, the withheld portions appear under two columns that describe when a "Job Offer Letter" is needed and what to look for on the document. It could be considered that these pages contain criteria that "relate to" the evaluation of a Job Offer Letter.

[28] Regarding the first part of the test, then, portions of all these pages cited either do contain evaluative criteria used to assess a candidate or a representative, or that relate to such evaluation. I will move onto the second part of these for all these pages.

### *2. Could disclosure reasonably be expected to prejudice the use or results of particular tests or audits?*

[29] Regarding the second part of the test, Immigration feels disclosure of the withheld information could prejudice the results of the audit. That is, the information, "could be used to ensure that the documents requested are reviewed with the assessment in mind." As stated, Immigration believes disclosure would allow individuals to misrepresent themselves and could then "game" the system by altering their practices "around the areas the Ministry focuses on to detect misrepresentation." Immigration adds that disclosure of the information could "prejudice the results of the audits" and that disclosure of the information would make "these types of assessments or guidance documents useless."

[30] The *Guide to FOIP*, Ch. 4, offers the following definitions at page 250:

- "Could reasonably be expected to" means there must be a reasonable expectation that disclosure could prejudice the use or results of particular tests or audits. There is a middle ground that a government institution must establish by providing evidence that the harm is "well beyond" or "considerably above" a mere possibility. Government institutions should not assume the harm is self-evident; the harm must be described in a precise and specific way. Evidence must: 1) show how disclosure

would cause harm; 2) indicate the extent of the harm that would result; and 3) be factual or factually support the assertions of the harm.

- "Prejudice" in this context refers to detriment to the use or to the results of tests or audits.

[31] The government institution does not have to prove that a harm is probable but needs to show that there is a "reasonable expectation of harm" if any of the information were to be released. In *British Columbia (Minister of Citizens' Service) v. British Columbia (Information and Privacy Commissioner), (2012),* Bracken J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm. Government institutions should not assume that the harm is self-evident. The harm must be described in a precise and specific way to support the application of the provision. The expectation of harm need not be a certainty, but it must be reasonable. The evidence of harm must show how disclosure of the information would cause the harm and indicate the extent of the harm that would result, and there must be facts to support the assertions made (*Guide to FOIP*, Ch. 4, pp. 249-250).

[32] Immigration's concern is that disclosure of the information could allow applicants and representatives to "game" the system and misrepresent themselves. They would do this by, apparently, knowing in advance what areas Immigration focuses on to alter their responses. Immigration has not gone into detail to describe what it means by "game" the system, but presumably this means applicants or representatives would know in advance how to respond in ways Immigration expects whether their responses are truthful or not. It appears that the harm is not necessarily the ability to "game" the system, but rather the result of the gaming – the risk that individuals would be fraudulently approved because of doing so.

[33] In my office's Review Report F-201-001 concerning Ministry of Health, paragraphs [96] to [104] discussed the application of subsection 20(a) of FOIP to a privacy impact assessment (PIA). It was thought that a PIA appears to be a form of an audit. However, it was found that a PIA, which contains a list of questions, is a "fact-finding exercise" that is used to determine if practices are compliant with legislation. If the questions are standard and there are no responses or an evaluation of the responses, then nothing of value is

disclosed if you release the questions. It is how you evaluate the answers that gives clues as to how the assessment may be used. You can know the questions on a test, but it does not mean that it will help you pass; it is the way in which you respond that helps you pass. In this matter, it is what is contained in a response that would give rise to a "red flag" that someone was being fraudulent; presumably, Immigration employees would want to know what red flags to watch for to prevent the harm. This is helpful in assessing Immigration's assertions.

[34] Based on this, I am not convinced by Immigration's arguments that the second part of the test is met for any of the withheld portions of the record as follows:

- The withheld portions of "5.3.1 Assessment Ratio Guidelines" and "6.0 Eligibility Criteria" that begin on page 7 and carry onto the middle of page 9 appear to describe standard program eligibility criteria or the type of criteria that would align with an application form. While these portions tell an employee what elements to evaluate, it does not contain information on how to assess the response, or what certain responses might mean, which would lead to the alleged harm. Similarly, "6.2 Ineligible Positions" that begins on the middle of page 9 and ends at the top of page 10 contains information on what makes someone ineligible, but not on what responses would lead to ineligibility.

- The withheld portion of "10.0 Use of Third-Party Representation" that starts on page 13 and carries onto the top portion of page 14 also does not appear to include information on how to evaluate responses or what to look for in a response that would lead to the alleged harm. If third-party representatives are supposed to be able to benefit from disclosure of this information, it is not clear how they would. The "processing standard" contained at the top of page 15 also does not contain direction on how to evaluate responses, it just describes what appears to be standard criteria. It is not clear how disclosure would lead to the harm alleged.

- The withheld portions of "Appendix B: Additional Document Request Verification" on pages 18 to 20, which includes two columns titled, "Request when" and "What to look for" describe a procedure of what to look for and what to assess on documents. It does not include information on how to evaluate or interpret responses, which would lead to the alleged harm. This is the same for the withheld portions of "Appendix F: Document Assessment" on pages 26 to 29. The information contained in the two columns titled, "Needed in assessment when" and "What to look for" appear to be a checklist of items to go through when assessing documents. There is no description of how to evaluate or interpret the responses.

[35] The withheld portions appear to align with what is likely on a SINP application or with the program rules or criteria, which I would assume an applicant or representative would know or have access to – Immigration has not said. As employees gather this information, they would evaluate the responses, looking for red flags. It is not clear, though, how disclosure of the withheld portions would necessarily lead to someone being able to "game" the system and provide expected responses. Immigration has not provided facts or evidence to support its assertions, such as a description or sample of how an applicant or representative would use the withheld information to provide a fraudulent response. The threshold here is "could reasonably be expected to", which requires more than just assertions. As the second part of the test is not met, I find that Immigration has not properly applied subsection 20(a) of FOIP to the withheld portions of pages 7 to 10, 18 to 20 and 26 to 20. I recommend Immigration release these portions to the Applicant within 30 days of the issuance of this Report.

**4. Did Immigration comply with section 8 of FOIP?**

[36] Section 8 of FOIP provides 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 applicant is refused access.

[37] Page 69 of the *Guide to FOIP*, Chapter 3, "Access to Records", updated May 5, 2023, states that a line-by-line review is essential to comply with the principle of severability set out in section 8 of FOIP. This provision grants an applicant a right of access to any record from which exempted material can be reasonably severed.

[38] Immigration did not speak to section 8 of FOIP in its submission. When I consider how a government institution meets it duty pursuant to section 8 of FOIP, I will look at factors such as if the government institution applied its exemptions in a blanket fashion. Exemptions are to be applied in a limited and specific manner to meet the overarching intent of FOIP. Innocuous parts of information being withheld that do not reveal the content should be released. This may include parts of a record such as title headings, subject lines,

headers, footers, etc. Government institutions should also turn their minds towards information that should be released because it is publicly known.

[39] Upon review of the record, Immigration has released elements including titles of column headers. This allows the person receiving the information to know the specific type of information that has been withheld. I also do not consider that Immigration has applied its exemptions here in a blanket fashion; it appears to have redacted only the portions on which it felt the exemptions apply. Lastly, Immigration did release additional information to the Applicant, which resulted in it dropping its reliance on subsection 17(1)(g) of FOIP. For these reasons, I find that Immigration met its obligations pursuant to section 8 of FOIP.

## IV FINDINGS

[40] I find I have jurisdiction.

[41] I find Immigration did not properly apply subsection 29(1) of FOIP.

[42] I find Immigration did not properly apply subsection 20(a) of FOIP.

[43] I find that Immigration met its obligations pursuant to section 8 of FOIP.

## V RECOMMENDATION

[44] I recommend Immigration release the withheld portions of the record to the Applicant within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 4th day of November, 2024.

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