



## **REVIEW REPORT 103-2024**

### **Ministry of Government Relations**

**July 4, 2024**

#### **Summary:**

The Applicant requested information from the Ministry of Government Relations (Government Relations). Government Relations asked the Applicant to complete an access to information request form. After several email exchanges over the course of several months, the Applicant requested a review by the Commissioner. Then, the Government Relations issued a decision pursuant to section 7 of *The Freedom of Information and Protection of Privacy Act* (FOIP) in response to the Applicant's request for information. Government Relations provided the Applicant access to some records but withheld others. It cited subsections 16(1)(a), 19(1)(b) and 29(1) of FOIP as its reasons for refusing the Applicant access to records. In the course of the Commissioner's review, Government Relations determined it was no longer relying on subsection 19(1)(b) of FOIP as a reason for refusing access to records and released records to the Applicant it initially refused the Applicant. The Commissioner determined that Government Relations did not properly apply subsection 16(1)(a) of FOIP. He also determined that Government Relations properly applied subsection 29(1) of FOIP in one instance but not to the remainder portions to which it applied subsection 29(1) of FOIP. Finally, the Commissioner found that Government Relations did not respond to the Applicant's access request within the legislated timeline. The Commissioner made several recommendations, including releasing the records to the Applicant where he (the Commissioner) found that Government Relations did not properly apply subsections 16(1)(a) and 29(1) of FOIP. He also recommended that Government Relations amend its procedures to accept to information requests that are not on the prescribed form but contains the information that pertains to the elements of the prescribed form.

#### **I BACKGROUND**

- [1] On July 13, 2023, the Applicant sent the following email to the Ministry of Government Relations (Government Relations):

Good morning

See below being an extract from your website.

In context of the same, asap please provide me with the last 2 financial audits for the MTA and the names and contact info for the members of the NMTAMB, the instrument of their appointment and mandate letter from the Minister (applicable Order in Council or Ministerial Orders????) together with a certified [sic] copy of the minutes for the last three meetings of the same. Please provide copies of any reports generated by the NMTAMB for the Minister.

[Name of Applicant]

Municipal Trust Account is the special account which provides the funds to administer the District. The Northern Municipal Trust Account Management Board is appointed to make recommendations to the Minister of Government Relations.

- [2] In an email dated July 17, 2023, Government Relations told the Applicant it required them to complete an access to information request form:

Good Afternoon,

I was forwarded an email by our Northern Municipal Services branch regarding an access to information request you are seeking. We require a completed access to information request form to be completed for each file. I have attached the form here. Please complete and submit back to us at [accessprivacygr@gov.sk.ca](mailto:accessprivacygr@gov.sk.ca).

- [3] In an email dated August 24, 2023, the Applicant responded to Government Relations. The Applicant asserted that “the law does not” require a form to be completed.

- [4] The following day, on August 25, 2023, Government Relations responded to the Applicant as follows:

The Ministry of Government Relations best practice is to have completed access to information request forms signed by the applicant, as they capture applicant contact information and all of the pertinent details relating to the information request. We did not receive a response from you pertaining to the email that was sent to you on July 17, 2023. As a result of this, **your request has been on hold awaiting your response.**

To expedite your request, I have attempted to fill out the access to information form on your behalf, which is enclosed in this email. I was able to retrieve your cellphone

number from your August 24, 2023, email. Can you confirm that the information is accurate?

I would like to take this opportunity to seek clarification on your request, which will enable us to provide you with the information that you are looking for. Can you clarify the following:

- Are you looking for information pertaining to the current board members of the NMTA?
- Are you just looking for the Northern Municipal Trust Account board meeting minutes from the last three meetings or is there a specific timeframe you are looking for?

Once I receive your confirmation and clarification of the request, I will proceed to fulfill your request in accordance with *The Freedom of Information and Protection of Privacy Act*.

Should you have any questions or concerns, please feel free to contact us.

[Emphasis added]

[5] On September 8, 2023, Government Relations followed up with the Applicant:

I am following up on the email I sent to you on August 25, 2023, which asked for your contact information and clarification, so we can proceed with filing and fulfilling your request. **To date, I have not received a response yet, so your file has not been logged yet.**

Please let me know your responses, so I can work on fulfilling this request.

[Emphasis added]

[6] On September 15, 2023, the Applicant sent an email to Government Relations indicating they intended to respond fully to Government Relations the following week.

[7] On October 12, 2023, Government Relations sent an email to the Applicant indicating it had not received a response yet “so this file continues to be incomplete and unfiled”.

[8] On December 11, 2023, the Applicant sent a lengthy email to Government Relations. The Applicant pointed out that Government Relations filled out Form A from *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP

Regulations). The Applicant indicated that they were requesting information that should be publicly available and stated the following:

In light of the fact original [request for information] is essentially directed at accessing the prescribed MMA section 437 and 438 audit and annual reports, this matter would appear from our perspective to be materials that do not require a FOIP (or LAFOIP) ATI Form A:...

[9] The Applicant went on to say if Government Relations was insisting on treating their request for information as a formal access to information request, then Government Relations should process it under *The Freedom of Information and Protection of Privacy Act* (FOIP), and not *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, they indicated they would not be signing the access to information request form sent to him by Government Relations.

[10] In the email, the Applicant provided more detail to clarify the information they were seeking from Government Relations.

[11] Finally, in the email, the Applicant highlighted section 3 of FOIP and section 3 of LA FOIP indicating that both Acts do not apply to published material or material that is a matter of public record. They noted section 133 of *The Northern Municipalities Act*, which entitles any person to inspect and obtain copies of municipal documents. They said:

I enclose below section 133 from the NMAct which will focus the request.

At first blush fulfilling the requests may seem to be an onerous [sic]. It should not be considering the NMTrustA is audited every year. The working papers would have the particulars sought as to the participating interest of the [name of Applicant's client].

[12] In an email dated December 13, 2023, Government Relations said to the Applicant that it required "a scope and parameters" to search for records sought by the Applicant:

My apologies for the misunderstanding.

In order to conduct a search of responsive records to fulfill an access to information request, our office requires a scope and parameters to apply to the search. This includes having specific search terms and a date range to ensure we are able to provide the correct information an applicant is looking for.

I would be happy to assist you with fulfilling this request, however I will need the following information:

- Scope of the request through search terms we can apply to files to find record(s) you are requesting; and,
- A date range for the scope of the request.

I feel this is supported by section 6(1)(b) of the Act, which states that: an applicant shall specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject-matter to identify the record.

Once this information is provided, I will be happy to fulfill this request and our duty to assist. I look forward to receiving your response.

[13] On January 11, 2024, the Applicant responded to Government Relations. The Applicant referred Government Relations to a resource by my office regarding search. He also referred Government Relations to details they had included in their email dated December 11, 2023. He then asked Government Relations to proceed with processing the access request or else they would proceed on the basis that “there has been a refusal, deemed or actual” and request a review by my office.

[14] On January 16, 2024, Government Relations responded to the Applicant indicating it did not consider this “abandoned”.

[15] On the same day, the Applicant said they would wait until 4 p.m. for a full response. If they did not receive a response, they would request a review by my office.

[16] The Applicant did not receive a response from Government Relations. Therefore, on January 17, 2024, the Applicant requested a review by my office of the lack of a response.

[17] Through my office’s early resolution process, Government Relations issued a decision pursuant to section 7 of FOIP dated March 25, 2024. The decision indicated that Government Relations was relying on subsections 16(1)(a), 19(1)(b) and 29(1) of FOIP as reasons for why some information in the records have been withheld.

[18] Then, the Applicant requested another review by my office of Government Relations' section 7 decision of the information that was withheld pursuant to subsections 16(1)(a), 19(1)(b) and 29(1) of FOIP.

[19] On April 22, 2024, my office notified both Government Relations and the Applicant that my office would be undertaking a review.

## II RECORDS AT ISSUE

[20] Government Relations identified the following records to be responsive to the Applicant's access request:

- **Record 1** - Northern Municipal Trust Account Management Board Meeting Minutes – September 2023
- **Record 2** - Northern Municipal Trust Account Management Board Meeting Minutes – July 2023
- **Record 3** - Northern Municipal Trust Account Management Board Meeting Minutes – June 2023
- **Record 4** - Northern Municipal Trust Account Board (May 27, 2022)
- **Record 5** - Order in Council 135/2022
- **Record 6** - Agency Data Update Form
- **Record 7** - Northern Municipal Trust Account Annual Report for 2020
- **Record 8** - Northern Municipal Trust Account Annual Report for 2019

[21] Government Relations originally withheld Records 1, 2, and 3 in their entirety pursuant to subsection 19(1)(b) of FOIP. However, in the course of my office's review, Government Relations indicated it was no longer relying on subsection 19(1)(b) of FOIP. It released Records 1 and 2 to the Applicant in their entirety. It applied subsection 29(1) of FOIP to portions of Records 3 and released the remainder to the Applicant.

[22] Government Relations also withheld portions of Record 4 pursuant to subsection 29(1) of FOIP.

[23] Government Relations withheld Record 6 in its entirety (7 pages) pursuant to subsection 16(1)(a) of FOIP.

[24] Government Relations released Records 5, 7, and 8.

### **III DISCUSSION OF THE ISSUES**

#### **1. Do I have jurisdiction?**

[25] Government Relations qualifies as a “government institution” as defined by subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, I find that I have jurisdiction to conduct this review.

#### **2. Did Government Relations properly withhold portions of Records 3 and 4 pursuant to subsection 29(1) of FOIP?**

[26] Government Relations applied subsection 29(1) of FOIP to portions of Record 3. In its submission, it described these portions as personal opinions as well as information about an individual who is not a board member. It said the information included the individual’s name, sex and race.

[27] It also applied subsection 29(1) of FOIP to home and office addresses, residential and office telephone numbers, cellphone numbers, and personal email addresses of members of the Northern Municipalities Trust Account Management Board in Record 4.

[28] Subsection 29(1) of FOIP provides:

**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.

[29] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure, or if the disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP (*Guide to FOIP*, Chapter 6, “Protection of Privacy”, updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 183).

[30] In order to withhold information pursuant to subsection 29(1) of FOIP, the information must qualify as “personal information” as defined by subsection 24(1) of FOIP. To qualify as personal information as defined by subsection 24(1) of FOIP, the information must: 1) be about an identifiable individual; and 2) be personal in nature. Information is about an “identifiable individual” if the individual can be identified from the information (e.g., their name is provided) or if the information, when combined with information otherwise available, could reasonably allow the individual to be identified. To be “personal in nature” means the information provides something identifiable about the individual (*Guide to FOIP*, Ch. 6, pp. 32-33).

[31] Subsection 24(1) of FOIP provides the definition of “personal information” as follows:

**24(1)** Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

...

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual;



[32] Pages 35 to 37 of the *Guide to FOIP*, Ch. 6, provides examples of information that my office has found not to qualify as “personal information”, including the following:

- Work product is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. This is not considered personal information.
- Business card information is the type of information found on a business card (name, job title, work address, work telephone numbers and work email address).

[33] This type of information is generally not personal in nature and therefore, would not be considered personal information. This is considered “business contact information” and not personal information.

[34] The rationale for a distinction between personal information and information that relates to a person in their professional or official capacity preserves the integrity of the regime that establishes the public’s right of access and government’s disclosure obligations. Without this distinction, the routine disclosure of information by government would be greatly impeded. For example, withholding all recorded information relating to the activities of public servants or other individuals in their professional or official capacities impedes FOIP’s overarching goal of creating accountability and transparency over government activities. Further, not differentiating between information that is personal in nature and information that relates to a person’s professional capacity would frustrate the purpose of FOIP, namely that information under the possession or control of a government institution should be made available to the public (unless subject to a limited and specific exemption) (*Guide to FOIP*, Ch. 6, p. 37).

[35] Regarding Record 3, Government Relations redacted information on pages 5 and 6 (of 8) of the Northern Municipal Trust Account Management Board meeting minutes. Page 5 of Record 3 contains three sentences that Government Relations redacted pursuant to subsection 29(1) of FOIP. The first sentence identifies a reason why a specific person was hired. This particular sentence identifies the person’s sex and race, which qualifies as “personal information” as defined by subsection 24(1)(a) of FOIP. I recommend that

Government Relations continue to withhold the first redacted sentence of page 5 of Record 3.

[36] The second sentence provides a general description of the treatment the person who was hired was receiving in the office. The general description does not contain anything personal about the person. Therefore, this sentence does not qualify as personal information as defined by subsection 24(1) of FOIP. I recommend that Government Relations release the second redacted sentence on page 5 of Record 3.

[37] The third sentence describes a challenge faced by New North. The sentence does not contain information that is personal in nature to any person. Therefore, this sentence does not qualify as personal information as defined by subsection 24(1) of FOIP. I recommend that Government Relations release the third redacted sentence on page 5 of Record 3.

[38] On page 6 of Record 3, Government Relations redacted several sentences where Board members expressed their opinion about workload and the functioning of New North. Such statements appear to be given in the course of their roles as board members of the Northern Municipalities Trust Account Management Board. Therefore, I find that the redacted information on page 6 of Record 3 does not qualify as “personal information”. I recommend that Government Relations release the redacted information on page 6 of Record 3.

[39] Regarding Record 4, the home address, residential telephone numbers and personal email addresses qualifies as personal information as defined by subsection 24(1) of FOIP:

24(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(e) the home or business address, home or business telephone number or fingerprints of the individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual;

[40] Therefore, I find that Government Relations properly applied subsection 29(1) of FOIP to the home address, residential telephone numbers and personal email addresses that appear on Record 4. I recommend that Government Relations continue to withhold the home address, residential telephone numbers and personal email addresses that appear on Record 4.

[41] Government Relations also withheld cellphone numbers on Record 4. In its submission, Government Relations asserted that the cellphone numbers of the Board members were the Board members' personal telephone numbers. Based on a review of Record 4, I am satisfied that it is plausible that the cellphone numbers are personal to the Board members. I recommend that Government Relations continue to withhold the cellphone numbers of Board members.

[42] However, information such as office address and office telephone number do not qualify as personal information. As such, I find that Government Relations did not properly apply subsection 29(1) of FOIP to the office addresses and office telephone numbers that appear on Record 4. I recommend that Government Relations release the office addresses and office telephone numbers that appear on Record 4.

**3. Did Government Relations properly apply subsection 16(1)(a) of FOIP to Record 6?**

[43] Government Relations applied subsection 16(1)(a) of FOIP to Record 6. Specifically, Government Relations withheld seven pages, in full, which contains information on the Northern Municipal Trust Account Management Board and information on the persons being appointed to the board.

[44] Subsection 16(1)(a) of FOIP provides:

**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;

[45] The following is the two-part test my office uses to determine if subsection 16(1)(a) of FOIP applies:

1. Does the record contain advice, proposals, recommendations, analyses or policy options?
2. Was the record created to present to Cabinet or any of its committees?

(*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 8, 2024 [*Guide to FOIP*, Ch. 4], pp. 100-103)

1. ***Does the record contain advice, proposals, recommendations, analyses or policy options?***

[46] In its submission, Government Relations asserted that Record 6 contains recommendations. Page 101 of *Guide to FOIP*, Ch. 4, defines “recommendation” as a specific piece of advice about what to do, especially when given officially; a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”.

[47] Government Relations described how these seven pages were provided to Cabinet with the draft version of an Order in Council. It asserted that the seven pages contains the recommended appointments to the Northern Municipal Trust Account Management Board. It said:

These seven pages are all completed Agency Data Update Forms related to Order in Council 135/2022, which made appointments and reappointments to the Northern Municipal Trust Account Management Board. These forms are not part of the official Order in Council, which is a public record and was released in full as page 19 of the package. Rather, **the forms were provided to Cabinet alongside the draft Order in Council, as part of a package of supplementary information that supports Cabinet in considering the appointments recommended by the ministry.**

[Emphasis added]

[48] Based on a review of Record 6, the content of the seven pages do not contain any recommendations. The content is about individuals that have been appointed to the Northern Municipal Trust Account Management Board. The first part of the test for subsection 16(1)(a) of FOIP is not met. There is no need to consider the second part of the two-part test. I find that Government Relations did not properly apply subsection 16(1)(a) of FOIP to Record 6.

[49] However, I recommend that Government Relations redact the home address of individuals and their gender pursuant to subsection 29(1) of FOIP (since such information qualifies as “personal information” as defined by subsection 24(1)(a) and (e) of FOIP) but release the remainder of Record 6 to the Applicant.

**4. Did Government Relations respond to the Applicant’s access to information request within the legislated timeline?**

[50] The Applicant sent an email dated July 13, 2024 to Government Relations.

[51] In emails dated July 17, 2023, August 25, 2023, and September 8, 2023, Government Relations responded to the Applicant indicating that they required an access to information request form to be filled out before it would process the access request. The Applicant did not fill out an access to information request form.

[52] Subsection 6(1)(a) of FOIP provides:

**6(1)** An applicant shall:

(a) make the application in the prescribed form to the government institution in which the record containing the information is kept;

[53] In determining whether applicants can deviate from using Form A of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations), *The Legislation Act* establishes general rules that govern the interpretation of all statutory instruments in the province of Saskatchewan. It defines words commonly used in legislation (*Guide to*

*FOIP*, Chapter 3: “Access to Records”, updated May 5, 2023 [*Guide to FOIP*, Ch. 3], p. 36). Section 2-26 of *The Legislation Act* provides:

**2-26** If an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if:

- (a) the deviations do not affect the substance;
- (b) the deviations are not likely to mislead; and
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.

[54] Therefore, pursuant to section 2-26 of *The Legislation Act*, it is not necessary that an Applicant complete and submit Form A of the FOIP Regulations. In [Review Report 336-2017](#), my office said:

My office has long been of the opinion that it is not mandatory for Applicants to use the prescribed form, provided the request is in writing and contains the information that pertains to the elements on the form.

[55] Based on a review of the Applicant’s email dated July 13, 2023, it contained the information that would have been required by Form A of the FOIP Regulations. Therefore, Government Relations received the access request on July 13, 2023. Accordingly, it should have provided the Applicant with a decision pursuant to section 7 of FOIP by August 12, 2023. However, it did not provide a section 7 decision until March 25, 2024, which was 140 days after the due date. I find that Government Relations did not respond to the Applicant’s access to information request within the legislated timeline.

[56] In its submission, Government Relations indicated it would begin processing an access request “regardless of whether the request is submitted on the prescribed form or contains sufficient information to begin a response”. I recommend that Government Relations amend its procedures to accept access to information requests that are not on the prescribed form but contains the information that pertains to the elements of the prescribed form.

[57] Finally, section 5.1 of FOIP requires that government institutions such as Government Relations respond completely to access requests. I note that the Applicant requested copies of the "...last 2 financial audits for the MTA...". I note that Government Relations provided the Northern Municipality Trust Account (NMTA) Annual Reports for 2019 and 2020, not 2021 or 2022. I recommend that Government Relations provide the Applicant with the NMTA Annual Reports for 2021 and 2022 within 30 days of issuance of this Report.

#### **IV FINDINGS**

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

[59] I find that the first redacted sentence on page 5 of Record 3 qualifies as personal information as defined by subsection 24(1)(a) of FOIP.

[60] I find that the second and third redacted sentences on page 5 of Record 3 does not qualify as personal information as defined by subsection 24(1) of FOIP.

[61] I find that the redacted sentences on page 5 of Record 3 does not qualify as personal information as defined by subsection 24(1) of FOIP.

[62] I find that Government Relations properly applied subsection 29(1) of FOIP to the home address, residential telephone numbers, personal email addresses and cell phone numbers that appear on Record 4.

[63] I find that Government Relations did not properly apply subsection 29(1) of FOIP to the office addresses and office telephone numbers that appear on Record 4.

[64] I find that Government Relations did not properly apply subsection 16(1)(a) of FOIP to Record 6.

[65] I find that Government Relations did not respond to the Applicant's access to information request within the legislated timeline.

## **V RECOMMENDATIONS**

[66] I recommend that Government Relations continue to withhold the first redacted sentence of page 5 of Record 3.

[67] I recommend that Government Relations release the second and third redacted sentences on page 5 of Record 3.

[68] I recommend that Government Relations release the redacted sentences on page 6 of Record 3.

[69] I recommend that Government Relations continue to withhold the home address, residential telephone numbers, personal email addresses and cellphone numbers that appear on Record 4.

[70] I recommend that Government Relations release the office addresses and office telephone numbers that appear on Record 4.

[71] I recommend that Government Relations redact the home address of individuals and their gender pursuant to subsection 29(1) of FOIP (since such information qualifies as "personal information" as defined by subsection 24(1)(a) and (e) of FOIP) but release the remainder of Record 6 to the Applicant.

[72] I recommend that Government Relations amend its procedures to accept access to information requests that are not on the prescribed form but contains the information that pertains to the elements of the prescribed form.

[73] I recommend that Government Relations provide the Applicant the NMTA Annual Reports for 2021 and 2022 within 30 days of issuance of this Report.



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

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