



REVIEW REPORT 120-2023

Ministry of Immigration and Career Training

September 8, 2023

Summary: The Applicant submitted an access to information request to the Ministry of Immigration and Career Training (Immigration). Immigration released records to the Applicant but withheld portions pursuant to subsections 15(1)(c), (k), 18(1)(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the Commissioner. The Commissioner found that Immigration did not demonstrate it properly applied subsection 18(1)(b) of FOIP. However, he found that Immigration properly applied subsections 15(1)(k) and 29(1) of FOIP. The Commissioner recommended that Immigration release the portions of the records it withheld pursuant to subsection 18(1)(b) of FOIP but to continue to withhold the portions it redacted pursuant to subsections 15(1)(k) and 29(1) of FOIP.

I BACKGROUND

[1] On April 6, 2023, the Ministry of Immigration and Career Training (Immigration) received the following access request from the Applicant:

Please send me all file, file notes, emails, transcripts of phone calls made by PIU to the employer, any emails sent and received in relation to this file and the so-called investigation into the supporting employer. I am authorized rep on file for employer and applicant already.

[Name]

Date of Birth: [Date, Month, Year]

File Number: [File Number]

[2] In a letter dated May 5, 2023, Immigration responded to the Applicant. Immigration indicated it was providing the Applicant access to the records but some of the information

was redacted pursuant to subsections 15(1)(c), (k), 18(1)(b)(i) and (ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On May 8, 2023, the Applicant requested a review by my office.

[4] On May 17, 2023, my office notified both Immigration and the Applicant that my office would be undertaking a review.

[5] On August 31, 2023, my office received a submission from Immigration. My office did not receive a submission from the Applicant.

II RECORDS AT ISSUE

[6] There are 101 pages of records at issue. The majority of pages were withheld in part.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Did Immigration properly apply subsection 18(1)(b) of FOIP?

[8] Immigration applied subsection 18(1)(b) of FOIP to portions of pages 1 to 46, 49, 51 to 52, 54 to 56, 86 to 91, and 94 to 95. The portions were Uniform Resource Locator (URL) paths to the Saskatchewan Immigrant Nominee Program (SINP) Online Application System (OASIS), the account number of the user of the OASIS system, and the name of a Program Integrity Officer.

[9] Subsection 18(1)(b) of FOIP provides:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use; and

(ii) that has monetary value or is reasonably likely to have monetary value;

[10] My office uses the following three-part test to determine if subsection 18(1)(b) of FOIP applies:

1. Does the information contain financial, commercial, scientific, technical or other information?
2. Does the government institution have a proprietary interest or a right to use it?
3. Does the information have monetary value for the government institution or is it reasonably likely to?

(*Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access” (Updated April 30, 2021), [*Guide to FOIP*, Ch. 4], pp. 164-166)

1. Does the information contain financial, commercial, scientific, technical or other information?

[11] In its submission, Immigration asserted that the information it redacted pursuant to subsection 18(1)(b) of FOIP is technical information. It said:

The information redacted in the responsive records are the website address and an employee username. A website address is technical information, as it pertains to the functionality of the Online Application System for Immigrating to Saskatchewan (OASIS). The website address is particular to this client. A username is technical information provided to an employee for access into the OASIS system.

[12] “Technical information” is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge, which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would

include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information (*Guide to FOIP*, Ch. 4, p. 165).

[13] Based on a review of the redacted information, including the URL, the account number of the user of the OASIS system, and the name of the Program Integrity Officer, I find that such information does not qualify as technical information as defined above. The URL itself is not technical in that it does not reveal the operation of the OASIS system. This is similar to how the address of a building would not reveal how the building is built. Further, the account number of the user and the name of the Program Integrity Officer is not technical information.

[14] The first part of the test is not met. As such, I do not need to consider the second or third parts of the three-part test. I find that Immigration has not demonstrated that subsection 18(1)(b) of FOIP applies.

3. Did Immigration properly apply subsection 15(1)(k) of FOIP?

[15] Immigration applied subsection 15(1)(k) of FOIP to portions of pages 23, 34, 44 to 48 and 90 to 96.

[16] Subsection 15(1)(k) of FOIP provides as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[17] My office uses the following two-part test to determine if subsection 15(1)(k) of FOIP applies:

1. Is there a law enforcement matter involved?
2. Does one of the following exist?
 - a) Could the release of information interfere with a law enforcement matter?
 - b) Could the release disclose information with respect to a law enforcement matter?

(Guide to FOIP, Ch. 4, pp. 75-77)

1. Is there a law enforcement matter involved?

- [18] “Law enforcement” includes policing, which refers to the activities of police services. This means activities carried out under the authority of a statute regarding the maintenance of public order, detection and prevention of crime or the enforcement of law (*Guide to FOIP*, Ch. 4, at p. 75).
- [19] Law enforcement can also include investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which leads to or could lead to a penalty or sanction being imposed under the enactment (*Guide to FOIP*, Ch. 4, at p. 75).
- [20] “Investigation” has been defined, in general, as a systematic process of examination, inquiry and observations (*Guide to FOIP*, Ch. 4, at p. 75).
- [21] “Inspection” has been defined, in general, as a careful examination (*Guide to FOIP*, Ch. 4, at p. 75).
- [22] “Legal proceeding” has been defined, in general, as any proceeding authorized by law and instituted in a court or tribunal to acquire a right or to enforce a remedy (*Guide to FOIP*, Ch. 4, at p. 75).

- [23] “Penalty or sanction” means a punishment or penalty used to enforce obedience to law. It can include a fine, imprisonment, revocation of a license, an order to cease an activity, or expulsion from an educational institution (*Guide to FOIP*, Ch. 4, at p. 75).
- [24] “Matter” should be given its plain and ordinary meaning. It does not necessarily have to apply to some specific ongoing investigation or proceeding (*Guide to FOIP*, Ch. 4, p. 75).
- [25] In its submission, Immigration asserted it undertook an investigation into program abuse that could lead to a penalty or sanction. Immigration identified that the penalty or sanction is the withdrawing of the nomination certificate. In other words, the person would no longer be considered a provincial nominee under *The Immigration and Refugee Protection Regulations*.
- [26] Based on a review of the redacted records, I note that Immigration undertook activities that include examining and inquiring about details regarding a matter involving a provincial nominee which led to a penalty or sanction. Therefore, there is a law enforcement matter involved.

2. Does one of the following exist?

a) Could the release of information interfere with a law enforcement matter?

b) Could the release disclose information with respect to a law enforcement matter?

- [27] In its submission, Immigration asserted that the release of the information would disclose information with respect to a law enforcement matter.
- [28] Section 15 of FOIP uses the word “could” versus “could reasonably be expected to” as seen in other provisions of FOIP. The threshold for “could” is somewhat lower than a reasonable expectation. The requirement for “could” is simply that the release of the information could have the specified result. There would still have to be a basis for asserting the outcome could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to FOIP*, Ch. 4, pp. 77-78).

[29] “With respect to” are words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters (*Guide to FOIP*, Ch. 4, p. 78).

[30] Based on a review of the redacted records, I agree that the release of the information would disclose information with respect to a law enforcement matter. Since the two-part test is met, I find that Immigration properly applied subsection 15(1)(k) of FOIP to pages 23, 34, 44 to 48 and 90 to 96.

[31] Since Immigration applied subsection 15(1)(k) of FOIP to the same portions it applied subsection 15(1)(c) of FOIP, there is no need to consider subsection 15(1)(c) of FOIP.

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

[32] Immigration applied subsection 29(1) of FOIP to portions of pages 50, 53, 96 to 98, and 100.

[33] 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.

[34] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains to, 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).

[35] Subsection 24(1)(k)(ii) of FOIP defines “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:

...

(k) the name of the individual where:

...

(ii) the disclosure of the name itself would reveal personal information about the individual.

[36] 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).

[37] In its submission, Immigration asserted that it redacted the names of individuals who are not the subject of the access request.

[38] Based on a review of the portions of the record to which Immigration applied subsection 29(1) of FOIP, I find that the information is about identifiable individuals. Further, based on the context in which the names appear, the names are personal in nature. Therefore, I find that the information qualifies as “personal information” as defined by subsection 24(1)(k)(ii) of FOIP. I find that Immigration properly applied subsection 29(1) of FOIP to pages 50, 53, 96 to 98, and 100.

IV FINDINGS

[39] I find that I have jurisdiction to undertake this review.

[40] I find that Immigration has not demonstrated that subsection 18(1)(b) of FOIP applies to pages 1 to 46, 49, 51 to 52, 54 to 56, 86 to 91, and 94 to 95.

[41] I find that Immigration properly applied subsection 15(1)(k) of FOIP to pages 23, 34, 44 to 48 and 90 to 96.

[42] I find that Immigration properly applied subsection 29(1) of FOIP to pages 50, 53, 96 to 98, and 100.

V RECOMMENDATIONS

[43] I recommend that Immigration release the portions of pages 1 to 46, 49, 51 to 52, 54 to 56, 86 to 91, and 94 to 95 that it had withheld pursuant to subsection 18(1)(b) of FOIP.

[44] I recommend that Immigration continue to withhold the portions of pages 23, 34, 44 to 48 and 90 to 96 to which it applied subsection 15(1)(k) of FOIP.

[45] I recommend that Immigration continue to withhold the portions of pages 50, 53, 96 to 98, and 100 to which it applied subsection 29(1) of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 8th day of September, 2023.

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