



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 128-2023

Ministry of Immigration and Career Training

September 12, 2023

Summary: The Applicant submitted an access to information request to the Ministry of Immigration and Career Training (Immigration). Immigration provided access to a portion of the record at issue but redacted the remainder pursuant to subsection 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that Immigration did not properly apply subsection 19(1)(b) of FOIP. Therefore, he recommended that Immigration release the record in its entirety to the Applicant within 30 days of issuance of this Report.

I BACKGROUND

[1] On March 14, 2023, the Ministry of Immigration and Career Training (Immigration) received the following access to information request from the Applicant:

Please provide a complete list of all job submissions in queue for assessment. Include employer name, job title (or NOC is fine too) and # of positions being requested for each.

[2] The Applicant had specified the time period to be as of March 14, 2023.

[3] In a letter dated May 12, 2023, Immigration responded to the Applicant. Immigration provided partial access to the records. It indicated it denied portions of the record pursuant to subsection 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[4] On May 17, 2023, the Applicant requested a review by my office.

[5] On June 7, 2023, my office notified Immigration and the Applicant that it would be undertaking a review.

[6] On September 8, 2023, Immigration provided its submission to my office. The Applicant did not provide a submission for this review.

II RECORDS AT ISSUE

[7] The record at issue is 58 pages. It features a four-column table. The columns are entitled “Legal Company Name”, “Number of Positions Requested”, “NOC” [National Occupation Code] and “Date Received”. The contents of the column entitled “Legal Company Name” was redacted pursuant to subsection 19(1)(b) of FOIP. The remaining three columns were released to the Applicant.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] Immigration is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. The redacted information involves the names of businesses; each one qualifying as a “third party” pursuant to subsection 2(1)(j) of FOIP. Therefore, I find that I have jurisdiction to undertake this review.

2. Did Immigration properly apply subsection 19(1)(b) of FOIP to the record?

[9] As mentioned above, Immigration applied subsection 19(1)(b) of FOIP to withhold the contents of the column entitled “Legal Company Name” in the four column table in the record at issue.

[10] Subsection 19(1)(b) of FOIP provides:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

[11] Subsection 19(1)(b) of FOIP is a mandatory, class-based exemption. It permits refusal of access in situations where a record contains financial, commercial, scientific, technical or labour relations information that was supplied in confidence to a government institution by a third party (*Guide to FOIP*, Chapter 5, “Third Party Information”, updated March 9, 2023, [*Guide to FOIP*, Ch. 5], pp. 16-17).

[12] To determine if subsection 19(1)(b) of FOIP applies to the record, the following three-part test must be met:

1. Is the information financial, commercial, scientific, technical, or labour relations information of a third party?
2. Was the information supplied by the third party to a government institution?
3. Was the information supplied in confidence implicitly or explicitly?

(*Guide to FOIP*, Ch. 5, pp. 17-20)

1. Is the information financial, commercial, scientific, technical, or labour relations information of a third party?

[13] In its submission, Immigration asserted that the redacted information qualified as “labour relations” information. It said:

The spreadsheet contained four columns: the name of the employer, the number of Saskatchewan Immigrant Nominee Program (SINP) Approved Positions, the National Occupation Code (NOC) and description, and the date the application was received by the SINP program. The employer’s name is labour relations information when it is combined with the other information in the table. This information discloses that the employer has been approved to staff certain positions with nominees, what the position is and the number of positions. This is information between workers and their employees and clearly falls within the definition of labour relations information above.

- [14] Page 18 of Chapter 5 of my office's *Guide to FOIP* defines "labour relations information" as follows:

"Labour relations information" is information that relates to the management of personnel by a person or organization, whether or not the personnel are organized into bargaining units. It includes relationships within and between workers, working groups and their organizations as well as managers, employers and their organizations. Labour relations information also includes collective relations between a public body and its employees. Common examples of labour relations information are hourly wage rates, personnel contracts, and information on negotiations regarding collective agreements (*Guide to FOIP*, Ch. 5, p. 18).

- [15] I note that in [Review Report 047-2023](#), my office considered a similar type of record by Immigration where the contents of the "Legal Company Name" column was also redacted. I said that the number of SINP approved positions and types of positions would be similar to staffing requirements, which would qualify as labour relations information.

- [16] In that case, I determine that the information qualified as "labour relations" information.

- [17] In this case, the contents of the "Legal Company Name" column" are the names of employers who have applied to hire foreign workers and are waiting to be assessed for approval. For the same reasons set out in [Review Report 047-2023](#), I find that such information qualifies as "labour relations information". The first part of the three-part test is met.

2. *Was the information supplied by the third party to a government institution?*

- [18] In its submission, Immigration asserted that the redacted information was supplied by the employer or their authorized representative through the Online Application System for Immigrating to Saskatchewan (OASIS) Employer Portal.
- [19] Page 20 of Chapter 5 of my office's *Guide to FOIP* defines "supplied" as "provided or furnished". Information may qualify as "supplied" if it was directly supplied to a

government institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.

- [20] *The Foreign Worker Recruitment and Immigration Services Act* (FWRIS Act) requires employers to submit an application for a certificate of registration:

14(1) Subject to subsection (2), no employer shall recruit foreign nationals for employment, either directly or through the services of another person, without holding a certificate of registration.

(2) Subsection (1) does not apply with respect to:

- (a) prescribed classes of employers; or
- (b) employers that are exempted by an order of the minister.

15 Every applicant for registration shall:

- (a) apply to the director in a form acceptable to the director;
- (b) comply with any prescribed application requirements; and
- (c) provide any information and materials that the director may reasonably require to assess the application.

- [21] Based on Immigration's submission and a review of the record, it appears that employers who applied for a certificate of registration would have supplied their legal company name to Immigration. The second part of the three-part test is met.

3. Was the information supplied in confidence implicitly or explicitly?

- [22] In its submission, Immigration asserted that the information was supplied implicitly in confidence. It said:

The information found in the responsive records was supplied in confidence implicitly because it is treated as confidential by the Ministry. If the Ministry receives requests, it only provides the information about employers to employers and verifies their identity prior to releasing any of this information. If the Ministry receives a call, the Ministry asks for the caller's name to verify they are the registered contact on file. The Ministry also requests the Employer ID number or Job Position number, business operating name and location. All information must be provided and verified that it

corresponds with the information presented on the employer's record on OASIS. If the request is sent by email, the same information must be provided and the request must be received from an authorized email address on file. If the information is not verified or not provided in either a phone call or email, then the Ministry responds that it can only provide information to authorized persons on file. The Ministry submits that the way it treats the information as confidential and only provides the information in the record to employers who are able to provide the information outlined above indicates that the information is implicitly supplied in confidence by employers.

[23] Page 21 of Chapter 5 of my office's *Guide to FOIP* defines "in confidence" as follows:

"In confidence" usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the supplier of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the government institution and the third party providing the information (*Guide to FOIP*, Ch. 5, p. 21).

[24] However, I note that "compulsory supply" means there is a compulsory legislative requirement to supply information. Where supply is compulsory, it will not ordinarily be confidential. In some cases, there may be indications in the legislation relevant to the compulsory supply that establish confidentiality. The relevant legislation may even expressly state that such information is deemed to have been supplied in confidence. Where information is required to be provided, unless otherwise provided by statute, confidentiality cannot be built in by agreement, informally or formally (*Guide to FOIP*, Ch. 5, p. 23-24).

[25] In my office's [Review Report 047-2023](#), I had found that information being supplied by employers were done on the basis of "compulsory supply". Therefore, I had found that the information was not provided in confidence.

[26] Similarly, in this case, I find that the FWRIS Act requires employers to supply an application for a certificate of registration. Therefore, information such as the employer's legal company name, would have been done on the basis of "compulsory supply". As such, I do not find that the information was supplied in confidence. The third part of the three-part test is not met.

[27] I find, therefore, that Immigration did not properly apply subsection 19(1)(b) of FOIP to the record at issue. I recommend Immigration release the record in its entirety to the Applicant within 30 days of issuance of this Report. So that employers are no surprised, Immigration might consider notifying each employer that it is releasing the record.

IV FINDING

[28] I find that Immigration did not properly apply subsection 19(1)(b) of FOIP to the record at issue.

V RECOMMENDATION

[29] I recommend Immigration release the record in its entirety to the Applicant within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 12th day of September, 2023.

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