



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 188-2023, 192-2023, 206-2023**

### **Ministry of Corrections, Policing and Public Safety**

**December 15, 2023**

#### **Summary:**

Three Applicants submitted access to information requests to the Ministry of Corrections, Policing and Public Safety (Corrections) for a copy of the report written by Rod Knecht regarding the review of the Prince Albert Police Service. Corrections responded by providing a heavily redacted copy of the report to each of the Applicants. Corrections cited subsections 13(2), 15(1)(b)(i), 15(1)(c), 15(1)(k), 16(1), 17(1)(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as reasons for its redactions. Each Applicant requested a review by the Commissioner. The Commissioner found that Corrections properly applied subsection 15(1)(c) of FOIP, which is an exemption Corrections relied upon to redact the entire record except for the title page and the recommendations that appear in the report. He did not find that Corrections properly applied subsection 15(1)(b)(i) or 16(1)(a) of FOIP to the footer of the title page of record at issue. Since subsection 15(1)(c) of FOIP is a discretionary exemption, the Commissioner recommended that the head of Corrections reconsider their discretion and release additional portions of the record at issue to the Applicants within 30 days of the issuance of this Report. He also recommended that Corrections release the footer of page 1 to the Applicants.

## **I BACKGROUND**

- [1] On April 25, 2023, the Ministry of Corrections, Policing and Public Safety (Corrections) received the following access to information request (206-2023) from Applicant #1:

A copy of the report, submitted to minister Christine Tell, regarding the review of the Prince Albert Police Service conducted by Rod Knecht.

- [2] Then, on April 26, 2023, Corrections received the following access to information request (192-2023) from Applicant #2:

I am requesting all drafts, interim reports, final reports and recommendations from Rod Knecht and/or Rod Knecht and Associates in regards [sic] to the review of the Prince Albert Police Service which began in November 2022.

- [3] Then, on May 1, 2023, Corrections received the following access to information request (188-2023) from Applicant #3:

A copy of the review report written by Rod Knecht to Minister of Corrections, Policing and Public Safety Christine Tell on the Prince Albert Police Service's operations.

\*Also any related briefing notes to the Minister regarding this report prepared in January, February, March or April 2023.

- [4] On August 11, 2023, Corrections responded to the three access requests. It provided a heavily redacted record to each Applicant. It cited subsections 13(2), 15(1)(b)(i), 15(1)(c), 15(1)(k), 16(1), 17(1)(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as its reasons for refusing access to portions of the record.

- [5] Each Applicant requested a review by my office.

- [6] On September 1, 2023, my office notified Corrections and Applicant #2 that my office would be undertaking a review.

- [7] On September 6, 2023, my office notified Corrections and Applicant #3 that my office would be undertaking a review.

- [8] On September 12, 2023, my office notified Corrections and Applicant #1 that my office would be undertaking a review.

- [9] On September 28, 2023, my office received a submission from Applicant #1. My office did not receive a submission from the other two Applicants.

- [10] On December 11, 2023, my office received submissions from Corrections for all three review files.

## **II RECORDS AT ISSUE**

- [11] The record at issue is the 70 page final report prepared by Rod Knecht & Associates entitled, “A Roadmap for Change” dated March 5, 2023. The report is regarding a special inquiry under section 88 of *The Police Act, 1990* regarding the Prince Albert Police Service.
- [12] Corrections withheld pages 2 to 11, 13 to 40, and 46 to 70 of the records at issue pursuant to subsections 15(1)(b)(i), (c), (k), and 16(1) of FOIP. Within those pages - pages 5 to 11, 13 to 17, 19, 22 to 35 and 40 - Corrections also applied subsection 17(1)(a) of FOIP.
- [13] In addition to subsections 15(1)(b)(i), (c), (k), 16(1) and 17(1)(a) of FOIP, Corrections cited subsection 13(2) of FOIP as a reason to withhold a portion of page 10.
- [14] In addition to subsections 15(1)(b)(i), (c), (k), 16(1) and 17(1)(a) of FOIP, Corrections cited subsection 29(1) of FOIP to withhold portions of pages 8, 13, 16, 20, 27, 29, 31 to 32, 35, 47, 50, 53 to 55, 58 to 60, 62 to 64 and 69.
- [15] Finally, Corrections applied subsection 15(1)(b)(i) and 16(1)(a) of FOIP to the footer of page 1 of the records at issue.

## **III DISCUSSION OF THE ISSUES**

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

- [16] Corrections 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 Corrections properly apply subsection 15(1)(c) of FOIP?**

[17] Corrections applied subsection 15(1)(c) of FOIP to pages 2 to 11, 13 to 40 and 46 to 70 of the Records at Issue.

[18] Subsection 15(1)(c) of FOIP provides:

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

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

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

1. Does the government institution's activity qualify as a "lawful investigation?"

2. Does one of the following exist?

a) Could the release of the information interfere with a lawful investigation?

b) Could the release disclose information with respect to a lawful investigation?

(*Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access", updated October 18, 2023 [*Guide to FOIP*, Ch. 4], pp. 53-54)

***1. Does the government institution's activity qualify as a "lawful investigation?"***

[20] A "lawful investigation" is an investigation that is authorized or required and permitted by law. The government institution should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future (*Guide to FOIP*, Ch. 4, p. 53)

[21] In its submissions, Corrections asserted that the record at issue contain information regarding a special inquiry. Based on a review, my office noted that the records to which Corrections applied subsection 15(1)(c) of FOIP is regarding the commencement of an inquiry pursuant to section 88 of *The Police Act, 1990*.

- [22] As I have found in my office's Review Report 161-2023 at paragraph [22], an inquiry pursuant to section 88 of *The Police Act, 1990*, qualifies as a lawful investigation for the purposes of subsection 15(1)(c) of FOIP. The first part of the two-part test is met.

**2. Does one of the following exist?**

**a) Could the release of the information interfere with a lawful investigation?**

**b) Could the release disclose information with respect to a lawful investigation?**

- [23] To meet the second part of the test, it is only necessary for the government institution to demonstrate that either the release of the information could interfere with a lawful investigation, or the release of the information could disclose information with respect to a lawful investigation. In its submission, Corrections asserted that the release of the records would disclose information with respect to a lawful investigation.

- [24] "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. 54).

- [25] 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, p. 55).

- [26] The record at issue is the final report by the person who conducted the special inquiry pursuant to section 88 of *The Police Act, 1990*. This report provides details of the inquiry, including the process undertaken, observations made, analysis of the police service and conclusions. Therefore, the second part of the two-part test is met. I find that Corrections properly applied subsection 15(1)(c) of FOIP. Since I find that Corrections properly applied

subsection 15(1)(c) of FOIP, there is no need for me to consider the other exemptions cited by Corrections to withhold pages 2 to 11, 13 to 40, and 46 to 70 of the Records at Issue.

- [27] Two of the Applicants asserted to my office that there is public interest in the record at issue. Applicant #1 said:

This independent review was called for because people in Prince Albert, Sask., died when police were involved. There is great public interest in this document.

Additionally, it is hard for the public to fully understand the scope of the issues surrounding the PAPS if they do not have the proper context about why recommendations were made.

- [28] Furthermore, the Applicant #3 said:

I seek to challenge the redaction of the entirety of the findings because of the public interest involved. This pertains to the operations of an agency tasked with providing emergency response and protecting life and public safety. Due to the police's unique position and responsibility, it is imperative that there is transparency about its operations, the functioning of the organization. This request isn't meant to unseal investigative or personnel files or obtain sensitive information, but to ensure that if there were specific findings about the operation of the agency, which the recommendations appear to indicate, it is important to understand the grounding for the recommendations so that members of the community can have an informed say in their community's law enforcement agency.

- [29] Unfortunately, there is no general public interest override in FOIP. However, I note that subsection 88(5) of *The Police Act, 1990* provides the Minister of Corrections, Policing and Public Safety the discretion to publish the record at issue. It says:

**88(5)** On receipt of a written report pursuant to subsection (4), the minister may:

(a) cause the report to be published in whole or in part and in any manner that the minister considers appropriate; and

(b) take any action that the minister considers appropriate.

- [30] Similarly, since subsection 15(1)(c) of FOIP is a discretionary exemption, there is discretion for the head of Corrections to release the record at issue to the Applicants. I

recommend that head of Corrections reconsider the exercise of their discretion and release additional portions of the record at issue to the Applicants within 30 days of issuance of this Report.

**3. Did Corrections properly apply subsection 15(1)(b)(i) of FOIP?**

[31] Corrections applied subsection 15(1)(b)(i) of FOIP to the footer page 1 of the record at issue. It also applied subsection 16(1) of FOIP to the footer as well, which I will consider later in this report.

[32] Subsection 15(1)(b)(i) of FOIP provides:

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

...

(b) be injurious to the enforcement of:

(i) an Act or a regulation;

[33] The following is the two-part test my office uses to determine if subsection 15(1)(b)(i) of FOIP applies:

1. Which Act or regulation is being enforced?
2. Could release of the record injure enforcement of the Act or regulation?

*(Guide to FOIP, Ch. 4, pp. 51-52)*

***1. Which Act or regulation is being enforced?***

[34] Pages 51 and 52 of *Guide to FOIP*, Ch. 4 provides the following definitions:

- An “Act or a regulation” means an Act of the Legislature together with any regulations issued thereunder and includes an Ordinance of the Northwest Territories in force in Saskatchewan.
- An “Act of Parliament of Canada or a regulation” encompasses all Acts enacted by the Parliament of Canada together with any regulations issued thereunder.

- “Enforcement” is the act or process of compelling compliance with a law, mandate, command, decree or agreement.

[35] In its submissions, Corrections indicated that the Act being enforced is *The Police Act, 1990*.

## ***2. Could release of the record injure enforcement of the Act or regulation?***

[36] “Injury” implies damage or detriment (*Guide to FOIP*, Ch. 4, p. 52).

[37] The footer of the record at issue contains boilerplate text. In its submission, Corrections did not speak to the boilerplate text on page 1. Based on a review, I find that the release of boilerplate text does not injure the enforcement of *The Police Act, 1990*. The second part of the two-part test is not met. I find that Corrections did not properly apply subsection 15(1)(c) of FOIP to the footer of page 1.

## **4. Did Corrections properly apply subsection 16(1)(a) of FOIP?**

[38] Corrections applied subsection 16(1) of FOIP to the footer of page 1 of the record at issue. Subsection 16(1) of FOIP is a mandatory class-based provision. Subsections 16(1)(a) through (d) of FOIP are not an exhaustive list. Therefore, even if none of the subsections are found to apply, the introductory wording of subsection 16(1) of FOIP must still be considered. In other words, is the information a confidence of Executive Council?

[39] Corrections did not explicitly indicate in its submissions that it was relying on subsection 16(1)(a) of FOIP. However, in its submission, it cited my office’s test for subsection 16(1)(a) of FOIP. Presumably, Corrections is relying on subsection 16(1)(a) of FOIP to withhold the foot of page 1 of the record at issue.

[40] 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;

[41] 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*, Ch. 4, pp. 99-101)

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

[42] In its submissions, Corrections asserted that the record at issue contains advice, recommendations and analyses.

[43] Pages 99 to 100 of *Guide to FOIP*, Ch. 4 provides the following definitions:

- “Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts.
- A “recommendation” is 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”.
- “Analyses” is a detailed examination of the elements or structure of something; the process of separating something into its constituent elements.

[44] Based on a review of the footer of page 1, I find that the text does not qualify as advice, recommendations or analyses. The first part of the two-part test is not met. I find that Corrections did not properly apply subsection 16(1)(a) of FOIP to the footer of page 1. I recommend that Corrections release the footer of page 1 to the Applicants.

#### **IV FINDINGS**

- [45] I find that I have jurisdiction to undertake this review.
- [46] I find that Corrections properly applied subsection 15(1)(c) of FOIP.
- [47] I find that Corrections did not properly apply subsection 15(1)(c) of FOIP to the footer of page 1.
- [48] I find that Corrections did not properly apply subsection 16(1)(a) of FOIP to the footer of page 1.

#### **V RECOMMENDATIONS**

- [49] I recommend that head of Corrections reconsider the exercise of their discretion and release additional portions of the record at issue to the Applicants within 30 days of issuance of this Report.
- [50] I recommend that Corrections release the footer of page 1 to the Applicants.

Dated at Regina, in the Province of Saskatchewan, this 15<sup>th</sup> day of December, 2023.

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