



REVIEW REPORT 214-2024

Saskatchewan Municipal Board

April 30, 2025

Summary:

The Applicant made an access to information request to the Saskatchewan Municipal Board (SMB) requesting access to a video recording (video) of a hearing and a request for a waiver of the fee. The SMB decided to release the video but placed conditions on the Applicant's sharing of the video. The Applicant requested a review of the decision by the A/Commissioner. In this review, the SMB argued that the A/Commissioner had no jurisdiction to conduct a review. The A/Commissioner found that he had jurisdiction to conduct the review, and that the SMB had no authority to place any restrictions on the Applicant's use or disclosure of the released record or to place sanctions on the Applicant for failure to comply with the restrictions. The A/Commissioner recommended that, within 30 days of the issuance of this Report, the SMB review its policies and procedures for processing access to information requests and ensure that they comply with the findings made in this Report. The A/Commissioner also recommended that, within 30 days of the issuance of this Report, the SMB issue a revised section 7 decision with a copy to my office that does not include any restrictions on the Applicant's use or disclosure of the video and complies with section 7 of FOIP.

I BACKGROUND

[1] Between May 27, 2024 and July 21, 2024, the Applicant sent various correspondence to the Saskatchewan Municipal Board (SMB) seeking a copy of a video recording (video) of a hearing that occurred on May 24, 2024. The SMB would not provide access to the video

[2] The Applicant sent an email to the SMB on July 22, 2024. The subject-matter of the email was described as "LAFOIP request for May 24, 2024 SMB hearing." The email stated:

Just following up on the LAFOIP request and the progress

If you could review the request and advise I have spoken with the Privacy Commissioner manager and it appears this is also the 1st of its kind for everyone.

If you need anything let me know?

- [3] Attached to the July 22, 2024, email was an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) to the SMB seeking access to a “Copy of video from the May 24, 2024 Hearing.” The Applicant also requested a waiver of the fee.
- [4] The access to information request was set out on Form A of PART III of *The Freedom of Information and Protection of Privacy Act Regulations* (FOIP Regulations).
- [5] The request was received by the SMB on July 22, 2024.
- [6] On August 8, 2024, the SMB responded to the July 22, 2024 email by inviting the Applicant to make a request for a transcript of the hearing according to Rule 14.2 of its [*Rules of Procedures for Hearings for all Committees*](#).
- [7] On August 21, 2024, the Applicant filed a request for a review of the SMB’s decision. My office opened Review File 199-2024 to process that review.
- [8] On August 23, 2024, my office wrote to the SMB advising it that its response to the Applicant’s access to information request did not meet the requirements of section 7 of FOIP. My office advised the SMB that it was beyond the legislated timelines for responding to the request. My office asked the SMB to provide it with an update on the status of its section 7 decision. My office also asked that the SMB provide its section 7 decision to the Applicant by August 30, 2024, with a copy to my office.
- [9] On August 29, 2024, the SMB wrote to my office and stated that “in the interest of early resolution, the [SMB] has reconsidered its decision regarding the release of the Hearing

Video of the May 24, 2024 Hearing” and advised that it was released today to the Applicant.

[10] The SMB provided my office with a copy of its covering email dated August 29, 2024, along with a PDF of the electronic transfer email.

[11] The SMB’s August 29, 2024 email did not refer to section 7 of FOIP. It stated as follows:

The Saskatchewan Municipal Board (SMB) has decided to release to the [Applicant], the May 24, 2024 Hearing Video. **Please be advised that any dissemination of the video, in whole or in part, on social media platforms will result in a sanction against the [Applicant] by the SMB.**

[Emphasis added]

[12] My office closed Review File 199-2024.

[13] Following an exchange of email correspondence between the Applicant and the SMB, the SMB added further restrictions to the dissemination of the video on September 4, 2024. Namely it stated that the Applicant could not share the video with the Ombudsman or law enforcement officials or other government officials. It stated that any requests for the recording by those parties should be made to the SMB.

[14] On September 4, 2024, the Applicant filed a request for a review of the SMB’s decision to place restrictions on the dissemination of the recording. My office opened Review File 214-2024 to process the review.

[15] On September 17, 2024, informal attempts were made by my office to resolve the issues in this matter. They were not successful.

[16] On October 1, 2024, my office sent a notice of review to the Applicant and the SMB. The notice asked the SMB to provide my office with information about its legal authority to place the restrictions on the dissemination of the video and threaten sanctions if the

Applicant disseminated the video. The notice also asked the SMB to address how subsection 23(1) of FOIP impacts its ability to impose restrictions and issue sanctions.

[17] On October 25, 2024, the SMB provided a submission to my office.

[18] The SMB stated that it did not consent to sharing the submission with the Applicant. My office sent an email to the SMB advising that in accordance with our usual practice, I would be referring to portions of the submission in this Report where necessary to facilitate the review and/or to establish grounds for the findings and recommendations. My office also advised the SMB that subsection 46(3) of FOIP authorizes these actions.

II RECORDS AT ISSUE

[19] As the issues in this review are procedural, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[20] In its submission, the SMB stated that my office does not have jurisdiction to conduct this review. Its argument appears to be based on the following two claims:

- The Applicant did not make an application under section 6 of FOIP that required a response by the SMB pursuant to section 7 of FOIP.
- The Applicant did not have the right to request a review under subsection 49(1) of FOIP.

[21] The SMB's submission did not address the application of section 23 of FOIP. I will consider its application later in this Report.

[22] Before I turn to the SMB's arguments, I must consider if the SMB qualifies as a government institution. The phrase "government institution" is defined, in part, in section 2(1)(d) of FOIP as follows:

2(1) In this Act:

...
(d) “government institution” means, subject to subsection (2):

...
(ii) any prescribed board, commission, Crown corporation or other body,

[23] The SMB is prescribed as a government institution pursuant to section 3 and PART I of the FOIP Regulations. Therefore, it qualifies as a government institution.

[24] Regarding section 6 of FOIP, the SMB stated:

Simply put, because the Applicant did not make a FOIP application as required by section 6, the commissioner’s jurisdiction under Part VI of FOIP was never engaged.

[25] Section 6 of FOIP sets out the requirement to make an application for access to information under FOIP to a government institution in the prescribed form. It states:

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; and

(b) 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.

(2) Subject to subsection (4) and subsection 11(3), an application is deemed to be made when the application is received by the government institution to which it is directed.

[26] It is not mandatory for a requester to use the form prescribed in the FOIP Regulations to make a valid access to information request. As long as the substance or intent of a written request is clear, and the request contains the information that would otherwise be provided via the prescribed form, it qualifies as a valid application under section 6 of FOIP.

[27] In arriving at this conclusion, I rely on *The Legislation Act* (LA), which establishes the general rules that govern the interpretation of all statutory instruments in the province and defines words commonly used in legislation. Subsection 2-26 of the LA states:

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.

[28] My office's approach to this issue is set out in our *Guide to FOIP*, Chapter 3, "Access to Records", updated October 18, 2023 [*Guide to FOIP*, Ch. 3], at page 10, where it states:

Applicants do not have to submit an access to information request on *Form A* for it to be considered a request under FOIP. A request need only be in writing and include the elements found on *Form A* to be a valid request under FOIP.

[29] However, it is not necessary for me to decide if the Applicant's correspondence between May and July 21, 2024, qualified as a valid access to information request. As noted above, the Applicant made another request using the prescribed form and sent it to the SMB by email dated July 22, 2024 at 6:35 PM. The email was addressed to a general information email address and the Manager of Administration at the SMB. A copy was provided to my office by the Applicant.

[30] The details of the request are set out above. I am satisfied that the Applicant specified the subject matter of the request with sufficient particularity. The fact that the Applicant's cover email to the SMB described the purpose of the email as a follow up does not change the intent and purpose of the email which was to forward the Applicant's access to information request.

[31] I am also satisfied that the access to information request was received by the SMB. Therefore, I find that the Applicant's access to information request was made in accordance with section 6 of FOIP on July 22, 2024.

[32] I now turn to consider the SMB's argument that the Applicant did not have the right to request a review under subsection 49(1) of FOIP. In its submission, the SMB stated:

34. In any event, in this case, there was no denial of access to review even if the Applicant had, in fact, submitted the prescribed application required by FOIP. The Applicant was provided access to the "record" [they] requested.

[33] First, I will consider if the criteria in subsection 49(1)(a) of FOIP have been met. That subsection states:

49(1) Where:

(a) an applicant is not satisfied with the decision of a head pursuant to section 7, 12 or 37

...

the applicant or individual may apply in the prescribed form and manner to the commissioner for a review of the matter.

[34] Subsection 49(1)(a) of FOIP provides that where an applicant is not satisfied with the decision of a head of a government institution pursuant to section 7 of FOIP, the applicant can request a review by the Commissioner.

[35] For subsection 49(1)(a) of FOIP to apply there must be an applicant who is not satisfied with the decision of a head. The decision of the head must be pursuant to section 7, 12 or 37 of FOIP.

[36] I have already found that the Applicant made a valid access to information request.

[37] In paragraph 8 of its submission, the SMB acknowledged that its August 8, 2024, email was sent in response to the Applicant's July 22, 2024 email. As I have found that the July 22, 2024, email qualified as a valid access to information request, the SMB's August 8, 2024 email was a response to the request. Therefore, it is clear that the SMB responded to the Applicant's request.

[38] As noted above, in the context of early resolution discussions involving my office, the SMB revised its decision and decided it would release the requested record. The SMB released the records with a letter to the Applicant dated August 29, 2024.

[39] The SMB's August 29, 2024 response qualifies as a decision of the head pursuant to subsection 7(1)(a) of FOIP which states:

7(1) Where an application is made pursuant to this Act for access to a record, the head of the government institution to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or

[40] The fact that the August 28, 2024 letter may not have met all of the requirements of a section 7 response does not have an impact on my office's jurisdiction to conduct a review. This is because my office is entitled to conduct a review whether or not a head fails to give notice pursuant to subsection 7(2) of FOIP. This is set out in subsection 7(5) of FOIP which states:

7(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[41] Having found that the Applicant made a valid access to information request, the SMB responded to the request and that the Applicant is not satisfied with the decision of the SMB, I also find that I have jurisdiction to conduct this review.

2. Did the SMB have the authority to impose restrictions on the Applicant's use or disclosure of the record?

[42] Section 5 of FOIP provides an applicant with a right of access to records in the possession or control of a government institution. It states:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[43] Subsection 5.1(1) of FOIP states:

5.1(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[44] My office's *Guide to FOIP*, Ch. 3 at page 12, states that subsection 5.1(1) of LA FOIP requires a government institution to respond to an applicant's access to information request openly, accurately and completely.

[45] Previous reports of my office and from other access to information oversight authorities have found that the right of access is unqualified, and the head does not have a right to place restrictions on how an applicant uses or discloses the released records.

[46] In my office's [Review Report F-2006-001](#), my predecessor stated, at paragraph [72]:

When an individual makes application for access under the *Act*, he/she does not have to provide a reason for seeking the information, as access is an **unqualified** fundamental democratic right subject to limited and specific exceptions.

[Emphasis added]

[47] This approach is described in my office's *Guide to FOIP*, Ch. 3 at page 7:

The reason an applicant wants specific information is not relevant when processing an access to information request. To require applicants to demonstrate a need for the information would erect a barrier to access. **FOIP grants an open-ended or unqualified right of access to public information of which government institutions are only the stewards.**

[Emphasis added]

[48] The *Guide to FOIP*, Ch. 3 at page 131, also states:

Applicants do not need to justify a request and **FOIP does not place limits on what an applicant can do with the information once access has been granted.**

[Emphasis added]

[49] The findings and analysis in [Order P-164](#), issued by the Ontario Information and Privacy Commissioner (ON IPC), are also directly relevant here. In that Order, the ON IPC considered a decision by a head to impose conditions on an applicant's use of a released record including a condition enjoining the applicant from sharing the record with other members of the public. In their order, the ON IPC adjudicator stated:

However, nowhere in the Act other than in subsection 21(1)(e) can there be found any provision which authorizes the head to grant conditional access to a record, in an official decision responding to a request under the Act.

The Act contemplates that where access is given to a requester, it is access to the world, and there are no limitations (subject to the limitations imposed by other laws, such as those pertaining to libel and slander) on the use to which the requester may put the record. That being so, it is my view that the head had no authority to grant conditional access to the requester in the circumstances of this appeal.

...

Where a decisionmaker acts outside his or her statutory authority, his or her actions are ultra vires, and the actions are a nullity. In this appeal, I find that the head's actions in attempting to grant conditional access are a nullity, and access was not given for the purposes of the *Freedom of Information and Protection of Privacy Act, 1987*.

[50] Order P-164 has been followed multiple times by the ON IPC including in [Order PO-4414](#) and [Order PO-4607](#). I agree with this approach and will follow it here as my predecessor did in my office's [Review Report F-2006-001](#).

[51] I will now consider the SMB's arguments that it has authority to control its own process and to set rules to govern the management and conduct of its affairs and how it impacts its obligations under FOIP. In its submission, the SMB stated:

23. The Board has, in fact, established rules of procedure - *Rules of Procedures for Hearings for All Committees* - that are publicly accessible on the Board's website. Because the Board's ability to make such rules is explicitly authorized by *The Municipal Board Act*, the *Rules of Procedure* are delegated legislation, like regulations.

24. Notably, the Board has restricted the ability of any other person to produce a recording of, be it audio, visual, photographic or otherwise, of its hearings. Further, the only release of the Board's recordings contemplated by the Rules is on application, with potential release to an authorized transcriber for the purpose of production of a transcript at the expense of the applicant.

[52] The fact that the Board has its own rules and processes by itself does not detract from its obligations to comply with the access and privacy requirements under FOIP. However, the Board appears to be suggesting that these rules and processes prevail over the obligations relating to access to information set out in FOIP which raises an issue of the application of section 23 of FOIP.

[53] My office reviewed SMB's *Rules of Procedures for Hearings for All Committees* and found the following provisions which might be relevant here:

5.4 Where any part of the materials provided for use in any matter before the Board is confidential, the material shall be placed in a secured location. Confidential material shall not be examined by or provided to any person except in accordance with **relevant legislation** and established procedures.

...

14.1 No person, other than the Board, shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing an oral or visual reproduction by electronic or other means at a hearing.

14.2 Upon application, the secretary shall release its recording of the hearing to a transcriber, approved by the Board, to prepare a transcript at the applicant's expense of all or any part of the testimony recorded at the hearing. The original of any transcript shall be sent to the Board.

[Emphasis added]

[54] Having reviewed these provisions, they do not support the SMB's position regarding my office's jurisdiction and its authority to set limits on the dissemination of the record.

[55] The SMB did not provide a submission specifically addressing section 23 of FOIP despite having been invited to do so in the notice of review sent to it by my office. However, I will address the SMB argument that its *Rules of Procedures for Hearings for All Committees* qualify as delegated legislation and how that may impact its access to information obligations under FOIP.

[56] I considered the meaning of “delegated legislation” (sometimes referred to as “subordinated legislation”) in Review Report 025-2020 which was issued on July 9, 2021.

In that report, I stated:

[88] Subordinate legislation is legislation that derives from any authority other than the sovereign power in a state and that therefore, depends for its continued existence and validity on some superior or supreme authority. A regulation is often referred to as subordinate legislation.

[89] As outlined in the *Guide to FOIP, The Canadian Bar Review, Subordinate Legislation* by Elmer Driedger (1960) provides guidance on legislation and subordinate legislation:

A statute, or an Act of Parliament, may be defined as the written will of a sovereign legislative body, solemnly expressed according to the forms necessary to constitute it the law of the territory over which that legislative body has jurisdiction. A statute is a law. We know, however, that there are other written laws in the form of statutes that were not enacted by a sovereign legislative authority...[T]here are laws made by municipal authorities.

These laws that are not enacted by a sovereign legislature **are nevertheless made under the authority of a statute....**

These subsidiary laws are known by a variety of expressions – regulations, rules, orders, by-laws, ordinances – or, collectively, as subordinate legislation or delegated legislation.

[Original Emphasis]

[57] It is not necessary for me to decide if the SMB’s *Rules of Procedures for Hearings for All Committees* qualified as delegated legislation, because of the prevailing provision in section 23 of FOIP which states:

23(1) Where a provision of:

(a) any other Act; or

(b) a regulation made pursuant to any other Act;

that restricts or prohibits access by any person to a record or information in the possession or under the control of a government institution conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail.

(2) Subject to subsection (3), subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

[58] Subsection 23(3) of FOIP includes a list of legislative provisions to which subsection 23(1) of FOIP does not apply. *The Municipal Board Act* is not listed in this subsection.

[59] Section 12 of the FOIP Regulations is also relevant here. It lists a number of legislative provisions that are prescribed as provisions to which subsection 23(1) of FOIP does not apply. *The Municipal Board Act* is not one of the listed acts.

[60] Section 23 of FOIP ensures that the fundamental rights enshrined in FOIP are given proper deference when interpreting legislative intent as to its application in conjunction with other statutes. This primacy clause is a strong expression of legislative intent and a tool for ensuring public policy objectives are met. In the event of a contest between two statutes, the legislature is presumed to not intend conflict between the statutes. Therefore, if an interpretation allows concurrent application, that interpretation should be adopted (*Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access” updated April 8, 2024 [*Guide to FOIP*, Ch. 4], at pp. 27 to 28).

[61] If engaging subsections 23(1), (2) or (3) of FOIP, the government institution should be able to demonstrate that the record or information in question falls within the statutory provision that is not subject to FOIP.

[62] Even if I were to accept the SMB’s position that its *Rules of Procedures for Hearings for All Committees* qualify as delegated legislation, *The Municipal Board Act* is not listed as one of the exceptions to the application of subsection 23(1) of FOIP.

[63] I find that the SMB has not met the burden of establishing that one of the exceptions in section 23 of FOIP applies. Therefore, subsection 23(1) of FOIP applies and the Applicant’s right of access to information prevails over the SMB’s *Rules of Procedures for Hearings for All Committees*.

[64] For all of these reasons, I find that the SMB did not have the authority to place any restrictions on the Applicant's use or disclosure of the released record or to place sanctions on the Applicant for failure to comply with the restrictions. Following the approach taken in the ON IPC Order P-164, I find that the SMB's section 7 decision is a nullity and therefore the Applicant does not need to comply with the restrictions set by the SMB on its use and disclosure of the video.

[65] I recommend that, within 30 days of the issuance of this Report, the SMB issue a section 7 decision to the Applicant without reference to any restrictions on the Applicant's use or disclosure of the video and that complies with FOIP.

[66] My office has issued guidance on responding to access requests for government institutions including my office's [Best Practices for Responding to Access Requests](#), [Guide to FOIP, Ch. 3](#), and [Section 7 Response](#). The SMB may wish to consult this guidance for further information about how to respond to access to information requests.

[67] I recommend that, within 30 days of the issuance of this Report, SMB review its policies and procedures for processing access to information requests and ensure that they comply with the findings made in this Report.

IV FINDINGS

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

[69] I find that the SMB did not have the authority to place any restrictions on the Applicant's use or disclosure of the video or to place sanctions on the Applicant for failure to comply with the restrictions and its attempt to do so is a nullity.

V RECOMMENDATIONS

[70] I recommend that, within 30 days of the issuance of this Report, SMB review its policies and procedures for processing access to information requests and ensure that they comply with the findings made in this Report.

[71] I recommend that, within 30 days of the issuance of this Report, the SMB issue a revised section 7 decision with a copy to my office that does not include any restrictions on the Applicant's use or disclosure of the video and complies with section 7 of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 30th day of April, 2025.

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