



## REVIEW REPORT 244-2022

Ministry of Corrections, Policing and Public Safety

March 24, 2023

**Summary:**

The Ministry of Corrections, Policing and Public Safety (Corrections) received an access to information request from the Applicant. Corrections responded to the Applicant partially denying access to the record pursuant to subsections 15(1)(m) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP), although Corrections later stated it applied subsection 29(1) of FOIP in error. The Applicant requested a review from the Commissioner. The Commissioner found that Corrections did not meet the burden of proof pursuant to section 61 of FOIP that subsection 15(1)(m) of FOIP applies to the video recording. The Commissioner recommended that Corrections release the video recording, in full, to the Applicant within 30 days of issuance of this Report.

### I BACKGROUND

- [1] On October 18, 2022, the Ministry of Corrections, Policing and Public Safety (Corrections) received the following access to information request from the Applicant:

[Name redacted] Correctional Centre

The second week of April, 2021. I was handcuffed from behind then peppersprayed [sic] in the face.

As soon as you can send them.

- [2] On October 19, 2022, Corrections requested clarification from the Applicant, seeking further details of the incident to identify the responsive records, pursuant to subsection 6(3) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On November 3, 2022, Corrections received the following revised access to information request from the Applicant:

[Name redacted] Correctional Centre

The incident report in which I was handcuffed from behind then pepper sprayed directly to the face. I would need the video as well. This incident took place on [date redacted].

30 calendar days.

[4] On November 29, 2022, Corrections responded to the Applicant providing access in full to paper records (6 pages) and denying access in full to a video recording pursuant to subsections 15(1)(m) and 29(1) of FOIP.

[5] On December 8, 2022, my office received a request for review from the Applicant, requesting a review of Corrections' decision to deny access to the video, in full, pursuant to subsections 15(1)(m) and 29(1) of FOIP.

[6] On December 13, 2022, my office provided notification to the Applicant and Corrections of my office's intention to undertake a review.

[7] On March 8, 2023, Corrections provided its submission to my office. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

[8] The record at issue is a video recording to which Corrections denied access in full pursuant to subsections 15(1)(m) and 29(1) of FOIP. In its submission to my office, Corrections stated that it cited subsection 29(1) of FOIP in error. Therefore, I will only review if Corrections properly applied subsection 15(1)(m) of FOIP to the video recording.

## **III DISCUSSION OF THE ISSUES**

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

[9] Corrections qualifies as a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

**2. Did Corrections properly apply subsection 15(1)(m) of FOIP?**

[10] Corrections applied subsection 15(1)(m) of FOIP to the video recording, which is 5 minutes and 35 seconds in length. The video recording has no audio; Corrections confirmed with my office that this type of video does not contain audio.

[11] Subsection 15(1)(m) of FOIP provides:

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

...

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[12] Subsection 15(1)(m) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, Updated on April 30, 2021, (*Guide to FOIP*, Ch. 4.) p. 89).

[13] “Including” means that the list of information that follows is not complete (non-exhaustive). The examples in the provision are the types of information that could be presumed to qualify as “security arrangements” (*Guide to FOIP*, Ch. 4. p. 89).

[14] The following two-part test can be applied. However, only one of the questions needs to be answered in the affirmative for the exemption to apply:

1. Could release reveal security arrangements (of particular vehicles, buildings, other structures or systems)?

2. Could release reveal security methods employed to protect the particular vehicles, buildings, other structures or systems?

*(Guide to FOIP, Ch. 4, pp. 88-91)*

[15] In its submission to my office, Corrections stated:

... Releasing the video produced by the security camera could cause safety and security concerns for the correctional buildings and those employed and incarcerated at the correctional facility because it reveals camera angles and range. Camera angles and range are specific security arrangements of the buildings, grounds, and security camera system.

[16] Based on Corrections' submission, it appears it is asserting that question one applies in this matter.

***1. Could release reveal security arrangements (of particular vehicles, buildings, other structures or systems)?***

[17] 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 the assertion. If it is fanciful or exceedingly remote, the exemption should not be invoked. For this provision to apply there must be objective grounds for believing that disclosing the information could reveal security arrangements of particular vehicles, buildings, other structures or systems (*Guide to FOIP, Ch. 4. p. 89*).

[18] "Reveal" means to make known; cause or allow to be seen (*Guide to FOIP, Ch. 4. p. 89*).

[19] "Security" means a state of safety or physical integrity. The security of a building includes the safety of its inhabitants or occupants when they are present in it. Examples of information relating to security include methods of transporting or collecting cash in a transit system; plans for security systems in a building; patrol timetables or patterns for security personnel; and the access control mechanisms and configuration of a computer system. Security means sufficient security (*Guide to FOIP, Ch. 4. p. 90*).

[20] “Other structures or systems” includes computer and communication systems. An example of a communication system could be a radio communication system such as two-way radios (*Guide to FOIP*, Ch. 4. p. 90).

[21] In my office’s [Review Report 160-2022](#) also concerning Corrections, at paragraph [37], I noted as follows:

[37] Corrections asserted that disclosing the video could reveal camera angles and range, thereby causing safety and security concerns. Corrections has not stated, though, how revealing the camera angles and range could cause safety concerns or what the safety concerns may be. It is also not up to my office to speculate. As Corrections has not met the burden of proof, I find it did not properly apply subsection 15(1)(m) of FOIP to the video footage...

[22] As in Review Report 160-2022, in this matter, Corrections has not provided details regarding how revealing camera angles and range could cause safety concerns or what those concerns may be. As I also stated in Review Report 160-2022, it is not up to my office to speculate on the safety concerns or what they may be.

[23] Section 61 of FOIP places the burden of proof on the head of a government institution as follows:

**61** In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[24] I find that Corrections did not meet the burden of proof pursuant to section 61 of FOIP that subsection 15(1)(m) of FOIP applies to the video recording.

[25] Regarding my recommendation, upon review of the video recording, I note it contains images of the Applicant, two officers and glimpses of four officers. In Review Report 160-2022, I stated at paragraph [46] that the images of correctional center employees is not personal information pursuant to subsection 29(1) of FOIP. The Applicant’s image is their own personal information, so they have a right of access to it pursuant to subsection 31(1) of FOIP. That subsection is as follows:

**31(1)** Subject to Part III and subsection (2), an individual whose personal information is contained in a record in the possession or under the control of a government institution has a right to, and:

- (a) on an application made in accordance with Part II; and
- (b) on giving sufficient proof of his or her identity;

shall be given access to the record.

[26] Based on the preceding, I recommend that Corrections give access to the video recording to the Applicant, in full, in accordance with subsection 10(3) of FOIP within 30 days of issuance of this Report.

#### **IV FINDINGS**

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

[28] I find that Corrections did not meet the burden of proof pursuant to section 61 of FOIP that subsection 15(1)(m) of FOIP applies to the video recording.

#### **V RECOMMENDATION**

[29] I recommend that Corrections give access to the video recording, in full, in accordance with subsection 10(3) of FOIP to the Applicant within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 24<sup>th</sup> day of March, 2023.

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