



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 244-2023 to 250-2023, 252-2023 to 257-2023

**Executive Council; Ministry of Advanced Education; Ministry of Agriculture;
Ministry of Corrections, Policing and Public Safety; Ministry of Energy and
Resources; Ministry of Environment; Ministry of Finance; Ministry of
Government Relations; Ministry of Justice and Attorney General; Ministry of
Labour Relations and Workplace Safety; Ministry of Parks, Culture and
Sport; Ministry of SaskBuilds and Procurement; Ministry of Trade and
Export**

March 19, 2024

Summary:

The Applicant submitted an identically worded access to information request to the Executive Council, Ministry of Advanced Education, Ministry of Agriculture, Ministry of Corrections, Policing & Public Safety, Ministry of Energy and Resources, Ministry of Environment, Ministry of Finance, Ministry of Government Relations, Ministry of Justice and Attorney General, Ministry of Labour Relations and Workplace Safety, Ministry of Parks, Culture and Sport, Ministry of SaskBuilds and Procurement, and Ministry of Trade and Export Development. The Applicant specified they required records in excel or CSV formats. Each of the government institutions responded by providing the Applicant access to records; however, the records were in PDF, not the format requested. The Applicant requested the Commissioner review the decisions by the government institutions. The Commissioner found that Executive Council and 12 Ministries failed to provide the record to the Applicant as required by *The Freedom of Information and Protection of Privacy Act* (FOIP). Further, the Commissioner found that Advanced Education did not comply with subsection 10(2) of FOIP. In addition, the Commissioner found that there is no evidence that suggests that there was inappropriate sharing of information. Finally, the Commissioner found that there is no evidence to suggest that the Applicant's identity was shared between or among government institutions in an inappropriate manner. The Commissioner recommended that Executive Council and 11 Ministries release the records to the Applicant in a spreadsheet format (either Excel or CSV) within 10 days of issuance of this Report. The Commissioner also recommended that Advanced Education, within 10 days of the issuing of this Report, take the

record in Word format, copy and paste into a spreadsheet format and provide it to the Applicant.

I BACKGROUND

[1] On August 2, 2023, 13 government institutions received the same access to information request from the Applicant. The access to information request was for the following:

In June 2023, the Globe and Mail launched a project called Secret Canada, an investigation that includes a national database of completed FOI summaries from hundreds of public institutions. SecretCanada.com is a free, public service. Globe reporters collected the FOI summaries primarily through individual FOI requests sent to each public body. We'll be repeating this process every year to keep the database up to date.

The vast majority of large public bodies use a records/data management system to track and manage FOI requests. We are seeking access to the following fields:

1. **Identifier:** The request number or unique identifier for each request.
2. **Summary:** The most detailed request text available in the tracking system, be that the full request text or a summary written by an FOI coordinator.
3. **Date received:** The date each FOI was received.
4. **Date completed:** The date each FOI was completed.
5. **Disposition:** The disposition for each FOI (records granted in full, in part, denied, etc.).
6. **(Not mandatory) Department, division, body or entity:** If your tracking system provides detail on which part of your organization is being targeted with a request, we would like this information. For example, some municipalities process FOIs for local transit and police services. Similarly, Ontario's Ministry of the Solicitor General handles requests for the Ontario Provincial Police, and various provincial health authorities handle requests on behalf of many hospitals. If this is the case for your organization and you are able to distinguish these entities with a field, that is helpful. If this information is not readily available, please disregard this part of our request. You do not need to contact us for permission to disregard this field.

We are seeking the above information for FOIs that were completed between January 1, 2022 and June 30, 2023.

We are only seeking access to data from general records requests, not personal records requests. (For example, we do not want information on requests from people asking for their own police or health file).

We are not seeking access to information about FOIs that are not yet completed, or FOIs that were withdrawn, abandoned, or transferred to another institution. In rare

instances, institutions are consulted on FOIs received by other institutions, and this interaction is captured in their tracking systems. We are not interested in requests that your organization does not have custody of. If you cannot easily filter out these unwanted requests – incomplete, withdrawn, abandoned, transferred, consultations – that’s fine. Send us what you have. You do not need to check with us about this.

We require this data in a machine-readable table format (Excel or CSV, for instance). If you need help downloading a spreadsheet from your system, please contact us as we are now familiar with the FOI tracking technology used by many public bodies across the country. **Providing the records as a spreadsheet greatly assists us in providing accurate information to the public.** If you do not provide the information in a machine-readable format, we must either manually transcribe the files or use OCR technology, which introduces formatting errors, typos and in some cases means we cannot include your information in this free, public database. If you are one of the few public bodies that does not have an FOI tracking system, contact us for next steps.

The FOI information you send us will be included as-is in our SecretCanada.com database.

Please send us the records by e-mail. Please do not password protect your response. Some institutions have begun uploading FOI responses to a third-party website, which we then have to download. If possible, we would prefer not to communicate this way as we have found the emails are sometimes lost in our junk folder and the Globe’s security system screens them out.

We have prepared a detailed guide for public institutions that answers many of the questions we have often received from FOI offices during this project. Please read it before reaching out to us with questions: <https://www.secretcanada.com/dear-foi-office>

All information you send will be published for public viewing.

[Emphasis in original]

[2] The 13 government institutions that received the Applicant’s access to information request and the associated IPC file number are as follows:

- Executive Council, File No. 244-2023
- Ministry of Advanced Education (Advanced Education), File No. 245-2023
- Ministry of Agriculture (Agriculture), File No. 246-2023
- Ministry of Corrections, Policing & Public Safety (Corrections), File No. 247-2023
- Ministry of Energy and Resources (Energy and Resources), File No. 248-2023
- Ministry of Environment (Environment), File No. 249-2023
- Ministry of Finance (Finance), File No. 250-2023
- Ministry of Government Relations (Government Relations), File No. 252-2023
- Ministry of Justice and Attorney General (Justice), File No. 253-2023

- Ministry of Labour Relations and Workplace Safety (LRWS), File No. 254-2023
- Ministry of Parks, Culture and Sport (PCS), File No. 255-2023
- Ministry of SaskBuilds and Procurement (SaskBuilds), File No. 256-2023
- Ministry of Trade and Export Development (Trade and Export Development), File No. 257-2023

[3] From August 8, 2023 to September 28, 2023, the 13 government institutions sent section 7 decision letters to the Applicant. The specific dates each government institution sent its section 7 decision to the Applicant are indicated in the table below:

Government Institution	Section 7 decision date
Executive Council	September 1, 2023
Advanced Education	August 18, 2023
Agriculture	September 1, 2023
Corrections	September 28, 2023 – On September 1, 2023, Corrections sent a letter to the Applicant indicating it would extend the section 7 deadline up to an additional 30 days.
Energy and Resources	August 30, 2023
Environment	August 25, 2023
Finance	August 25, 2023
Government Relations	August 29, 2023
Justice	August 28, 2023
LRWS	September 1, 2023
PCS	August 8, 2023
SaskBuilds	August 24, 2023
Trade and Export Development	September 5, 2023

[4] In its section 7 decision, SaskBuilds released records in full. The other 12 government institutions released records in part.

[5] On September 29, 2023, my office received a request for review from the Applicant regarding the manner of access in which all 13 government institutions provided records to the Applicant. The Applicant requested records to be provided in Excel or CSV form but received records in PDF form.

- [6] On October 20, 2023, my office reached out to the government institutions to inquire if they would be willing to provide a copy of the records to the Applicant in Excel or CSV formats.
- [7] On October 27, 2023, Executive Council, Advanced Education, Agriculture, Corrections, Energy and Resources, Environment, Justice, PCS, SaskBuilds, and Trade and Export Development argued that it had satisfied the legislative requirements of *The Freedom of Information and Protection of Privacy Act* (FOIP) by providing the records to the Applicant in PDF format and therefore would take no further action. On October 30, 2023, LRWS made the same argument to my office as did the other ten government institutions. On October 31, 2023, Finance also made the same argument as LRWS did to my office. Finally on November 1, 2023, Government Relations also made the same argument as Finance did to my office.
- [8] On November 7, 2023, my office sent notices to the 13 government institutions and the Applicant advising of my office's intent to undertake a review of each government institution's section 7 decision. My office requested that each government institution provide its submission to my office by December 7, 2023. The Applicant was also invited to provide a submission by December 7, 2023.
- [9] From December 5, 2023, to December 19, 2023, each of the 13 government institutions provided my office with its submission.
- [10] On December 7, 2023, the Applicant provided my office with their submission.
- [11] In each of the 13 submissions provided to my office, the government institutions requested that a copy of the Applicant's submission be provided to it. Each of the government institutions indicated that its submission should not be shared with the Applicant.
- [12] On December 27, 2023, my office asked the Applicant if they consented to my office providing a copy of their submission to each of the government institutions.

- [13] On January 2, 2024, the Applicant gave consent for their submission to be shared with the government institutions.
- [14] On January 3, 2024, my office provided a copy of the Applicant's submission to each of the government institutions.
- [15] On February 13, 2024, my office requested that the Applicant send copies of the records to my office. The Applicant sent the records to my office on this date.
- [16] Between February 28 and March 6, 2024, my office sent emails to each of the government institutions asking each one to confirm if the information requested by the Applicant existed in spreadsheet (Excel or CSV) format.
- [17] Between February 28 and March 13, 2024, Executive Council, Agriculture, Corrections, Energy and Resources, Environment, Finance, Government Relations, Justice, LRWS, PCS, Trade and Export Development and SaskBuilds responded to my office via email confirming that the information requested by the Applicant existed in spreadsheet format. Advanced Education indicated that the information requested did not exist in spreadsheet format. Advanced Education confirmed that the source destination for the information requested was Word. Advanced Education stated the following:

...The information is directly entered into the Word document when Advanced Education receives access to information requests from applicants. We do not have a database or use excel to collect or house this data. The information is tracked annually in a Word document...

II RECORDS AT ISSUE

- [18] At issue is the format in which the 13 government institutions provided the Applicant access to records. The records are summaries of general freedom of information requests completed by the government institutions between January 1, 2022 and June 30, 2023. The Applicant requested records in spreadsheet format (Excel or CSV), but each of the government institutions provided records to the Applicant in PDF format.

[19] FOIP defines a record as follows:

2(1) In this Act:

...

(i) “**record**” means a record of information **in any form** and includes information that is written, photographed, recorded or **stored in any manner**, but does not include computer programs or other mechanisms that produce records;

[20] As indicated in paragraph [17] of this Report, Executive Council and 11 ministries confirmed the record existed in spreadsheet format. Advanced Education confirmed the record existed in Word format.

[21] The issue then for Executive Council and 11 Ministries was their failure to provide the Applicant with the record that existed in spreadsheet format. The issue for Advanced Education was whether subsection 10(2) of FOIP would require them to provide the record in spreadsheet format.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[22] The Executive Council and 12 ministries are “government institutions” pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I find that I have the authority to conduct this review.

2. Did Executive Council and 11 Ministries comply with FOIP?

[23] As indicated in paragraph [17] of this Report, Executive Council and 11 Ministries have the record in spreadsheet format. I find they failed to provide the record to the Applicant. I recommend within 10 days of the issuing of this Report, Executive Council and the 11 Ministries provide the record in spreadsheet format (Excel or CSV) to the Applicant.

3. Did Advanced Education comply with subsection 10(2) of FOIP?

[24] My office's *Guide to FOIP*, Chapter 3, "Access to Records" (*Guide to FOIP*, Ch. 3) at page 87, explains that section 10 of FOIP deals with how access to a record will be given to applicants. Depending on the type of record, the manner of access can include providing paper copies of records, providing electronic copies, or allowing applicants to view a record.

[25] As we are dealing with electronic files, subsection 10(2) of FOIP would be the relevant section of FOIP in this matter. Subsection 10(2) of FOIP provides as follows:

10(2) Subject to subsection (3), if a record is in electronic form, a head shall give access to the record in electronic form if:

- (a) it can be produced using the normal computer hardware and software and technical expertise of the government institution;
- (b) producing it would not interfere unreasonably with the operations of the government institution; and
- (c) it is reasonably practicable to do so.

[26] According to the *Guide to FOIP*, Ch. 3 at page 88, the following test can be used to determine if the government institutions should provide records in the electronic format requested by the Applicant.

1. Can the record be produced using the normal computer hardware and software and technical expertise of the government institution?
2. Would producing the record interfere unreasonably with the operations of the government institution?
3. Is it reasonably practicable to produce the record?

1. Can the record be produced using the normal computer hardware and software and technical expertise of the government institution?

[27] As indicated in paragraph [17] of this Report, Advanced Education indicated that information requested by the Applicant existed in Word format. Thus, a record in Word format already existed.

[28] In my office's attempt to determine the process of converting tabular information from a Word document to an Excel format, my office found that a Copy and Paste function would result in this conversion. Thus, Advanced Education could easily provide the record to the Applicant in a spreadsheet format.

2. Would producing the record interfere unreasonably with the operations of the government institution?

[29] Advanced Education did not provide an explanation for how producing the records would interfere unreasonably with its operations. Since the record already exists in a Word format, and a simple copy and paste would convert it to a spreadsheet format, then I find that producing the records would not interfere unreasonably with the operations of Advanced Education.

3. Is it reasonably practicable to produce the record?

[30] I find that it is reasonably practicable for Advanced Education to take the record in Word format, copy and paste into a spreadsheet format and provide the record to the Applicant.

[31] I find that Advanced Education did not comply with subsection 10(2) of FOIP. I recommend that Advanced Education, within 10 days of the issuing of this Report, take the record in Word format, copy and paste into a spreadsheet format and provide it to the Applicant.

4. In responding to the Applicant's request, did the government institutions inappropriately coordinate responses and/or was there disclosure of the Applicant's personal information?

[32] In my office's notice of review to the government institutions dated November 7, 2023, my office stated the following:

- I note that the language you used in your October 27, 2023 email to this office was almost identical to the language used by other Ministries who received this review. In your submission, please explain if your Ministry coordinated its response with other government institutions who received the same access to information request and request for review, and, if it did, please indicate what that process entailed including if the Applicant's identity was shared in the process.

[33] In its submission to my office, each of the 13 government institutions addressed the issue of a coordinated response with the following response as follows:

Appropriate use of legal counsel:

The [government institution] sought legal advice in how to respond to the Applicant and develop this submission. From the [government institution's] perspective, if other clients received the same or similar legal advice after seeking legal advice to the same or similar questions, that is not coordination but a result to be expected. The Ministry of Justice and Attorney General is responsible for the administration of justice. One way that is achieved is by having its legal counsel provide consistent legal advice.

[34] In my office's Review Report 301-2017, 302-2017, 303-2017, 304-2017, 003-2018, I made recommendations on coordinated responses as follows:

[22] Without knowing what types of discussions have taken place, who was involved in these discussions, what the nature of these discussions were or what decisions were made, I have no way of knowing whether or not these discussions interfered with the discretion of the head. Regardless if the ministries are discussing the request with legal counsel or other ministries, it should ensure that these practices of seeking advice or undertaking discussions still provide the head with the ability to exercise their discretion and do not delay the process.

[23] The ministries should also ensure that any coordination efforts undertaken in the processing of an access to information request protect the identity of the Applicant and are in place to assist the Applicant and not delay or discourage the Applicant. The ministries should also ensure any coordination efforts are applied in a consistent manner to ensure Applicants are not being treated differently based on who they are or what organization they represent.

[35] From a review of the submission by each of the government institutions, it appears all 13 government institutions used the same legal counsel. Although the language used in the submissions to my office is almost identical, and in section 7 decisions to the Applicant is similar, I find that there is no evidence that suggests that there was inappropriate sharing

of information. Also, I find that there is no evidence to suggest that the Applicant's identity was shared between or among government institutions in an inappropriate manner.

IV FINDINGS

[36] I find that I have the authority to conduct this review.

[37] I find that Executive Council and 12 Ministries failed to provide the record to the Applicant as required by FOIP.

[38] I find that Advanced Education did not comply with subsection 10(2) of FOIP.

[39] I find that there is no evidence that suggests that there was inappropriate sharing of information.

[40] I find that there is no evidence to suggest that the Applicant's identity was shared between or among government institutions in an inappropriate manner.

V RECOMMENDATIONS

[41] I recommend that Executive Council and 11 Ministries release the records to the Applicant in a spreadsheet format (either Excel or CSV) within 10 days of issuance of this Report.

[42] I recommend that Advanced Education, within 10 days of the issuing of this Report, take the record in Word format, copy and paste into a spreadsheet format and provide it to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 19th day of March, 2024.

Ronald J. Kruzeniski, K.C

Saskatchewan Information and Privacy
Commissioner