



REVIEW REPORT 235-2016

Ministry of Economy

January 20, 2017

Summary: The Applicant appealed to the Information and Privacy Commissioner (IPC) when he was dissatisfied with the Ministry of Economy's (Economy) response to his access to information request. Economy had provided the Applicant with records from a registry that was partially severed. The IPC found that *The Freedom of Information and Protection of Privacy Act* does not apply to the information that is publicly available.

I BACKGROUND

[1] On July 25, 2016, the Ministry of Economy (Economy) received the following access-to-information request:

Copies of all information submitted on MARS or by mail causing mineral disposition MC00000160 and MC00004853 to be surrendered and lapse.

[2] In a letter dated September 28, 2016, Economy responded to the Applicant. Economy provided copies of records but redacted information under subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] The Applicant was dissatisfied with Economy's response so he requested a review by my office.

[4] On September 29, 2016, my office notified the Applicant and Economy that it would be undertaking a review.

II RECORDS AT ISSUE

[5] There were six pages of records provided to the Applicant. These six pages were printed from Economy's web-based system called Mineral Administration Registration Saskatchewan (MARS). The first two pages details the mineral disposition surrender application, including the application number, the disposition number, and the legal land description. The third and fourth pages are the transaction details for the first mineral disposition surrender application. The fifth and sixth pages are the transaction details for the second mineral disposition surrender application.

III DISCUSSION OF THE ISSUES

1. Does FOIP apply?

[6] Subsection 3(1)(a) of FOIP provides:

3(1) This Act does not apply to:
(a) published material or material that is available for purchase by the public;

[7] According to Economy's submission, the records sought by the Applicant were stored within the MARS system. The MARS system is a registry established pursuant to subsection 27.33(1) of *The Crown Minerals Act*. According to section 12 of *The Mineral Tenure Registry Regulations*, any person or corporation may register to use the registry. According to subsection 15(1) of *The Mineral Tenure Registry Regulations*, a registered user may conduct an electronic search of the information contained in the registry on payment of the fee set out in Table 2 of the Appendix. Below are the relevant sections of *The Mineral Tenure Registry Regulations*:

12(1) A person must be registered to search the registry, acquire or transfer a mineral disposition, register any instrument or make any application or submission pursuant to these regulations.

(2) A person who intends to register to use the registry must:
(a) submit to the registry his, her or the corporation's:
(i) name;
(ii) phone number;

- (iii) address for service; and
- (iv) email address for service;

(b) if the person is a corporation, submit to the registry the corporation's entity number in the register of corporations established pursuant to section 282 of *The Business Corporations Act*; and

(c) pay the fee set out in Table 2 of the Appendix.

...

15(1) On payment of the fee set out in Table 2 of the Appendix, a registered user may conduct an electronic search of **the information** contained in the registry.

[emphasis added]

[8] At issue are records stored within a registry that any person may search provided he or she pay the fees set out in Table 2 of the Appendix. As such, FOIP does not apply to this publically available information pursuant to subsection 3(1)(a) of FOIP.

[9] In a letter dated December 8, 2016, Economy asserted that while a person may be able to search for his/her own application information on MARS, he/she would not be able to search for the application information of another person. Therefore, Economy argued that FOIP would apply to the records at issue in this case. The technical limitations or design of MARS should not be able to decide when FOIP does or does not apply.

[10] I find that the Applicant is entitled to the information pursuant to subsection 15(1) of *The Mineral Tenure Registry Regulations*. The technical limitations or design of MARS should not prevent the Applicant from gaining information that is contained within the registry.

[11] I also note that if a person becomes a registered user of MARS, he or she must agree to a Terms of Use. Within those terms, it provides that information about individuals is not subject to FOIP. It provides:

MARS is a public registry and may contain information about individuals and corporate bodies that is a matter of public record, and therefore not subject to The Freedom of Information and Protection of Privacy Act. By submitting your registration information, you agree and acknowledge that all or portions of the registration information become part of the public record, subject to the terms and

conditions of the Minister stated herein. In using the search functions contained in the MARS website, you are permitted to copy electronically and print hard copy of pages for your own lawful use, accordance with the "Trademarks and Copyright" provisions contained herein.

[12] I recommend that Economy release the withheld information to the Applicant. I also recommend that Economy continue to develop MARS so that it is compliant with subsection 15(1) of *The Mineral Tenure Registry Regulations*.

IV FINDING

[13] I find that FOIP does not apply.

V RECOMMENDATION

[14] I recommend that Economy release the records in their entirety to the Applicant.

[15] I also recommend that Economy continue to develop MARS so that it is compliant with subsection 15(1) of *The Mineral Tenure Registry Regulations*.

Dated at Regina, in the Province of Saskatchewan, this 20th day of January, 2017.

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