



Dec 24, 2018

Office of the Information and Privacy Commissioner of Saskatchewan  
503 – 1801 Hamilton Street  
Regina, SK S4P 4B4

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

Dear Mr. Kruzeniski,

This is in response to your Investigation Report 038-2018 (the “**Report**”) dated November 28, 2018. Following are the responses of the University of Regina (the “**U of R**”) to the four recommendations contained in the Report, listed as items [60] through [63] (the “**Recommendations**”).

In our meeting with Ms. Sharon Young of your office on November 21, 2018, we attempted to provide further explanation and context with respect to the U of R’s position, and with the analysis and conclusions contained in the draft report that had been provided to the University of Regina. We do not intend to repeat those submissions here, other than to respectfully state that the U of R does not concur with the analysis contained in the Report, including with respect to the interplay between, and application of, sections 5.1, 8 and 17 of *The Local Authority Freedom of Information and Protection of Privacy Act* (the “**Act**”). Rather, this response is limited to advising you, and Dr. Eaton, of the U of R’s decision with respect to the Recommendations.

**[60] I recommend that the U of R regard the filtered spreadsheet [the “Database Query Spreadsheet”] as the record responsive to the Applicant’s access request.**

Response:

Dr. Eaton asked the U of R to review its records and generate a spreadsheet containing certain information:

- (i) the dollar amount;
- (ii) the funding agency/company awarding the money;
- (iii) the title of the research project; and
- (iv) the unit (faculty or department or school) that received the funding;

for all external research funding (both private and public) provided to the U of R for fossil fuel research projects involving oil, gas, coal, carbon capture, climate change, alternative energy and petroleum (collectively, the “**Identified Areas**”), between 2006 and 2017 (the “**Requested Information**”).

The Database Query Spreadsheet was generated by the U of R’s Research Office conducting a rudimentary database query of the information contained in the Research Office’s database (the



“Database”) using the Identified Areas as search terms. The information in the Database is informally “recorded” by a number of individuals in the Research Office. There are no guidelines or protocols for how information is input into the Database (including how the name of the project is recorded, or how funding is shown to be received or allocated over the life of the research project). The Database is not intended to be comprehensively accurate – it is a basic summary listing of the various research projects at the U of R. The complete and accurate information is contained only in the individual research project files (the “Project Files”).

As we advised you (and as noted at paragraph [22] of the Report), without reviewing the Project Files the U of R cannot confirm that all of the projects listed on the Database Query Spreadsheet are in fact fossil fuel research projects.

In fact, from even a cursory review of the project descriptions in the Database Query Spreadsheet, I can advise that some would not be responsive to the request. Others would require redaction because they include the funding agency’s name, or the name of the department carrying out the research.

The Database Query Spreadsheet was generated as an initial step in the process to search for responsive records, and as a tool to assist in that search. In its current form, it is not the responsive record.

As we advised your office, only after the U of R completes the steps outlined in paragraphs [23] and [24] of the Report (which would constitute the search required under the Act) can the U of R create a document that contains the actual information requested (the “Responsive Spreadsheet”).

**[61] I recommend that the U of R release the project title, the funding amount, the funding agency, and the unit receiving the funding to the Applicant.**

Response:

This recommendation appears to be based on two findings:

- (a) the U of R must conduct a line-by-line review of the Spreadsheet pursuant to section 8 of the Act in order to apply subsection 17(3) of the Act; and
- (b) the U of R has not demonstrated how releasing the name of the funding agency, and the unit that received the funding would disclose details of the academic research being conducted by its employees.

With respect to the first finding, it is clear from the drafting of subsection 17(4) that the **Legislature itself** has assessed and determined what details can “reasonably be severed” from a



record relating to academic research without disclosing the information to which the U of R is entitled to refuse access (within the meaning of section 8 of the Act). That is, all details except the title of, and the amount of, the funding being received.

Therefore, with respect, given that the responsive record (as determined by the OIPC) is the Database Query Spreadsheet, the line by line review suggested at paragraph [37] of the Report is unnecessary. The Database Query Spreadsheet generated by the U of R contains nineteen columns of information. For each research project, we expect that five of the nineteen columns contain information of interest to Dr. Eaton:

- (i) Amount Awarded or Contract Amount;
- (ii) Agency;
- (iii) Project Title;
- (iv) Department; and
- (v) Faculty

Two of those items [(i) and (iii)] may be disclosed pursuant to subsection 17(4). The U of R is prepared to disclose that information. The other three items [(ii), (iv), and (v)] are information that the U of R is entitled to refuse to disclose pursuant to subsection 17(3) of the Act. We are not certain what further line-by-line review the OIPC suggests should be undertaken in respect of that information.

We are unsure: is it suggested that the U of R must assess whether in each case the funding agency and/or the academic unit would disclose something that is of particular concern? Again, with respect, that is not what subsection 17(3) provides. The U of R is entitled to refuse access to all details of academic research pursuant to subsection 17(3). Subsection 17(4) provides that where **reasonably possible** it shall disclose the title and the amount of the funding. The finding that the U of R has not met its obligations under section 8 of the Act, in this particular circumstance, is, with respect, puzzling.

With respect to the second finding, subsection 17(3) of the Act is manifest that the U of R may refuse to disclose any details of academic research being conducted at the U of R by employees of the U of R. All that is required is for the research to be conducted by an employee of the U of R in the course of the employee's employment.

It is important to note that section 17 is an exemption granted to a local authority. It is entitled "Economic and Other Interests". Unlike section 18, which relates to third party information, or section 28, which relates to personal information, section 17 was enacted to create confidentiality around certain University records that have specific proprietary, economic, scientific or other value to the institution. Subsection 17(3) is a **statutory recognition** of the confidentiality and sensitivity of such research, and the academic freedom rights afforded to all faculty members under the Collective Agreement between the U of R and the University of Regina Faculty Association.

The fact that the details of some research projects may at some point be or become publicly disclosed is not determinative. There are some cases where research has been completed, and



it has been a term of the underlying funding agreement, that the research would be made public. However, there are many types of research projects, including those that are in process, that are not currently public. In other cases, the funders require permanent confidentiality for the research.

Faculty members often undertake research under specific confidentiality conditions that speak to when, if at all, there may be publication of the research results. In those cases, the parties have agreed to what may occur.

If, through a request under the Act, any research that academic staff undertake on behalf of funding agencies can be accessed at any point during the research process, and prior to any agreed-upon publication, we respectfully suggest that academic freedom, institutional competitiveness, and research confidentiality would be violated.

Including for the reasons articulated in paragraphs 28 to 40 of the U of R's written submission on this review, the U of R will not release details of the funding agency, or the unit receiving the funding.

**[62] I recommend that the U of R comply with subsection 17(4) of LA FOIP.**

Response:

The U of R accepts this recommendation. We have consistently expressed willingness to disclose the two categories of information set out in subsection 17(4) of the Act (subject to any applicable exemptions).

Dr. Eaton previously advised me that if the U of R would disclose only the project title and the funding amount, this information would be of no use to her. Therefore, we will confirm whether that is still the case (in which case we will consider her request withdrawn), or whether she wishes the two categories of information to be disclosed.

If she does, then the U of R will undertake a review of the individual research project files identified in the Database Query Spreadsheet, and will then prepare the Responsive Spreadsheet which will be provided to Dr. Eaton.

**[63] I recommend that the U of R rescind its fee estimate.**

Response:

Dr. Eaton has been advised that there may well be exemptions in addition to subsection 17(3) of the Act that apply (including the mandatory exemptions under section 18 of the Act which may apply to protect the rights and interests of the funding agencies). Unless and until a detailed



review of the Project Files is undertaken, the U of R cannot articulate any specific exemptions relating to any specific research projects. It is only once that review is undertaken that a determination as to exemptions and the information that can be provided can be made.

We respectfully believe that the interpretation of subsection 9(2) in the Report is too narrow. The *IPC Guide to Exemptions* recognizes that the time spent to physically sever exempt information from a responsive record (preparing the information for disclosure) is to be included in the fee estimate.

In the context of the present request, the U of R cannot determine whether or not to sever the title or amount of funding under subsection 17(4) without reviewing the Project File that relates to each of the line items in the Database Query Spreadsheet. This is in order to determine if there are any specific confidentiality provisions that could be breached by the U of R were it to disclose the title and amount of funding being received, as recommended by subsection 17(4) of the Act.

The record being sought by Dr. Eaton is relevant only because it is a derivative of data in the possession of the U of R, which data emanates from the individual Project Files. As noted above, the Database Query Spreadsheet is only a tool to help focus the review on the initially identified Project Files.

If Dr. Eaton wants information from those Project Files, the U of R will have to review the underlying Project Files to determine whether the record being disclosed will or will not include certain particulars in respect of each Project File.

As such, we respectfully submit that such a review is in fact necessary in order to prepare the Responsive Spreadsheet, and will therefore result in a fee that is appropriately charged pursuant to section 9.

As a result, if Dr. Eaton wishes the U of R to generate a Responsive Spreadsheet containing the project title and the funding amount, payment pursuant to the Fee Estimate will be required.

Sincerely,

A handwritten signature in blue ink that reads "Glenys Sylvestre".

Glenys Sylvestre

Executive Director, University Governance and  
Head, Access to Information and the Protection of Privacy

cc: Dr. Emily Eaton