



Commissariat
à l'information
du Canada

Office of the
Information Commissioner
of Canada

Gatineau, Canada
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APR 02 2015

Mr. Cobus Kriek
Suite 632, Unit 440
10816 Macleod Trail South
Calgary, AB T2J 5N8

Subject: **Our file:** 3213-01980
 Institution's file: A-2013-00690/HJK

Dear Mr. Kriek:

I am writing to report to you the results of our investigation of your complaint, made under the *Access to Information Act* (the Act), against Employment and Social Development Canada (ESDC).

Background

On January 15, 2014, ESDC received your request for:

Please provide copies of Section 3.5.5.2.7.2 and Section 3.5.5.2.13.1 of the Temporary Foreign Workers Manual. It was previously part of pages 417 to 421 that was previously released under Access to Information request 2012-00360/SS. Copies of these pages are enclosed. It shows that the information was blacked-out pursuant to Section 16.2 to the Access to Information Act. It is now requested that this information be released.

On February 14, 2014, ESDC responded to the request by exempting some information from release pursuant to subsection 16(2) of the Act. On February 24, 2014, you complained to our office about ESDC's response.

Investigation

In your complaint, you stated that you did not agree with ESDC's application of subsection 16(2).

As you are aware, the responsive records include two sections of the Temporary Foreign Worker Program Manual (Sections 3.5.5.2.13.1 and 3.5.5.2.7.2). Initially, ESDC applied subsection 16(2) to Section 3.5.5.2.13.1 in its entirety as well as to two sentences within Section 3.5.5.2.7.2.

PROTECTED A**Subsection 16(2)**

Subsection 16(2) is a discretionary, injury-based, exemption where release of information could reasonably be expected to facilitate the commission of an offence.

In this case, ESDC was of the view that the disclosure of the information could lead to an offence under the *Immigration and Refugee Protection Act* Regulations as well as hinder its ability to enforce the rules and regulations of the Temporary Foreign Workers Program.

For injury based exemptions, the burden of proof rests on the institution to demonstrate that disclosure of information could reasonably be expected to be injurious to the interest specified in the exemption. If no harm or injury is apparent, a government institution should, keeping in mind the spirit and intent of the Act, consider exercising discretion to release the requested information. Also, when benefits of disclosing information outweigh the harm to be caused to the institution if released, or if harm becomes negligible, government institutions should release the requested information.

Initially, ESDC applied a blanket exemption to section 3.5.5.2.13.1 of the manual. Although we agreed with some of the exemptions that ESDC had applied, we were not satisfied that subsection 16(2) applied to the entire document.

Following our initial contact with ESDC, we advised its officials that we disagreed with some of the exemptions applied. As a result, ESDC revised its treatment of records and agreed to release more information to you. However, we did not request that ESDC provide you with an updated release package at that time as you had stated that you preferred to only receive one final release package. As we were still not satisfied with some of the exemptions that ESDC had applied, no updated release package was provided to you at that time.

Following the first proposed updated release package which included the disclosure of column #2 (Documentation Assessed) in its entirety, we contacted ESDC to inform them that we believed that the majority, if not all of column #1 (Elements Assessed) should also be disclosed as we did not believe that subsection 16(2) was sufficiently justified to exempt the content. ESDC reconsidered its position and agreed to disclose all but one paragraph within column #1 (Elements Assessed).

We are satisfied that what remains withheld under column #3 (Compensation) has been properly exempted.

Exercising Discretion

Subsection 16(2) is a discretionary exemption. As ESDC did not initially disclose any information to you, it did not properly exercise discretion. As a result, we asked ESDC to consider its discretion and disclose more within the records you were seeking. With the subsequent agreement to disclose more information; we are now

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satisfied that ESDC properly exercised its discretion when it decided not to disclose portions of the records after applying severance. That is, we are satisfied that ESDC considered its ability to enforce the rules and regulations of the Temporary Foreign Workers Program and the possibility of an offence that would frustrate its effective administration of the *Immigration and Refugee Protection Act* should the withheld information be disclosed.

Conclusion

ESDC has agreed to provide you with a subsequent release package which was sent on April 1st, 2015. We are satisfied that the institution has provided sufficient grounds to maintain the application of subsection 16(2) to the remaining portion of Section 3.5.5.2.13.1.

Based on the foregoing, we will record your complaint as well-founded and resolved. *

Having now received the report of our investigation, section 41 of the Act provides that you may apply to the Federal Court for a review of the Employment and Social Development Canada's decision to deny you access to requested records. Such an application should name the Minister of Economic and Social Development Canada as respondent and it must be filed with the Court within 45 days of receiving this letter. Should you wish to proceed to the Federal Court, we suggest you contact the Court's Registry Office nearest you. Their locations are listed on the Court's website at www.fct-cf.gc.ca or you may call the Court's toll free phone number at 1-800-663-2096.

Please take note that the Information Commissioner's report of the results of her investigation is not subject to judicial review under any provision of the Act and that the Information Commissioner shall not be named as a respondent in an application under section 41 of the Act. A copy of section 41 is enclosed for your convenience.

Yours sincerely,



Sandra George
Director, Intake and Early Resolution Unit
Complaints Resolution and Compliance

c.c.: Access to Information and Privacy Coordinator
Economic and Social Development Canada

Encl: section 41

LOI SUR L'ACCÈS À L'INFORMATION

REVIEW BY THE FEDERAL COURT

Review by
Federal Court

41. Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow. R.S. 1985, c. A-1, s. 41.

RÉVISION PAR LA COUR FÉDÉRALE

Révision par la
Cour fédérale

41. La personne qui s'est vu refuser communication totale ou partielle d'un document demandé en vertu de la présente loi et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à l'information peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 37(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation. L.R. 1985, ch. A-1, art. 41.