



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 128-2020**

### **Saskatchewan Power Corporation**

**August 30, 2021**

#### **Summary:**

Saskatchewan Power Corporation (SaskPower) received an access to information request from the Applicant. SaskPower responded to the Applicant, denying access to portions of the record pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review from the Commissioner of SaskPower's application of subsection 29(1) of FOIP, and of its search efforts. The Commissioner found that SaskPower applied subsection 29(1) of FOIP appropriately to some portions of the record, but not to one item of the record and that subsection 27(1) of *The Health Information Protection Act* (HIPA) applied to some information in the record. The Commissioner also found that SaskPower conducted a reasonable search. The Commissioner recommended that SaskPower continue to withhold portions of the record where subsection 29(1) of FOIP and subsection 27(1) of HIPA were found to apply and release the rest. The Commissioner also recommended that SaskPower take no further action regarding search.

#### **I BACKGROUND**

- [1] On October 30, 2019, Saskatchewan Power Corporation (SaskPower) received an access to information request from the Applicant, requesting the following information:

All emails that [Supervisor Meter Reading, North Battleford] had sent to [Manager, Meter Reading Central] or all emails that [Supervisor Meter Reading, North Battleford] has received from [Manager, Meter Reading Central] with the words “[Applicant’s first name]”, “Kindersley” or “[Applicant’s full name]”. April 1, 2018 to present.

- [2] During November 2019 to January 2020, SaskPower worked with the Applicant in order to provide a fee estimate. The Applicant paid the 50% deposit on the fee estimate.
- [3] On February 10, 2020, SaskPower responded to the Applicant denying access to portions of the requested records pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] On May 21, 2020, my office received an email from the Applicant requesting a review of the exemption applied and the search efforts of SaskPower, as the Applicant believed that SaskPower did not locate and provide all responsive records.
- [5] On June 17, 2020, my office provided notification to the Applicant and SaskPower of my office's intent to undertake a review.
- [6] On September 18, 2020, the Applicant provided their submission to my office and on November 11, 2020, SaskPower provided its submission to my office.

## **II RECORDS AT ISSUE**

- [7] SaskPower responded to the Applicant with 351 pages, out of which 284 pages were released in full with the other 67 pages withheld in part pursuant to subsection 29(1) of FOIP. Therefore, only portions of 67 pages are at issue for this review. For details, see Appendix A of this Report.

## **III DISCUSSION OF THE ISSUES**

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

- [8] SaskPower qualifies as a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP and section 3 and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). SaskPower is also a "trustee" pursuant to subsection 2(t)(i) of *The Health Information Protection Act* (HIPA) for

purposes of personal health information in its custody or control. Therefore, I have jurisdiction to conduct this review.

**2. Did SaskPower properly apply subsection 29(1) of FOIP?**

[9] There are 67 pages where SaskPower applied subsection 29(1) of FOIP, in part.

[10] Subsection 29(1) of FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. Subsection 29(1) of FOIP requires a government institution to have the consent of the individual whose personal information is in the record prior to disclosing it unless it has authority to disclose without consent pursuant to subsection 29(2) or section 30 of FOIP. Subsection 29(1) of FOIP provides:

**29(1)** No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[11] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as “personal information” as defined in subsection 24(1) of FOIP.

[12] In its submission to my office, SaskPower did not specify which subsection of 24(1) of FOIP it applied to different parts of the record. However, upon review of the record, it appears that subsections 24(1)(b), (d) and (k)(i) of FOIP are engaged. Subsections 24(1)(b), (d) and (k)(i) of FOIP provide:

**24(1)** Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in *The Health Information Protection Act*;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

...

[13] While subsection 24(1) of FOIP provides examples of the type of information that qualifies as personal information, this is not an exhaustive list. There may be other information that qualifies as personal information, if the following two elements exist:

1. Is there an identifiable individual? and
2. Is the information personal in nature?

[14] In its submission, SaskPower explained that the records on which it applied subsection 29(1) of FOIP were emails between SaskPower employees, portions of which reveal individuals' names in the context of their performance as employees and it was the personal information of those individuals.

[15] Upon review of the 67 pages, it appears some of these pages are emails between SaskPower employees and the remaining pages are Systems Applications and Products in Data Processing (SAP) attendance time statements.

[16] My office noted that these emails pertain to employees other than the Applicant and contain those employees' training status, vacation requests, overtime requests, and management issues. For example, pages 27 to 29 are email chains regarding the training status of employees; pages 205 to 206 is an email chain regarding orientation matters of an employee; pages 305 to 306 are email chains regarding overtime requests for an employee; all this correspondence is regarding employees other than the Applicant. Such information constitutes employment history of those employees and would qualify as personal information as defined in subsection 24(1)(b) of FOIP and I recommend it continue to be withheld pursuant to subsection 29(1) of FOIP. For details, see Appendix A of this Report.

- [17] Upon review of the remaining pages, my office noted that these pages contained SAP attendance time statements. The data elements in these SAP time statements that had been withheld are employee names, employee numbers and employee handwritten signatures. The other data elements in these SAP time statements that had been released to the Applicant are day, attendance/absence, hours worked, daily work schedules (DWS) time codes etc.
- [18] In my office's Review Reports 381-2019, 082-2017 and LA-2012-002, it was found that the name of employees and the shifts or hours they worked would not be personal information as defined in subsection 24(1)(b) of FOIP. My office's report LA-2012-002 also referred to the Supreme Court of Canada's decision *Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403, which concluded that hours of work pertain more to the job description of an individual than personal information.
- [19] My office noted that pages 43 to 44, 215 to 241, 244 to 245, 248 to 258 and 260 to 261 are all SAP time statements of employees, other than the Applicant and everything but the employee names, employee numbers and employee handwritten signatures have been already released to the Applicant. In my office's Review Report F-2005-001, it was found that employee number when linked to an employee name qualifies as personal information as defined in subsection 24(1)(d) of FOIP. Therefore, I find that SaskPower appropriately applied subsection 29(1) of FOIP to the employee number.
- [20] Generally speaking, information which identifies the reason why an employee was not working (i.e. family leave, personal leave and leave without pay), would be considered personal in nature, but it does not qualify as personal information until linked to an identifiable individual. SaskPower has already released to the Applicant the column named "attendance/absence" in these time statements and this column listed other data elements such as regular time, sick time, family day, personal day and leave without pay, for each employee.

[21] If employee names and handwritten signatures in this context are also released to the Applicant, individuals will be identified and thereby personal information of employees will be disclosed. Accordingly, I find that SaskPower appropriately applied subsection 29(1) of FOIP in these instances.

[22] I however also need to determine if HIPA is engaged. HIPA is only engaged if three elements exist: (1) there must be a trustee within the meaning of subsection 2(t) of HIPA; (2) there must also be personal health information within the meaning of subsection 2(m) of HIPA; and (3) the personal health information must be in the custody or control of the trustee.

[23] As I found earlier, SaskPower is a trustee pursuant to subsection 2(t)(i) of HIPA. Subsection 2(t)(i) of HIPA states:

2(t) “trustee” means any of the following that have custody or control of personal health information:

- (i) a government institution;
- ...

[24] Therefore, the first element is met.

[25] Information regarding an employee’s sick leave would be considered personal health information as defined by subsection 2(m)(i) of HIPA. Subsection 2(m)(i) of HIPA provides:

2(m) “**personal health information**” means, with respect to an individual whether living or deceased:

- (i) information with respect to the physical or mental health of the individual;
- ...

[26] Therefore, the second element is met.

[27] Custody is physical possession with a measure of control. Control needs to be considered only if there is no custody by a trustee. As the time statements are regarding SaskPower’s

employees and entered into its database, SaskPower has custody of the personal health information. Therefore, the third element is met.

[28] As all three elements have been met, I find that HIPA is engaged in this case.

[29] Information regarding sick leave was already released to the Applicant, but was not linked to specific employees. So as with my earlier finding, if the name and handwritten signature of an employee in this context is released, it would result in personal health information of the employee being disclosed to the Applicant resulting in a privacy breach.

[30] Therefore, in the specific cases where sick or personal or family leave details have already been released to the Applicant, the corresponding names and signatures of the employees in question must still be withheld.

[31] However, I also find that some information withheld on one page of the record (page 101) does not constitute personal information. The information pertains to a group of employees in general, so there is no identifiable individual to associate the information to. Further, there are opinions contained in the severed information that pertain to the Applicant. Subsection 31(1) of FOIP provides that individuals have a right to have access to their own personal information contained in a record. Therefore, I find that SaskPower did not appropriately apply subsection 29(1) of FOIP to that portion of the record. I recommend SaskPower release this information on page 101 to the Applicant.

[32] In conclusion, I find that there is personal information involved as defined in subsections 24(1)(b), (d) and (k)(i) of FOIP on some pages of the record, but not in all cases where identified by SaskPower. Hence, I find that SaskPower properly applied subsection 29(1) of FOIP to some portions of the record. I also find that there is personal health information involved pursuant to subsection 2(m)(i) of HIPA which must be withheld pursuant to subsection 27(1) of HIPA. Therefore, the employee names, employee numbers and employee handwritten signatures should continue to be withheld in the cases I noted earlier. For further details, see Appendix A of this Report.

**3. Did SaskPower conduct a reasonable search for records?**

[33] During the initial correspondence with my office, the Applicant had requested a review of SaskPower's search efforts, advising that they did not believe that SaskPower had located and provided them with all the responsive records. Therefore, I will review if SaskPower conducted a reasonable search.

[34] Section 5 of FOIP provides as follows:

**5** Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[35] Section 5 of FOIP is clear that access to records must be granted if they are in the possession or under the control of the government institution subject to any exemptions that may apply pursuant to FOIP.

[36] If a government institution indicates that records do not exist, an applicant may request my office conduct a review of the government institution's search efforts. FOIP does not require a government institution to prove with absolute certainty that records do not exist, but it must demonstrate that it has conducted a reasonable search to locate the records.

[37] A *reasonable search* is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records reasonably related to the access to information request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances. Examples of information to support its search efforts that government institutions can provide to my office include the following:

- For personal information requests - explain how the individual is involved with the government institution (i.e. client, employee, former employee etc.), and why certain departments/divisions/branches were included in the search.



- For general requests - tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by:
  - alphabet
  - year
  - function
  - subject
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders);
- If the record has been destroyed, provide copies of record schedules and/ or destruction certificates;
- Explain how you have considered records stored off-site;
- Explain how records that may be in the possession of a third party but in the government institution's control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search.
- Consider having the employee that is searching provide affidavit to support the position that no record exists or to support the details provided. For more on this,

see the IPC resource, Using Affidavits in a Review with the IPC available on the IPC website.

*(IPC Guide to FOIP, Chapter 3: Access to Records, updated: June 29, 2021, (Guide to FOIP), pp. 9-10)*

[38] The preceding list is intended to be a guide. Each case will require different search strategies and details depending on the records requested (Guide to FOIP, p. 10).

[39] In its submission to my office, SaskPower explained that it has established a process to handle searching for records more efficiently. It explained:

Each Vice-President designates a Business Unit Representative (“BU Rep”) as a point of contact for each Business Unit. The BU Rep would have a better knowledge of which employees within the Business Unit would likely be in possession of records responsive to the Request for Information. Upon receipt of an access to information request by the Freedom of Information Coordinator (the Coordinator), the Coordinator reaches out to the BU Rep requesting they coordinate a search strategy and complete a spreadsheet on behalf of the Business Unit. The BU Rep is given a deadline within which to provide the Coordinator a completed search strategy spreadsheet encompassing the search undertaken by the Business Unit. If the search indicates that the time to search for the records would be greater than 6 hours, then an Estimate of Costs is prepared. If the search indicates that the time to search for the records would be less than 6 hours, the Business Unit is then asked to complete the search and provide the records to the Coordinator.

[40] In its submission, SaskPower listed dates and details of its email exchanges with its staff, to identify the responsive records and conduct a thorough search. The details of SaskPower’s search can be summarized as follows:

- October 30, 2019 – the FOI coordinator contacted the FOI representative for the Distribution Services Business Unit [DSBU] and that unit’s employee named in the scope of the Applicant’s access to information request;
- November 4, 2019 – the DSBU informed the FOI coordinator that it estimated 300 pages (10 emails per month x 2 pages each x 15 months). As there was only one employee reporting search time, a search spreadsheet was not prepared;
- December 6, 2019 - the DSBU’s Supervisor provided all pages of the record that they had located, along with a breakdown of their search efforts for collecting the responsive records:

- This Supervisor searched their various outlook folders named Kindersley/ [name of Supervisor]/ [name of Manager]/ Sent; using key words such as [name of Supervisor]/ [name of Manager]/ [name of Applicant]/ Kindersley; and
- They spent 3 hours on November 21, 2019 and 2.5 hours on December 6, 2019, a total of 5.5 hours.

[41] My office noted that it appeared that no paper records were searched or found by this Supervisor named in the Applicant's access to information request. Therefore, my office contacted SaskPower to clarify if they had conducted any search for paper records. My office also inquired if SaskPower had searched all archived emails during April 1, 2018 to October 30, 2019 (time period provided in the Applicant's access to information request).

[42] SaskPower explained, that as the scope of the Applicant's access to information request was for emails only, it only conducted an electronic search for records. The search was performed for all emails for the dates referred to in the Applicant's access to information request. SaskPower further explained that in this case, there was only one Supervisor in the DSBU who conducted the search and they searched their "Outlook", which would have included archives.

[43] At this point, I need to determine if the Applicant provided any evidence to support their assertion that SaskPower did not locate and provide them with all the responsive records. Upon review of the Applicant's submission, I do not find any constructive argument or evidence to prove their aforesaid assertion. In addition, some issues were raised that were not within the scope of this review. For example, concerns regarding the Applicant's privacy.

[44] I note that the Applicant submitted three access to information requests to SaskPower between October 7, 2019 and November 1, 2019. In their submission, the Applicant raised concern that there were records responsive to one access request that were not provided to them in response to the other two. However, upon review, the scope of the three access to information requests were all different, so would capture different records.

[45] In Review Report 159-2019 at paragraph [16], I stated that applicants set the parameters of their search requests, so public bodies can conduct an adequate search of records. As such, there is some onus on an applicant to establish their basis for believing further records exist, such as by providing supporting evidence.

[46] Therefore, based on the search efforts provided by SaskPower, I find that SaskPower conducted a reasonable search to locate records requested in the Applicant's access to information request.

#### **IV FINDINGS**

[47] I find that SaskPower appropriately applied subsection 29(1) of FOIP to portions of the record. For details, see Appendix A of this Report.

[48] I find that SaskPower did not appropriately apply subsection 29(1) of FOIP to one item of the record. For details, see Appendix A of this Report.

[49] I find that HIPA applies when sick leave is tied to an employee name which includes their handwritten signature.

[50] I find that SaskPower conducted a reasonable search to locate records requested in the Applicant's access to information request.

#### **V RECOMMENDATIONS**

[51] I recommend that SaskPower continue to withhold portions of records where subsection 29(1) of FOIP or subsection 27(1) of HIPA was found to apply and release the remaining portion of the records where subsection 29(1) of FOIP was found not to apply. For details, see Appendix A of this Report.

[52] I recommend that SaskPower take no further action with regard to search efforts in this matter.

Dated at Regina, in the Province of Saskatchewan, this 30<sup>th</sup> day of August, 2021.

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

**Appendix A**

<b>Page # Redacted version (as provided to OIPC)</b>	<b>Page # - Applicant's version</b>	<b>Description</b>	<b>Exemption of FOIP SaskPower Applied</b>	<b>Withheld in Full (F) or Part (P)</b>	<b>Exemption found to Apply</b>
376	27	Email; subject – Over due LMS – May 31, 2018	29 (1)	P	29(1) of FOIP, continue to withhold
377 – 378	28 – 29	Email; subject – Over due LMS – May 31, 2018	29 (1)	P	29(1) of FOIP, continue to withhold
392 - 393	43 - 44	Email and attachment to email; subject – Time Statement form 2018.xlsx – June 1, 2018	29 (1)	P	29(1) of FOIP, continue to withhold
408 - 409	59 - 60	Email chain; subject – [name of SaskPower employee other than Applicant] – Staff meeting – June 25, 2018	29(1)	P	29(1) of FOIP, continue to withhold
450 – 452	101 – 103	Email chain; subject – News Article – Powertel – October 12, 2018	29(1)	P	Release information
554 – 555	205 – 206	Email chain; subject – [name of SaskPower employee other than Applicant] – March 28, 2019	29(1)	P	29(1) of FOIP, continue to withhold
564 – 590	215 – 241	Email and attachments to email; subject – Time Statement form 2018.xlsx – June 1, 2018	29(1)	P	29(1) of FOIP and 27(1) of HIPA, continue to withhold
593 – 594	244 – 245	Time Statements; Evaluation period – February, 2019	29(1)	P	29(1) of FOIP, continue to withhold
597 – 607	248 – 258	Time Statements; Evaluation period – February, 2019	29(1)	P	29(1) of FOIP and 27(1) of HIPA,

					continue to withhold
609 – 610	260 – 261	Time Statements; Evaluation period – February, 2019	29(1)	P	29(1) of FOIP, continue to withhold
611	262	Time Statements 2019; Jan – Dec – tally chart	29(1)	P	29(1) of FOIP, continue to withhold
627	278	Time Statements 2019; Jan – Dec – tally chart	29(1)	P	29(1) of FOIP, continue to withhold
644 – 646	293 – 295	Email chain; subject – Information Required – April 23, 2019	29(1)	P	29(1) of FOIP, continue to withhold
660	305	Email chain; subject – Over time for [name of employee other than the Applicant] – April 29, 2019	29(1)	P	29(1) of FOIP, continue to withhold
661	306	Email chain; subject – OT for [name of employee, other than Applicant] – May 6, 2019	29(1)	P	29(1) of FOIP, continue to withhold
675	320	Email chain; subject – Confidential – not for Distribution – May 31, 2019	29(1)	P	29(1) of FOIP, continue to withhold
692 – 696	337 – 341	Email chain; subject – Request for Action – June 19 – 20, 2019	29(1)	P	29(1) of FOIP, continue to withhold