



REVIEW REPORT 002-2020

Saskatchewan Human Rights Commission

October 27, 2020

Summary:

The Saskatchewan Human Rights Commission (SHRC) responded to an access to information request by providing access to some records but refused access to others. The SHRC cited subsection 17(1)(b)(i) and section 22 of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that some of the records were outside of the scope of the access request. He found that subsections 17(1)(b)(i) and section 22 of FOIP did not apply to the records. The Commissioner made a number of recommendations including that the SHRC release the records within the scope of the access request to the Applicant. He also recommended that the SHRC offer to provide the Applicant a copy of the documents originally provided by the Applicant or copies of emails that were sent or received by the Applicant, as such records would be responsive to the access request.

I BACKGROUND

- [1] On November 26, 2019, the Applicant submitted an access to information request to the Saskatchewan Human Rights Commission (SHRC). They requested a copy of any and all correspondence and records related to themselves and their file.
- [2] In a letter dated December 19, 2019, the SHRC responded to the Applicant. It provided the Applicant access to some records, but withheld others. It cited subsection 17(1)(b)(i) and section 22 of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] On December 31, 2019, the Applicant requested a review by my office.

- [4] On January 7, 2020, my office notified both the Applicant and the SHRC that my office would be undertaking a review.

II RECORDS AT ISSUE

- [5] At issue are 28 pages of records. They are pages 1 to 2, 3 to 7, 9 to 10, 11 to 12, 22, 25 to 27, 29 to 39, 54, and 63. In its submission, the SHRC indicated that the records involved in this review were related to an intake file at the SHRC. It said that initially the intake file was assigned to one Intake Officer, but was then reassigned to another. It said that the majority of the intake file would have been documents provided by the Applicant and the majority of the correspondence on the file involved the Applicant and the two Intake Officers. When processing the access request, the SHRC elected not to provide documents originally provided by the Applicant nor provide copies of emails that were sent or received by the Applicant. The SHRC provided other records in the Applicant's intake file, including telephone notes by Intake Officers.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [6] The SHRC 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). Therefore, I have jurisdiction to conduct this review.

2. Are there records that are not responsive to the Applicant's access to information request?

- [7] The SHRC identified pages 3 to 7 as not responsive to the access request. These pages are dated January 7, 2020.

- [8] In past reports, I have said that an applicant's access to information request itself sets the boundaries of relevance and circumscribes the records or information that will ultimately be identified as being responsive.
- [9] In this case, the Applicant's access request was received on November 26, 2019. As such, the only records that can be responsive to the Applicant's access request would have to be either created on or before November 26, 2019. Since pages 3 to 7 are records dated January 7, 2020, I find that these pages are outside the scope of the access request.
- [10] Later, the SHRC noted that pages 1 and 2 are records that were created after November 26, 2019. Based on a review of pages 1 and 2, I find that these records were indeed created after November 26, 2019. As such, I find that pages 1 and 2 are outside the scope of the access request.
- [11] I trust that the SHRC provided pages 1, 2, 3 to 7 to my office for the purpose of this review in order to be as transparent as possible with my office. In order to avoid confusion in the future, I recommend that the SHRC paginate records when it is processing an access request. This would enable the SHRC and the applicant to have one set of records to reference. Should the applicant request a review by my office, then the SHRC, the applicant, and my office would have one set of records to reference.

3. Did the SHRC properly apply subsection 17(1)(b)(i) of FOIP?

- [12] The SHRC applied subsection 17(1)(b)(i) of FOIP to all 28 pages that were withheld from the Applicant. Since I already found that pages 1, 2, 3 to 7 are outside the scope of the access request, I will only consider the remaining 21 pages. Subsection 17(1)(b)(i) of FOIP provides as follows:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[13] My office's *Guide to FOIP: Chapter 4* (updated February 20, 2020)(Guide to FOIP) provides a two-part test for subsection 17(1)(b)(i) of FOIP:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of a government institution, a member of the Executive Council, or the staff of a member of the Executive Council?

[14] At pages 127 to 128, the Guide to FOIP, defines "consultation" and "deliberation" as follows:

Consultation means:

- the action of consulting or taking counsel together: deliberation, conference;
- a conference in which the parties consult and deliberate.

A consultation can occur when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation.

Deliberation means:

- the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision;
- the consideration and discussions of the reasons for and against a measure by a number of councillors.

A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

[15] I will use the above two-part test to determine if subsection 17(1)(b)(i) of FOIP applies.

Draft versions of letters

[16] Pages 29 to 34, and 38 to 39 are draft versions of letters addressed to the Applicant. These draft letters were prepared by the Intake Officer for the Director of Resolution's approval. They contain a summary of SHRC's understanding of the Applicant's complaint, factual information regarding the complaint, decisions by the SHRC regarding the complaint and the reasons for the decisions. These letters also contain handwritten edits by the Director of Resolution. In its submission, the SHRC asserted that consultations and deliberations occurred between the Intake Officer and the Director of Resolution. It asserted that the draft letters summarized the deliberations.

[17] In Review Report 187-2019 at paragraph [40], I found that subsection 17(1)(b) of FOIP did not apply to responses drafted for approval that contained factual information. In Review Report 086-2018 at paragraph [66], I found that factual information in draft documents that do not explain the pros or cons of a particular action do not qualify for exemption under subsection 17(1)(b)(i) of FOIP.

[18] Also, at paragraph 75 of Order F2016-016, Alberta's Office of the Information and Privacy Commissioner (AB IPC) said that the contents of a draft document does not mean the information qualifies as "consultations" or "deliberations". AB IPC said:

[para 75] There is no evidence that the letter reflects the deliberations of the councillor as to what the letter should say. As I noted in Order F2013-17, **the fact that a draft (assuming the letter is a draft and not the final version) may differ from a final version of does not transform the information in the draft into advice, proposals, recommendations, analyses, policy options, consultations or deliberations: information must have that character to begin with.** I acknowledge that the differences between a draft version and a final version may allow a reader to determine what was changed and to speculate about the reasons for the changes. However, it does not follow from this possibility that any changes that were made are the result of information subject to section 24(1)(a) or (b), or that such information would be revealed by disclosing the draft version.

[Emphasis added]

[19] Based on a review of the draft letters, I find that the contents do not qualify as consultations or deliberations. First, they are draft versions of letters addressed to the Applicant. They

do not qualify as consultations or deliberations simply because they are draft versions, and not the final versions, of the letters. Second, the contents do not qualify as consultations or deliberations as defined earlier. For example, the contents do not represent the views of one or more SHRC employees regarding the appropriateness of a particular proposal or suggested action. Further, the contents are not a consideration or discussion of reasons for and against a particular action. Third, the handwritten edits are directions, rather than consultations or deliberations, given by the Director of Resolution to the Intake Officer. I find that subsection 17(1)(b)(i) of FOIP does not apply to the draft letters on pages 29 to 34, and 38 to 39.

Emails between an Intake Officer and the Director of Resolution

[20] Pages 9, 35, 36, 37, 54 and 63 contain emails between the Intake Officer and the Director of Resolution. The contents do not qualify as consultations or deliberations. For example, page 9 contains an email from the Director of Resolution to an Intake Officer. The Director sought a status update on a file. The Intake Officer responded by providing a status update. I do not find that the contents of the email exchange to qualify as a “consultation” or a “deliberation” as defined earlier. Another example is on pages 35 to 36. They contain email exchanges between the Intake Officer and the Director of Resolution. The Intake Officer summarized their finding and reasons for the finding. In turn, the Director provided direction to the Intake Officer on what they (the Director) want the Applicant to do. I find that the contents do not qualify as a “consultation” or “deliberation”. I find that subsection 17(1)(b)(i) of FOIP does not apply to pages 9, 35, 36, 37, 54 and 63.

Emails between SHRC employees

[21] Pages 9 to 10 and 11 to 12 consist of emails between SHRC employees. In an email on pages 9 and 10, an SHRC employee asks another SHRC employee to save an email to the Applicant’s file. I find that such an exchange does not qualify as “consultations” or “deliberations” as defined earlier. On pages 11 to 12, a SHRC employee (Commission Assistant) forwarded an email from the Applicant to another SHRC employee (lawyer). Then, the SHRC employee (Lawyer A) forwards the email to another SHRC employee

(Lawyer B). Lawyer A provides direction to Lawyer B. I find that such an exchange does not qualify as “consultations” or “deliberations as defined earlier. Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply to pages 9 to 10 or 11 to 12.

Other records

[22] Page 22 is a note to file by the Intake Officer. The note to file does not contain consultations or deliberations. Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply to page 22.

[23] Page 25 is a handwritten chronology of events in the Applicant’s intake file. It also contains a summary of the Applicant’s job duties. Such information does not qualify as consultations or deliberations. Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply to page 25.

[24] Pages 26 and 27 contain an email from the Applicant to the Intake Officer. Page 26 also contains a note to file by the Intake Officer. I find that the information on pages 26 and 27 do not qualify as “consultations” or “deliberations”. Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply to pages 26 and 27.

4. Did the SHRC properly apply subsection 22(a) of FOIP?

[25] The SHRC applied subsection 22(a) of FOIP to all of the records at issue. Since I have already found that pages 1, 2, 3 to 7 are outside the scope of the access request, I will consider the remaining 21 pages of records at issue.

[26] Before I proceed with the analysis, I note that government institutions have three options when claiming subsection 22(a) of FOIP. These include: 1) providing the records to my office stating that the government institution is not waiving the privilege; 2) providing the records to my office with the portions severed where solicitor-client privilege is claimed; or 3) providing my office with an affidavit with a schedule of records. If I have a reasonable basis for questioning the content of an affidavit, I may exercise my formal powers,

and only as necessary, request additional background information by affidavit or otherwise.

[27] My office's *Rules of Procedure* (revised August 12, 2020), provides further guidance to government institutions on this. In the matter before me, the SHRC has gone the route of the first option, which is providing my office with a copy of the records to which it is applying subsection 22(a) of FOIP. This approach by a government institution is always appreciated by my office.

[28] Subsection 22(a) of FOIP provides:

22 A head may refuse to give access to a record that:

(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

[29] My office uses the following three-part test to determine if subsection 22(a) of FOIP applies:

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Did the parties intend for the communication to be treated confidentially?

[30] In its submission, the SHRC indicated that some of its employees are lawyers and that they are active members of the Law Society of Saskatchewan. As such, SHRC asserted they are legal counsel. SHRC submitted that correspondence involving one or more of its employees who are lawyers would qualify for exemption under subsection 22(a) of FOIP. For example, in its arguments for pages 9 and 10, the SHRC argued that an email from the Director of Resolution to an Intake Officer is subject to solicitor-client privilege. It asserted that the Director of Resolution is the solicitor and the Intake Officer is the client. It submitted that:

The three-part test for this exemption is met. The record is a communication between solicitor and client. In this case, the solicitor is Jocelyn Putland Wiebe (Director of

Resolution and Commission Counsel) and the client is Paula Jane Remlinger (Intake Officer) who is acting on behalf of the Commission. As stated above, all discussions between Intake Officer(s) and the Director of Resolution are conducted in contemplation of arriving at a decision. The Director of Resolution's role is to make final decisions at the end of the intake stage. These decisions are informed by consultations/deliberations with Intake Officers.

[31] As described earlier, page 9 contains an email by the Director of Resolution where the Director sought a status update. The Intake Officer provided a status update. Such communication does not constitute the seeking or giving of legal advice.

[32] The SHRC offered similar arguments for other pages in which the Director of Resolution is involved. Those pages are 35, 36, 37, 29 to 39, 54 and 63.

[33] At pages 250 to 251 of the Guide to FOIP and at paragraph [98] of my Review Report 171-2019, I cited *R. v Campbell*, [1999] 1 SCR 565 (*R v. Campbell*), where the Supreme Court of Canada (SCC) stated that not everything done by a government (or other) lawyer attracts the solicitor-client privilege:

It is, of course, not everything done by a government (or other) lawyer that attracts solicitor-client privilege. While some of what government lawyers do is indistinguishable from the work of private practitioners, they may and frequently do have multiple responsibilities including, for example, participation in various operating committees of their respective departments. Government lawyers who have spent years with a particular client department may be called upon to offer policy advice that has nothing to do with their legal training or expertise, but draws on departmental know-how. **Advice given by lawyers on matters outside the solicitor-client relationship is not protected...Whether or not solicitor-client privilege attaches in any of these situations depends on the nature of the relationship, the subject matter of the advice and the circumstances in which it is sought and rendered.**

[Emphasis added]

[34] Based on a review of the emails between the Director of Resolution and the Intake Officer in this file (including the one that appears on page 9), I find that a solicitor-client relationship does not exist. Instead, the relationship appears to be that of an employer-employee relationship. The Director of Resolution directs the Intake Officer and the Intake

Officer submits work product for the Director of Resolution's approval. Similarly, any email correspondence in the records at issue involving the Director of Resolution and any SHRC employee does not appear to be a solicitor-client relationship but that of an employer-employee relationship. As such, I find that subsection 22(a) of FOIP does not apply to pages 9, 10, 35, 36, 37, 29 to 39, 54 and 63.

[35] Pages 11 to 12 involve two SHRC employees who are lawyers. As described earlier, the Commission Assistant forwarded an email from the Applicant to Lawyer A. Then Lawyer A forwarded the email to Lawyer B. Lawyer A provided direction to Lawyer B. In its submission, the SHRC provided the following argument as to why subsection 22(a) of FOIP applies to these emails:

The three-part test for this exemption is met. The records are a communication between solicitor Amjad Murabit (Commission Counsel), solicitor Meghan Seidle (Commission Counsel) and client Karen Materi (Commission Assistant, acting on behalf of the Commission). Amjad Murabit (Commission Counsel) and Meghan Seidle (Commission Counsel) are active members of the Law Society of Saskatchewan. The communication entails seeking legal advice and/or providing direction about a legal issue and a recommended course of action. The parties intended for the communication to be treated confidentially and expected the same. The communication has not been disclosed to any parties outside of the solicitor-client relationship.

[36] In spite of the SHRC's submissions, I find that the contents of the emails on pages 11 to 12 do not qualify for exemption under subsections 22(a) of FOIP. I do not accept SHRC's argument that the Commission Assistant is the client in a solicitor-client relationship and that the communication involves the seeking or giving of advice from Lawyer A or Lawyer B. Based on the content of the email exchanges, the Commission Assistant is passing on information to Lawyer A for Lawyer A to handle. Further, Lawyer A directing Lawyer B to handle the matter is just that – it is direction, not advice. Therefore, I find that subsection 22(a) of FOIP does not apply to pages 11 to 12.

[37] For the remaining pages (pages 22, 25, 26 to 27), it is not clear what SHRC's arguments are for why it applied subsection 22(a) of FOIP. These pages do not appear to involve an

SHRC employee who is acting in the capacity of legal counsel. On the face of these pages, I do not find that subsection 22(a) of FOIP applies to pages 22, 25, 26 to 27.

5. Did the SHRC properly apply subsection 22(b) of FOIP?

[38] The SHRC applied subsection 22(b) of FOIP to all of the records at issue. Since I have already found that pages 3 to 7 are non-responsive, I will only consider the remaining 23 pages of records at issue. Section 22(b) provides:

22 A head may refuse to give access to a record that:

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;

[39] My office uses the following two-part test to determine if subsection 22(b) of FOIP applies.

1. Were the records “prepared by or for” an agent or legal counsel for a government institution?
2. Were the records prepared in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

[40] In its arguments for subsection 22(b) of FOIP, the SHRC took an approach that is similar to its approach for arguing subsection 22(a) of FOIP. That is, if an SHRC employee is a lawyer, then the SHRC employee is acting in the capacity of legal counsel. For example, in its submission for subsection 22(b) of FOIP for pages 9 and 10, it asserted that the Director of Resolution was legal counsel. It said:

The two-part test for this exemption is met. These records were prepared by legal counsel for a government institution, Jocelyn Putland Wiebe (Director of Resolution and Commission Counsel), and they were prepared in relation to a matter involving the provision of advice. In this correspondence, the Director of Resolution is arranging a meeting with the Intake Officer and is seeking a recommendation on the disposition of the file.

[41] I disagree with the description of the email exchange between the Director of Resolution and the Intake Officer that appears on page 9. Again, as described earlier, the Director of

Resolution sought a status update on a file and the Intake Officer provided a status update. I find that the Director of Resolution is acting in the capacity of a director and not as legal counsel.

[42] The SHRC offered similar arguments for other pages in which the Director of Resolution was involved. Those pages are 35, 36, 37, 29 to 39, 54 and 63. As I had found earlier, I do not find that the Director of Resolution is acting in the capacity of legal counsel in these pages. Instead, I find that they are acting in the capacity of a director who is providing direction to employees. As such, the first part of the test is not met. I find that subsection 22(b) of FOIP does not apply to pages, 9, 10, 35, 36, 37, 29 to 39, 54 and 63.

[43] For pages 11 to 12, involving an email exchange between the Commission Assistant, Lawyer A, and Lawyer B (as described earlier), the SHRC offered the following submission:

The two-part test for this exemption is met. The records were prepared by and for legal counsel for the Commission. Meghan Seidle (Commission Counsel) prepared the email for the use of Amjad Murabit (Commission Counsel). The email prepared by Karen Materi (Commission Counsel) was meant for Meghan Seidle (Commission Counsel). The records provide a legal opinion about a legal issue and a recommended course of action. In these documents, Meghan Seidle (Commission Counsel) proposes a course of action regarding a matter with legal implications.

[44] I do not accept SHRC's submission that the records were prepared by or for legal counsel. As I found in Review Report 171-2019 at paragraph [128], it is not sufficient to indicate that because a record was prepared by or for a SHRC employee who is also a lawyer is enough to find that subsection 22(b) of FOIP applies. The SHRC should be explaining how each SHRC employee/lawyer is taking on the role of legal counsel, and that the records it is withholding under subsection 22(b) of FOIP contains information that was compiled or created for the purpose of providing legal advice or legal services by its legal counsel. Based on a review of pages 11 and 12 and as described earlier, the Commission Assistant is passing on information to Lawyer A for Lawyer A to handle. Further, Lawyer A directing Lawyer B to handle the matter is just that – it is direction. It is not a legal opinion

nor does it constitute legal services. Therefore, I find that subsection 22(b) of FOIP does not apply to pages 11 to 12.

[45] For the remaining pages (pages 22, 25, 26 to 27), it is not clear what SHRC's arguments are for why it applied subsection 22(b) of FOIP. These pages do not appear to involve an SHRC employee who is acting in the capacity of legal counsel. On the face of these pages, I do not find that subsection 22(b) of FOIP applies to pages 22, 25, 26 to 27.

6. Did the SHRC properly apply subsection 22(c) of FOIP?

[46] The SHRC applied subsection 22(c) of FOIP to all of the records at issue. Since I have already found that pages 1, 2, 3 to 7 are outside the scope of the access request, I will consider the remaining 21 pages of records at issue. Subsection 22(c) of FOIP provides as follows:

22 A head may refuse to give access to a record that:

...

(c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other person in relation to a matter involving the provision of advice or other services by the agent or legal counsel.

[47] My office uses the following two-part test to determine if subsection 22(c) of FOIP applies:

1. Is the record a correspondence between the government institution's legal counsel (or an agent of the Attorney General) and any other person?
2. Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?

[48] Similar to its approach to its arguments for subsections 22(a) and 22(b) of FOIP, the basis for SHRC's submissions for the application of subsection 22(c) of FOIP was that an SHRC employee who is a lawyer was also acting in the capacity of legal counsel. For example, in its argument for how subsection 22(c) of FOIP applies to pages 9 and 10, the SHRC argued that the Director of Resolution (who is a lawyer) was acting in the capacity of legal

counsel and is corresponding with the Intake Officer. As such, it concluded, that subsection 22(c) of FOIP applied. It submitted:

The two-part test for this exemption is met. The above documents meet the definition of “correspondence”, Paula Jane Remlinger (Intake Officer) falls within the expansive definition of “any other person.” The correspondence relates to a matter involving the provision of advice by legal counsel. The entire Intake process is of a legal nature and its comes to an end when a decision is rendered by Jocelyn Putland Wiebe (Director of Resolution and Commission Counsel).

[49] In addition to pages 9 and 10, the SHRC offered similar submissions for other pages in which the Director of Resolution was involved. Those pages are 35, 36, 37, 29 to 39, 54 and 63. SHRC’s argument that the Director of Resolution was legal counsel who was offering legal advice, but was also a decision-maker, is confusing. As I have already found earlier, based on the contents of the records, the Director of Resolution was acting in the capacity of a director rather than that of legal counsel. There is no correspondence between “legal counsel” and any other person. As such, I find that subsection 22(c) of FOIP does not apply to pages 9 to 10, 35, 36, 37, 29 to 39, 54 and 63.

[50] Earlier, I described that pages 11 to 12 involve the Commission Assistant, Lawyer A and Lawyer B. In its submission for how subsection 22(c) of FOIP applied to pages 11 to 12, it said the following:

The two-part test for this exemption is met. The record is correspondence between the government institution’s legal counsel and “any other person.” It is abundantly clear that it relates to a matter that involves the provision of advice or services by legal counsel.

[51] Again, the basis of SHRC’s argument is that any SHRC employee who is a lawyer is acting in the capacity of legal counsel. Earlier, I already described the emails in pages 11 to 12. I find that neither Lawyer A nor Lawyer B are acting as legal counsel. I find that subsection 22(c) of FOIP does not apply to pages 11 to 12.

[52] For the remaining pages (pages 22, 25, 26 to 27), it is not clear what SHRC’s arguments are for why it applied subsection 22(c) of FOIP. These pages do not appear to involve an

SHRC employee who is acting in the capacity of legal counsel. On the face of these pages, I do not find that subsection 22(c) of FOIP applies to pages 22, 25, 26 to 27.

7. Does subsection 29(1) of FOIP apply?

[53] In its response to the Applicant, the SHRC did not raise subsection 29(1) of FOIP as a reason for withholding records. However, in my office’s review of the records, my office identified an instance in which it would be appropriate to apply subsection 29(1) 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.

[54] Page 265 of the Guide to FOIP explains that subsection 29(1) protects the privacy of individuals whose personal information may be contained within the records responsive to an access to information request made by someone else.

[55] In order to withhold information pursuant to subsection 29(1) of FOIP, the information must first qualify as personal information as defined by subsection 24(1) of FOIP. Subsection 24(1) of FOIP provides:

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:

...

(k) the name of the individual where:

...

(ii) the disclosure of the name itself would reveal personal information about the individual.

[56] In this case, the name of a third party individual appears in the second sentence of the email dated November 26, 2019, timestamped 2:11pm, on page 11. I find that the name of the individual would qualify as “personal information” as defined by subsection 24(1)(k) of

FOIP. As such, I recommend that the SHRC redact the third party's name pursuant to subsection 29(1) of FOIP.

8. Did the SHRC meet its obligation under section 8 of FOIP?

[57] Section 8 of FOIP provides:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[58] When a government institution receives an access to information request, it must complete a line-by-line review of the responsive records to comply with section 8 of FOIP. Through this review, the government institution is required to determine where a mandatory or discretionary exemption applies and sever those specific portions of the records. Then, it is to release the remainder of the records to the applicant.

[59] The approach taken by the SHRC to applying exemptions is to identify internal emails and attachment and then to apply exemptions to withhold them in their entirety, regardless of the content of the records. As such, I do not find that the SHRC has met its obligation under section 8 of FOIP. I made a similar finding in Review Report 171-2019 where the SHRC took a blanket approach to applying exemptions to records. I had recommended that the SHRC prepare records pursuant to section 8 of FOIP. Again, I recommend that the SHRC improve its procedures so that it is in compliance with section 8 of FOIP. That is, conducting a line-by-line review of records and only applying exemptions to portions of a record to which exemptions apply.

[60] Earlier, in the "Records at Issue" section, I noted that the SHRC elected not to provide documents originally provided by the Applicant nor provide copies of emails that were sent or received by the Applicant. In its submission, there is no indication that the SHRC clarified with the Applicant if the Applicant sought copies of documents originally provided by the Applicant or emails that were sent by or received by the Applicant. I recommend that the SHRC offer to provide the Applicant a copy of the documents originally provided by the Applicant or copies of emails that were sent or received by the

Applicant, as such records would be responsive to the Applicant's access request. I also recommend that the SHRC amend its procedures so that it clarifies with applicants whether or not they wish to receive copies of documents originally provided by an applicant or copies of emails that were sent or received by an applicant before processing an access request.

IV FINDINGS

[61] I find that I have jurisdiction to conduct this review.

[62] I find that pages 1, 2, 3, to 7 are outside the scope of the access request.

[63] I find that subsection 17(1)(b)(i) of FOIP does not apply to pages 9 to 10, 11 to 12, 22, 25 to 27, 29 to 39, 54 and 63.

[64] I find that subsection 22(a) of FOIP does not apply to pages 9 to 10, 11 to 12, 22, 25 to 27, 29 to 39, 54 and 63.

[65] I find that subsection 22(b) of FOIP does not apply to pages 9 to 10, 11 to 12, 22, 25 to 27, 29 to 39, 54 and 63.

[66] I find that subsection 22(c) of FOIP does not apply to pages 9 to 10, 11 to 12, 22, 25 to 27, 29 to 39, 54 and 63.

[67] I find that the name of the third party individual in the second sentence of the email dated November 26, 2019, timestamped 2:11pm on page 11 would qualify as "personal information" as defined by subsection 24(1)(k) of FOIP.

[68] I find that the SHRC has not met its obligation under section 8 of FOIP.

V RECOMMENDATIONS

- [69] I recommend that the SHRC paginate records when it is processing an access request. This would enable the SHRC and the applicant to have one set of records to reference.
- [70] I recommend that the SHRC release pages 9 to 10, 12, 22, 25 to 27, 29 to 39, 54 and 63 to the Applicant.
- [71] I recommend that the SHRC redact the third party's name that appears in the second sentence of the email dated November 26, 2019, timestamped 2:11pm on page 11 pursuant to subsection 29(1) of FOIP, but then release the remainder of the page to the Applicant.
- [72] I recommend that the SHRC improve its procedures so that it is in compliance with section 8 of FOIP. That is, conducting a line-by-line review of records and only applying exemptions to portions of a record to which exemptions apply.
- [73] I recommend that the SHRC offer to provide the Applicant a copy of the documents originally provided by the Applicant or copies of emails that were sent or received by the Applicant, as such records would be responsive to the Applicant's access request.
- [74] I recommend that the SHRC amend its procedures so that it clarifies with applicants whether or not they wish to receive copies of documents originally provided by an applicant or copies of emails that were sent or received by an applicant before processing an access request.

Dated at Regina, in the Province of Saskatchewan, this 27th day of October, 2020.

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