



## **REVIEW REPORT 078-2020**

### **Saskatchewan Telecommunications**

**November 9, 2021**

**Summary:**

In response to an access to information request, Saskatchewan Telecommunication (SaskTel) notified the Third Party pursuant to section 34 of FOIP that it planned to withhold certain parts of the record pursuant to section 19(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). After hearing from the Third Party, SaskTel advised the Applicant and the Third Party that it intended to withhold some portions of the record pursuant to sections 18(1)(f), 19(1)(c)(i), (ii), (iii) and 29(1) of FOIP and release the remainder. The Commissioner received a request for review from the Third Party. The Third Party submitted the entire record should be withheld pursuant to sections 19(1)(b), 19(1)(c)(i), (ii) and (iii) of FOIP. The Commissioner found that these exemptions, and section 29(1) of FOIP, did not apply. Based on a review of sections 19(1)(b), 19(1)(c)(i), (ii), (iii) and 29(1) of FOIP, the Commissioner recommended release of the record except for what SaskTel withheld under section 18(1)(f) of FOIP as was not a subject of this review. He also found that SaskTel did not correctly notify the Third Party pursuant to section 34 of FOIP and recommended that SaskTel revise its procedures.

## **I BACKGROUND**

- [1] On January 2, 2020, Saskatchewan Telecommunications (SaskTel) received an access to information request from the Applicant for the following:

Contract between Saskatchewan Telecommunications and ATI Telecom International, Company, dated May 1, 2012 regarding the provision of services related to the SaskTel InfiNET Project.

- [2] On January 31, 2020, and in accordance with section 12(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP), SaskTel informed the Applicant that an extension of time was required before providing a response to the Applicant. The reason for the extension was that SaskTel was required to give notice to a third party, ATI Telecom International Co. (Third Party), pursuant to section 34(1) of FOIP. On the same day, SaskTel also provided a notice to the Third Party pursuant to section 34(1) of FOIP. SaskTel did not indicate specifically if it planned to release information to which section 19(1) of FOIP applies in accordance with section 19(3) of FOIP.
- [3] On March 2, 2020, pursuant to section 37 of FOIP, SaskTel informed the Applicant that it intended to release the record to the Applicant, but withhold some information pursuant to sections 18(1)(f), 19(1)(c) and 29(1) of FOIP. It also indicated that it informed the Third Party of its intention to release some records.
- [4] On March 16, 2020, the Third Party requested a review of SaskTel's decision by my office. On March 24, 2020, unaware of the Third Party's request for review because of delays at the beginning of the pandemic, SaskTel provided the Applicant with the responsive records with some portions severed. The Applicant agreed not to open the envelope containing the records until I have concluded this review.
- [5] On April 6, 2020 my office informed the Applicant, SaskTel and the Third Party of my intention to undertake a review of section 19(1) of FOIP. Both the Applicant and Third Party provided submissions to my office. I will also review SaskTel's application of section 29(1) of FOIP as it is a mandatory consideration.
- [6] The Applicant did not request a review as a result of SaskTel's notification pursuant to sections 7 and 37 of FOIP, but did provide a submission regarding the application of section 19(1) of FOIP in response to this review.

## **II RECORDS AT ISSUE**

- [7] The record consists of seven documents. The first is an 81 page agreement between SaskTel and the Third Party. The other six documents are letters of agreement, amending agreements or contact change orders varying from two to 20 pages. In total, there are 119 pages of responsive records.
- [8] SaskTel indicated that it has applied sections 19(1)(c)(i), (ii) and (iii) of FOIP to portions of 37 pages of the record. It is also withholding information from 12 pages of the record pursuant to section 29(1) of FOIP. SaskTel is withholding information from 48 pages of the record in total.
- [9] The Third Party has submitted that the entire record (all 119 pages) should be withheld pursuant to sections 19(1)(b), 19(1)(c)(i), (ii) and (iii) of FOIP.
- [10] For more information about the record and where the exemptions have been applied and where I have recommended release, see Appendix A of this Report.

## **III DISCUSSION OF THE ISSUES**

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

[11] SaskTel qualifies as a government institution pursuant to section 2(1)(d)(ii) of FOIP. Therefore, I have jurisdiction to conduct this review.

[12] ATI Telecom International Co. qualifies as a third party pursuant to section 2(1)(j) of FOIP.

### **2. Do sections 19(1)(c)(i) and (ii) of FOIP apply to the record?**

[13] Sections 19(1)(c)(i) and (ii) of FOIP provide:

**19(1)** Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

...

a third party;

[14] SaskTel applied sections 19(1)(c)(i) and (ii) of FOIP to portions of 37 pages of the record. In its submission, SaskTel described these portions of the record as detailed pricing information related to specific work or services, unit prices, price adjustments, estimates, annual payments, annual investments, termination fees, CPI impact details, effects of target revenue, monthly volume discount, discount activation, revenue forecast, revenue commitment construction details, and timing particulars of payment and specific payment terms. Upon review of the record, I agree with this description. Generally, SaskTel has severed only certain figures or phrases within a paragraph and figures within tables.

[15] The Third Party indicated in its submission that the redactions made by SaskTel are not sufficient. It believes that protected information is inextricably woven throughout the record and that redacting portions of the record would be insufficient to protect its information. As such, it believes that sections 19(1)(c)(i) and (ii) of FOIP applies to the entire 119 pages of the record.

[16] My office's resource *IPC Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 30, 2021 [*Guide to FOIP*, Ch. 4], pp. 211, 216, 221-222, provides the following tests for the application of sections 19(1)(c)(i) and 19(1)(c)(ii) of FOIP:

**Test for the application of section 19(1)(c)(i) of FOIP**

1. What is the financial loss or gain being claimed?

2. Could release of the record reasonably be expected to result in financial loss or gain to a third party?

**Test for the application of section 19(1)(c)(ii) of FOIP**

1. What is the prejudice to a third party's competitive position that is being claimed?
2. Could release of the record reasonably be expected to result in the prejudice?

[17] The Third Party, in its submission, indicated that release of the record could reasonably be expected to prejudice its competitive position and therefore result in financial loss.

[18] The following definitions apply:

**Financial loss or gain** must be monetary, have a monetary equivalent, or value (e.g. loss of revenue or loss of corporate reputation).

*(Guide to FOIP, Ch. 4, p. 211)*

**Prejudice** in this context refers to detriment to the competitive position of a third party.

**Competitive position** means the information must be capable of use by an existing or potential business competitor, whether or not that competitor currently competes for the same market share.

*(Guide to FOIP, Ch. 4, p. 216)*

[19] When applying section 19(1)(c) of FOIP, government institutions and third parties should not assume that the harms are self-evident. The harm must be described in a precise and specific way in order to support the application of the provision (*Guide to FOIP, Ch. 4, p. 210*).

[20] The Third Party submitted that release of the records could allow competitors to develop similar products and procedures that the Third Party is currently able to provide to SaskTel. However, in the same submission, the Third Party also noted that services and products of that it provides are specialized and the market consists of a relatively small amount of entities competing for the same business, which can deliver similar results, services and

products. I am not persuaded that the Third Party has clearly identified a prejudice to its competitive position or financial loss in this manner.

[21] The Third Party also submitted that the records were created as a result of a costly and confidential negotiation process with SaskTel. It also noted that the record contains the requirements for the specialized work that the Third Party has contracted to complete. It submitted that the disclosure of the record could reasonably allow for business competitors to reverse engineer the negotiation process, in all or in part, and therefore, undermine the Third Party's ability to compete in similar competitions for work. It also indicated that release of the records would also allow a competitor to circumvent a costly negotiation process.

[22] I also note that in previous reports, such as [Review Report 236-2017](#), I found that the risk of being underbid by competitors for future contracts did not meet the threshold for sections 19(1)(c)(i) and (ii) of FOIP. Releasing costs will increase the chances that the public body will obtain fair bids and a competitive bidding process (para. [21]). Further, if SaskTel chose to use the services of a competitor of the Third Party in the future, I am not persuaded that either party would forgo a negotiation process. In addition, SaskTel would make known what it would require from the competitor. I am not persuaded that the Third Party has identified a prejudice to its competitive position or financial loss.

[23] As noted, SaskTel applied sections 19(1)(c)(i) and (ii) of FOIP to only certain portions of the record as described in Appendix A. In its submission, SaskTel indicated that, when applying section 19(1)(c) of FOIP, it considered feedback from the Third Party. It also applied its own understanding of the commercial realities of the competitive marketplace for fiber installations. It noted that there is a limited number of companies that perform such work. SaskTel submitted that since such contracts are awarded through competitive procurement processes, disclosing detailed pricing information or efficiencies gained through the competitive process directly impacts a company's competitiveness, and therefore submitted that these exemptions apply.

[24] As noted above, I found that the risk of being underbid by competitors for future contracts did not meet the threshold for sections 19(1)(c)(i) and (ii) of FOIP.

[25] I am not satisfied that SaskTel or the Third Party have clearly identified any prejudice to the Third Party's competitive position. The first test is not met. Section 19(1)(c)(ii) of FOIP does not apply to the record.

[26] I am not satisfied that SaskTel or the Third Party have identified any financial loss. The first part of the test is not met. Section 19(1)(c)(i) of FOIP does not apply to the record.

**3. Does section 19(1)(c)(iii) of FOIP apply to the record?**

[27] Section 19(1)(c)(iii) of FOIP provides:

**19(1)** Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

...

(iii) interfere with the contractual or other negotiations of;

a third party;

[28] The *Guide to FOIP* provides the following test for the application of section 19(1)(c)(iii) of FOIP:

1. Are there contractual or other negotiations occurring involving a third party?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations of a third party?

(*Guide to FOIP*, Ch. 4, pp. 221-222)

[29] SaskTel applied section 19(1)(c)(iii) of FOIP to the same portions of the record identified above under sections 19(1)(c)(i) and (ii) of FOIP. However, SaskTel did not specifically address this provision in its submission. The Third Party indicated that section 19(1)(c)(iii) of FOIP applies to the entire 119 pages of the record.

*1. Are there contractual or other negotiations occurring involving a third party?*

[30] A negotiation is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. Prospective or future negotiations could be included within this exemption, as long as they are foreseeable. It may be applied even though negotiations have not yet started at the time of the access to information request, including when there has not been any direct contact with the other party or their agent. However, a vague possibility of future negotiations is not sufficient (*Guide to FOIP*, Ch. 4, p. 221).

[31] The Third Party identified the on-going negotiations with SaskTel for the purposes of section 19(1)(c)(iii) of FOIP. In its submission, the Third Party stated that it has an ongoing relationship with SaskTel, with the most recent Mutual Nondisclosure Agreement entered into by the parties on January 9, 2020. In its submission, SaskTel indicated that it announced an investment of \$62 million to the Fibre to the Premises program (FTTP) in 2020-2021 as part of an investment of over \$1.4 billion in the next five years. It provided a link to the news release of May 11, 2020. SaskTel indicated that it will be engaging in significant contract negotiations in the immediate future. Given that there are several amending agreements and change orders to the main agreement and that SaskTel is making significant investments in this field, I am satisfied that further negotiations with SaskTel are foreseeable. The Third Party identified future negotiations with SaskTel which meets the first part of the test.



***2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations of a third party?***

[32] The following definitions are required to apply the second part of the test:

**Interfere** means to hinder or hamper.

**“Could reasonably be expected to”** means there must be a reasonable expectation that disclosure could prejudice the competitive position of a third party. The Supreme Court of Canada set out the standard of proof for harms-based provisions as follows:

This Court in *Merck Frosst* adopted the “reasonable expectation of probable harm” formulation and it should be used wherever the “could reasonably be expected to” language is used in access to information statutes. As the Court in *Merck Frosst* emphasized the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and “inherent probabilities or improbabilities or the seriousness of the allegations or consequences”...

(*Guide to FOIP*, Ch. 4, p. 222)

[33] The Third Party indicated that insight into the nature and type of contracts it entered into with SaskTel following a successful and costly negotiation process could reasonably be expected to interfere with the Third Party’s ongoing negotiations with SaskTel. It submitted that release of the record would provide competitors with details of the bargain and allow them to have a competitive advantage in a request for proposals (RFP) process and contractual negotiations for similar work in the field.

[34] In my office’s *Guide to FOIP*, it is noted that the Federal Court in *Société Gamma Inc. v. Canada (Department of the Secretary of State)* [1994] 56 CPR (3d) 58, interpreted the equivalent provision in the federal *Access to Information Act* as requiring that, “it must refer to an obstruction to those negotiations and not merely the heightening of competition for the third party which might flow from disclosure” (*Guide to FOIP*, Ch. 4, p. 223). Therefore, I am not persuaded that the release of the record could reasonably be expected to interfere with the negotiations of a Third Party. The second part of the test is not met.

[35] Section 19(1)(c)(iii) of FOIP does not apply to the record.

**4. Does section 19(1)(b) of FOIP apply to the record?**

[36] Section 19(1)(b) of FOIP provides:

**19(1)** Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

[37] The Third Party has claimed that section 19(1)(b) of FOIP applies to the entire 119 page record. SaskTel did not apply this exemption.

[38] The following three part test can be applied when determining if section 19(1)(b) of FOIP applies:

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?
2. Was the information supplied by the third party to a government institution?
3. Was the information supplied in confidence implicitly or explicitly?

*(Guide to FOIP, Ch. 4, pp. 198-202)*

***1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?***

[39] In its submission, the Third Party indicated that parts of the record qualified as its financial, commercial, scientific, technical or labour relations information. The following definitions are relevant:

**Financial information** is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial

forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a third party.

**Commercial information** is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records. Types of information included in the definition of commercial information can include:

- offers of products and services a third-party business proposes to supply or perform;
- a third-party business' experiences in commercial activities where this information has commercial value;
- terms and conditions for providing services and products by a third party;
- lists of customers, suppliers or sub-contractors compiled by a third-party business for its use in its commercial activities or enterprises - such lists may take time and effort to compile, if not skill;
- methods a third-party business proposes to use to supply goods and services; and
- number of hours a third-party business proposes to take to complete contracted work or tasks.

**Scientific information** is information exhibiting the principles or methods of science. The information could include designs for a product and testing procedures or methodologies. It is information belonging to an organized field of knowledge in the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information.

**Technical information** is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information.

**Labour relations information** is information that relates to the management of personnel by a person or organization, whether or not the personnel are organized into bargaining units. It includes relationships within and between workers, working groups and their organizations as well as managers, employers and their organizations. Labour relations information also includes collective relations between a public body and its employees. Common examples of labour relations information are hourly wage rates, personnel contracts and information on negotiations regarding collective agreements.

*(Guide to FOIP, Ch. 4, pp. 198-199)*

- [40] The Third Party identified examples in the record for each type of information.
- [41] For financial information, the Third Party indicated that information in the record such as bonding requirements, annual price increases, invoicing, benefits, pricing specifications and format qualifies as financial information. I am not persuaded that this information falls in the category of monetary resources of the Third Party, such as financial capabilities, assets and liabilities. Rather, it is terms negotiated for the current contract.
- [42] In its submission, the Third Party indicated that many parts of the record qualify as commercial information. As examples, it listed insurance pricing structure, business plans, products and services that the Third Party proposed to supply or perform and other terms outlined in the contract between the Third Party and SaskTel. I agree that this information qualifies as commercial information.
- [43] The first part of the test is met for the information identified as commercial information only.

***2. Was the information supplied by the third party to a government institution?***

- [44] In its submission, the Third Party asserted that some of the commercial information was supplied to SaskTel by the Third Party during the RFP process. It also indicated that other information was a result of the subsequent discussions and negotiations.
- [45] Supplied means provided or furnished. Information may qualify as “supplied” if it was directly supplied to a government institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.
- [46] The contents of a contract involving a government institution and a third party will not normally qualify as having been supplied by a third party. The provisions of a contract, in

general, have been treated as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party. An agreement where the government institution contributed significantly to its terms would not qualify under this exemption because it is the result of negotiation between the parties and was also largely based on the criteria set out by the government institution in its request RFPs.

- [47] I followed this approach to contracts in [Review Report 229-2015](#), where I found the unit price information in a contract between the Canadian Bank Note Limited and Saskatchewan Government Insurance was “negotiated” and not “supplied.” Addressing the potential application of section 19(1) of FOIP to unit prices, I stated:

The unit prices and lump sum prices form part of the terms of the contract that has been agreed to. SGI was not bound to accept them. If SGI judged the prices to be unacceptable, it had the option of not entering into the contract with the third party. In my view, having accepted the pricing was part of the negotiation process. Even if SGI did not feel it could negotiate the price, by accepting it, the price is agreed upon as mutual agreement is required for the term to become binding on the parties.

There is a distinction that needs to be made here between the initial procurement phase, when proposals may be submitted on a confidential basis and the final stage when the contract is issued and public accountability considerations come to the forefront.

- [48] On appeal to the Court of Queen’s Bench of Saskatchewan, Justice Zarzeczny upheld my finding that the unit prices qualified as commercial information, but did not uphold my finding on the question of whether that information was supplied ([Canadian Bank Note Limited v. Saskatchewan Government Insurance 2016 SKQB 362](#)).

- [49] With respect to the supplied issue, and relying on the Supreme Court of Canada’s decision in *Merck Frosst Canada Ltd. v. Canada (Health)*, 2021 SCC 3, Justice Zarzeczny stated:

**The question is not whether or not the RFP provided that the Contract between SGI and Veridos could involve negotiation of the Unit Price but rather whether it did. The facts establish clearly that it did not.** I therefore conclude that this commercial information (i.e. the Unit Price) was “supplied ... by a third party” namely Veridos within the meaning of ss. 19(1)(b) of the [FOIP].

[Emphasis added]

[50] More recent reports of my office have followed the Court's approach in *Canadian Bank Note Limited*, and have treated the question of supply as a question of fact requiring a consideration of the facts surrounding the provision of the information (see for example, Review Reports [336-2017](#) and [086-2019](#)).

[51] The Third Party maintained that section 19(1)(b) of FOIP applied to the entire record and, therefore, suggested it supplied the information in the entire record to SaskTel. Its submission stated:

The information contained in the documents... was supplied to SaskTel pursuant to ATI's response to SaskTel's RFP for the Work, and as a result of the subsequent discussions and negotiations between them that led up to ultimately forming the initial contract (Document 1) and the remainder of the documents that form the Record.

[52] A successful RFP represents the beginning of a negotiation process and does not necessarily indicate that a government institution has accepted all the terms proposed, at the outset, by a third party. In these situations, it is up to the third party or government institution to factually demonstrate what information was supplied through the RFP and what was ultimately negotiated. In this case, the Third Party did not provide anything to factually support its claim that all of the commercial information identified was supplied through the RFP. Therefore, I cannot conclude that the commercial information in question has been supplied.

[53] The Third Party has not demonstrated that the information in question was supplied to SaskTel. The second test is not met. Section 19(1)(b) of FOIP does not apply to the record.

## **5. Does section 29(1) of FOIP apply to the record?**

[54] Section 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.

[55] SaskTel has applied section 29(1) of FOIP to withhold information on 12 pages of the record. SaskTel's submission indicates it has applied this section to unique signatures and third party contact information.

[56] In order for section 29(1) to apply, there must be personal information pursuant to section 24(1) of FOIP which provides, in part:

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:

...

(e) the home or business address, home or business telephone number or fingerprints of the individual;

...

[57] While section 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?

([Review Report 127-2020](#), para. [42])

[58] SaskTel submitted that the names of individuals, telephone numbers, fax numbers, cell phone numbers and emails qualify as personal information pursuant to section 24(1)(e) of FOIP.

[59] “Business card information” is information that appears on an employee's business card. For example, a person's name, their job title, the name of their company, and their business contact information. In my Review Reports [186-2019](#) and [301-2019](#), I explained that business card information is generally not personal in nature and therefore, not considered personal information. The information identified by SaskTel does not qualify as personal information as defined by section 24(1) of FOIP.

- [60] I will now consider if the signatures that SaskTel withheld qualify as personal information.
- [61] In [Review Report 149-2019 and 191-2019](#), also involving SaskTel, I defined work product as information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. Work product is not considered personal information. Further, my office has found that business card information is not personal in nature and would not qualify as personal information. Finally, in the past, my office has determined that signatures do not constitute personal information when made in a work-related capacity. However, a signature may be personal in nature outside of a professional context ([Review Report 149-2019 and 191-2019](#), para. [87]). In this case, all of the records were created in a professional context and constitute work product.
- [62] Past decisions have not only found that work product of employees of public bodies should be released. My office's decisions have also found that work product of employees of private organizations do not qualify as personal information ([Review Report 149-2019 and 191-2019](#), para. [88]).
- [63] The signatures in question do not qualify as personal information.
- [64] I find that section 29(1) of FOIP does not apply to the portions of the record identified by SaskTel.
- [65] Based on a review of sections 19(1)(b), 19(1)(c)(i), (ii), (iii) and 29(1) of FOIP, I recommend that SaskTel release the entire record to the Applicant, other than what SaskTel has also severed pursuant to section 18(1)(f) of FOIP from the released record to which the Applicant has not requested a review.



**6. Did SaskTel correctly notify the Third Party of its intention to release information pursuant to section 34(1) of FOIP?**

[66] Section 19(3) of FOIP provides a government institution the ability to release third party business information to an applicant even if it believes that section 19(1) of FOIP applies. Section 19(3) of FOIP provides:

**19(3)** Subject to Part V, a head may give access to a record that contains information described in subsection (1) if:

(a) disclosure of that information could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment; and

(b) the public interest in disclosure could reasonably be expected to clearly outweigh in importance any:

(i) financial loss or gain to;

(ii) prejudice to the competitive position of; or

(iii) interference with contractual or other negotiations of;

a third party.

[67] It is up to the “head” of a government institution to determine whether exemptions apply to records in its possession or under its control. Section 34 of FOIP only requires a government institution to provide notice to a third party where it intends to release information that it has reason to believe contains information described in subsection 19(1) of FOIP. Section 34(1) of FOIP provides:

**34(1) Where a head intends to give access to a record** that the head has reason to believe may contain:

(a) **information described in subsection 19(1)** that affects the interest of a third party; or

(b) personal information that may be disclosed pursuant to clause 29(2)(o) and that relates to a third party;

and, in the opinion of the head, the third party can reasonably be located, **the head shall give written notice to the third party** in accordance with subsection (2).

[Emphasis added]

[68] In the notification provided to pursuant to section 34(1) of FOIP dated January 31, 2020, SaskTel informed the Third Party of the request and identified which records were responsive to the request. SaskTel indicated that it “intends to give access, in whole or in part,” to records SaskTel believed “may contain” information that would affect the interest of the Third Party. The letter also stated the following:

SaskTel has identified in yellow highlighting the portions of the records that we consider to be exempt from disclosure pursuant to section 19 of the Act regarding [the Third Party] and intend to redact those portions.

[69] As SaskTel had already identified what it believed qualified as third party business information pursuant to section 19(1) of FOIP, and did not intend to release it, there was no need to contact the Third Party pursuant to section 34(1) of FOIP. Likewise, SaskTel also identified portions of the record it believed to be personal information pursuant to section 29(1) of FOIP, but did not intend to release it. In the future, SaskTel can simplify its process by only notifying third parties when it has identified information that it has reason to believe is exempt pursuant to subsection 19(1) of FOIP, but is intending to release the information nonetheless.

[70] As a result, I am in a situation where I have reviewed some exemptions based on a request by the Third Party to review section 19(1) of FOIP. I have found that those exemptions do not apply and must recommend release of the record based on those conclusions. However, SaskTel has also notified the Applicant that it also applied subsection 18(1)(f) of FOIP to the record. I did not review this exemption as no one has requested such a review.

[71] I find that SaskTel did not need to notify the Third Party pursuant to section 34(1) of FOIP.

[72] I recommend that SaskTel ensure it has a policy or procedure for the processing of access to information requests, including the processing of requests involving third parties to ensure it is processed in accordance with FOIP.

#### **IV FINDINGS**

[73] I find that sections 19(1)(b), 19(1)(c)(i), (ii), (iii) and 29(1) of FOIP do not apply to the record.

[74] I find that SaskTel did not need to notify the Third Party pursuant to section 34(1) of FOIP.

#### **V RECOMMENDATIONS**

[75] Based on a review of sections 19(1)(b), 19(1)(c)(i), (ii), (iii) and 29(1) of FOIP, I recommend that SaskTel release the entire record to the Applicant, other than what SaskTel has also severed pursuant to section 18(1)(f) of FOIP from the released record.

[76] I recommend that SaskTel ensure it has a policy or procedure for the processing of access to information requests, including the processing of requests involving third parties to ensure it is processed in accordance with FOIP.

Dated at Regina, in the Province of Saskatchewan, this 9th day of November, 2021.

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

## APPENDIX A

## Exemptions applied by SaskTel

Record	Page	19(1)(c)(i)	19(1)(c)(ii)	19(1)(c)(iii)	29(1)	Release or Withhold
1	2				No	Release
	4				No	Release
	12	No	No	No		Release unless 18(1)(f) applied
	15	No	No	No		Release unless 18(1)(f) applied
	16	No	No	No		Release unless 18(1)(f) applied
	19				No	Release
	31	No	No	No		Release unless 18(1)(f) applied
	39	No	No	No		Release unless 18(1)(f) applied
	40	No	No	No		Release unless 18(1)(f) applied
	41	No	No	No		Release unless 18(1)(f) applied
	42	No	No	No		Release unless 18(1)(f) applied
	68	No	No	No		Release unless 18(1)(f) applied
	76	No	No	No		Release unless 18(1)(f) applied
	78				No	Release
	79	No	No	No		Release unless 18(1)(f) applied
2	1	No	No	No		Release unless 18(1)(f) applied
	2				No	Release
3	1	No	No	No		Release unless 18(1)(f) applied
	2	No	No	No		Release unless 18(1)(f) applied
	3				No	Release
	4	No	No	No		Release unless 18(1)(f) applied
4	3				No	Release

## APPENDIX A

## Exemptions applied by SaskTel cont

Record	Page	19(1)(c)(i)	19(1)(c)(ii)	19(1)(c)(iii)	29(1)	Release or Withhold
5	3				No	Release
	4	No	No	No		Release unless 18(1)(f) applied
	5	No	No	No		Release unless 18(1)(f) applied
	6	No	No	No		Release unless 18(1)(f) applied
	7	No	No	No		Release unless 18(1)(f) applied
	8	No	No	No		Release unless 18(1)(f) applied
	9	No	No	No		Release unless 18(1)(f) applied
	10	No	No	No		Release unless 18(1)(f) applied
	11	No	No	No		Release unless 18(1)(f) applied
	12	No	No	No		Release unless 18(1)(f) applied
	13	No	No	No		Release unless 18(1)(f) applied
	14	No	No	No		Release unless 18(1)(f) applied
	15	No	No	No		Release unless 18(1)(f) applied
	16	No	No	No		Release unless 18(1)(f) applied
	17	No	No	No		Release unless 18(1)(f) applied
	18	No	No	No		Release unless 18(1)(f) applied
	19	No	No	No		Release unless 18(1)(f) applied
	20	No	No	No		Release unless 18(1)(f) applied
6	2	No	No	No		Release unless 18(1)(f) applied
	3				No	Release

## APPENDIX A

## Exemptions applied by SaskTel cont

Record	Page	19(1)(c)(i)	19(1)(c)(ii)	19(1)(c)(iii)	29(1)	Release or Withhold
7	1				No	Release
	2	No	No	No		Release unless 18(1)(f) applied
	3	No	No	No		Release unless 18(1)(f) applied
	4	No	No	No		Release unless 18(1)(f) applied
	5	No	No	No	No	Release unless 18(1)(f) applied
	6				No	Release

## Exemptions suggested by Third Party

Record	Pages	19(1)(c)(i)	19(1)(c)(ii)	19(1)(c)(iii)	Release or Withhold
1	1-81	No	No	No	Release except where 18(1)(f) applied
2	1-2	No	No	No	Release except where 18(1)(f) applied
3	1-4	No	No	No	Release except where 18(1)(f) applied
4	1-3	No	No	No	Release except where 18(1)(f) applied
5	1-20	No	No	No	Release except where 18(1)(f) applied
6	1-3	No	No	No	Release except where 18(1)(f) applied
7	1-6	No	No	No	Release except where 18(1)(f) applied