



REVIEW REPORT 139-2017

Saskatchewan Power Corporation

December 7, 2017

Summary:

Saskatchewan Power Corporation (SaskPower) received an access to information request for records related to a bomb threat. The Commissioner found that SaskPower performed a reasonable search for records, but recommended that SaskPower revisit its practices for saving e-mails. The Commissioner found that additional records identified were responsive to the Applicant's request. He also found that subsections 15(1)(k), 22(a),(c) and 29(1) of FOIP applied to portions of the record and subsection 15(1)(c) and section 21 of FOIP did not apply to the record. He recommended that SaskPower release additional material to the Applicant.

I BACKGROUND

[1] On May 17, 2017, Saskatchewan Power Corporation (SaskPower) received an access to information request for the following:

1. SaskPower's contacts with the Regina Police Service (RPS) regarding the Applicant. In particular, all records reflecting any complaint or referral that SaskPower's made to the RPS with respect to any alleged wrongdoing by the Applicant.
2. Internal communications disclosing SaskPower's initiation and advancement of the RPS investigation, and any internal communications regarding the Applicant, the RPS and potential criminal wrongdoing.

[2] SaskPower replied to the Applicant on June 16, 2017. It provided the Applicant with records responsive to his request. It redacted some information from the record and withheld it pursuant to subsections 15(1)(c), (k), 21, 22(a), (b), (c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] The Applicant was dissatisfied with SaskPower’s response and requested a review by my office on June 21, 2017. He asked for a review of the application of the exemptions and of SaskPower’s search for records. My office notified both the Applicant and SaskPower of my intention to undertake a review on July 6, 2017.

II RECORDS AT ISSUE

[4] On June 16, 2017, SaskPower provided the Applicant with 38 pages of responsive records. It made redactions on several of the pages pursuant to subsections 15(1)(c), (k), 21, 22(a), (b), (c) and 29(1) of FOIP. The redactions are described in the table below:

Page	Redaction	15(1)(c)	15(1)(k)	21	22(a)	22(b)	22(c)	29(1)
II-1	1	X	X	X				X
II-2	1	X	X	X				X
II-4	1	X	X					
	2	X	X					
II-6	1	X	X					
II-7	1	X	X					
II-10	1				X	X	X	
	2				X		X	
II-11	1						X	
II-16	1	X	X	X				X
II-19	1	Released in full						
II-22	1	Released in full						
	2	Released in full						
II-26	1				X	X		
	2	X	X	X				X
	3	X	X	X				X
II-28	1	X	X					
II-33	1	X	X	X				X
II-34	1	X	X					

[5] On July 19, 2017, SaskPower released pages II-19 and II-22 in full.

[6] While preparing for this review, SaskPower indicated that five additional pages of records were identified. It stated that these records were not considered in its initial response to the Applicant, as the record holder was of the view that they were not responsive to the request. However, SaskPower said that if I found them to be responsive to the Applicant’s request, it would like to redact the identity of a witness pursuant to subsections 21, and 29(1) of FOIP. The redactions are described in the table below:

Page	Redaction	15(1)(c)	15(1)(k)	21	22(a)	22(b)	22(c)	29(1)
1	1			X				X
	2			X				X
	3			X				X
	4			X				X
2	1			X				X
	2			X				X
	3			X				X
4	1			X				X
	2			X				X
5	1			X				X

III DISCUSSION OF THE ISSUES

[7] SaskPower qualifies as a government institution pursuant to subsection 2(1)(d)(ii) of FOIP.

1. Did SaskPower conduct a reasonable search?

[8] Section 5 of FOIP provides:

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.

[9] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the government institution. FOIP does not require a government

institution to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

[10] A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.

[11] The level of detail that can be provided to my office is outlined in my office’s resource, *IPC Guide to Exemptions*. Each case requires different search strategies and details depending on the nature of the records and the way an organization manages them.

SaskPower’s General Search Efforts

[12] SaskPower’s Freedom of Information Access Coordinator (the Coordinator) began the search. Her strategy was developed in consultation with SaskPower’s Manager of Investigations and Operations Enterprise Security (the Manager) who led SaskPower’s response to a bomb threat, which is the subject of SaskPower’s communications with the RPS. He told the Coordinator that the Vice-President, Law, Land & Regulatory Affairs (the Vice-President); Director and Associate General Counsel, the Manager, Enterprise Security, Assessment & Compliance and he were involved in SaskPower’s response. It was later determined that the Manager, Enterprise Security, Assessment & Compliance was not a party to the investigation and his records were not searched.

[13] On May 24, 2017, the Director and Associate General Counsel provided the Coordinator with responsive records. He also indicated that the President and CEO, Vice-President, Finance and Internal Audit area might have responsive records.

[14] The Coordinator identified these areas that may have held records responsive to the Applicant’s request:

- Law, Land & Regulatory Affairs;
- Information Technology and Security;
- Internal Audit;

- Human Resources;
- Vice-President, Finance; and
- President and CEO.

- [15] The Coordinator e-mailed each of these areas. She kept a detailed spreadsheet of all of her communications with these areas during the search. Further, some individuals who participated in the search kept similar spreadsheets. These spreadsheets detail locations searched, keywords used and records found.
- [16] The Coordinator contacted Internal Audit and Human Resources on May 24, 2017 as they had previously had records responsive to one of the Applicant's other access to information requests. On May 26, 2017, Human Resources replied to the Coordinator and indicated they did not have any responsive records. On May 26 and 30, 2017 individuals from Internal Audit replied to the Coordinator and indicated that there were no responsive records. SaskPower noted that although these areas had records related to the Applicant, they were not related to the bomb threat.
- [17] The Vice-President, Law, Land & Regulatory Affairs searched this area. This included her e-mail account and handwritten notes from September 10, 2015 to November 30, 2015. She provided responsive records to the Coordinator.
- [18] On May 25, 2017, the Executive Assistant to the President and CEO provided the Coordinator with responsive records from that area. On the same day, the Executive Assistant to the Vice-President, Finance indicated that no records were found in their area.
- [19] Finally, SaskPower indicated that the Manager was responsible for searching Information Technology and Security. He searched his e-mail, an electronic storage device and a paper file, which would have included any possible handwritten notes. He also found responsive e-mails as a result of his search.
- [20] I am satisfied that SaskPower's general search efforts were reasonable.

Search for specific items

- [21] In his request for review, the Applicant specifically asked about certain kinds of records that would be captured by his original request.
- [22] The first item is records of conversations between the Manager and a member of the RPS. SaskPower confirmed that it included these types of records in his search. It also confirmed that it searched for any handwritten notes of the Manager and determined records did not exist.
- [23] Next, the Applicant asked about the content of an e-mail from the RPS to the Manager on September 10, 2015 at 11:18AM which appears multiple times in the record. It is the beginning of e-mail chains and appeared to be a blank message. The copies provided to my office did not have notations indicating that information had been severed or exemptions applied. My office asked SaskPower about this blank e-mail. It explained that the legal counsel at SaskPower had previously asked the same question and was informed that the message had no content. The purpose of the message was to provide contact information. I am satisfied with this response.
- [24] Also, the Applicant asked for records related to the authorization of an action that appears in an e-mail dated September 10, 2015, 3:22PM from the individual who authorized it. SaskPower confirmed that records of this type were captured in its search for records and no records were found. It noted that it does not have records of conversations.
- [25] Finally, one of the e-mails released to the Applicant indicates that two employees told the Vice-President after the bomb threat that they were concerned about the Applicant before the bomb threat. The Applicant asked for records related to this conversation. SaskPower confirmed that they did consider records of this type in its search. It indicated that there is no record of this conversation.

E-mail Headers

- [26] SaskPower released all of the e-mail headers in the e-mail threads (with the exception of those that were identified since SaskPower was notified of this review). The e-mail header typically indicates:
- the sender of the e-mail;
 - the recipients of the e-mail;
 - the date and time the e-mail was sent; and
 - the subject of the e-mail.
- [27] However, some participants in the e-mail threads used the “Mail” application on an iPhone or iPad to respond to e-mail messages. When this occurs, the e-mail header of the e-mail previous, the e-mail to which the iPhone or iPad user is replying to or forwarding on, is truncated. In other words, the e-mail header of the last e-mail appears to the next recipient(s) as “On [date], at [time], [name and e-mail address] wrote:”. It does not indicate the subject line or all of the recipients of that e-mail. This is then continued on throughout the e-mail chain. This is problematic if an applicant wanted to know who received the e-mail or if the subject line contained additional information.
- [28] SaskPower indicated that the e-mail headers are in an iPad/iPhone format.
- [29] The Applicant has received some of the headers that are truncated by the iPad or iPhone. If the e-mail with the truncated header is printed directly from the sent mail folder of the sender or the inbox of the iPhone user, the full header will appear. However, he has not received two of the full e-mail headers and has concerns about a third.
- [30] With respect to the two remaining e-mails whose heading was truncated, SaskPower indicated that it searched the sent folder of the e-mail account of the Vice-President, who responded to the e-mail with her iPad or iPhone. It did not find the sent mail in the sent folder.
- [31] My office also asked SaskPower why its archiving practices did not archive these e-mails. SaskPower explained that the legal department stores its e-mails through an application called “Enterprise Connect”. The e-mails are deleted from Outlook when they are

transferred to Enterprise Connect. It did not explain why the e-mails with the entire header were not captured in Enterprise Connect.

[32] SaskPower consulted with its information technology department to find a solution to the format of e-mail headers generated from iPhones or iPads in its possession. SaskPower reported that it is an issue with the application and a solution is not within SaskPower's control. I recommend that SaskPower work with the Provincial Archives of Saskatchewan to change its practices of archiving and storing e-mails to capture all e-mail header information.

[33] Finally, on July 19, 2017, SaskPower provided the Applicant with a print out of one of the e-mails whose header was truncated from the sent folder of the sender. However, the original record provided to the Applicant indicated that the e-mail was sent at 12:06PM and the new copy provided to the Applicant indicated it was sent the same day at 12:07PM. In effect, the sender's copy of the e-mail indicates it was sent one minute after the receiver received it.

[34] In response, SaskPower indicated that the time discrepancy is a function in its Enterprise Connect file management software. The software will either round up or down to the time of the e-mail to the nearest minute. However, the software saves the e-mail's metadata to the second. SaskPower provided my office with a copy of the metadata for both the sent and received messages and the time of the sent e-mail and the received e-mail match. I am satisfied with this response.

2. Are the additional records responsive to the Applicant's access request?

[35] When a public body receives an access to information request, it must determine what information is responsive to the access request. Responsive means relevant. The term describes anything that is reasonably related to the request. The request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

[36] As previously noted, while preparing for this review, SaskPower indicated that there were five additional pages of records. It stated that these records were not considered in its initial response to the Applicant, as the record holder was of the view that they were not responsive to the request. However, SaskPower asked if I would review them for responsiveness.

[37] One of the records in question is a two page statement by a potential witness to the bomb threat investigation. The other three pages are an e-mail chain which guides the statement through the organization.

[38] The second item of the Applicant's access requests reads as follows:

Internal communications disclosing SaskPower's initiation and advancement of the RPS investigation, and any internal communications regarding the Applicant, the RPS and potential criminal wrongdoing.

[39] Neither of the documents in question contain the name of the Applicant nor remotely suggest that he is related to the witness' statement. However, the wording of the request, particularly the use of the word "and", indicates that he is not just seeking records that refer to him.

[40] I must consider what is meant by "the RPS investigation". Although it is not explicit in his request, the Applicant knew before he made the access request that the RPS investigation was related to the bomb threat. He also knew that the RPS was investigating him in relation to the bomb threat. In this case, SaskPower should interpret the request broadly as to the investigation of the bomb threat in its entirety instead of just the RPS investigation of him in relation to the bomb threat.

[41] SaskPower provided the witness statement to the RPS and the e-mail chain reflects this. Therefore, I am satisfied that these records are responsive to the portion of the request for "Internal communications disclosing SaskPower's... advancement of the RPS investigation".

3. Does subsection 15(1)(k) of FOIP apply to the record?

[42] Subsection 15(1)(k) of FOIP provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[43] SaskPower applied subsection 15(1)(k) of FOIP to 12 redactions in the record. In order to qualify for this exemption, the following test might be met.

1. Does the public body's activity qualify as a "law enforcement matter"?
2. Does one of the following exist?
 - a. The release of information would interfere with a law enforcement matter, or
 - b. The release of information would disclose information with respect to a law enforcement matter.

Does the public body's activity qualify as a "law enforcement matter"?

[44] My office has indicated that law enforcement includes:

- i) policing, including criminal intelligence operations, or
- ii) investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment.

[45] SaskPower's submission indicates that the RPS was investigating a bomb threat made against SaskPower's head office building in Regina, which is contrary to the *Criminal Code* of Canada. It provided examples of where a bomb threat would be contrary to the *Criminal Code*. Further, the *Criminal Code* describes what penalties can be imposed.

[46] There is evidence within the record that the RPS was investigating the bomb threat and it had a file open on the matter. The record also shows that SaskPower was cooperating with the RPS' investigation.

[47] Therefore, I must consider if the RPS's investigation qualifies as a "law enforcement matter" because it was conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment.

[48] Section 25 and subsection 26(1)(a) of *The Police Act, 1990* provides:

25 A municipality:

(a) is responsible for the maintenance of law and order within its boundaries;

(b) shall provide policing services to maintain a reasonable standard of law enforcement; and

(c) shall provide adequate and reasonable facilities required for the policing services mentioned in clause (b).

26(1) A municipality shall:

(a) establish its own police service;

[49] The City of Regina has established the RPS pursuant to subsection 26(1)(a) of *The Police Act, 1990* to provide policing services to maintain a reasonable standard of law enforcement.

[50] Previous reports from this office, Report 93/021 and Review Report F-2012-006, have found that the activities of agencies and investigative bodies listed in section 14 of *The Freedom of Information and Protection of Privacy Regulations* (the Regulations) for the purpose of subsection 29(2)(g) of FOIP may also qualify as law enforcement matters for the purpose of subsection 15(1)(k) of FOIP. Subsection 14(b) of the Regulations provide:

14 For the purposes of clause 29(2)(g) of the Act, the following law enforcement agencies and investigative bodies are prescribed as law enforcement agencies or investigative bodies to which personal information may be disclosed:

...

(b) a police service or regional police service within the meaning of *The Police Act, 1990*;

[51] I am persuaded that the RPS' investigation qualifies as a law enforcement matter pursuant to subsection 15(1)(k) of FOIP.

Would the release of information interfere with a law enforcement matter or disclose information with respect to a law enforcement matter?

[52] SaskPower submits that release of the information would disclose information with respect to a law enforcement matter. It is only necessary for the public body to demonstrate that the information in the record is information with respect to a lawful investigation to meet this part of the test.

[53] Seven of the 12 redactions (pages II-4 (redaction 2), II-6, II-7, II-16, II-26 (redaction 2), II-28 and II-34) are written communications between the RPS and SaskPower. The information relates directly to the information SaskPower provided to the RPS for the purpose of its investigation of the bomb threat. I am satisfied that subsection 15(1)(k) of FOIP applies to these redactions.

[54] Two of the redactions (pages II-1 (redaction 1), II-2 (redaction 1)), are identical. They are portions of internal e-mail threads which discuss information that SaskPower planned to share with the RPS. The e-mail which contains the redacted portion was sent before any of the written communication between SaskPower and the RPS occurred. The information in this redaction appears in a different form in the communication between SaskPower and the RPS addressed above. As such, I am persuaded that subsection 15(1)(k) of FOIP applies to the record.

[55] Two other redactions are also identical (pages II-26 (redaction 3) and II-33). The redactions appear in internal e-mail communication that occurred after any of the written communication between SaskPower and the RPS. SaskPower redacted the second bullet of three bullets providing information about the investigation to senior management. My office asked why SaskPower chose to use its discretion and release the other two bullets

and only apply exemptions to the second bullet. It said it wanted to provide as much information as possible to the Applicant. It noted that it redacted the second bullet for the purpose of protecting the identity of witnesses. Because the second bullet reflects information that was communicated to the RPS for the purpose of the investigation, I am persuaded that subsection 15(1)(k) of FOIP applies to these redactions. SaskPower did not use its discretion for an improper purpose.

[56] Finally, the last redaction to which SaskPower applied subsection 15(1)(k) of FOIP appears on page II-4 (redaction 1). In this internal e-mail, information about the Applicant is shared among employees which is unrelated to the bomb threat investigation. It is not evident that the detail in this redaction was shared with the RPS. Subsection 15(1)(k) does not apply to this redaction.

[57] With the exception of the redaction on page II-4 where I have found that subsection 15(1)(k) of FOIP does not apply, I note that SaskPower has done an excellent job of meeting its severing obligations imposed by section 8 of FOIP and releasing as much of the record as possible to the Applicant.

4. Does subsection 15(1)(c) of FOIP apply to the record?

[58] Subsection 15(1)(c) of FOIP provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[59] SaskPower applied subsections 15(1)(c) and 15(1)(k) of FOIP to 12 redactions. Because 15(1)(k) of FOIP applies to 11 of the redactions, I must only consider if subsection 15(1)(c) of FOIP applies to one of the redactions (II-4 (redaction 1)).

[60] In order for subsection 15(1)(c) of FOIP to apply, a two part test is used:

1. Does the public body's activity qualify as a "lawful investigation"?

2. Does one of the following exist?
 - a. The release of information would interfere with a lawful investigation, or
 - b. The release of information would disclose information with respect to a lawful investigation.

Does the public body's activity qualify as a "lawful investigation"?

[61] A lawful investigation is an investigation that is authorized or required and permitted by law. The public body should identify the legislation under which the investigation is occurring.

[62] As described above, the RPS undertook an investigation into a bomb threat made to SaskPower's head office building. Pursuant to subsections 25(b) and 26(1)(a) of *The Police Act, 1990*, the RPS provides policing services to maintain a reasonable standard of law enforcement.

[63] My office has found in Review Reports F-2004-006 and 027-2016 subsection 15(1)(c) of FOIP may apply to a record about an investigation undertaken by a body other than the one who received the request.

[64] This qualifies as a lawful investigation pursuant to subsection 15(1)(c) of FOIP.

Would the release of information interfere with a lawful investigation or disclose information with respect to a lawful investigation?

[65] Again, this redaction is found in an internal e-mail where information about the Applicant is shared among employees who are unrelated to the bomb threat investigation. It is not evident that the detail in this redaction was shared with the RPS. Subsection 15(1)(c) does not apply to this redaction and it should be disclosed to the Applicant.

5. Does subsection 22(c) of FOIP apply to the record?

[66] Subsection 22(c) of FOIP provides:

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.

[67] SaskPower applied this exemption to three redactions (page II-10 (redactions 1 and 2) and page II-11).

[68] In order to qualify for this exemption, both parts of the following test must be met:

1. Is the record a correspondence between the public body's legal counsel or an agent of the Attorney General for Saskatchewan 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?

Is the record a correspondence between the public body's legal counsel or an agent of the Attorney General for Saskatchewan and any other person?

[69] My office has previously noted that correspondence, in this context, is an interchange of written communications. The redactions in question are found in an e-mail thread between the Manager of Investigations and Operations Enterprise Security and the Director and Associate General Counsel of Law, Land and Privacy.

[70] SaskPower's submission indicates that the Director and Associate General Counsel of Law, Land and Privacy is SaskPower's legal counsel. It is also clear from review of the record that both individuals were acting on behalf of SaskPower. The first test is met.

Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?

[71] Legal advice includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.

[72] The second redaction on page II-10 and the redaction on page II-11 is the Manager seeking advice from the Director and Associate General Counsel of Law, Land and

Privacy. The first redaction on page II-10 is the Director and Associate General Counsel of Law, Land and Privacy's response which provides advice. The second test is met.

[73] Subsection 22(c) of FOIP applies to these records.

6. Does subsection 22(a) of FOIP apply to the record?

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

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

...

(a) contains information that is subject to solicitor-client privilege;

[75] Subsection 22(a) of FOIP is meant to protect information that is subject to solicitor-client privilege. In *Solosky v. Canada* (1980), Justice Dickson regarded the rule of solicitor-client privilege as a "fundamental civil and legal right" that guaranteed clients a right to privacy in their communications with their lawyers.

[76] In *Descoteaux et al. v. Mierzwinski*, (1982), Justice Lamer outlined a very liberal approach to the scope of the privilege by extending it to include all communications made "within the framework of the solicitor-client relationship." The protection is very strong, as long as the person claiming the privilege is within the framework. Subsection 22(a) of FOIP ensures that the government, as the client, has the same protection for its legal documents as persons in the private sector.

[77] In order to qualify for this exemption, the withheld information must meet all three parts of the following test established in *Solosky v. Canada*, (1980):

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Was the communication intended to be confidential?

[78] SaskPower has applied subsection 22(a) of FOIP to one remaining redaction (page II-26, redaction 1).

Is the record a communication between solicitor and client?

[79] The record is an e-mail written by the Manager to the Vice-President. The Director and Associate General Counsel, Land, Law and Privacy and Manager, Enterprise Security, Assessment and Compliance are copied on the e-mail. The Manager wrote the e-mail to reply to questions that the Vice-President posed in an earlier e-mail which was released to the Applicant.

[80] The portion of the e-mail that is redacted pursuant to subsection 22(a) of FOIP summarizes advice given to the Manager on page II-10 and II-11 of the record to which I have found subsection 22(c) of FOIP applies.

[81] Although on the surface, this does not appear to be a communication between the solicitor and a client because it is between a Manager and a Vice-President, the Director and Associate General Counsel of Law, Land and Privacy has been copied on the e-mail. More significantly, the record reflects legal advice given by legal counsel. As such, it can be captured by the privilege as it is part of the continuum of legal advice. Therefore, I am satisfied that the first part of the test is met.

Does the communication entail the seeking or giving of legal advice?

[82] As discussed, the redaction in question reflects the legal advice given on page II-10 and II-11 of the record. I have found that for the purpose of subsection 22(c) of FOIP, this information relates to the provision of legal advice. Therefore, I find the second part of the test is met.

Was the communication intended to be confidential?

[83] As noted, the redaction in question appears in an e-mail which responded to an e-mail written by the Vice-President. The Vice-President specifically wrote in her e-mail “please treat this as confidential”. I am satisfied that the Manager’s reply would be intended to be treated in the same fashion. The third part of test is met.

[84] Subsection 22(a) of FOIP applies to the first redaction on page II-26.

7. Did SaskPower properly apply subsection 29(1) of FOIP to the record?

[85] 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.

[86] As noted, while preparing for this review, SaskPower indicated that it identified five additional pages of records which I have found to be responsive to the Applicant's request. These records are related to a witness statement. SaskPower indicated it would redact information that identifies a witness pursuant to subsection 29(1) of FOIP. There are 11 redactions on the five pages. Nine of the redactions are witness' names or e-mail addresses. The other two redactions are the title, work phone number/fax number and e-mail address of the witness.

[87] In order for subsection 29(1) of FOIP to apply, the information in a record must qualify as personal information as defined by subsection 24(1) of FOIP.

[88] Section 24 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:

...

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

(f) the personal opinions or views of the individual except where they are about another individual;

...

(h) the views or opinions of another individual with respect to the individual;

...

(k) the name of the individual where:

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

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

...

(2) “Personal information” does not include information that discloses:

...

(c) the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;

[89] SaskPower submitted that portions of the records that reveal the name of the witness to the bomb threat are personal information within the meaning of FOIP. It did not provide further explanation of how the information severed from the record would qualify as personal information.

[90] I will first address the name of the witness severed from the record. Subsection 24(1)(k) of FOIP indicates that the name of an individual would qualify as personal information if it appears with other personal information that relates to the individual or the disclosure of the name itself would reveal personal information about the individual. Therefore, I must consider whether the rest of the information qualifies as personal information of the witness.

[91] I note that subsections 24(1)(f), (h) and 24(2)(c) of FOIP addresses opinions or views. Past reports of this office (Review Reports F-2006-004 and LA-2013-003) have provided the following:

An “opinion” is a belief or assessment based on grounds short of proof; a view held as probable. An “opinion” is subjective in nature, and may or may not be based on fact. An example of an “opinion” would be a belief that a person would be a suitable employee, whether or not the opinion is based on the person’s employment history.

[92] However, in Review Report LA-2013-001, my office has found that observations simply indicate relevant facts such as daily events and practices at the workplace would not qualify as personal information.

[93] The statement of the witness is mostly factual information about what the witness saw on her way to work the morning of the bomb threat. I view this information as observation material. The witness' description did not give an opinion or view as to the identity of the individuals involved. Although the observations were not made during the witness' work hours, the record was created in the context of an event that occurred at the witness' work, namely the bomb threat. This is why SaskPower is in the possession of these records. Otherwise, the witness could have gone directly to the RPS. The observations are not personal in nature. As such, the record as a whole would not qualify as personal information pursuant to subsection 24(1)(f) or (h) and subsection 24(2)(c) of FOIP also would not apply. Therefore, subsection 24(1)(k) of FOIP does not apply to the names of the witness that appear in the record.

[94] Next, I will address title, work phone number/fax number and e-mail address of the witness. This information qualifies as business card information. I have found that business card information is generally not considered personal in nature and therefore would not be considered personal information.

[95] I have reviewed the five pages in question, and there is only one phrase that would be personal in nature and would qualify as personal information pursuant to subsection 24(1) of FOIP. This would be the last sentence of the first paragraph of the witness statement which describes how the witness arrived on the scene. This is personal in nature. This should be severed from the record pursuant to subsection 29(1) of FOIP.

8. Did SaskPower properly apply subsection 21 of FOIP to the record?

[96] Section 21 of FOIP provides:

21 A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual.

[97] SaskPower has applied this exemption to the same information to which it applied subsection 29(1) of FOIP. This includes 11 redactions on the five pages of additional records SaskPower identified. Nine of the redactions are the witness' names or e-mail

addresses. The other two redactions are the title, work phone number/fax number and e-mail address of the witness.

[98] Section 21 of FOIP is meant to provide the ability to refuse access to information if its disclosure could threaten the safety, physical or mental health of an individual. Generally, this means the public body must make an assessment of the risk and determine whether there are reasonable grounds for concluding there is a danger to the health or safety of any person. That assessment must be specific to the circumstances of the case under consideration. The inconvenience, upset or unpleasantness of dealing with difficult or unreasonable people is not sufficient to trigger this section. The threshold cannot be achieved on the basis of unfounded, unsubstantiated allegations.

[99] The public body should be able to detail what the harm is and to whom the harm threatens if the information were released.

[100] In order to determine whether a threat to the safety, physical or mental health of any person exists, all three parts of the following test must be met:

1. Is there a reasonable expectation of probable harm?
2. Does the harm constitute damage or detriment and not mere inconvenience?
3. Is there a causal connection between disclosure and the anticipated harm?

Is there a reasonable expectation of probable harm?

[101] In its submission, SaskPower stated that it would be concerned about the safety and physical health of the witness and another concerned employee if their names were released to the Applicant. I note the name of the concerned employee appears only in records where I have found other exemptions apply. SaskPower specifically indicated that there may be verbal or physical harassment or stalking of these individuals or worse if their names are released.

[102] As part of its submission, SaskPower provided an affidavit sworn by the concerned employee. The affidavit pointed generally to workplace shootings and indicated that the

Applicant's behavior has "differed from other individuals in the same circumstances" because he has launched a wrongful dismissal lawsuit against SaskPower and makes many access to information requests.

[103] With respect to SaskPower's claim that the Applicant may harass or stalk the witness if her name was released to the Applicant, I am not persuaded that there is a reasonable expectation of probable harm. There is information in the record that contradicts SaskPower's assertion that harassment or stalking is probable.

[104] In Review Report LA-2012-002, my office also discussed how actions taken through appropriate lawful channels available to the Applicant was not enough to justify a claim that disclosure could threaten the safety or the physical or mental health of an individual. SaskPower's assertions that the fact the Applicant launched a wrongful dismissal lawsuit and made many access to information requests indicates that he would threaten the safety or the physical or mental health of an individual is not persuasive.

[105] The first part of the test is not met. Section 21 of FOIP does not apply to the record.

IV FINDINGS

[106] I find that SaskPower has performed a reasonable search for records.

[107] I find that the additional records identified by SaskPower are responsive to the Applicant's request.

[108] I find that subsections 15(1)(k), 22(a) and (c) of FOIP apply to portions of the record.

[109] I find that subsection 15(1)(c) and section 21 of FOIP do not apply to the record.

[110] I find that SaskPower should withhold one phrase pursuant to subsection 29(1) of FOIP.

V RECOMMENDATIONS

[111] I recommend that SaskPower work with the Provincial Archives of Saskatchewan to change its practices of archiving and storing e-mails to capture all e-mail header information.

[112] I recommend that SaskPower withhold information as described in the tables below and release all other information.

NN = No need to review

Page	Redaction	15(1)(c)	15(1)(k)	21	22(a)	22(b)	22(c)	29(1)	Withhold/Release
II-1	1	NN	Applies	NN				NN	Withhold
II-2	1	NN	Applies	NN				NN	Withhold
II-4	1	Does not apply	Does not apply						Release
	2	NN	Applies						Withhold
II-6	1	NN	Applies						Withhold
II-7	1	NN	Applies						Withhold
II-10	1				NN	NN	Applies		Withhold
	2				NN		Applies		Withhold
II-11	1						Applies		Withhold
II-16	1	NN	Applies	NN				NN	Withhold
II-26	1				Applies	NN			Withhold
	2	NN	Applies	NN				NN	Withhold
	3	NN	Applies	NN				NN	Withhold
II-28	1	NN	Applies						Withhold
II-33	1	NN	Applies	NN				NN	Withhold
II-34	1	NN	Applies						Withhold

Page	Redaction	21	29(1)	Withhold/Release
1	1	Does not apply	Does not apply	Release
	2	Does not apply	Does not apply	Release
	3	Does not apply	Does not apply	Release
	4	Does not apply	Does not apply	Release
2	1	Does not apply	Does not apply	Release
	2	Does not apply	Does not apply	Release
	3	Does not apply	Does not apply	Release
4	1	Does not apply	Does not apply	Release
			last sentence of the first paragraph of the witness statement	Withhold
	2	Does not apply	Does not apply	Release
5	1	Does not apply	Does not apply	Release

Dated at Regina, in the Province of Saskatchewan, this 7th day of December, 2017.

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