



## **REVIEW REPORT 141-2019**

### **Saskatchewan Telecommunications**

**March 10, 2020**

**Summary:**

The Applicant submitted an access to information request to Saskatchewan Telecommunications (SaskTel). SaskTel responded by releasing most of the records to the Applicant, but applied subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to the withheld portions. The Commissioner found that subsection 29(1) of FOIP was properly applied to parts of the redacted information, but not to other parts. The Commissioner recommended that SaskTel release the parts to the Applicant where subsection 29(1) of FOIP was found to not apply. The Commissioner also found that SaskTel met its obligation pursuant to section 8 of FOIP.

### **I BACKGROUND**

- [1] On May 6, 2019, Saskatchewan Telecommunications (SaskTel) provided its section 7 response to the Applicant's request for copies of their personal information as they related to a particular matter between the Applicant and SaskTel. SaskTel applied subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to portions of the records.
- [2] On May 10, 2019, my office received a request for review from the Applicant regarding SaskTel's application of subsection 29(1) of FOIP to portions of the records.
- [3] On May 22, 2019, my office provided notification to SaskTel and the Applicant of my office's intent to undertake a review. On June 4, 2019, SaskTel provided its submission.

## II RECORDS AT ISSUE

[4] SaskTel has indicated on its index of records that it applied subsection 29(1) of FOIP to portions of the records contained in documents 3, 4, 12 and 15 (I note the remainder of the records were released to the Applicant without redactions). These documents consist of the following, which I have modified from SaskTel’s original index for ease of reference:

Document	Number of Pages	Content
3	5	Meeting notes
4	6	Email exchange
12	6	Meeting minutes with statement by former employer
15	6	Personal & Confidential Investigator’s Report

## III DISCUSSION OF THE ISSUES

### 1. Do I have jurisdiction to conduct a review?

[5] SaskTel 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. Did SaskTel properly apply subsection 29(1) of FOIP to the records?

[6] 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.

[7] Subsection 29(1) of FOIP is a mandatory exemption intended to protect the privacy of individuals whose personal information may be contained within records responsive to an

access to information request made by someone else. Subsection 29(1) of FOIP requires a government institution to have the consent of the individuals whose personal information is in the record prior to disclosing it unless one of the exceptions at subsection 29(2) or section 30 of FOIP are found to apply.

- [8] The first step in dealing with information in a record that appears to be personal information is to confirm that it is personal information pursuant to subsection 24(1) of FOIP. SaskTel stated that the records contain personal information pursuant to subsections 24(1)(e) and 24(1)(h) of FOIP. I will separately analyze how SaskTel has applied these subsections to documents 3, 4, 12 and 15 in the following sections of this Report.

***Document 3, Meeting Notes and Document 4, Email with Attached Meeting Notes***

- [9] I will provide my analysis of documents 3 and 4 together since, upon review of the record, document 3 appears to be a copy of meeting notes while document 4 appears to be an email that has the copy of the meeting notes attached. SaskTel has applied its redactions pursuant to subsection 29(1) of FOIP to documents 3 and 4 in the same manner.
- [10] SaskTel stated that the information contained in documents 3 and 4 includes personal information pursuant to subsection 24(1)(h) of FOIP, which 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:

...

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

- [11] In its submission, SaskTel referenced paragraph [22] of my office’s Review Report 010-2018, respecting subsection 23(1)(f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), which is analogous to subsection 24(1)(f) of FOIP. In this paragraph, I noted that pursuant to subsection 23(1)(f) of LA FOIP, or subsection 24(1)(f) of FOIP, the views and opinions about an individual qualifies as personal information of the subject individual. I further noted in this Report that opinions and comments about an applicant of an access request are the personal information of the

applicant, which would be considered pursuant to subsection 23(1)(h) of LA FOIP, which is equivalent to subsection 24(1)(h) of FOIP. Therefore, your views and opinions about yourself contained in a record are considered your personal information pursuant to subsection 24(1)(f) of FOIP, while views and opinions you have about the applicant of an access request are considered the applicant's personal information pursuant to subsection 24(1)(h) of FOIP.

[12] With this in mind, I turn my attention towards the information that SaskTel has withheld in documents 3 and 4 of the records. Upon review of the records, I note that the meeting notes are divided into questions and responses, and that SaskTel has redacted information contained in the responses to questions 6(a), 15, 16 (a, b and c), 18 (a, b and c) of documents 3 and 4. All are questions asked to SaskTel employees regarding the Applicant.

[13] Question 6(a) appears to contain responses from two different respondents, who recounted an interaction between SaskTel employees and the Applicant. The last statement of the individual that SaskTel identified in the records as "KC" was redacted (I note that SaskTel did not redact the initials "KC"). Upon review of this information, it appears that the response to question 6(a) by KC would be personal information of the respondent KC pursuant to subsection 24(1)(f) of FOIP because it is information or an opinion that KC was providing about themselves. I find that subsection 29(1) of FOIP was properly applied to the response for question 6(a) in documents 3 and 4 of the records, and recommend that SaskTel continue to withhold this information.

[14] Question 15 appears to be one respondent's description or account of events regarding interaction with the Applicant (I note that SaskTel redacted the initials of the respondent). In Review Report LA-2013-001, my office found that information provided by an employee that are observations of what occurred at a particular incident would not be considered personal information unless the information was about another individual, in which case it would be personal information. The account of what occurred is about the Applicant, which is then their personal information pursuant to subsection 24(1)(h) of FOIP. I find, therefore, that subsection 29(1) of FOIP was not properly applied to the

response for question 15 in documents 3 and 4 of the records, and recommend SaskTel release this information to the Applicant.

[15] Question 16 (a and b) appears to include opinions regarding the Applicant, while 16(c) appears to be an objective observation of what occurred (There is no response provided by the respondent to question 16(d), so that response is blank). I note that all responses are provided by the same respondent, though SaskTel has redacted the respondent's initials. 16 (a and b) appear to be personal information of the Applicant pursuant to subsection 24(1)(h) of FOIP, while the response to question 16(c) appears to be an objective observation of what occurred. As I pointed out at paragraph [14], an account of what occurred is personal information if the account includes information about that individual. I find, therefore, that subsection 29(1) of FOIP was not properly applied to the responses for questions 16 (a, b and c) in documents 3 and 4 of the records, and recommend SaskTel release this information to the Applicant.

[16] Question 18 (a, b and c) all appear to be opinions of the same respondent, whose identity was redacted by SaskTel, regarding the Applicant, which is the Applicant's personal information pursuant to subsection 24(1)(h) of FOIP. I find, therefore, that subsection 29(1) of FOIP was not properly applied to the responses for questions 18(a, b and c) in documents 3 and 4 of the records, and recommend SaskTel release this information to the Applicant.

***Document 12, Meeting Minutes with Statement by Former Employer***

[17] In its submission, SaskTel stated that the information contained on page 5 of document 12 contained personal information pursuant to subsection 24(1)(e) of FOIP, which 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;

[18] The information redacted pertains to the cellphone number and address information of a company that, according to the records, is a “SaskTel contractor” that “does our access control through SecureTek”. A contracted individual is an “employee” pursuant to subsection 2(1)(b.1) of FOIP, which provides:

2(1) In this Act:

...

(b.1) “**employee of a government institution**” means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution;

[19] Pursuant to subsection 2(1)(b.1) of FOIP, SaskTel’s contractor is an employee.

[20] I have outlined in past reports that business card information, which is the type of information found on business cards such as name, job title, work address, work telephone numbers, etc., is not generally considered personal in nature and, therefore, would not be personal information. In Review Reports 277-2016 and 135-2019, I concluded that this also includes cell phone information that is used by employees in the course of conducting business. In its submission, SaskTel stated that the cell phone “is not a telephone number that is associated with [name of contractor] such that it could be an employee owned device used for personal and business or simply a personal cell phone” [sic]. SaskTel has not provided proof, however, to indicate that any of this is the case. Upon review of the record, it appears to me that this individual uses their cell phone for business purposes as they include it with their work email signature, which would then make it part of their business card information. I find, therefore, that subsection 29(1) of FOIP was not properly applied to the contractor’s work address and cell phone number in document 12 of the records and recommend that SaskTel release this information to the Applicant.

*Document 15, Personal and Confidential Investigator’s Report*

[21] SaskTel has applied subsection 29(1) of FOIP to a portion of page 4 of document 15 under a section titled, “Witnesses accounts”, and to the signature block on page 6 of document 15, which is titled, “Personal and Confidential Investigator’s Report”.

[22] The portion on page 4 of document 15 under “Witnesses accounts” includes four sentences of a witness account of an interaction between SaskTel employees and the Applicant. SaskTel has not stated directly under which provision of subsection 24(1) of FOIP it considers the information to be “personal information”, but it included the following in its submission:

This redaction contains a portion of a witness’ account of the situation that involved the Applicant and [XX]. The redaction is a record of views and opinions of the witness concerning the situation in question between the Applicant and [XX]. As views and opinions concerning both the Applicant and the SaskTel employee [XX] involved with [them], the redacted information was considered to be personal information of both the Applicant and [XX]. Accordingly, it was withheld as personal information, similar to paragraph #24 of Review Report 010-2018.

[23] In paragraph [24] of Review Report 010-2018, I stated that opinions and comments about individuals are the personal information of that individual, and that the opinion-giver’s identity is also part of the personal information of the individual about whom the opinions are expressed. To put this simply, if an employee named Bob provides written opinions and comments about a customer named Alice, then those written opinions and comments are Alice’s personal information because they are about Alice and not Bob. The fact that Bob provided the opinions and comments is also part of Alice’s personal information. This would all be considered pursuant to subsection 24(1)(h) of FOIP, which I reviewed at paragraph [10] of this report.

[24] With respect to the portion of the “Witnesses accounts” that SaskTel has redacted on page 4 of document 15, the first two sentences and the first part of the third sentence appear to all be an objective, eye-witness account of what occurred, and not personal information of the Applicant or of the individual providing the account. The last portion of the third sentence appears to be the respondent’s personal opinion of themselves, and so would be their personal information pursuant to subsection 24(1)(f) of FOIP. I find, therefore, that subsection 29(1) of FOIP was not properly applied to the first two sentences and to the first part of the third sentence on page 4 of document 15, but that it has been properly applied to the remainder of the third sentence. I recommend that SaskTel release the portion of these three sentences to the Applicant as I have identified in this paragraph.

[25] On page 6 of document 15, SaskTel has redacted the signature block of the two investigators. In its submission, SaskTel stated, “SaskTel considers those actual signatures to be personal information of each of the investigators, since the signatures are personal to each of the individuals”.

[26] In Review Report 149-2019, and 191-2019, I stated at paragraph [87] that signatures, when they are part of work product, are not personal information. The “Personal and Confidential Investigator’s Report”, which is part of document 15, appears to be work product of individuals who work for SaskTel. As such, the signatures in question do not qualify as personal information, and I find that subsection 29(1) of FOIP was not properly applied to the signature block on page 6 of document 15. I recommend that SaskTel release this information to the Applicant.

### **3. Did SaskTel meet its obligations pursuant to section 8 of FOIP?**

[27] Section 8 of FOIP provides the following:

**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.

[28] When a government institution receives an access to information request, it must complete a line-by-line analysis of the responsive records to comply with section 8 of FOIP. Through this, the government institution is required to determine where mandatory or discretionary exemptions apply and sever those specific portions. Once it does this, it is to release the remainder of the record to the Applicant.

[29] In the matter before me, SaskTel has applied what is a mandatory exemption to personal information pursuant to subsection 29(1) of FOIP. Even though I found that SaskTel did not properly apply subsection 29(1) of FOIP to parts of what was severed, upon review of the record, it is clear that SaskTel did undertake a line-by-line review. I note this because SaskTel appears to have been selective in where it applied its exemptions, and it appears to have applied them minimally, for which I commend them.



[30] I am satisfied that SaskTel has undertaken a line-by-line review of the records and find that it met its obligations pursuant to section 8 of FOIP.

#### **IV FINDINGS**

[31] I find that subsection 29(1) of FOIP was properly applied to: the response for question 6(a) of documents 3 and 4 of the records; and to the remainder of the third sentence on page 4 of document 15 under “Witnesses accounts”.

[32] I find that subsection 29(1) of FOIP was not properly applied to: the responses for questions 15, 16 (a, b and c), 18 (a, b and c) of documents 3 and 4 of the records; the contractor’s work address and cell phone number in document 12 of the records; the first part of the third sentence on page 4 of document 15 under “Witnesses accounts”; and the signature block on page 6 of document 15 of the records.

[33] I find that SaskTel met its obligations pursuant to section 8 of FOIP.

#### **V RECOMMENDATIONS**

[34] I recommend that SaskTel continue to withhold the response to question 6(a) of documents 3 and 4 of the records, and the last part of the third sentence on page 4 of document 15 under “Witnesses accounts”.

[35] I recommend that SaskTel release to the Applicant the responses for questions 15, 16 (a, b and c), 18 (a, b and c) of documents 3 and 4 of the records; the contractor’s work address and cell phone number in document 12 of the records; the first part of the third sentence on page 4 of document 15 under “Witnesses accounts”; and the signature block on page 6 of document 15 of the records.

Dated at Regina, in the Province of Saskatchewan, this 10th day of March, 2020.

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