

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 146/2014

Saskatchewan Research Council

Summary: Saskatchewan Research Council (SRC) applied subsection 22(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to a record requested by the Applicant. The record was created by external legal counsel for SRC. The record was copied to a staff member of the Provincial Auditor's office. The Commissioner found that the exemption did apply.

I BACKGROUND

- [1] The Applicant made an access to information request dated July 29, 2014 to the Saskatchewan Research Council (SRC) for "personal information record on discussions over the contingent liabilities in respect of my claim." SRC responded in a letter dated August 27, 2014 indicating that records responsive to the request were being withheld pursuant to section 22 of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [2] The Applicant was dissatisfied with SRC's response and requested a review by my office on November 25, 2014. This office provided notification to both the Applicant and SRC of the office's intention to undertake a review on December 16, 2014.

II RECORDS AT ISSUE

- [3] The responsive record is a two page letter from a lawyer to an associate vice president at SRC. A member of the Provincial Auditor's staff is copied on the letter.

III DISCUSSION OF THE ISSUES

- [4] SRC qualifies as a government institution pursuant to subsection 2(d)(ii) of FOIP and Part I of the Appendix in the FOIP Regulations.

1. Did SRC properly apply subsection 22(b) of FOIP?

- [5] Section 22(b) of FOIP states:

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

...

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

- [6] The established test that my office uses to make a determination for this exemption is as follows:

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

- [7] SRC's submission indicates that the record was prepared by external legal counsel for SRC. Upon review of the record, I agree. The first part of the test is met.

- [8] SRC's submission also indicates that it was prepared to provide a legal service for SRC. Specifically, it stated: "The record was created during the external audit process where obtaining legal opinions is standard practice, was created specifically in the context of, and as a result of, the seeking of legal advice, and consisted of a specific legal opinion

prepared by external legal counsel.” Upon review of the record and SRC’s submission, I am satisfied that the test for the second part has been met.

[9] Subsection 22(b) of FOIP applies to the record. There is no need to consider the other exemptions.

IV FINDINGS

[10] I find subsection 22(b) of FOIP applies to the record.

V RECOMMENDATIONS

[11] I recommend that SRC take no further action.

Dated at Regina, in the Province of Saskatchewan, this 20th day of February, 2015.

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