



REVIEW REPORT 149-2019, 191-2019

Saskatchewan Telecommunications

December 20, 2019

Summary: The Commissioner reviewed Saskatchewan Telecommunication's (SaskTel) response to the Applicant's access request including the timelines involved, the fee estimate and the fee charged. The Commissioner also reviewed SaskTel's search and application of subsections 18(1)(b), 22(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to the record. The Commissioner found that SaskTel's fee estimate and search were reasonable. He also found that subsections 18(1)(b) and 29(1) of FOIP did not apply. He recommended that SaskTel release certain records and reconsider exercising its discretion to waive the fees.

I BACKGROUND

[1] On February 1, 2019, Saskatchewan Telecommunications (SaskTel) received an access to information request for the following information:

RE: [Address 1] & [Address 2], Regina Saskatchewan

1. All correspondence with 3346286 Manitoba Ltd and/ or Shindico, including initial letters of intent, signed lease agreement(s), any assignments, renewals, purchase and sale agreement or any option agreements and/ or renewals for the above land or adjacent property, signed lease agreement(s) including negotiations of both the interior and exterior premise.
2. Copies of any & all applications for rezoning, plans and permits obtained & development permits submitted directly or by the owner of the property or on behalf of the Saskatchewan Telecommunications and/ or Saskatchewan Holding Corporation.

3. Copy of any correspondence, letters, offers, leases with Saskatchewan Telecommunications & Saskatchewan Telecommunications Holding Corp regarding the above property.
4. Copies of all feasibility studies done on the property including soil testing.
5. Copy of any awarded contract(s) for [Address 1] and [Address 2].

January 1, 2010 to January 17, 2019.

- [2] On February 10, 2019, SaskTel asked the Applicant if he wanted to narrow the scope of the request to reduce possible fees. The next day, the Applicant told SaskTel not to narrow the scope of the request. On February 28, 2019, SaskTel provided the Applicant with a fee estimate of \$1,219.90. The Applicant indicated the desire to pay the 50 percent deposit and provided credit card information. However, SaskTel did not process the payment for the deposit.
- [3] Between March 18, 2019 and May 3, 2019, SaskTel responded to the Applicant five times. Those responses communicated various information. SaskTel released some responsive records to the Applicant. It also notified the Applicant that some information was being withheld pursuant to subsections 18(1)(b), 22 and 29 of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] SaskTel also sent the Applicant an invoice for a total of \$63 in fees.
- [5] On May 8, 2019, the Applicant requested a review by my office. The Applicant requested a review of the timelines, application of the exemptions applied and the fees. My office notified the Applicant and SaskTel of my intention to undertake a review on May 24, 2019.
- [6] On June 14, 2019, the Applicant also requested that my office review SaskTel's search for records. On June 17, 2019, my office notified both the Applicant and SaskTel of my intention to review SaskTel's search for records.

II RECORDS AT ISSUE

[7] SaskTel identified 105 pages of responsive records. It severed information on 11 pages of the record pursuant to subsections 22(a), (b) and 29(1) of FOIP. SaskTel also withheld 33 pages in their entirety pursuant to subsection 18(1)(b) of FOIP. See Appendix A for details.

III DISCUSSION OF THE ISSUES

1. Does FOIP apply in these circumstances?

[8] 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, FOIP applies and I have jurisdiction to review this matter.

2. Was SaskTel's fee estimate reasonable?

[9] Subsection 9(1) of FOIP states:

9(1) An applicant who is given notice pursuant to clause 7(2)(a) is entitled to obtain access to the record on payment of the prescribed fee.

[10] Section 6 of the FOIP Regulations provide a government institution the ability to recover costs associated with searching for responsive records.

[11] Subsection 9(2) of FOIP requires that a government institution provide the Applicant with an estimate of the fees:

9(2) Where the amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

[12] A reasonable fee is one that is proportionate to the work required on the part of the public body to respond efficiently and effectively to an applicant's request. The public body should be able to detail how it arrived at its fee estimate amounts for each of the types of fees that can be charged. In past reports, my office has established that there are three kinds of fees that a public body can include in its fee estimate:

- fees for searching for a responsive record;
- fees for preparing the record for disclosure; and
- fees for the reproduction of records.

[13] My office has recommended the following steps be taken when charging fees:

1. Contact the applicant:
 - a. advise that fees will be necessary;
 - b. attempt to clarify or offer ways to narrow the request to reduce or eliminate fees;
 - c. follow up in writing with applicant when narrowing occurs;
2. Make a search strategy;
3. Based on the search strategy, prepare a fee estimate (do not complete search);
4. Decide whether to charge a fee (refer to your public body's policy);
5. Send out fee estimate and suspend work;
6. If applicant initiates, clarify or narrow request with applicant; and
7. When applicant pays 50 percent deposit; start search.

[14] After receiving the access to information request, SaskTel contacted the Applicant on February 10, 2019 to inform them that there may be a large amount of records. SaskTel indicated there may be a large fee estimate. It suggested a way that the Applicant could narrow the request to reduce the amount of fees. With these actions, SaskTel followed best practice as described in the resources offered by my office. On February 11, 2019, the Applicant declined to narrow the request and asked for the full fee estimate.

[15] SaskTel provided the following estimate to the Applicant on February 28, 2019:

Activity	Estimate
Locating the records requested Estimate at 1 hour x \$15/half hour	\$30
Performing redaction function Estimated 1000 pages x 2 minutes/page = 33.33 hours x \$15/half hour	\$990.90
Minus 2 hours provided free of charge to search for the record and/or prepare the record for disclosure	(\$60)
Reproduction costs	\$250
Total	\$1,219.90
Deposit required (50 percent)	\$609.95

[16] SaskTel’s fee estimate was prepared on SaskTel’s initial assessment that there would be approximately 1000 pages of responsive records. Upon review, SaskTel’s estimate based on 1000 pages was prepared both in accordance with the regulations and best practices discussed in my office’s resource *Fee Estimate – Quick Calculation Guide*.

[17] Once the Applicant received the fee estimate, they contacted SaskTel to narrow the scope of the request in the same manner that SaskTel suggested on February 10, 2019. On March 12, 2019, SaskTel responded that the fee estimate had been mistakenly prepared with the narrowed scope to begin with so the fee estimate would not change. The Applicant then indicated he would pay the 50 percent deposit and SaskTel proceeded with its search.

[18] I find that SaskTel followed the steps recommended by my office and prepared a reasonable fee estimate.

[19] I note that on March 12, 2019, the Applicant agreed to pay the 50 percent deposit. He provided SaskTel with credit card information.

[20] The payment was not immediately processed as SaskTel had not accepted a credit card payment for an access request fee in the past. SaskTel advised the Applicant that by providing the credit card information, it considered the deposit paid even though a payment had not been processed. SaskTel indicated that it did not want to have to refund the Applicant if any payment was higher than the actual cost. SaskTel did not process a

payment on the credit card. I recommend that SaskTel create a written policy on the type of payments it will accept for access requests.

3. Did SaskTel perform a reasonable search for records?

[21] 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.

[22] Section 5 of FOIP is clear that access to records must be granted if they are in the possession or under the control of the government institution subject to any applicable exemptions under FOIP.

[23] The Applicant requested an extensive amount of information related to two parcels of land. The Applicant requested a review of SaskTel's search for a specific reason. In its fee estimate of February 28, 2019, SaskTel estimated that there could be 1000 pages of responsive records. On March 15, 2019, SaskTel sent a picture to the Applicant of the file that would be searched for responsive records. SaskTel estimated that the file had 1500 pages but also warned the Applicant there would be far fewer responsive records as the scope of the request had been narrowed. In the end, SaskTel identified 105 pages of responsive records. The Applicant is particularly interested in the discrepancy between the estimated number of responsive records and the actual number.

[24] In the notification, my office requested that SaskTel describe its search efforts for the records in its possession or control that are responsive to the Applicant's request. My office also asked that SaskTel address the discrepancy between the estimate of responsive pages and the actual number of pages responsive to the request.

[25] 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. FOIP does not require the government institution to prove with

absolute certainty that records do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

[26] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

[27] When conducting a review of a government institution's search efforts, details are requested that help my office understand the level of effort made to locate the records. Examples of the type of information that can be provided can be found in my office's *IPC Guide to Exemptions for FOIP and LA FOIP* (updated June 21, 2019).

[28] In its submission, SaskTel provided a detailed description of its initial assessment of the number of potential records which occurred on February 22, 2019. It used guidance from my office to provide details of its search. SaskTel's submission describes in detail the qualifications of the individual who performed the preliminary search and I am satisfied that the SaskTel employee was qualified to perform the search.

[29] SaskTel also described in detail what steps were taken in its initial assessment. It noted that SaskTel's standard practices when dealing with a leased site and a tower site is to keep detailed paper files. SaskTel indicated that there are a number of files and a number of people involved in handling a file over the passage of time, resulting in the retention of a large number of records. When designing the search plan to respond to the access request, the SaskTel employee assessed what was being requested and determined what tower and lease files would be responsive. The employee viewed the file in the drawer and determined that there were approximately 500 to 1000 pages which could respond to the access request.

- [30] I accept SaskTel's explanation that responsive records would be held in physical form. I am also persuaded that it has sufficiently explained where the physical records were held and why. I am satisfied with SaskTel's explanation of its initial assessment of the number of potential records.
- [31] Next, I will consider SaskTel's explanation of why the estimated number of pages of responsive records went from approximately 1000 to 1500 pages to a final number of 105 pages.
- [32] I acknowledge that the Applicant narrowed the request on February 28, 2019, after SaskTel did its initial assessment of the number of potential records. However, in its submission, SaskTel confirmed that no files addressing the records that the Applicant ruled out on February 28, 2019 were considered in this assessment.
- [33] In response to this review, SaskTel again reviewed the approximately 1000 potentially responsive records that were not provided to the Applicant. It found one additional page that should have been identified as responsive. SaskTel has indicated that the page will be disclosed when the Applicant pays the fees. As will be discussed later in this Report, I have recommended that SaskTel consider waiving the fee, I also recommend that SaskTel release this page to the Applicant.
- [34] SaskTel has also identified 22 other pages that were potentially responsive. It explained that the 105 pages of records identified as responsive were specifically described in the access request. SaskTel described the additional 22 withheld documents as internal to SaskTel, such as routing documents, and transmittal memos. It submitted that they did not fall within the scope of the Applicant's request.
- [35] In Review Report 023-2017 and 078-2017, I indicated that the purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If a government institution has any doubts about its interpretation, it has a duty to assist the Applicant by clarifying or reformulating it. I note that on March 16, 2019, SaskTel consulted with the Applicant to see if the Applicant wanted specific documents (lease

agreements) that fell outside of the timeframe listed in the access request. In this case, SaskTel met the duty to assist.

[36] Upon review of the 22 potentially responsive pages and the wording of the access request, I agree with SaskTel's assessment that the wording of the Applicant's request suggests the Applicant is seeking records that were intended to be shared externally to the government institution. I also agree with SaskTel's assessment that the 22 pages would be outside the scope of the access request for this reason.

[37] With respect to the approximately 1350 other pages of potentially responsive records, SaskTel submitted that they were determined to be non-responsive simply because they fell outside of the time frame listed in the access request.

[38] I find that SaskTel's description of its search for records is reasonable.

4. Did SaskTel meet legislated timelines?

[39] Before I discuss whether SaskTel met the legislated timelines for responding to the Applicant's request, I note that on January 8, 2019, SaskTel received a similar access request to the one reviewed in this Report. SaskTel responded to this first request on January 31, 2019, indicating that responsive records did not exist. Later, SaskTel and the Applicant discussed how the Applicant could change the request to reflect the information sought. The Applicant did not request a review of SaskTel's January 31, 2019 response. These are separate matters. Therefore, none of these actions factor into my analysis of whether SaskTel met the legislated timelines.

[40] When requesting this review from my office, the Applicant submitted that SaskTel did not provide a response to his access to information request, made on February 1, 2019, within the 30-day timeline.

[41] Section 6 of FOIP provides:

6(1) An applicant shall:

(a) make the application in the prescribed form to the government institution in which the record containing the information is kept; and

(b) specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject-matter to identify the record.

(2) Subject to subsection (4) and subsection 11(3), an application is deemed to be made when the application is received by the government institution to which it is directed.

(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.

(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

[42] Pursuant to subsection 6(2) of FOIP, an access request is deemed to have been made when the government institution receives it. If the government institution needs more information to identify the record, it can ask the applicant to supply additional details pursuant to subsection 6(3) of FOIP. In accordance with subsection 6(4) of FOIP, if additional details were requested, the access request is deemed to have been made when the record is identified. In this case, the request that was made on February 1, 2019 was clear. Therefore, the application was made on February 1, 2019.

[43] Subsection 7(2) of FOIP requires government institutions to respond to access to information requests within 30 days after the request is made. Subsection 7(2) of FOIP provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...

[44] I also note that subsection 9(3) of FOIP provides that the time within which a government institution is to respond to an Applicant's request pursuant to subsection 7(2) of FOIP is

suspended when a government institution issues a fee estimate pursuant to subsection 9(2) of FOIP. The time is suspended until the applicant notifies the government institution that they wish to proceed with the request. Subsections 9(2) to 9(4) of FOIP provide:

9(2) Where the amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

(4) Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced for the records for which access is sought.

[45] Upon review of the material provided to my office, SaskTel approached the Applicant on February 10, 2019 to attempt to narrow the request. The next day, the Applicant told SaskTel not to narrow the scope of the request. In resources such as *Steps to Charging Fees*, my office has indicated that it is best practice to attempt to narrow the scope of the request when charging fees. SaskTel followed best practice in this case. However, nothing in FOIP suggests a change in the timeline when a government institution attempts to narrow a request before issuing a fee estimate.

[46] As SaskTel received the access request on February 1, 2019, twenty-seven days elapsed and then it issued the fee estimate letter dated February 28, 2019. That means that once the Applicant paid deposits for the fee estimate, SaskTel would have had only three more days to provide a response pursuant to section 7 of FOIP.

[47] Twelve days after receiving the fee estimate, the Applicant indicated that they would pay the 50 percent deposit. The timeline was suspended for those 12 days pursuant to subsection 9(3) of FOIP.

[48] Section 12 of FOIP enables government institutions to extend the 30 days prescribed in subsection 7(2) for a reasonable period not exceeding 30 days in some circumstances. If one of those circumstances exist, subsection 12(3) of FOIP requires that the government institution provide a response pursuant to section 7 to the Applicant within the period of extension. SaskTel did not give notice to the Applicant that it was extending the period pursuant to subsection 12(3) of FOIP.

[49] In response to the access request, SaskTel provided the Applicant with five letters that each contained some elements of what is required by subsection 7(2) of FOIP as follows:

Day	Date	Description
34	March 18, 2019	SaskTel provided some records to the Applicant. It indicated that the remainder of records contained third party information. SaskTel advised the Applicant that notification would be given to third parties pursuant to section 34 of FOIP.
47	April 11, 2019	SaskTel indicated that it has decided to release information related to the first third party. It indicated that some information would be withheld because it is personal information. SaskTel did not identify the specific provision of this Act on which the refusal is based pursuant to subsection 7(2)(d) of FOIP. SaskTel also indicates that notice will again be given to the first third party of its decision and its right to request a review by my office pursuant to subsection 37(2)(a) of FOIP.
59	April 12, 2019	SaskTel released records to the Applicant that related to the second third party. No other elements, as required by section 7 of FOIP, were in this correspondence.
59	April 12, 2019	SaskTel advised the Applicant that the records related to the third third party is being withheld pursuant to subsection 18(1)(b) of FOIP, which is not a third party exemption.
80	May 3, 2019	SaskTel released the information relating to the first third party to the Applicant. However, it also indicated that additional information was being withheld pursuant to subsections 22 and 29(1) of FOIP.

[50] SaskTel did not provide a response to the Applicant that was compliant with section 7 within 30 days of receiving the Applicant's access request. The last one was received 80 days after the Applicant made the request.

- [51] As it appears that SaskTel is not clear about the timeline provisions found in Part II of FOIP, I recommend it review its written procedures for responding to an access request to ensure they comply with FOIP.
- [52] In its submission, SaskTel also indicated that the Applicant raised the fact that SaskTel had not responded within the 30-day period before receiving any of the responses. SaskTel drew the Applicant's attention to subsection 7(5) of FOIP indicating that SaskTel's lack of response could be viewed as a deemed refusal.
- [53] Subsection 7(5) of FOIP indicates that if a government institution does not provide a response in accordance with section 7 of FOIP within 30 days, access to responsive records is deemed to have been refused. Subsection 7(5) of FOIP provides:
- 7(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.
- [54] SaskTel's submission indicated that it let the Applicant know that there were two courses of action available in light of the Applicant's contention that the 30 day time period had elapsed. The options were "to either stop all work on the Access Request and have section 7(5) apply to the Access Request or agree that the 30 day period for response would apply from the date that the parties amended the Access Request."
- [55] SaskTel indicated that the Applicant continued to want access to the records as quickly as possible, which "resulted in his acquiescence with the 30 day period applying from the date that the parties agreed upon an amended access request".
- [56] It is positive that SaskTel continued processing the request after the 30 days at the Applicant's request instead of requiring the Applicant to request a review by my office at that time. The date of the application, though, remains February 1, 2019.
- [57] I find that SaskTel did not respond to the Applicant's access request within the legislative timelines.

5. Was the fee charged by SaskTel reasonable?

[58] The final fee total was \$63. This fee is reasonable calculating 105 pages of responsive records with the fee estimate guidelines described in this Report and in the FOIP Regulations.

[59] I note, however, subsection 9(1)(c) of the FOIP Regulations which provides:

9(1) For the purposes of subsection 9(5) of the Act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

...

(c) if the prescribed fee or actual cost for the service is \$100 or less.

[60] In this case, the actual cost is less than \$100 and meets the circumstances for a fee waiver listed in subsection 9(1)(c) of the FOIP Regulations. Given subsection 9(1)(c) of the FOIP Regulations and the fact that SaskTel provided the responsive records to the Applicant before it provided the Applicant with the invoice for the actual cost of processing the access request, I recommend that SaskTel reconsider exercising its discretion to waive the fees.

[61] In its submission, SaskTel acknowledged the discrepancy between the estimate and the actual cost. The higher fee estimate caused the Applicant to narrow the scope of the request. I suggest that SaskTel work with the Applicant to verify if there are further records responsive to the broader request that would be of interest to the Applicant. Otherwise, the Applicant can make a new access review for records not captured in the narrowed scope.

[62] SaskTel also reported that it is taking steps to prepare more accurate fee estimates in the future. These steps include two additional employees being trained to be able to prepare fee estimates with an overall goal to be more accurate in providing fee estimates. I note that the discrepancy between the estimate and the actual cost was due to the difference in timeframe of the request and timeframe captured in the file identified during the initial assessment. SaskTel should keep this in mind when creating future fee estimates.

6. Does subsection 18(1)(b) of FOIP apply to the record?

[63] Subsection 18(1)(b) of FOIP provides:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use; and

(ii) that has monetary value or is reasonably likely to have monetary value;

[64] In order to find that subsection 18(1)(b) of FOIP applies to a record, all three parts of the following test must be met:

1. Does the information contain financial, commercial, scientific, technical or other information?
2. Does the public body have a proprietary interest or a right to use it?
3. Does the information have monetary value for the public body or is it likely to?

[65] SaskTel applied subsection 18(1)(b) of FOIP to 33 pages in their entirety. One document is a 32 paged geotechnical report that was prepared by an engineering firm for SaskTel. The other one-page document is a letter from the engineering firm addressing a particular issue.

1. Does the information contain financial, commercial, scientific, technical or other information?

[66] My office has defined technical information as 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.

[67] In its submission, SaskTel indicated that the documents in question constitute a geotechnical report prepared by a professional engineer and reviewed by a professional engineer. The report summarizes a geotechnical investigation and provides recommendations. Upon review of the record, I agree with SaskTel's description and am satisfied that it qualifies as technical information. The first part of the test is met.

2. Does the public body have a proprietary interest or a right to use it?

[68] A proprietary interest or a right to use information means that the government institution must be able to demonstrate rights to the information. Proprietary interest is the interest held by a property owner together with all appurtenant rights, such as a stockholder's right to vote the shares. It signifies simply "interest as an owner" or "legal right or title".

[69] In its submission, SaskTel indicated that it paid for the report and accompanying letter which was provided to SaskTel and its advisors. Therefore, it submitted that SaskTel has a proprietary interest in it. This is confirmed by a passage in the record. I am satisfied that the second part of the test is met.

3. Does the information have monetary value for the public body or is it likely to?

[70] Monetary value requires that the information itself have an intrinsic value. It may be demonstrated by evidence of potential for financial return to the government institution. An example of information that is reasonably likely to have monetary value might include a course developed by a teacher employed by a school board.

[71] In its submission, Sasktel indicated that the record in question has monetary value because it paid for the creation of the record. In Review Report 056-2017, Review Report 039-2018 and Review Report 086-2019, I have found that the mere fact that a government

institution incurred a cost to create the record does not mean it has monetary value for the purposes of this exemption. Most reports from a professional will have to be paid for.

[72] SaskTel also indicated that the information could have monetary value for owners of adjacent properties.

[73] In Review Report 185-2016, I considered that the records at issue in that report would have monetary value for other organizations. However, I concluded that it did not have monetary value for the government institution in question. Therefore, in that Report, I concluded that the third part of the test was not met.

[74] I am not persuaded that, because an outside organization may find monetary value in this record, it has monetary value for SaskTel. In this case, SaskTel has not demonstrated how the record has monetary value for SaskTel.

[75] The third part of the test is not met. Subsection 18(1)(b) of FOIP does not apply to the record. See Appendix A for details.

7. Does subsection 22(b) of FOIP apply to the record?

[76] Subsection 22(b) of FOIP provides:

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

...

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

[77] SaskTel applied subsection 22(b) of FOIP to a portion of one page of the record. I appreciate that SaskTel provided this record to my office.

[78] Subsection 22(b) of FOIP permits refusal of access in situations where a record was prepared by or for legal counsel for a government institution in relation to the provision of advice or services by legal counsel.

[79] The following test can be applied:

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

[80] The record must be “prepared”, as the term is understood, in relation to the advice or services or compiled or created for the purpose of providing the advice or services. In order to qualify, the person preparing the record must be either the person providing the legal advice or legal service or a person who is preparing the record in question on behalf of, or, for the use of, the provider of legal advice or legal related services.

[81] In its submission, SaskTel indicated that the record in question was prepared by one of SaskTel’s legal counsels. The first part of the test is met.

[82] SaskTel also submitted that the legal counsel was providing advice on a particular topic. My office has defined legal advice as follows: includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications. Upon review of the record, I agree that legal advice has been provided to SaskTel employees about a particular course of action. The second part of the test is met.

[83] I find that subsection 22(b) of FOIP applies to the record. There is no need to consider subsection 22(a) or (c) of FOIP. See Appendix A for details.

8. Does subsection 29(1) of FOIP apply to the record?

[84] 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.

[85] SaskTel severed signatures or written initials of individuals from 11 pages of the records. The initials and signatures include employees of SaskTel, the City of Regina and a third party business.

[86] In order for subsection 29(1) of FOIP to apply, the information in the record must first qualify as “personal information” as defined by subsection 24(1) of FOIP; however, it is not an exhaustive list.

[87] In the past, I have 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. In this case, all of the records were created in a professional context and constitute work product.

[88] 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.

[89] The signatures in question do not qualify as personal information. I find that subsection 29(1) of FOIP does not apply to the portions of the record in question. See Appendix A for details.

IV FINDINGS

[90] I find that SaskTel's fee estimate and final fee were reasonable.

[91] I find that SaskTel did not meet legislated timelines.

[92] I find that SaskTel's search for records was reasonable.

[93] I find that subsections 18(1)(b) and 29(1) of FOIP do not apply to the record.

[94] I find that subsection 22(b) of FOIP applies to a portion of the record.

V RECOMMENDATIONS

[95] I recommend that SaskTel create a written policy on the type of payments it will accept for access requests.

[96] I recommend that SaskTel review its written procedures for responding to an access request to ensure they comply with FOIP.

[97] I recommend that SaskTel reconsider exercising its discretion to waive the fees.

[98] I recommend that SaskTel release the additional responsive page to the Applicant.

[99] I recommend that SaskTel release and withhold records as described in Appendix A.

Dated at Regina, in the Province of Saskatchewan, this 20th day of December, 2019.

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

APPENDIX A

DOCUMENT NUMBER	NUMBER OF PAGES	SECTION(S) APPLIED BY SASKTEL	DOES IT APPLY?	RELEASE OR WITHHOLD
1	2	29(1)	No	Release
4	1	29(1)	No	Release
5	1	29(1)	No	Release
8	3	29(1)	No	Release
11	1	18(1)(b)	No	Release
13	2	29(1)	No	Release
14	10	29(1)	No	Release
22	16	22(b)	Yes	Withhold
		29(1)	No	Release
25	32	18(1)(b)	No	Release