



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 176-2019, 177-2019, 262-2019, 263-2019

Office of the Residential Tenancies

December 17, 2020

Summary:

The Office of Residential Tenancies (ORT) received two access to information requests from the Applicant. For both requests, the Applicant requested a review based on the delayed response by ORT and information that was withheld from the Applicant. The Commissioner found that ORT did not meet the legislated timeline to respond to the Applicant's access to information requests as outlined in subsection 7(2) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Further, the Commissioner found that subsection 29(1) of FOIP does not apply to the record. The Commissioner recommended that ORT provide access to information and privacy training to those employees responsible for FOIP in the organization. The Commissioner also recommended that ORT develop written policies and procedures for responding to access to information requests. Finally, the Commissioner recommended that ORT release the entire record to the Applicant as described in Appendix A.

I BACKGROUND

Request for ORT File A

- [1] On April 22, 2019, the Office of the Residential Tenancies (ORT) received an access to information request for all records related to a certain file [ORT file A] and records used to make a decision on that file. The Applicant indicated that the time period for the records was November 2017.

- [2] On June 4, 2019, the Applicant requested a review from my office as they had not received a response from ORT. My office opened file 176-2019 to review the delayed response.
- [3] As a result of early resolution efforts by my office, ORT provided the Applicant with a response on July 23, 2019. ORT provided the Applicant with responsive records, but indicated that some information had been redacted from the record because it was personal information.
- [4] On July 25, 2019, the Applicant requested that my office review ORT's decision to withhold certain information. My office opened file 262-2019 to do so.
- [5] On July 31, 2019, my office notified both the Applicant and ORT of my intention to review ORT's response and the decision to withhold information.

Request for ORT File B

- [6] On April 22, 2019, ORT received an access to information request for all records related to a second file [ORT file B] and records used to make a decision on that file. The Applicant indicated that the time period for the records was August 2017.
- [7] On June 4, 2019, the Applicant requested a review from my office as they had not received a response from ORT. My office opened file 177-2019 to review the delayed response.
- [8] As a result of early resolution efforts by my office, ORT provided the Applicant with a response on July 23, 2019. ORT provided the Applicant with responsive records, but indicated that some information had been redacted from the record because it was personal information.
- [9] On July 25, 2019, the Applicant requested that my office review ORT's decision to withhold certain information. My office opened file 263-2019 to do so.

[10] On July 31, 2019, my office notified both the Applicant and ORT of my intention to review ORT's response and the decision to withhold information.

II RECORDS AT ISSUE

[11] When my office conducts reviews, the public body must provide my office with an unredacted version of the record that indicates what information is being withheld and the exemptions being applied. In this case, ORT provided my office with a redacted copy of the record and an unredacted copy. However, there were inconsistencies between the redacted and unredacted records provided. Further, it was unclear which records were responsive to ORT file A and which were responsive to ORT file B.

[12] In response to my Draft Report, ORT attempted to provide further clarity surrounding the records and the way in which they were sent. However, when providing a draft report to a public body, our office only requests that we be provided factual errors. In addition, in response to the Draft Report, ORT sent me what it called, "...the correct titles with unredacted/missing information included per Appendix A of the Draft Review Report..." At this point in the Review, ORT only can comment on factual errors and has missed the opportunity to provide further submissions and provide more material to my office.

[13] Although I recognize this was published to the website after the Draft Report was provided to ORT, my office recently published the blog *Reviews for factual errors in a draft report*. This blog clarifies what we are actually asking from a public body in factual error checks when they are provided a draft report. In part, this blog reads:

...

What does a review for factual errors entail, then? Quite simply, it is an opportunity for a public body to provide corrections to details such as names, dates, places, page numbers, etc. These are generally details that may not change the substance of the report or the findings and recommendations, but rather ensure that such factual details are correct.

...

(<https://oipc.sk.ca/reviews-for-factual-errors-in-a-draft-report/>, accessed December 16, 2020)

- [14] That is all my office is looking for in a factual error review by a public body.
- [15] On January 29, 2020, my office met with ORT. We asked for unredacted copies of the record that matched the redacted copies of the record. My office also provided ORT with guidance regarding what I have found to qualify as personal information in the past.
- [16] On February 18, 2020, ORT indicated that it “has released more information”. However, the additional information was not sent to the Applicant until April 17, 2020. At that time, ORT had not yet provided my office with an unredacted copy of the record that matched the redacted copy of the record that was provided to the Applicant on April 17, 2020. However, because of the COVID-19 pandemic, ORT was unable to provide an unredacted copy of the record until August 4, 2020.
- [17] On August 4, 2020, ORT provided my office with three packages of records. My office asked what packages corresponded with ORT file A and ORT file B. ORT indicated that ORT files A and B were heard together and had the same evidence. Therefore, ORT explained that the files were “merged into one”. In other words, all of the records in the three packages provided relate to both ORT file A and ORT file B. I have addressed the practice of merging files in Review Report 178-2019, and 264-2019.
- [18] In response to the Draft Report on this point, ORT stated, “[t]here was confusion related to the names of the files...It is important to note that these claims were not merged together, but there was a miscommunication between ORT and OIPC regarding the naming of the documents submitted. ORT staff involved in previous responses were unfamiliar with RTS claims and went based on assumptions of a database and paper filing system they had never used....” In response, I would advise ORT that they should be certain that the individual who corresponds with my office in a review or investigation knows what they are talking about to avoid miscommunication. Perhaps ORT needs a second person reviewing

materials and correspondence being sent to my office to ensure that information being sent is accurate and complete.

[19] In addition, there remained inconsistencies between the copies of the records provided. Specifically, the redacted copy of package 1 that was provided to the Applicant on April 17, 2020 contained 54 pages. The unredacted copy of the record contained 61 pages. This is described further in Appendix A.

[20] As some of the information in the six unaccounted for pages of package 1 is repetitive, I will continue my review of these files without matching records.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[21] Subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) provides that the definition of a “government institution” includes a body that is prescribed in *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Subsection 3(a) of the FOIP Regulations indicates bodies listed in Part I of the Appendix are prescribed government institutions. ORT is one of the bodies listed in Part I of the Appendix, and as such qualifies as a government institution for purposes of FOIP. Therefore, I find that I have jurisdiction to conduct this review.

2. Did ORT comply with section 7 of LA FOIP?

[22] Section 7 of FOIP instructs a government institution on what to do if it receives an access to information request. Relevant portions are as follows:

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

...

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

[23] ORT received the Applicant's two access to information requests on April 22, 2019. The access requests were received on this day pursuant to subsection 6(2) of FOIP, which provides:

6(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.

[24] Thirty days after making the access request, the Applicant had not received a response from ORT. On June 4, 2019, 43 days after making the access request, the Applicant had not received responses from ORT.

[25] On June 4, 2019, the Applicant requested reviews from my office. As a result of early resolution efforts by my office, ORT provided the Applicant with a response to the access request. ORT provided the Applicant with copies of the records. Its response also noted that the address or telephone number of the landlord involved was redacted because it was personal information. I note that subsection 7(2)(d) of FOIP, requires that a section 7 response include the reason for the refusal and identify the specific provision of FOIP on which the refusal is based. In this case, ORT did not cite the provision of FOIP it was relying on to withhold information. Later, my office clarified with ORT that it was relying on subsection 29(1) of FOIP to withhold the portions of the records that were not released to the Applicant.

[26] In its submission, ORT indicated that its access and privacy officer began an extended leave. The Deputy Director of ORT assumed the duties related to FOIP. The submission indicated that the Deputy Director was learning the role and as a result, ORT did not meet the timeline. I find that ORT did not meet the legislated timeline to respond to the Applicant's access to information requests as outlined in subsection 7(2) of FOIP.

[27] I recommend that ORT provide access to information and privacy training to those employees responsible for FOIP in the organization.

[28] Further, ORT reported that it was not sure if it had written policies or procedures for responding to access to information requests.

[29] I recommend that ORT develop written policies and procedures for responding to access to information requests.

3. Did ORT properly apply subsection 29(1) of FOIP to the record?

[30] 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.

[31] 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, which provides, in part:

24(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:
...

[32] However, the data elements provided in subsection 24(1) is not an exhaustive list. There may be other information that qualifies as personal information, if the following two elements exist:

1. Is there an identifiable individual? and
2. Is the information personal in nature?

[33] ORT has applied subsection 29(1) of FOIP to all of the redactions it made. I first must determine if the withheld information qualifies as personal information. ORT’s submission indicated that it severed the personal names and addresses from the record. However, it applied subsection 29(1) of FOIP to more than just names and addresses. Further, ORT

did not provide any explanation of how each data element it withheld qualified as personal information.

Absurd Result

- [34] ORT has withheld a specific address (Address A) on eight pages of the record. It has withheld the email address of the landlord on 11 pages of the record. It has also withheld “surface parcel” numbers on 4 pages of the record. Appendix A indicates where these data items appear.
- [35] The record indicates that the Applicant has prior knowledge of Address A, which appears to be an address for the landlord. The record indicates that ORT released this address to the Applicant on page 26 of package 1 of the Applicant’s copy of the record. The Applicant already has knowledge of this address and rented a room in this building.
- [36] The Applicant also had prior knowledge of the landlord’s email address. Several pages of the record, where the landlord’s email address appears, are emails that were sent by ORT to both the Applicant and the landlord. The emails were sent before the Applicant made the access requests.
- [37] Finally, ORT severed “surface parcel” numbers on four pages of the record. However, page 9 of package 3 of the Applicant’s copy of the record is a form that was filled out by the Applicant, including the “surface parcel” numbers that ORT severed. This demonstrates that the Applicant knew these numbers before making the access request.
- [38] In Review Report 187-2019 and Review Report 044-2017, my office indicated that it would be an absurd result to withhold information from an applicant that they had either supplied or already had knowledge of. As the Applicant has had prior knowledge of all of the data elements outlined in this part of the Report, it would be an absurd result if ORT withheld them. There is no need to consider if they qualify as personal information pursuant to subsection 24(1) of FOIP. I recommend that ORT release this information as outlined in Appendix A of this report.

Work Product, Business Card Information and Signatures

- [39] In several places in the record, ORT severed the name of an employee of the City of Saskatoon (City), the name of an employee of the Saskatoon Police Service (SPS) and the name of an agent acting on behalf of the landlord. ORT has also severed email addresses and other business contact information for these individuals. It has severed a telephone number and address related to the landlord. ORT also withheld the signature of the City employee.
- [40] In past reports, such as Review Report 086-2019, 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, 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.
- [41] The names of the employee of the City, the employee of SPS and the agent for the landlord appear in records related to their professional responsibilities. As such, this information qualifies as work product and not personal information pursuant to subsection 24(1) of FOIP. In addition, the contact information that appears with these names also are provided in a professional context. This is business card information and does not qualify as personal information pursuant to subsection 24(1) of FOIP.
- [42] The signatures that were severed by ORT were signatures provided by an employee of the City in the course of their professional duties. The signatures also constitute work product and do not qualify as personal information pursuant to subsection 24(1) of FOIP.
- [43] The telephone number and address of the landlord were used in the context of the landlord’s business. Therefore, it constitutes business card information and not personal information pursuant to subsection 24(1) of FOIP. This is consistent with Investigation Report 070-

2018 where I found that a landlord was acting in their business capacity and not in a personal capacity. As a result, the information involved did not constitute the landlord's personal information.

Information that is not related to an Identifiable Individual

- [44] ORT also withheld other information pursuant to subsection 29(1) of FOIP, such as the fact that it issued a summons to, or considered issuing a summons to public bodies and related contact information or file numbers. It also applied subsection 29(1) to information about a business, building permit numbers and zoning information. I will consider if this information qualifies as personal information. I note again that information must be about an identifiable individual.
- [45] ORT withheld the name and related contact information to two public bodies that it either issued a summons to or to which it considered issuing a summons. There are no individuals listed in these records that may have been associated with the summons or potential summons. As such, there is no identifiable individual or information that is personal in nature. Therefore, the information identified by ORT does not qualify as personal information pursuant to subsection 24(1) of FOIP.
- [46] ORT has also withheld file or occurrence numbers of a public body pursuant to subsection 29(1) of FOIP. The file numbers withheld are assigned to occurrences, not individuals. Further, the public body makes these numbers routinely available to the public. I am not persuaded that the file numbers qualify as personal information pursuant to subsection 24(1) of FOIP.
- [47] Two of the pages of the records list several building permit numbers issued by the City related to an address known to the Applicant. These permit numbers appear to have been issued in the 1950s or 1990s. The record does not indicate to whom these permits were issued and the owner of the property may have changed over the course of 70 years. In Investigation Report 043-2017, I found that building permits were about a property and not about an identifiable individual. I find the building permit information does not qualify as

personal information pursuant to subsection 24(1) of FOIP. Further, the zoning district information that is found in the record is also about a location and not an identifiable individual. The zoning information does not qualify as personal information pursuant to subsection 24(1) of FOIP.

[48] ORT withheld information from a copy of a business license that appears twice in the record, which includes the business name, a business license number and its expiry date. None of these data elements are about an identifiable individual, but about a business. As such, the information does not qualify as personal information pursuant to subsection 24(1) of FOIP.

Pages not accounted for

[49] As previously noted in this Report, the unredacted package 1 that ORT provided my office did not match the number of pages sent to the Applicant. Details about the mismatch can be found in Appendix A of this Report. ORT has indicated that the only exemption applied in these files is subsection 29(1) of FOIP.

[50] Upon review, it appears that pages 9 to 13 of package 1 that was sent to my office matches pages 4 to 8 of the record. Subsection 29(1) of FOIP does not apply to these pages because the Applicant has already received copies of them.

[51] The Applicant did not receive copies of pages 56 and 60 of package 1 that was provided to my office. Page 56 is a form that was signed by the Applicant. The data elements on the form are the same that I have discussed earlier in the Report and do not qualify as personal information pursuant to subsection 24(1) of FOIP, or would have already been known by the Applicant. The information on page 60 appears to be standard guidance provided by ORT and does not qualify as personal information pursuant to subsection 24(1) of FOIP.

[52] As I have not found that any of the information withheld by ORT qualifies as personal information, or that withholding the information would create an absurd result, I find that

subsection 29(1) of FOIP does not apply to the record. I recommend that ORT release the records to the Applicant in their entirety.

[53] In response to the Draft Report, ORT advised my office that it released the unredacted record to the Applicant in full on September 24, 2020. My office has not heard from the Applicant since the Applicant had received the record. Further, there have been so many missteps by ORT through the course of this review, I will leave in the above recommendation. By doing so, ORT must respond formally to that recommendation pursuant to section 56 of FOIP.

IV FINDINGS

[54] I find that I have jurisdiction to conduct this review.

[55] I find that ORT did not meet the timeline to respond to the Applicant's access to information requests as outlined in subsection 7(2) of FOIP.

[56] I find that subsection 29(1) of FOIP does not apply to the record.

V RECOMMENDATIONS

[57] I recommend that ORT provide access to information and privacy training to those employees responsible for FOIP in the organization.

[58] I recommend that ORT develop written policies and procedures for responding to access to information requests.

[59] I recommend that ORT release the entire record to the Applicant as described in Appendix A.

Dated at Regina, in the Province of Saskatchewan, this 17th day of December, 2020.

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

APPENDIX A

Page # of record sent to our office	Page # of record sent to Applicant	Data element	Exemption applied	Does it apply	Release or Withhold
Package 1					
1		Title page created for review. Not provided to Applicant. Not a responsive record.			
3	2	Address A	29(1)	Absurd result	Release
9-13	Not provided	5 pages		Absurd Result	Release
14	8	Address A	29(1)	Absurd result	Release
		Landlord Telephone number	29(1)	No	Release
15	9	Landlord email address	29(1)	Absurd result	Release
19	13	Address A	29(1)	Absurd result	Release
		Agent name	29(1)	No	Release
26	20	Address B	29(1)	No	Release
		Address A	29(1)	Absurd result	Release
		Surface Parcel Numbers	29(1)	Absurd result	Release
27	21	Address A	29(1)	Absurd result	Release
		Business Permit numbers	29(1)	No	Release
28	22	Signature of City employee	29(1)	No	Release
		Name of City employee	29(1)	No	Release
29	23	Name of City employee	29(1)	No	Release
30	24	Name of City employee	29(1)	No	Release
		Signature of City employee	29(1)	No	Release
31	25	Name of City employee	29(1)	No	Release
		Email address of City employee	29(1)	No	Release
42	36	Agent/translator name	29(1)	No	Release
45	40	Part of address A	29(1)	Absurd result	Release
		Telephone number of landlord	29(1)	No	Release
47	42	Part of address A	29(1)	Absurd result	Release
		Telephone number of landlord	29(1)	No	Release
49	44	Landlord email address	29(1)	Absurd result	Release
52	47	Landlord email address	29(1)	Absurd result	Release
53	48	Landlord email address	29(1)	Absurd result	Release
54	49	Landlord email address	29(1)	Absurd result	Release
55	50	Landlord email address	29(1)	Absurd result	Release
56	Not provided	1 page	29(1)	No / Absurd result	Release
59	53	Telephone number of Landlord	29(1)	No	Release
		Landlord email address	29(1)	Absurd result	Release
60	Not provided	1 page	29(1)	No	Release

Page # of record sent to our office	Page # of record sent to Applicant	Data element	Exemption applied	Does it apply	Release or Withhold
Package 3					
1		Title page created for review – not provided to applicant (not a responsive record)			
3	2	Business Licence number	29(1)	No	Release
		Name of a business	29(1)	No	Release
		Address A	29(1)	Absurd result	Release
		Business licence expiry date	29(1)	No	Release
		City employee signature	29(1)	No	Release
6	5	Surface parcel numbers	29(1)	Absurd result	Release
9	8	Surface parcel numbers	29(1)	Absurd result	Release
16	15	Landlord email address	29(1)	Absurd result	Release
28	27	Name of City employee	29(1)	No	Release
		Contact information for City employee	29(1)	No	Release
		Name and contact information of public body that may have been served a summons	29(1)	No	Release
39	38	Landlord email address	29(1)	Absurd result	Release
40	39	Title of a public body on summons	29(1)	No	Release
		Public body file number	29(1)	No	Release
52	51	Address B	29(1)	No	Release
		Surface Parcel numbers	29(1)	Absurd result	Release
		Zoning information	29(1)	No	Release
53	52	Permit numbers	29(1)	No	Release
55	54	Name of City employee	29(1)	No	Release
56	55	Name of City employee	29(1)	No	Release
		Telephone number of City employee	29(1)	No	Release
		Signature of City employee	29(1)	No	Release
		Name of City employee	29(1)	No	Release
		Email address of City employee	29(1)	No	Release
80	79	Name of City employee	29(1)	No	Release
		Email address of City employee	29(1)	No	Release
82	81	Saskatoon City Police file number	29(1)	No	Release
		Name of employee of Saskatoon Police Service	29(1)	No	Release
90	89	Business Licence number	29(1)	No	Release
		Name of a Business	29(1)	No	Release
		Address A	29(1)	Absurd result	Release
		Business licence expiry date	29(1)	No	Release
		City employee signature	29(1)	No	Release
118	117	Landlord email address	29(1)	Absurd result	Release
132	131	Landlord email address	29(1)	Absurd result	Release
148	147	Landlord email address	29(1)	Absurd result	Release
149	148	Title of a public body on summons	29(1)	No	Release
		Public body file number	29(1)	No	Release