



## **REVIEW REPORT 272-2017**

### **Saskatchewan Power Corporation**

**February 13, 2018**

**Summary:** The Applicant requested audio records of a bomb threat. Saskatchewan Power Corporation (SaskPower) indicated that the record did not exist at SaskPower. The Commissioner accepted SaskPower's explanation of why the record did not exist and its search for records. He recommended that SaskPower release a transcript of the bomb threat to the Applicant.

#### **I BACKGROUND**

[1] On August 4, 2017, Saskatchewan Power Corporation (SaskPower) received an access to information request for a copy of an audio recording of a bomb threat that was made in 2015. The Applicant also asked for the name of the voice expert that identified the caller. The Applicant also asked for other records related to the bomb threat.

[2] On September 5, 2017, SaskPower replied to the Applicant. It indicated that records responsive to the first two items listed above did not exist. It also indicated that records responsive to the last item had been captured by an earlier access to information request by the Applicant. It noted that the earlier access request was under review by my office at that time (Review Report 139-2017). Since that time, Review Report 139-2017 was issued.

[3] On October 23, 2017, the Applicant requested a review by my office. The Applicant requested a review of SaskPower's response to his access request. The Applicant also requested a copy of the report of the voice expert which was not part of his original access

to information request in addition to the expert's name. Given the Applicant's new request related so closely to his original, as part of early resolution efforts, my office contacted SaskPower to see if records responsive to this request existed, and if not, if it could be added to the scope of the review. SaskPower agreed to expand the scope of the request. It indicated that responsive records did not exist.

[4] On November 3, 2017, my office provided notification to both SaskPower and the Applicant of my intention to undertake a review. It indicated that the scope of the review would include records responsive to the request for the audio recording and the name and report of the voice expert. It also indicated that the scope of this review would not include records that were also responsive in Review Report 139-2017.

## **II RECORDS AT ISSUE**

[5] There are no responsive records at issue in this review because I am only reviewing SaskPower's response to certain portions of the Applicant's access request where SaskPower has indicated that responsive records do not exist.

## **III DISCUSSION OF THE ISSUES**

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

### **1. Did SaskPower conduct a reasonable search?**

[7] 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.

[8] 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.

- [9] 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.
- [10] 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.
- [11] Some of the steps recommended for a search strategy include:
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
  - For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- [12] SaskPower engaged its Manager, Security Investigations & Operations, Technology & Security (the Manager) to assist in responding to this access request. The Manager’s responsibilities include managing security investigations, operational security matters and physical access management systems. For these reasons, the Manager took over incident management responsibilities at the time of the bomb threat and later led the investigation into the bomb threat from the SaskPower corporate perspective. As part of those duties, the Manager was the individual at SaskPower who liaised with the Regina Police Service on their investigation of the bomb threat that was made against SaskPower.
- [13] As part of its submission, SaskPower provided an affidavit made by the Manager addressing the search for records. The Manager indicated he knew of no other person within SaskPower who may have knowledge or information to speak to this request.
- [14] Next a government institution should identify the departments, divisions or branches within the organization where records may be found. Also, it should explain why other areas were not searched.

- [15] In this case, the Applicant is seeking very specific records. In its submission, SaskPower first provided an explanation of why the records do not exist in SaskPower's records. It explained that the bomb threat against SaskPower was called in to the Regina Police Service (RPS), not SaskPower. As such, the recording of the actual bomb threat was made by the RPS.
- [16] SaskPower indicated that it requested a copy of the bomb threat recording from the RPS. However, SaskPower communicated that RPS denied its request for a copy of this record.
- [17] Regarding the other parts of the Applicant's request, the Manager's affidavit stated that SaskPower does not know if the RPS used an expert to determine to whom the caller's voice belonged. Further, SaskPower does not know if RPS possesses a report from a voice expert related to the bomb threat.
- [18] Regardless of the explanation that SaskPower provided as to why its responsive record was not in SaskPower's possession, it also conducted a search for records. SaskPower provided the details of its search in its submission. I am satisfied with its search efforts in this case.
- [19] Based on the information provided to me, I am persuaded that responsive records do not exist at SaskPower.

## **2. Did SaskPower meet the duty to assist?**

- [20] Subsection 5.1(1) of FOIP provides:

5.1(1) Subject to this Act and the regulations, a government institution shall respond to a written request for access openly, accurately and completely.

- [21] I note this provision is a recent amendment to FOIP and came into effect on January 1, 2018, after the Applicant made his access request. Nevertheless, my office has been informing public bodies for many years that there was an implied duty to assist.
- [22] While SaskPower does not have an audio recording of the bomb threat, it has provided me with a copy of a transcript of the bomb threat.

[23] Section 10(3)(a) of FOIP provides:

10(3) If a record is a microfilm, film, sound or video recording or machine-readable record, a head may give access to the record:

(a) by permitting the applicant to examine a transcript of the record;

...

[24] SaskPower has indicated to my office that it is willing to release the transcript to the Applicant. Best practice would have been that SaskPower determine whether the Applicant was interested in a transcript before it provided its section 7 response to the Applicant.

#### **IV FINDING**

[25] I find that records responsive to the Applicant's access request do not exist.

#### **V RECOMMENDATION**

[26] I recommend that SaskPower release the transcript of the bomb threat to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 13th day of February, 2018.

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