



## **REVIEW REPORT 301-2019**

### **Ministry of Environment**

**June 11, 2020**

**Summary:** The Applicant requested records from the Ministry of Environment (Environment). Environment withheld portions of the records pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that subsection 29(1) of FOIP had been appropriately applied to some portions of the records. The Commissioner recommended Environment continue to withhold those portions it found subsection 29(1) of FOIP applied to and release the remaining portions of the records.

#### **I BACKGROUND**

- [1] On May 31, 2019, the Ministry of Environment (Environment) received an access to information request for “all records relating to the contamination and remediation of [a specified address].”
- [2] On June 25, 2019, Environment responded partially granting access to the requested records and withholding portions pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] On September 11, 2019, my office received a request for review from the Applicant. On September 17, 2019, my office notified both Environment and the Applicant of my intention to undertake a review.

**II RECORDS AT ISSUE**

[4] Environment provided my office with six responsive records; however, the sixth record did not appear to contain any redactions. In an email dated May 26, 2020, Environment confirmed to my office that this record was released in full to the Applicant. As such, my review will only consider the five records that were partially withheld pursuant to subsection 29(1) of FOIP, as follows:

<b>Record Number</b>	<b>Total Number of Pages</b>	<b>Record Description</b>	<b>Page Numbers with Portions Redacted</b>
1	13	Facility Decommissioning Notification Letters	2, 4, 9
2	13	Lab Analysis Report	1, 5, 7, 8, 12
3	230	Supplemental Off-Site Phase II Environmental Site Assessment	2, 75, 81, 84, 85, 86, 99, 112, 113, 114, 117, 121, 122, 127, 145, 146, 147, 148, 153, 154, 157, 178, 179, 180, 189, 193, 194, 197, 199, 200, 205, 206, 210, 211, 217, 218, 219, 224, 230
4	12	Site Management Plan Letters	1, 5
5	34	Correspondence related to the approval to Approval to Decommission a Hazardous Substance and/or Waste Dangerous Goods Storage Facility	1, 4, 5,6, 7, 8, 10, 11, 13, 15, 17, 25

**III DISCUSSION OF THE ISSUES**

**1. Do I have jurisdiction to conduct this review?**

[5] Environment qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

**2. Did Environment properly apply subsection 29(1) of FOIP to the withheld portions of the records?**

[6] The redacted information in the record at issue can be categorized as follows:

- Names, initials, positions and contact information of individuals,
- Pronoun used to refer to one individual,
- Signatures of individuals,
- Closing greeting and notation of attachments to the correspondence,
- Professional seals/Professional stamps, and
- Calendar information that appears to have been recorded in error and crossed out.

[7] 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.

[8] In order to rely on subsection 29(1) of FOIP, the information in question must first be found to constitute personal information under FOIP. Subsection 24(1) of FOIP provides an enumerated list of examples of what is considered personal information under FOIP as follows:

**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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) **Repealed.**

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

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

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[9] As noted above, the list at subsection 24(1) of FOIP is a list of examples. It is not meant to be exhaustive. There may be other information that qualifies as personal information, if two elements exist:

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

[10] Environment's submission provided that, "the ministry has applied subsection 29(1) of FOIP to personal information as defined in subsection 24(1). The employees are not employees of a government institution and therefore deserve the personal information protection offered by subsection 29(1). The application of 29(1) of FOIP to business card information is supported by [*Hande v University of Saskatchewan*, QBG 1222 of 2018]." Environment's submission also quoted the following paragraph from this Saskatchewan Court of Queen's Bench decision:

[31] It appears that the Commissioner reduced the term "personal information protection" to exclude personal information protection for any employee, whether they work for the local authority or any other company or organization. The legislation, however, does not isolate professional protection from personal protection. Simply because the participants identified their work association or profession does not negate the personal information protection. It does not follow that mere participation at a university event waives personal information protection. The protection offered by s. 23(1)(f) does not suggest such a limitation. The entire purpose of the symposium was an opportunity to share individual perspectives, offer opinions and views with respect to organizations, such as the Right to Know, and to facilitate discussion.

*Names, initials, positions and contact information of individuals*

*Pronoun used to refer to one individual*

*Signatures of individuals*

[11] Most of the redacted portions of records appears to be business card information, including names, signatures and business contact information of individuals acting in work capacity that are not employees of the Government of Saskatchewan. There are also instances, where an individual's position is recorded and at the end of letters are initials of those that were likely tasked with editing the correspondence. In one of the emails, it appears one of the individuals acting in work-capacity is referred to by another individual that was acting in a work capacity by name, and then in any other references to the individual used a pronoun, rather than referencing them by name again.

[12] My office asked Environment to clarify if some of the instances where names of individuals appeared, if they were acting in a work-related capacity or in a personal capacity. In an email dated May 27, 2020, Environment responded stating:

Please refer to the submission letter where our process is clearly outlined that the ministry has withheld the personal information as defined in subsections 24(1)(1.1) and (2) of FOIP, which state, "personal information" means personal information about an identifiable individual that is recorded in any form.

I don't know nor can confirm that the personal or work related capacity of any of the individuals, however it is apparent that they are not employees of a government institution as defined in FOIP, therefore redactions have been applied.

[13] In Review Report 186-2019, my office found that business card information would not be considered personal information, as follows:

[25] ...the Ministry has also applied subsection 29(1) of FOIP to cellular telephone numbers of a third party business employee. In its submission, the Ministry indicated that the cellular telephone number was withheld because if released it would disclose personal information of an identifiable individual as the number is not publicly available.

[26] Business card information is the type of information found on a business card (name, job title, work address, work phone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. Further, in Review Report 149-2019, 191-209 [sic], I noted that business card information does not qualify as personal information when found with work product. Work product is 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 also not considered personal information.

...

[28] In Review Report F-2010-001, Review Report F-2012-006 and Review Report LA-2013-002, my office noted that section 4.01 the Personal Information Protection and Electronic Documents Act (PIPEDA), which applies to every organization that collects, uses or discloses personal information in the course of “commercial activities”, carves out business contact information from the type of personal information that requires protection.

[29] Subsection 2.1 of PIPEDA defines “business contact information” as, “information that is used for the purpose of communicating or facilitating communication with an individual in relation to their employment, business or profession such as the individual’s name, position name or title, work address, work telephone number, work fax number or work electronic address.” This supports the conclusion that business card information is not meant to be personal information for the purposes of subsection 24(1) of FOIP when it appears in work product.

[30] The cellular telephone number, therefore, constitutes business card information and does not qualify as personal information in this instance. I recommend that the Ministry release it to the Applicant.

[14] In Review Report 149-2019, 191-2019, my office provided the following regarding the application of subsection 29(1) of FOIP to signatures:

[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...

[15] The majority of the redactions in the responsive records is information that would qualify as business card information of individuals acting in a work-related capacity. Therefore, it would not reveal any information that is considered personal in nature and would not qualify as personal information. As such, subsection 29(1) of FOIP would not apply.

[16] As noted earlier, my office asked Environment to clarify if some redactions in the record were referencing individuals in a personal or work-related capacity. Those redactions appeared in record 5 as follows:

- On page 6 (redaction number 6), page 8 (redaction number 4), page 10 (redaction number 2), and page 11,
- On page 13 (redaction number 1), and
- On page 17 (contact information recorded at number 5 on this form).

[17] As Environment was not able to provide me with any clarification, my consideration on the application of subsection 29(1) of FOIP to these portions of the record will be based on my review on the face of the record.

- [18] For the redactions referred to above on pages 6, 8, 10 and 11 of record 5, this appears to relate to an individual in a personal capacity and contains references to their name and telephone number. Further, the release of the individual's name combined with other details already released could reveal information of a personal nature about the individual. I find that this information would qualify as personal information and qualify for exemption under subsection 29(1) of FOIP.
- [19] For the redactions on page 13, the name of the individual would reveal an identifiable individual, but regardless of whether they are acting in a personal or work-related capacity, it does not appear the release of the name would reveal anything personal in nature. Therefore, I do not find it would qualify as personal information and would not qualify for exemption under subsection 29(1) of FOIP.
- [20] For the contact information redacted at number 5 on this form, it appears the form and individuals identified are acting in a work-related capacity; however, the form requested the home address of the individual identified. It is unclear if the telephone number recorded is a personal telephone number or a business telephone number for the individual. I find that the home address of the individual would qualify as personal information. If the telephone number recorded is a personal telephone number, this would also qualify as personal information. The individual's personal contact information would qualify for exemption under subsection 29(1) of FOIP.

*Professional seals/stamps*

- [21] There are two seals or stamps that were withheld by Environment in the responsive records. One appears to be the professional seal of an individual and the other is a professional stamp of an organization.
- [22] In my office's Investigation Report 043-2017, my office found that an engineer's professional seal did not qualify as personal information as follows:



[10] The Complainant submits that the professional seal qualifies as personal information as it is an identifying symbol and number pursuant to subsection 23(1)(d) of LA FOIP. He also submits that the entire application qualifies as his personal information.

[11] I will first address the professional seal. This seal is governed by the bylaws of The Association of Professional Engineers and Geoscientists of Saskatchewan (APEGGS). It is a round seal that indicates that the professional is a Professional Engineer in Saskatchewan. It also bears the professional's name and association member number as well as the date that the document was stamped. APEGGS' publication entitled *Authentication of Documents: Use of Profession Seals* states:

The seal constitutes the distinctive mark of the professional. It identifies work performed by, or under the direct supervision of a licensed professional. It assures the document's recipient that the work meets the standards expected of experienced professionals who take personal responsibility for their judgments and decisions. The seal is important because it is a visible commitment to the standards of the profession and signifies to the public that a particular professional has accepted responsibility for the document.

[12] By nature, the seal is meant to be a tool to signify to the public that a particular professional has accepted responsibility for the document to which it is affixed. As such, I do not find that it is personal in nature and does not qualify as personal information.

[23] Just as found in this report, these seals or stamps do not reveal any information that is personal in nature and do not qualify as personal information. As such, subsection 29(1) of FOIP does not apply.

***Closing greeting and notation of attachments to the correspondence***

***Calendar information that appears to have been recorded in error and crossed out***

[24] None of the information recorded in these portions of the record appear to have any relation to identifiable individuals or contain any information that would be considered personal in nature. As such, subsection 29(1) of FOIP would not apply.

[25] In summary, I find that subsection 29(1) of FOIP was appropriately applied to page 6 (redaction number 6), page 8 (redaction number 4), page 10 (redaction number 2), page 11 and page 17 (personal contact information recorded at number 5 on this form) of record 5.

[26] I find that subsection 29(1) of FOIP was not appropriately applied to the remaining portion of the record.

[27] I recommend that Environment continue to withhold page 6 (redaction number 6), page 8 (redaction number 4), page 10 (redaction number 2), page 11 and page 17 (personal contact information recorded at number 5 on this form) of record 5 pursuant to subsection 29(1) of FOIP.

[28] I recommend Environment release the remaining portions of the withheld records where subsection 29(1) of FOIP was found not to have been properly applied.

#### **IV FINDINGS**

[29] I find that subsection 29(1) of FOIP was appropriately applied to page 6 (redaction number 6), page 8 (redaction number 4), page 10 (redaction number 2), page 11 and page 17 (personal contact information recorded at number 5 on this form) of record 5.

[30] I find that subsection 29(1) of FOIP was not appropriately applied to the remaining portion of the record.

#### **V RECOMMENDATIONS**

[31] I recommend that Environment continue to withhold page 6 (redaction number 6), page 8 (redaction number 4), page 10 (redaction number 2), page 11 and page 17 (personal contact information recorded at number 5 on this form) of record 5 pursuant to subsection 29(1) of FOIP.

[32] I recommend Environment release the remaining portions of the withheld records where subsection 29(1) of FOIP was found not to have been properly applied.

Dated at Regina, in the Province of Saskatchewan, this 11th day of June, 2020.

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