



REVIEW REPORT 411-2019

Saskatchewan Telecommunications

August 20, 2020

Summary:

The Applicant made an access request to Saskatchewan Telecommunication (SaskTel) for information related to a specific address and adjacent land. SaskTel responded indicating that responsive records did not exist. Through a second access request, the Applicant discovered there was responsive records related to land adjacent to the specific address. The Applicant requested that the Commissioner review SaskTel's search for records and whether it met the duty to assist. The Commissioner found that SaskTel did not conduct a reasonable search for records or meet the duty to assist. The Commissioner recommended that SaskTel review its relevant policies and procedures.

I BACKGROUND

[1] On January 18, 2019, Saskatchewan Telecommunications (SaskTel) received an access to information request for the following information:

RE: [A specific address], Regina Saskatchewan and adjacent land

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

3. Copy of any correspondence, letters, offers, leases with Saskatchewan Telecommunication regarding the property.
4. Copies of all feasibility studies done on the property including all soil testing.
5. Copy of awarded contract(s) for [the specific address], Regina, Saskatchewan

- [2] The Applicant also indicated the timeframe for the request was January 1, 2015 to January 18, 2019.
- [3] On January 31, 2019, SaskTel responded to the Applicant's request indicating that no responsive records existed.
- [4] The Applicant then initiated communication with SaskTel to clarify what information they were seeking. The Applicant was informed that the property that they were interested in had a different address. On February 1, 2019, SaskTel asked the Applicant to make a new request.
- [5] On February 1, 2019, the Applicant made a second request to SaskTel which included both the address in the first request made in January, and the second address provided by SaskTel. My office has since reviewed several issues related to the second request in Review Report 149-2019, 191-2019.
- [6] On December 20, 2019, the Applicant requested that my office review SaskTel's response to the first request including SaskTel's search for records and whether it met the duty to assist.
- [7] On December 31, 2019, my office notified both the Applicant and SaskTel of my intention to undertake a review.

II RECORDS AT ISSUE

[8] In this Report, I am reviewing SaskTel's search for records and whether it met the duty to assist. As a result, there are no responsive records at issue in this Report.

III DISCUSSION OF THE ISSUES

1. Does FOIP apply in these circumstances?

[9] SaskTel qualifies as a government institution pursuant to subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (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. Did SaskTel perform a reasonable search for records?

[10] 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.

[11] 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.

[12] The Applicant requested an extensive amount of information related to a specific address and to "adjacent land". SaskTel responded that there were no records responsive to the Applicant's request.

[13] 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.

[14] 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.

[15] 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’ *Guide to FOIP, Chapter 3* (updated August 7, 2020) (Guide to FOIP) at pages 7 to 10.

[16] In its submission, SaskTel further cited the Guide to FOIP, at page 7, where it states:

As noted above, 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.

[17] SaskTel’s submission went on to indicate that when it received the Applicant’s first access request, it inquired with the Land Management and Legal departments to determine if there were any responsive records. SaskTel reported that it interviewed a long serving member of the legal department that had knowledge of the history of the property at the address listed in the request. The employee indicated that all dealings with the address “specifically provided by the applicant” ended in 2001 when the City sold the property. SaskTel submitted that, given that the applicant’s request was for records from the time frame of January 1, 2015 to January 18, 2019, after the property was sold in 2001, there could be and were no responsive records.

[18] It appears that SaskTel did not take any further steps to search for responsive records related to the address listed in the Applicant’s request.

[19] SaskTel also noted that the Applicant took steps to clarify the request after SaskTel provided its section 7 response. Its submission indicated that this was its first indication

that the Applicant was looking for information about a SaskTel tower at a nearby civic address. SaskTel stated that “no liberal interpretation of the request... could have suggested the applicant was seeking” information about the property that had the SaskTel tower.

[20] I note that the address listed in the Applicant’s request was not the only property listed in the request. The Applicant also requested the same information for “adjacent land”. This part of the request was reproduced in SaskTel’s section 7 response to the Applicant and in SaskTel’s submission. However, SaskTel’s submission did not address how it searched for responsive records for land adjacent to the address listed.

[21] As noted, the Applicant later clarified with SaskTel what they were looking for and SaskTel provided the Applicant with the correct address. My office used Google Maps on August 7, 2020 to confirm that the addresses were adjacent to each other. In my view, a reasonable person would conclude that the second address provided to the Applicant by SaskTel would be captured by the words “adjacent land” in the Applicant’s first request. The Applicant, later, made a second request to SaskTel which included both addresses and many responsive records were identified.

[22] As such, I find that SaskTel did not conduct a reasonable search for records with respect to the first access request.

[23] I recommend that SaskTel review its policies and procedures related to interpreting access requests and how it searches for records so that it ensures its searches for records responsive include all components of future access requests.

[24] As the Applicant has already made a second request with the second address, and I have reviewed SaskTel’s response to this second request, I will not make any further recommendations regarding search.

3. Has SaskTel met the duty to assist?

[25] Subsection 5.1(1) of FOIP provides that government institutions must respond openly, accurately and completely to access requests. Subsection 5.1(1) of FOIP provides as follows:

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.

[26] To determine if it has met the duty to assist, I must determine if SaskTel has responded openly, accurately and completely to the Applicant's first access requests.

Completely

[27] The Guide to FOIP, at page 62, states that complete means having all its parts; entire; finished; including every item or element; without omissions or deficiencies; not lacking in any element or particular. Further, it means the information from a government institution must be comprehensive and not leave any gaps in its response to an applicant's access to information request.

[28] As described in this Report, SaskTel's response to the Applicant's request focused on searching for records that were related to the specific address listed in the Applicant's request. SaskTel did not respond to the "adjacent land" portion of the request.

[29] As such, SaskTel did not respond to the Applicant's request completely.

Accurately

[30] The Guide to FOIP, at page 62 states that accurate means the government institution must provide the applicant with sufficient and correct information about the access process and how decisions are made. This includes understanding what the applicant is actually looking for and includes clarifying the nature of the access to information request.

- [31] SaskTel noted in its submission that after it issued its section 7 response to the Applicant, the Applicant took steps to clarify with SaskTel that they were looking for information about a SaskTel tower at a neighbouring address. SaskTel submitted that a liberal interpretation of the request could not have suggested the applicant was seeking information about the neighbouring property. Again, SaskTel has not addressed in its submission why it did not take into account the part of the Applicant's request that mentioned land adjacent to the specific address listed. In my view, a reasonable person would have interpreted "adjacent land" as the property that housed the SaskTel tower.
- [32] Further, SaskTel did not describe any attempts at initiating discussions with the Applicant that would have resulted in clarification.
- [33] SaskTel did not respond to the access request accurately.

Openly

- [34] The Guide to FOIP, at page 62 defines openly as to be honest, forthcoming and transparent. Where a decision is made to not provide an applicant with all or part of a record, a government institution should provide reasons for the refusal in an upfront and informative manner. To respond openly to an access request, government institutions must be transparent and provide explanations of the processes, actions and decisions taken to respond to an access request.
- [35] SaskTel's section 7 response to the Applicant dated January 31, 2019, simply indicated that responsive records did not exist. It did not indicate that it only searched for records related to the specific address that was noted in the Applicant's access request, but not to adjacent lands. This would have given the Applicant the impression that there were no records related to the request, when in actuality, there were records related to adjacent lands.
- [36] As, such, SaskTel did not respond to the request openly.

[37] In conclusion, I find that because SaskTel did not respond to the Applicant's request openly, accurately or completely, it failed to meet the duty to assist as described in subsection 5.1(1) of FOIP.

[38] I recommend that SaskTel review its policies and procedures to ensure it meets the duty to assist when responding to future access to information requests.

IV FINDINGS

[39] I find that SaskTel did not conduct a reasonable search for records with respect to the first request.

[40] I find that SaskTel failed to meet the duty to assist as described at subsection 5.1(1) of FOIP.

V RECOMMENDATIONS

[41] I recommend that SaskTel review its policies and procedures related to interpreting access requests and how it searches for records so that it ensures its searches for responsive records include all components of future access requests.

[42] I recommend that SaskTel review its policies and procedures to ensure it meets the duty to assist when responding to future access to information requests.

Dated at Regina, in the Province of Saskatchewan, this 20th day of August, 2020.

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