Date: September 11, 2006 **File No.: 2004/042**

SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT F-2006–003

Saskatchewan Justice

Summary: The Applicant requested a review of the decision of Saskatchewan Justice (Justice) to extend the 30 day response deadline mandated by *The Freedom of Information and Protection of Privacy Act* (the Act) by an additional 15 days. Justice employed section 12(1)(b) of the Act claiming that it could not reasonably complete "consultations" that were necessary in order to properly comply with the Applicant's application within the 30 day time limit. The Commissioner determined that Justice did not properly invoke this subsection as it did not initiate consultations in a timely manner and many of those activities described by Justice as "consultations" did not qualify as consultations within the meaning of the Act. The notice provided to the Applicant met the requirements of section 12(2) of the Act. However, the response did not meet the requirements of section 7(2)(d) and subsequently section 12(3) of the Act as Justice did not adequately identify which exemptions applied to each severed line item of the record nor did it offer adequate reasons for the refusal to permit access to certain records.

Statutes Cited: *The Freedom of Information and Protection of Privacy Act* [S.S. 1990-91, c. F-22.01 as am], ss. 2(1)(d)(i), 7(2)(d), 12(1)(a)(i), 12(1)(b), 12(2), 12(3), and 27

Authorities Cited: **Reports & Orders:** Saskatchewan OIPC Reports F-2004-001 & 2005-005; Alberta IPC Orders 98-002 & 2000-021; and Ontario IPC Order PO-1876

Other Resources Cited: Michel W. Drapeau & Marc-Auréle Racicot, *Federal Access to Information and Privacy Legislation Annotated 2005*, (Toronto: Thomson Canada Limited, 2004) at 1-131; Government of Alberta, *Freedom of Information and Protection of Privacy Guidelines and Practices 2005* at 236; Ontario IPC Practices, Drafting a Letter Refusing Access to a Record, Number 1, Revised September 1998 at 2 & 3 [Available online: http://www.ipc.on.ca/userfiles/page_attachments/num-1.pdf]

I BACKGROUND

[1] On April 23, 2004 the Applicant submitted an access to information request to the Department of Justice, also known as Saskatchewan Justice (Justice), for the following:

> *Please provide all records prepared by or for or held by the department that show the following:*
>
> *For the years 2002 [jan to dec] and 2003 [Jan. to Dec.] and [jan to mar]:*
>
> *Civil Law Division Billable hours by department or agency and*
>
> *For the years 2002 [jan to dec] and 2003 [jan. to dec.] and 2004 [jan to mar]:*
>
> *Private Legal Billings [firms retained, location amount billed, descriptions]*

[2] On May 21, 2004, Justice informed the Applicant that it was extending the response deadline by 15 days past the original 30 day response time line.

[3] Shortly thereafter, the Applicant requested that our office review Justice's decision to extend the response deadline for an additional 30 days.

[4] Justice provided the Applicant with a severed copy of the record within the extended deadline.

[5] After acknowledging receipt of the record, the Applicant raised additional concerns with respect to the record provided.

II RECORD

[6] Justice offered the following detailed description of the record:

> *Thank you for your Access to Information Request which was received at this office on April 23, 2004, asking for information concerning the billable hours of the Civil Law Division and private legal billings for the period January 1, 2002, to March 31, 2004. By letter dated May 21, 2004, you were advised the response time was being extended 15 days to June 7, 2004.*
>
> *The first two pages attached to this letter set out the billable hours of the Civil Law Division for calendar years 2002 and 2003, respectively. The summary of hours for 2004 will not be prepared until early 2005.*
>
> *The other attached documents contain the summaries of billing by private law firms compiled by our department on a quarterly basis. These summaries are based on reports received from departments and other executive government*

agencies that employ the services of law firms. You will see that the information in the summaries is organized by quarter year and according to the government's fiscal year (April 1 to March 31). Therefore, the totals set out in the fifth and sixth columns of the documents do not provide information on the calendar year basis.

Each of the nine stapled documents relates to a three month reporting period, and the particular quarter is identified in the heading of the third column. For example, the first document is for the reporting period January 1, 2002, to March 31, 2002. The firm and its location are listed in the first two columns, the amount billed during the three month reporting period is listed in the third column, and the nature of the work performed is indicated in the fourth column. You will see that there are subtotals by client department in the third column and a grand total for the reporting period at the bottom of the column.

However, some of the information contained in these documents has been severed to remove certain details of personal information and information protected by solicitor client privilege, pursuant to sections 8, 22(a) and 29(1) of The Freedom of Information and Protection of Privacy Act.

III ISSUES

1. Was Justice's response to the Applicant adequate in terms of what is required by section 12 of the Act?

2. Did Justice meet the requirements of section 7 of the Act when it provided notice to the Applicant within the time extension?

3. Was Justice's extension of the response deadline in accordance with the criteria set out in section 12(1)(b) of the Act?

IV DISCUSSION OF THE ISSUES

1. Was Justice's response to the Applicant adequate in terms of what is required by section 12 of the Act?

[7] Justice is a "government institution" as defined by section 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (the Act) which reads as follows:

> *2(1) In this Act:*
>
> …
>
> *(d) "**government institution**" means, subject to subsection (2):*

> *(i) the office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan….*

[8] The Act requires that if a government institution decides to extend the response deadline it must give written notice to the Applicant of its intention to do so within the original 30 day response period.

[9] The applicable provisions of the Act are as follows:

> *12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:*
>
> *…*
>
> *(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within the 30 days after the application is made.*
>
> *(3) Within the period of extension, the head shall give notice to the applicant in accordance with section 7.*

[10] Justice acknowledged receipt of the Applicant's request by letter dated May 21, 2004. It read as follows:

> *I wish to inform you that the response time of 30 days has been extended another 15 days to June 7, 2004, pursuant to clause 12(b) of The Freedom of Information and Protection of Privacy Act. Clause 12(b) states:*
>
> > *The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days where consultations that are necessary to comply with the application cannot reasonably be completed within the original period.*

[11] This letter confirmed that Justice provided the Applicant with notice of the time extension within 30 days of the original access application as required by section 12(2) of the Act.

[12] Subsection 12(3) of the Act, however, requires that the government institution provide a response as required by section 7 within the period of extension. In order to determine if Justice provided adequate notice under section 12(3), we must first determine if its response adequately addressed the requirements of section 7 of the Act.

2. Did the Department meet the requirements of section 7 of the Act when it provided notice to the Applicant within the time extension?

[13] Section 7(2) provides as follows:

> *(2) The head shall give written notice to the applicant within 30 days after the application is made:*
>
> > *(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;*
> >
> > *(b) if the record requested is published, referring the applicant to the publication;*
> >
> > *(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;*
> >
> > *(d) stating that access if refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;*
> >
> > *(e) stating that access is refused for the reason that the record does not exist; or*
> >
> > *(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4).*

[14] Section 8 provides as follows:

> *8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.*

[15] After receiving Justice's response letter together with a copy of the severed record, the Applicant raised additional concerns as reproduced below:

> [The Freedom of Information and Protection of Privacy (FOIP) Coordinator's] *letter indicates that the department carefully reviewed "200 pages of correspondence" and needed time to sever "protected information".*
>
> *However, the material I received from the department, on June 4, 2004 did not amount to "200 pages". It was not even close to that number. Nor was there any evidence of anyone doing any severing of "protected information". And, for what it may be worth, I have re-read the act and can find no provision allowing for severing information that is "protected". Indeed the word "protected" does not appear anywhere in the text of the legislation. Even if* [the FOIP Coordinator] *is using the term to reference, in general terms, the withholding of some information, the act requires the department to disclose this action when it does release information. [That is: identify which portions have been withheld, pursuant to a section of the Act.] That was never done.*

> *In summary,* [the FOIP Coordinator's] *assertion must be challenged, as there is no evidence that any of the work* [the FOIP Coordinator] *describes took place, beyond her say-so.*

[16] In rebuttal, Justice offered us the following:

> [The Applicant] *claims that the material received did not amount to 200 pages. The number of pages* [the Applicant] *received in attachments totaled 206 pages.*
>
> [The Applicant] *claims that there was not evidence of severing in the documents he received. There was severing which can be easily identified as a black marker was used to sever the exempt information.*
>
> [The Applicant] *has also claimed that he was not informed of why the information was severed, and that it was described as "protected information" only. The first paragraph on page two of the enclosed covering letter to* [the Applicant] *(dated June 4, 2004) states:*
>
> > *"However, some of the information contained in these documents has been severed to remove certain details of personal information and information protected by solicitor client privilege, pursuant to sections 8, 22(a), and 29(1) of The Freedom of Information and Protection of Privacy Act."*
>
> *Therefore,* [the Applicant] *was informed of the appropriate sections of the Act which were applied to the protected information.*
>
> *Our initial submission to Mr. Dickson, Q. C. dated June 24, 2004, was to address* [the Applicant's] *disagreement with our need to extend the processing time for this file an additional 15 days. We still remain confident that this extension was necessary in order to consult with the affected Government Institutions, and carefully review the approximately 200 pages of attachments to ensure all the necessary severing was captured.*

[17] The Applicant made no further submission.

[18] This office reviewed the record and is able to confirm that the record provided contained the number of pages claimed by Justice.

[19] However, in reviewing the record, I note that, though severing of line items is apparent, each severed item lacks a notation indicating which exemption(s) applies in each instance. Justice has only submitted in a global fashion that some severing was required citing sections 22 and 29 of the Act.

[20] This office offered some guidance on how to prepare records for release to applicants by means of a resource entitled *Helpful Tips* and available on our website: www.oipc.sk.ca under the tab, *Resources*. This office drew attention to the document both in the April 2004 FOIP FOLIO and on page 3 of our Annual Report for 2003-2004. Both the FOIP FOLIO issue and the Annual Report are available on the above noted website. In these documents, this office offered the following advice to government institutions and local authorities on how to submit a copy of the record to this office during a review:

> *If any information has been withheld, the institution or authority could submit the record in one of two ways:*
>
> 1. *Reproducing the withheld portion of the record in red ink, leaving the disclosed portion in black ink, and clearly indicating, beside or near the withheld portion, the applicable section (s) of the relevant Act; or*
> 2. *Alternatively, by providing a copy of the record with:*
>   a. *The withheld information outlined or highlighted, and*
>   b. *The relevant section number(s) of the Act clearly indicated beside or near that withheld information.*

[21] If the exemptions are clearly marked beside severed line items/sections, it will be clear upon review which of the multiple exemptions applies to the severed items in question. The same procedure should be utilized when providing severed records to an Applicant even though the Applicant is not provided with the information that has been severed. This would remove any doubt as to which exemption applies to which line item.

[22] Section 7 of the Act requires that when denying an applicant's access application whether in full or in part, the written notice must meet three requirements:

> (a) It must state that access is refused to all or part of the record;
>
> (b) It must set out the reason for refusal; and
>
> (c) It must identify the specific provision of the Act on which the refusal is based.

[23] There can be no question that the refusal of access to those severed portions of the record was communicated by Justice to the Applicant, as required in (a) above. However Justice failed to meet the requirements in (b) and (c).

[24] Two exemptions were cited by Justice in its response to the Applicant: (1) Section 22 – discretionary exemption for legal advice and solicitor-client privilege and (2) Section 29 – mandatory exemption for personal information. While it is clear those two exemptions are relied upon by Justice, the Applicant would have no way of determining which particular lines that have been severed relate to each of the exemptions claimed. If the Applicant receives in fact 200 pages with significant portions severed pursuant to section 8 of the Act, how is the Applicant to know which pages and how many pages allegedly involve legal advice or solicitor-client privilege and which pages and how many pages allegedly involve personal information? Since the treatment of mandatory exemptions is different on a review by our office than the treatment of discretionary exemptions how can an applicant assess whether he should proceed to request a formal review?

[25] The duty to sever in section 8 of the Act means that any exemption claimed by a government institution must be clearly linked to the appropriate lines in the document being severed. When Justice provided the Applicant with the severed copy of the record, it stated that information was severed *to "remove certain details of personal information and information protected by solicitor client privilege…."* The skeletal information provided the Applicant is a concern. This minimal and general statement falls short of explaining **why** sections 22 and 29 of the Act would apply to the line items severed as required by the provision. It would be extremely unusual that both sections 22 and 29 would apply to every severed line in the responsive record. I take section 7(2)(d) to require a reasonable degree of transparency as to the decision of the government institution such that the applicant can understand the basis for the denial of access.

[26] Ontario Information and Privacy Commissioner (IPC) *Practices Number 1*[1] offers advice on what elements are required in a written notice. It is recommended that,

> *(e) For each record or part of a record that is refused, explain why the provision applies to the record. This explanation, along with the general description of the record, should enable the requester to understand why the information cannot be disclosed.*[2]

[1] Ontario IPC Practice Number 1; Drafting a Letter Refusing Access to a Record [Available online: http://www.ipc.on.ca/userfiles/page_attachments/num-1.pdf]
[2] Ibid at 2

[27] In the same document, the Ontario IPC suggests that a decision letter granting partial access should state: "*If an exemption is being applied, refer to the 'Comments/Explanations' column"*[3]. The Ontario IPC suggests that this column should be part of the Index of Records that accompanies the written notice sent to the applicant. Under this column heading, it is recommended that the government institution provide a detailed explanation as to why the exemption applies in the circumstance. An example from this publication describes a record as a "*[p]lan showing building and grounds of detention centre dated Nov. 11, 1998. Also showing proposed alterations (1 page)*" and offers a possible explanation of why sections 14(1)(j) and 14(1)(k) of the applicable legislation would apply. This explanation is as follows:

> *Since this record shows entrances and exits to buildings and grounds, and other security-sensitive information, its release could reasonably be expected to facilitate escapes and jeopardize the security of the detention centre, so both exemptions apply. As this Ministry's policy is to prevent such security lapses, the head is exercising his discretion to apply the exemption and to withhold this record in its entirety.*[4]

[28] In the case at hand, Justice did not clearly identify which exemption(s) applied to which severed line item of the record, nor did it provide an adequate explanation as to why it invoked each exemption cited. As a result, the Applicant would not be in a position to make a reasonably informed decision of whether or not to seek a review of the head's decision. In this respect, I find that Justice's minimal notice of refusal did not satisfy the requirements of clause 7(2)(d) of the Act.

[29] Moreover, as section 12(3) of the Act requires that a government institution provide a proper written notice in accordance with section 7 within the period of extension, and I find it did not, I find that Justice also did not meet the requirements of section 12(3).

3. Was the Department's extension of the response deadline in accordance with the criteria set out in section 12(1)(b) of the Act?

[30] Section 12(1)(b) reads as follows:

> *12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:*
>
> …

[3] Ibid at 3
[4] Ibid, page 4

> *(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period….*

[31] In order for the provision to apply, the government institution must demonstrate that "consultations" that are necessary to comply with the request could not reasonably be completed within the original 30 day response deadline.

[32] I must first determine what types of activities constitute "consultations".

[33] The Act does not define the term "consultation" as it is used in section 12(1)(b). However, in an earlier SK OIPC Report[5], I defined it as follows:

> *[11] This Office will also be guided and informed by decisions of counterparts in other Canadian jurisdictions. There are many similarities between the provisions of the Freedom of Information and Protection of Privacy Act and access to information and privacy laws in other provinces and territories as well as the federal Access to Information Act and federal Privacy Act. Section 24(1)(b(i) of the Alberta Freedom of Information and Protection of Privacy Act provides that:*
>
> > *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal…*
> >
> > *(b) consultations or deliberations involving*
> >
> > *(i) officers or employees of a public body…."*
>
> *[12] A "consultation" occurs when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. (Alberta Order F2003-016 [20]).…*

[34] The Department's arguments for why the extension was necessary in this case are as follows:

> *Since the information within the requested summaries pertained to activities within several departments or agencies, it was necessary for us to advise the interested parties of this and provide an opportunity for them to review the information for accuracy. Once completed, this did not leave an appropriate length of time for the information to be prepared for disclosure.*
>
> *In addition to the above, the requested information involved approximately 200 pages of correspondence, some of which needed to be severed pursuant to sections 8, 22(a) and 29(1) of The Freedom of Information and Protection of Privacy Act (the Act). Therefore, the time involved with carefully reviewing 200*

[5] OIPC Report F-2004-001

> *pages of correspondence and severing the protected information as necessary took a large amount of time.*

[35] Justice offered this office a list of the other government institutions contacted in preparation of its response to the Applicant's application which included the following: Agriculture, Food & Rural Revitalization; Community Resources and Employment; Corrections and Public Safety; Culture, Youth and Recreation; Environment; Executive Council; Finance; Government Relations and Aboriginal Affairs; Health; Highways and Transportation; Industry and Resources; Information Technology Office; Labour; Learning; Northern Affairs; Public Service Commission; Saskatchewan Gaming Corporation; Saskatchewan Liquor and Gaming Authority; Saskatchewan Transportation Corporation; and Saskatchewan Water Corporation.

[36] While the number of government institutions contacted is lengthy, we needed to understand why Justice was unable to conclude its "consultations" within the original 30 day response deadline. To meet the burden of proof, we were looking to Justice to provide sufficient evidence as to the nature and complexity of the "consultations" undertaken by the Department.

[37] To offer perspective, Justice offered the following:

> *I have attached the e-mails and memos from our file detailing the consultations that took place around the preparation of the original response to this request. The application was received in the department on April 23, 2004. The 30-day period ended May 23, 2004, which was a Sunday. For all practical purposes, we had to complete our work and have the letter mailed by Friday, May 21, 2004.*
>
> *It was determined that we were not in a position to respond to* [the Applicant] *by the initial date of May 21, 2004, therefore the 15-day extension letter dated May 21, 2004 was prepared. As we advised in our earlier correspondence with your office, the reason for the extension was pursuant to clause 12(b) of The Freedom of Information and Protection of Privacy Act, as consultations were necessary to complete the application.*
>
> *The majority of the work for this request was by …*[the] *Executive Director, Civil Law Division. He recalls (which is supported by the attached correspondence), that the initial work to prepare the documents occurred fairly early during the 30-day period.*
>
> *The work involved with preparing this file for release was quite extensive, as he needed to review this file to ensure all information which was exempt from release was captured. In particular, it was necessary to ensure that no personal*

information not already in the public domain was included. As I noted in my letter to your office dated April 11, 2005, the responsive materials were 206 pages of correspondence. In many instances he needed to obtain further information about the entries before making a decision on whether to sever information. Although a minimal amount of information required severing, it did not minimize the amount of time [the Executive Director] *required to review the file.*

As the documents show, [the Executive Director] *sent the enclosed e-mail out to the permanent heads on May 4, 2004, and he indicated that our intention was to release the summaries the week of May 17th.*

Responses began to come back in during the week of May 4th, and he dealt with some of the concerns raised during the week. However, he was away from the office the entire week of May 10th. With [the Executive Director's] *overall knowledge and involvement with this file, it could not be turned over to a colleague.*

When [the Executive Director] *returned to the office on Monday, May 17th, he dealt with the additional inquiries from the department, stemming from his consultations. At this point, we were still aiming to have the summaries ready for release by May 21, 2004.*

As you can see by attached correspondence, after the letter of extension was sent to the applicant, there were a few items finalized – one by e-mail dated May 26, 2004 to [Department Official's Name], *Corrections and Public Safety and the second by fax message dated May 26, 2004 to* [Department Official's Name], *SPMC. This additional time was also utilized to brief our Access Officer on this request.*

In retrospect, the letter of extension should have also quoted subclause 12(1)(a)(i) of The Freedom of Information and Protection of Privacy Act as [the Applicant] *did request access to a large number of records which needed to be carefully reviewed and prepared for release. Completing the necessary work in the initial 30-day response period, when consultations were also necessary, was very difficult.*

I would like to note that the department did not exercise the full 30-day extension, and in fact only extended [the Applicant's] *application by 15 days. Given the amount of time involved with this file and the required consultations, we feel that this extension was not unreasonable.*

As an observation, we have noted that [the Applicant] *filed his request for review with your office by letter dated May 26, 2004.* [The Applicant] *received the requested information within the 15-day extension period, by letter dated June 4, 2004. For your information* [the Applicant] *files several requests with this department each year, many of which are for access to a large amount of information. Although an extension was necessary in this request, we strive to complete each request within the 30-day period.*

[38] This Report is the first I have issued dealing directly with the interpretation and application of section 12 of the Act. It is therefore appropriate that I examine the issues raised in this case of first impression in some detail.

[39] I am mindful that an extension of 15 days – only one half of the 30 additional days permitted by section 12 – may seem like a relatively short time. Nonetheless, as the Department responsible for the administration of the Act, Justice fulfills an important leadership role for all other government institutions and local authorities. Other public bodies will undoubtedly look to Justice for leadership and best practices to guide their own compliance efforts. That makes it even more important for me to carefully assess the actions of Justice against the relevant statutory requirements.

[40] In the above noted submission, Justice cited subsection 12(1)(a)(i) as another reason why the time extension was necessary. The provision provides as follows:

> *12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:*
>
> *(a) where:*
>
> *(i) the application is for access to a large number of records or necessitates a search through a large number of records….*

[41] Of assistance in quantifying what constitutes "a large number of records" is the following excerpt from the text *Federal Access to Information and Privacy Legislation Annotated 2005*[6]:

> *2. **Large Number of Records**. There is no magic number of records that qualify as a "large number". Historically, however, the Information Commissioner has rarely accepted 500 or fewer records as being a large number. On the other hand, it has not been unusual for the Commissioner to accept 1,000 or more records as being a large number. No matter what the number of records may be, if an institution wishes to make a case for an extension based on a large number of records, it should take into account the following factors:*
>
> *a. are the records easily reviewed, despite the number of pages, due to their homogeneity [example: a large computer printout where review of one or two pages results in a uniform approach to be applied to all pages];*
>
> *b. have the records been reviewed in response to a previous request;*

[6] Toronto: Thomson Canada Limited

> *c. does the number of records exceed the average number of records requested per request in the institution;*
>
> *d. does the number of records exceed the number which, historically, the institution has been able to process in 30 days; or*
>
> e. *would processing the request in 30 days unreasonably interfere with the operations of the institution?*[7]

[42] I do not find the record in this case to be so voluminous as to warrant an extension.

[43] On the question of consultations, Ontario IPC Order PO-1876 provides examples of what activities would not constitute "consultations" under its freedom of information and protection of privacy legislation such as:

> *Sections 27(1)(a) and (b) of the Act read as follows:*
>
> *A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,*
>
> *(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution;*
>
> *(b) consultations with a person outside of the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.*
>
> …
>
> *With respect to section 27(1)(b), the Ministry is required to provide sufficient evidence that consultations with a person outside the Ministry are necessary to comply with the request and that such consultations cannot reasonably be completed within the 30 day time limit.*
>
> *The Ministry points out that the request includes records of a former Minister and a former employee and that "it may prove time consuming to...consult on any records…". The Ministry states that consultations may also be required with other ministries such as the Ministry of Natural Resources. The Ministry states that consultations within the Ministry with its legal department and the delegated decision-maker were additional factors in taking the time extension.*
>
> *Earlier orders of the Commissioner have established that for the purpose of section 27(1)(b), consultations are required to be with someone external to or outside of the institution (Orders 104, 193). I agree. Accordingly, I find that consultations within the institution cannot be a basis for extending the time under section 27(1)(b) and therefore, consultations with the legal department or the delegated decision maker do not qualify.*

[7] Ibid, page 1-130 & 1-131

> *I have not been provided with sufficient evidence as to the nature or the necessity of the Ministry's consultations with other ministries or whether such consultations actually took place or are even taking place. Therefore, I am unable to conclude that consultations with someone outside the institution are necessary to comply with the request and that such consultations could not be completed without recourse to a time extension. I find that the time extension taken by the Ministry was not reasonable in the circumstances.*
>
> *Finally, the Ministry made the following statement:*
>
> > *It should be kept in mind that the Ministry was up-front regarding its need for an extension by requesting the extension within a week of receipt of the request, as we did not wish to risk not meeting the statutory time frame or requesting an extension close to the 30th day.*
>
> *I agree that there is merit in an institution taking care not to place itself at risk of being in a "deemed refusal" situation. However, that does not mean that it can automatically avail itself of the time extension provisions under section 27(1) of the Act. In my view, for all the reasons set out above, the factors considered by the Ministry such as "proper and thorough search", review of records by individuals familiar with the records, consultations with legal and the delegated decision maker are an intrinsic and routine part of an institution's obligations to comply with the request within the statutory 30 day limit.*
>
> *Even though the Ministry has not satisfied me that the time extension is reasonable, the original date for the Ministry's decision was March 1, 2001, the date of this order. For practical reasons, I am requiring the Ministry to issue an access decision no later than March 8, 2001.*
>
> [emphasis added]

[44] The provision in the Saskatchewan Act does not explicitly exclude internal "consultation" types of activities. However, my view is that internal consultations are part of every government institution's routine responsibilities when responding to an access to information application. For that reason, for purposes of section 12(1)(b) of the Act, activities that constitute "consultations" should be those outside of intrinsic and routine obligations of any government institution.

[45] In SK OIPC Report 2005-005, we outlined the types of internal activities we view as general responsibilities of a government institution in responding to an access to information request. The relevant portions of that Report are reproduced below:

> *[51] In my view, preparing the record for disclosure includes time anticipated to be spent physically severing exempt information from records. Time spent reviewing records for release and identifying records that require*

> *severing would be activities that should be considered as part of the government institution's general responsibilities under the Act. I find that the latter activities would not be captured by the phrase, "preparing a record for disclosure" in section 6(2)(b) of the FOIP Regulation. I find that the FOIP Regulation contemplates a charge for actually severing a record. I find that it would not contemplate time for:*
>
> - *Deciding whether or not to claim an exemption*
> - *Identifying records requiring severing*
> - *Identifying and preparing records requiring third party notice*
> - *Packaging records for shipment*
> - *Transporting records to the mailroom or arranging for courier service*
> - *Time spent by a computer compiling and printing information*
> - *Assembling information and proofing data*
> - *Photocopying*
> - *Preparing an index of records.*

[46] Justice argued that it required time to "*brief our Access Officer on this request*." My view is that internal consultations with the Department's own Access Officer does not qualify as "consultations" under section 12(1)(b) of the Act. I take the same view with respect to time spent reviewing documents or time for employees of the government institution discussing or considering a response to an access request.

[47] Justice also submitted that it required the extension in order to "*obtain further information about the entries before making a decision on what to sever"*, but also in an earlier submission, expressed the need to "*advise the interested parties of this and provide an opportunity for them to review the information for accuracy"* and to "*ensure that no personal information not already in the public domain was included*."

[48] Sections 7 and 12 of the Act do not address a standard of accuracy. However, section 27 of the Act speaks to the standard of accuracy of personal information. The section reads as follows:

> *27 A government institution shall ensure that personal information being used by the government institution for an administrative purpose is as accurate and complete as is reasonably possible.*

[49] In Alberta IPC Order 98-002 at paragraphs [86] and [87], the Acting Information and Privacy Commissioner offered the following description of the terms "accurate" and "complete":

> *[para 86.] Section 34 incorporates a fundamental principle of "fair information practices", in that it requires that public bodies, who use personal information to make decisions about individuals, ensure that the personal information is accurate and complete. As stated in Ontario Investigation 195-031M, "The importance of this 'data quality' principle cannot be overstated; its absence can lead to serious consequences."*
>
> *[para 87.] The Concise Oxford Dictionary, Ninth Edition, defines "accurate" to mean, in part, "careful; precise; lacking errors", and defines "complete to mean, in part, "having all its parts; entire; finished". Black's Law Dictionary defines "complete" to mean, in part, "including every item or element; without omissions or deficiencies; not lacking in any element or particular". I accept those definitions for the purposes of interpreting section 34(a).*

[50] There is no general requirement in the Saskatchewan Act for government institutions to verify the accuracy of either personal or general information contained in a record before releasing it to the applicant. Rather, the government institution must determine whether its records contain material responsive to the Applicant's request. If every government institution had to review its records for accuracy after receipt of every application for access, the amount of time taken to process requests would increase exponentially. The duty on a government institution to respond to an access request within a prescribed time period is perhaps one of the most important features of the Act. The 30 day deadline imposes an essential degree of discipline on government institutions to respond in a timely way. The extension of time permitted by the Act should be construed narrowly, insofar as it is an exception to the 30 day time limit. I take that to be the intention of the Legislative Assembly since the extension provision in section 12 is qualified in a number of ways. Three specific circumstances are exhaustive of the circumstances in which the 30 days can be extended. The relevant section 12(1)(b) imports the requirement that consultations that are *necessary* to comply with the application cannot *reasonably* be completed within the original period. Such an approach is consistent with the approach taken in many other Canadian jurisdictions.

[51] Also, I cannot understand why a government institution would need to verify data when responding to an access request instead of at the time of collection of that

information/record by that government institution. My expectation would be that if a government institution is relying on information from outside sources in its decision making process that it is imperative that it conduct this type of 'accuracy' check as part of its regular course of business.

[52] A helpful publication that provides advice on how to ensure the accuracy and completeness of "personal information" is the Alberta Government's *Freedom of Information and Protection of Privacy Guidelines and Practices 2005*. Some helpful suggestions offered include the following:

> *Public bodies should have adequate procedures in place to properly verify the accuracy and completeness of any personal information crucial to an application, transaction or action at the time the information is provided (see IPC Orders 98-002 and 2001-004).*
>
> *It is a good business practice for programs that use large personal information systems for delivery of programs or services to have systematic processes for updating personal information that is used on a regular or continuous basis.*
>
> *Other methods of maintaining accuracy include periodically auditing files with accuracy and completeness as one of the criteria tested; ensuring limited access to information for the purposes of making corrections; and establishing cross referencing and verification checks within software of automated systems that identify anomalies in data*. (Page 236)

[53] Justice submitted that it needed to ensure accuracy of information and to sever personal information. I am unsure if Justice was trying to gauge if personal information contained within the record was accurate just to sever it in the end, or if it was attempting to verify the accuracy of other information. If the consultations were required to accurately identify personal information for the purpose of complying with section 29(1) of the Act, I view this as a necessary "consultation" under the Act. However, I find that Justice did not provide sufficient explanation of the nature or complexity of the consultations in order for me to make that determination.

[54] Section 12(1)(b) of the Act states that the head may only extend the response deadline for a "reasonable period" where consultations are necessary to comply with the application and cannot reasonably be completed within the original period.

[55] In Alberta IPC Order 2000-021 at paragraph [68], the Information and Privacy Commissioner states that "*in Order 98-002 at paragraph 88, I adopted the definition of 'reasonable' in Black's Law Dictionary: 'fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view.' "*

[56] I adopt the same definition of reasonable for purposes of section 12(1)(b) of the Saskatchewan Act.

[57] As noted earlier, Justice acknowledges receiving the access to information request on April 23, 2004, but did not send the first of the attached emails seeking input from others until April 28, 2004. Instead of starting work immediately on the request, the date of this email suggests that the initial discussions did not take place between two Department employees until 5 days after receipt of the Applicant's request. The purpose of the email was apparently to clarify the scope of the request, and documents Justice's concern that "*departments and agencies that provide the reports have a clear interest in our decision to release this information. I think we should contact them to advise them that we intend to do so*." We take this as indication that Justice was planning to release the information in question. It does not reveal the need for consultations of any sort with external departments. Justice also indicated that it expected that after minimal severing of the responsive records, it would be able to release the record without any legitimate objections by third parties under the Act. In other words, the consultations referred to with other departments appears to be courtesy based rather than content-relevant.

[58] Other dates of emails fall between May 4, 2004 and May 26, 2004. These emails detail the discussion between Justice and the other department heads on the matter. The May 4, 2004 email to department heads contained the following:

> *As you know, the Department of Justice receives quarterly reports from departments and agencies of the executive government with respect to payments to law firms and prepares quarterly and annual summaries based on those reports. Those summaries appear to us to be accessible under FOI, subject to minor deletions in relation to personal information. Therefore, it is our intention to provide the summaries to the* [the Applicant's employer] *in response to their request.*
>
> *Since the information contained in the summaries pertains to activities within your department or agency, we thought we should advise you of this and provide an opportunity for you to comment. If you have any concerns with respect to this*

> *information, please let me know. We intend to provide summaries to the* [the Applicant's employer] *early in the week of May 17.*

[59] The deadline for the government institutions to respond is clearly stated. However, Justice did not send this email request until 11 days after acknowledging receipt of the Applicant's access to information request, namely on April 28, 2004. I also note that some Departments responded immediately to Justice's notification email citing no concerns with the planned responses by the Department. Others did offer some comment. However, the Department did not offer any evidence that it sent additional reminders to ensure that it would be in a position to respond to the Applicant's request within the original 30 day deadline.

[60] Accordingly, I am not satisfied that Justice initiated and oversaw consultations in a timely manner.

[61] I find that many of the activities undertaken by Justice in preparation of its response do not constitute "consultations" under the provision.

[62] Justice did not provide sufficient evidence of the nature and complexity of external consultations for me to find that these activities warranted a further extension of the 30 day response time line.

[63] The Applicant also asked this office to consider the following: "*This is a request for review of a decision by the head of Justice to extend the time for a response. Identical requests, in the past, have not led to this delay."* The Applicant provided a copy of a response letter from the same Department responding to a similarly worded earlier request for records. The response letter from Justice to the Applicant reads in part as follows:

> *In response to your Access to Information Request, dated November 25, 1998 and received by our office November 30, 1998, enclosed is a report outlining the types of legal services provided by lawyers within the Civil Law Division to client departments and agencies of the Government of Saskatchewan.*
>
> *Also enclosed is a report of the total billable hours of lawyers within the Division for client departments and agencies for the 1997 calendar year. I would advise that no record is kept of the billable hours of specific types of legal services provided.*

[64] An email exchange between various governmental officials (internal and external to Justice) provided by Justice as part of its submission in this case highlights differences between this review and another application similar in wording. In this email, the Department's representative offered the following commentary on the matter:

> *In 2002, we received a similar request for calendar 2000 and 2001. We complied with both parts of the request at that time. However, the request made on that occasion in relation to payments to law firms was cast in a way that allowed for an interpretation that it applied only to payments to law firms from our department. A choice was made to construe the application in the narrower fashion and that's all that was provided.*
>
> *This time the application, in my view, does not admit that narrower interpretation. …*

[65] The argument from the Applicant is not persuasive. With the limited information available to me about these earlier requests, I am unable to find that the 1998, 2002, and 2004 requests are identical and that they required the exact same treatment in each case.

[66] I find that extending the response deadline in this case was not appropriate.

[67] I appreciate the cooperation of and thoroughness of the submissions offered by the Applicant and the various representatives of Justice throughout the course of this review.

V RECOMMENDATIONS

[68] Given that the Applicant acknowledges receipt of a severed record received within the 15 day extension invoked by Justice, I make no recommendation with respect to section 12(2) of the Act.

[69] I recommend that, in accordance with section 12(3) and section 7 of the Act, Justice provide the Applicant with a revised record that would be responsive to the original request with relevant exemptions clearly linked to the specific lines in the record.

[70] I further recommend that Justice provide the Applicant with sufficient information about the severed portions of the record so that a reasonable person could understand the type of information that had been severed and how that information related to the statutory exemptions relied upon by Justice.

[71] I recommend that Justice consider modifications to its policies and procedures to ensure that in the future severing is done in accordance with the foregoing recommendations.

[72] I recommend that Justice ensure that its Freedom of Information and Protection of Privacy training for Departmental employees emphasizes the importance of the 30 day period for responding to an access request and the narrow scope of the extension permitted by section 12 of the Act.

[73] Dated at Regina, in the Province of Saskatchewan, this 11th day of September, 2006.

R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for Saskatchewan