SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT F-2008–001

Saskatchewan Corrections and Public Safety

Summary: Two applicants made separate applications, the first to records of the Regina Provincial Correctional Centre (RPCC) and the second, to the Saskatoon Provincial Correctional Centre (SPCC). In both cases, the government institution responsible for those facilities, Saskatchewan Corrections and Public Safety (CPS), was unable to produce some of the records requested. In the case of the first applicant, the missing documentation was eventually accounted for and provided to the applicant along with other responsive records released in full or in part. Some of these records or portions of records, CPS withheld citing sections 13(1)(a), 21, and 29(1) of *The Freedom of Information and Protection of Privacy Act*, and section 38(1)(a) of *The Health Information Protection Act*. In the case of the second applicant, CPS provided sufficient evidence to substantiate its claims that no responsive records existed. The Commissioner found that in its dealings with both applicants, CPS did not meet the duty to assist as deadlines were missed and the initial searches conducted were inadequate. The Commissioner also found deficiencies in the department's section 7 responses to both applicants. Though the Commissioner found that in the case of the first applicant, CPS provided proper notice to the Applicant of its decision to extend the response deadline, he found that CPS did not have a proper basis to extend the response time. Though the Commissioner did not find that section 21 of FOIP or section 38(1)(a) of HIPA applied to any of the information to which severance was applied, he agreed that CPS had properly applied section 13(1)(a) of FOIP to the nine records it withheld from the first applicant. Other third party personal information was also properly withheld from that applicant.

Statutes Cited: *The Freedom of Information and Protection of Privacy Act,* [S.S. 1990-91, C. F-22.01 as amended] ss. 2(1)(d)(i), 2(1)(j), 7(1)(a), 7(2)(d), 7(2)(e), 7(5), 12(1)(b), 12(2), 12(3), 13(1)(a), 21, 24, 29; *The Health Information Protection Act,* [S.S. 1999, C. H-0.021, as amended] ss. 2(m)(i), 2(t)(i), 38(1)(a); *Access to Information Act* (R.S., 1985, c. A-1), Schedule 1.

Authorities Cited: **Reports and Orders:** Saskatchewan OIPC: Report F-2006-001, Report F-2006-003, Report F-2006-005, Report H-2006-001, Report F-2004-003, Report F-2005-001; Report F-2006-002; Report F-2007-001, Investigation Report F-2007-001, Report H-2007-001; British Columbia OIPC Order 2001-047; Ontario OIPC Order PO-2257, Order PO-1772.

Other Sources Cited: Office of the Information and Privacy Commissioner for British Columbia, *Tips for DMIPS and Freedom of Information and Privacy Coordinators: Conducting an Adequate Search Investigation under the Freedom of Information and Protection of Privacy Act*, 2003.

I. BACKGROUND

First Applicant

[1] An inmate made an access to information request to the Regina Provincial Correctional Centre (RPCC), a facility of Saskatchewan Corrections and Public Safety (CPS or the department) now known as the Ministry of Corrections, Public Safety and Policing, on or about August 25, 2004, for the following:

> *R.P.C.C. File Addmitting* [sic] *Feb/04* [Applicant's name]
> *Range 1-A/CW1* [Employee's Name] *incident reports, decision reports*
> *Range East G incident reports, decision reports*
> *Range West G/A.D.D.* [Employee's Name] *incident reports, decision reports*
> *MEDICAL FILE: Letters, physical & mental condition reports*
> *ALL REBUTTAL LETTERS*

[2] On or about August 25, 2004, CPS acknowledged receipt of the Applicant's application.

[3] We received the Applicant's Request for Review on September 29, 2004 with the following noted on the form: "*I have been refused access to all or part of the record (verbally) by R.P.C.C.; I have not received a reply to my application, which I submitted 30 days ago; I disagree with the need to extend the 30-day response period; and I am a third party, and I wish to request a review of a decision to give access to a record that affects my interests*". This last issue is not applicable as the Applicant is not a third party.[1]

[1] Section 2(1)(j) of FOIP: ***"third party"*** *means a person, including an unincorporated entity, other than an applicant or a government institution.*

Second Applicant

[4] A second Applicant, another inmate, on or about July 5, 2005, made application to CPS, Saskatoon Provincial Correctional Centre (SPCC), for "*Unit log May – Oct 98 (D-2) & Institutional Sign Logs (May – Oct 98)*".

[5] On December 7, 2005, CPS informed the Applicant that the requested records do not exist.

[6] Our office received a Request for Review from the Applicant on January 11, 2006.

II. RECORDS AT ISSUE

First Applicant

[7] CPS provided responsive records to the first Applicant at two different times during the review process as follows:

1. On October 26, 2004, CPS released to the Applicant 31 severed copies of a variety of records including: Inmate Warrant Reports; letters to, from and about the Applicant; Warrants Remanding a Prisoner; Log Detail Reports; an email; Notification of Change of Status form; Notice to Escorting Police Officers; Admitting & Intake Forms; Prisoner Report; Nurse's Notes; and Doctor's Notes. Reasons for severing included sections 29(1) and 21 of *The Freedom of Information and Protection of Privacy Act*[2] (FOIP) and section 38(1)(a) of *The Health Information Protection Act*[3] (HIPA). CPS also released 3 unsevered records to the Applicant. Withheld in full from the Applicant are 9 documents pursuant to section 13(1)(a) of FOIP. These include a 4 page RADAR (Reports of Automated Data Applied to Reintegration) Report, and a fax cover sheet accompanied by a four page offender admission form.

2. On July 5, 2005, CPS released to the Applicant an additional 16 pages of documents: 11 released in full; plus 5 pages contained some severing: Nurse's Notes, Doctor's Notes, and Dentist's prescription. Exemptions cited included sections 21 of FOIP and 38(1)(a) of HIPA.

Second Applicant

[8] I did not review any responsive records with respect to this review as CPS asserts that, after conducting a thorough search, it could find none.

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[2] *The Freedom of Information and Protection of Privacy Act*, [S.S. 1990-91, C. F-22.01 as amended].
[3] *The Health Information Protection Act*, [S.S. 1999, C. H-0.021, as amended].

III. ISSUES

1. Did CPS meet its section 12 and 7 obligations under *The Freedom of Information and Protection of Privacy Act* when providing its responses to both Applicants with respect to each application?

2. Did CPS meet the burden of proof in terms of demonstrating that no responsive records to the second Applicant's application exist?

3. Did CPS meet the implied duty to assist each applicant in each case?

4. In the case of the first Applicant, did CPS properly invoke sections 21 of *The Freedom of Information and Protection of Privacy Act* and 38(1)(a) of *The Health Information Protection Act*?

5. In the case of the first Applicant, did CPS properly invoke section 29(1) of *The Freedom of Information and Protection of Privacy Act*?

6. Did CPS properly invoke section 13(1)(a) of *The Freedom of Information and Protection of Privacy Act* to records withheld from the first Applicant?

IV. DISCUSSION OF THE ISSUES

1. Did CPS meet its section 12 and 7 obligations under *The Freedom of Information and Protection of Privacy Act* when providing its responses to both Applicants with respect to each application?

[9] CPS is a government institution for purposes of FOIP[4].

[10] The applicable provisions of FOIP are as follows:

> *7(1) Where an application is made pursuant to this Act for access to a record, the head of the government institution to which the application is made **shall**:*

[4] SK OIPC Report F-2006-001 [1]. Available online at www.oipc.sk.ca under the *Reports* tab.

> *(a) consider the application and **give written notice** to the applicant of the head's decision with respect to the application in accordance with subsection (2);*
>
> …
>
> *(2) **The head shall give written notice to the applicant within 30 days after the application is made**:*
>
> …
>
> *(d) stating that access is refused, **setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based**;*
>
> …
>
> *(5) A head who fails to give notice pursuant to subsection (2) is **deemed to have given notice**, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.*
>
> …
>
> ***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**:*
>
> …
>
> *(b) **where consultations that are necessary to comply with the application cannot reasonably be completed within the original period**; or*
>
> …
>
> *(2) **A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made**.*
>
> *(3**) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7**.*
>
> [Emphasis added]

First Applicant

[11] The Applicant, in his request for review, raised the following concerns: that he had not received a response within the original 30 day deadline, and that he disagreed with the department's decision to extend the response deadline. Upon investigation, we determined that CPS did respond to the Applicant's application on or about the day the Applicant submitted it, August 25, 2004. In this letter, CPS indicated that it was processing his request and would provide a written response within 30 calendar days.

a) Section 12

i. Was the department's written response to the Applicant adequate in terms of what is required by section 12 of *The Freedom of Information and Protection of Privacy Act*?

[12] On or about September 24, 2004, CPS informed the Applicant of its intentions to extend the response deadline as follows:

> *I wish to inform you that the response time of 30 days has been extended another 30 days to October 24, 2004, pursuant to clause 12(1)(b) of The Freedom of Information and Protection of Privacy Act. Clause 12(1)(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."*
>
> *If you wish to request a review of this action, you may do so within one year of this notice.*

[13] I find that CPS provided adequate notice of the extension as it provided the reason why the extension was necessary and as required by subsection 12(2) of FOIP, provided notice within the time period stipulated.[5]

ii. Was the extension of the response deadline in accordance with the criteria set out in section 12 of *The Freedom of Information and Protection of Privacy Act*?

[14] In previous Reports[6], I determined that to invoke section 12 of FOIP, the burden of proof of establishing an appropriate basis to extend the time to respond to an applicant under FOIP should be borne by the government institution, in this case, CPS.

[15] CPS provided the following in support of its decision:

> *By enclosed letter (item #3) dated September 24, 2004,* […]*, Access Officer for Corrections and Public Safety advised* [the Applicant] *that the department was extending the response time 30 days to* ***October 24, 2004****, pursuant to clause 12(1)(b) of The Freedom of Information and Protection of Privacy Act (the Act), as* ***consultations*** *were necessary to comply with the application.* ***Our reason for***

[5] SK OIPC Report F-2006-005, Report F-2007-001, Report F-2006-003.
[6] SK OIPC Report F-2006-003 [31] to [36]; F-2006-005 [27].

> ***the extension for the purposes of consultations was to consult with our legal counsel*** *to ensure we were processing the request properly following both the terms of The Freedom of Information and Protection of Privacy Act and The Health Information Protection Act. Once consultations were completed,* ***additional time was also required in order to properly prepare the responsive materials for disclosure****.*
>
> [Emphasis added]

[16] In my Report F-2006-005, I detailed what criteria must be considered in determining if an extension was warranted, as follows:

> *[71] I considered an extension of time to respond to an access request pursuant to section 12(1)(b) in Report F-2006-003 [30] to [66]. That case dealt specifically with an extension of time pursuant to section 12(1)(b) of the Act. I adopt and incorporate herein by reference that discussion and analysis. That includes my determination that 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.*
>
> *[72] In assessing whether an extension is appropriate under section 12(1)(b) of the Act I am focusing on the following criteria:*
>
> > *a)* ***Were the consultations external to the organization or in the nature of intrinisic*** [sic] ***and routine obligations of any government institution?***
> >
> > *b) Are the consultations necessary to comply with the request for access?*
> >
> > *c) Can those consultations not reasonably be completed within the original 30 day timeline?*
>
> …
>
> *[82] SaskEnergy did provide a more detailed response compared with that received from the other three Crown corporations involved in this Review. This included an outline of the steps involved, the process followed and the nature of the unusual legal issues that required additional research and study. Legislative privilege is something out of the ordinary and would not normally be encountered by a Crown corporation in routine activities under the Act.*
>
> *[83] Nonetheless, the submission was lacking sufficient particulars to enable me to make the determination that section 12(1)(b) of the Act had been properly involved. I find that SaskEnergy failed to meet the burden of proof with respect to section 12(1)(b) of the Act.*[7]
>
> [Emphasis added]

[17] Based on the findings in the above noted Report, the reasons offered by CPS do not justify the extension. Consulting with legal counsel would not, for the most part, be

[7] SK OIPC Report F-2006-005.

anything but a routine part of processing any access request. Also, the department did not provide reasons as to why it could not complete its consultations within the original 30 day timeline. Accordingly, I find that CPS did not properly invoke section 12(1)(b) of FOIP in the circumstances.

[18] In addition to subsection 12(1)(b) of FOIP, to determine if the department was fully compliant with section 12, I must also consider what subsection 12(3) requires.

[19] Subsection 12(3) requires that CPS provide the following:

> ***12****(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.*

[20] CPS did not provide its next response to the Applicant within the extended deadline of October 24, 2004. Its response was not provided until on or about October 26, 2004 in contravention of subsection 12(3) of FOIP.

[21] Subsequently, I find that the department's response was not in accordance with section 12 of FOIP.

b) Section 7

[22] To be compliant with section 7 of FOIP, when providing written notice to an applicant, a government institution must meet three requirements: (a) must state that access is refused to all or part of the record; (b) must set out the reason for refusal; and (c) must identify the specific provision of FOIP to which the refusal is based.[8]

[23] CPS provided notice to the Applicant on two separate occasions, October 26, 2004 and July 5, 2005, as to what exemptions it generally relied on in withholding certain information/records from him as follows:

1) October 26, 2004

> *The records that have been cleared for access are attached. However, pursuant to Section 8 & 21 of The Freedom of Information and Protection of Privacy Act (The FOIPP Act), some of the information has been deleted in these documents because it "…could threaten the safety or the physical or mental health of an individual".* ***Some of the information has also been deleted pursuant to section 29(1) of The FOIPP Act as it contains personal information****.*

[8] SK OIPC Report F-2006-003 [22].

> *Further, **some of the health information contained in this file has been deleted** pursuant to clause 38(1)(a) of The Health Information Protection Act, as it could, "…endanger the mental or physical health or the safety of the applicant or another person."*
>
> *The remainder of the requested information was provided to Corrections and Public Safety, in confidence, from the Correctional Service of Canada. Therefore, access to this information is denied pursuant to section 13(1)(a) of The FOIPP Act.*

2) July 5, 2005

> *We have located additional records which were not included in our response to you of October 26, 2004. I have attached copies of these additional records, however, pursuant to Sections 8 & 21 of The Freedom of Information and Protection of Privacy Act, **some of the information has been deleted** in these documents because it "…could threaten the safety or the physical or mental health of an individual."*
>
> *Further, **some of the health information contained in this file has been deleted** pursuant to clause 38(1)(a) of The Health Information Protection Act, as it could, "…endanger the mental or physical health or mental health of the applicant or another person.*
>
> [Emphasis added]

[24] In its preparation of the record for release to the Applicant, CPS did not identify which exemption it applied to each line item severed. Rather, the Applicant received copies of documents with wording removed, but without noting reasons. Additionally, it appears that CPS used whiteout to mask certain information. Once copied, without writing in which exemption was applied to each blanked item, it would not be evident to the Applicant if specific line items had been removed or if instead had never existed.

[25] CPS responded to this concern with the following:

> *As you may notice, the information sent to* [the Applicant] *on October 26, 2004, did not show the severed material as "blacked out", but in our letter to him of July 5, 2005, severed information was identified by being "blacked out". For your information, we have begun to use this practice of identifying the severed information by using a black marker, so the applicant can clearly see which information has been severed.*

[26] The above demonstrated that CPS altered its severing technique; however, it neglected again to add notations to indicate which exemptions it applied to each of the severed line items on copies provided to the Applicant this second time.

[27] I provided guidance on how to note exemptions when severing in Report F-2006-003 as follows:

> *[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.*[9]

[28] In terms of why it is important to clearly mark exemptions, in the same Report, I offered the following:

> *[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:***

[9] Ibid.

(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.*

[Emphasis added]

[29] By not citing which of multiple exemptions applied to each masked line item, CPS did not provide: (a) sufficient reason for the refusal, nor (b) the specific exemption relied on in each case. Consequently, I find that CPS did not meet the requirements of section 7 of FOIP.

Second Applicant

a) Section 12 & Section 7

[30] The second Applicant made application to CPS, SPCC, on or about July 5, 2005.

[31] More than one month later, on or about August 23, 2005, CPS informed the Applicant of the following:

> *I would like to apologize for the delay in responding to you. Staff at the correctional centre have advised* […]*, Freedom of Information Co-ordinator that your request was faxed to central office for processing on July 5, 2005.* ***However, we did not receive your request until August 15, 2005. It would appear that the fax did not go through when sent on July 5, 2005, and a follow-up call was not made to ensure receipt of your request.***
>
> *I wish to inform you that the* ***response time of 30 days has been extended*** *another 30 days to* ***September 3, 2005****, pursuant to clause 12(1)(a)(i) of The Freedom of Information and Protection of Privacy Act, as your application necessitates a search through a large number of records.*
>
> [Emphasis added]

[32] Though its response notifying the Applicant of the extension contained the appropriate details, I find that as the government institution did not respond within the original 30 day deadline as required by section 7, it was no longer able to request an extension via section 12, as its lack of response constitutes a deemed refusal pursuant to section 7(5). Section 12(2) supports this view as it requires that notice of an extension be given within 30 days of the application being made. As the department pointed out in its submission, it did not start processing the request until more than one month after receiving it.

[33] I find that with respect to its responses, the department did not meet its section 12 & 7 FOIP obligations.

2. Did CPS meet the burden of proof in terms of demonstrating that no responsive records to the second Applicant's application exist?

[34] The applicable provision of FOIP is as follows:

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

> *(e) stating that access is refused for the reason that the record does not exist;*

[35] CPS informed the Applicant on or about December 7, 2005 of its inability to find responsive records as indicated below:

> *I have been advised that you have been speaking with* […]*, Freedom of Information Coordinator, and* […]*, Team Leader at the SPCC several times since the beginning of September, and have been provided verbal updates to the search efforts in locating these records.*
>
> *There have been several staff involved with search efforts to locate the records, and the total time spent in trying to locate the specific Unit and Institution sign-in logs has been in excess of 15 hours. I would like to assure you that every effort has been made to locate the records you are requesting. While searching for these records,* [the Team Leader] *has advised us that the log books before and after the dates you were requesting have been located, however, the log books within the dates you were requesting were not located.*
>
> *Given the above, it is with regret that I must inform you the requested information cannot be found. As these records cannot be found, I must give notice pursuant to clause 7(2)(e) of The Freedom of Information and Protection of Privacy Act that the records do not exist. However, we will keep this request open in the case the records you have requested are located, at some time.*

[36] I must determine whether CPS has provided sufficient evidence to substantiate its claim that no responsive records exist.

[37] The department provided the following details with respect to the search undertaken:

> *Through conversations and emails with* […]*, former Freedom of Information Co-ordinator, and then with me* [present FOIP Coordinator] *it was* ***determined that the areas searched should be clearly identified, the areas should be described in size and structure, the names of the people, and the nature of their involvement should be documented****.*
>
> [The Applicant] *requested access to unit log books for D-2 Unit and institutional sign-in log books for the May to October 1998 period. The search for the log books in question centered in the administrative areas, the Assistant Deputy Directors's* [sic] *office, the D Unit Team Leader Office, and the Centre's storage areas. The search areas were not expanded to the other living units because each living unit is independent of the other. A series of* ***maps of the Saskatoon Correctional Centre have been included to better illustrate the search areas and efforts involved by the staff****.*
>
> *The administrative staff,* [two CPS employees]*, spent approximately six hours combing the director's office and the administrative areas. Exhausting those areas,* [two CPS employees] *delved into the listings binder which contains the*

> *master list of archived files, log books, and other stored papers to determine what is housed in the Saskatoon Provincial Correctional Centre and what is at the Gemini Records Warehouse.*
>
> *The archived log books at Centre are stored in the Gymnasium Projector Room which is approximately four feet by six feet and houses three to four hundred log books. Assistant Deputy Director* […] *assigned* [a CPS employee] *to go through this room and organize the log books as he conducted his search.* [CPS employee] *methodically reviewed and arranged the log books by Unit into boxes until he exhausted his supply of boxes at which time he then shelved the books according to units.*
>
> [CPS employee] *and Acting Deputy Director* […] *separately searched the Assistant Deputy Directors's* [sic] *office for the missing log book to no avail.*
>
> [Acting Deputy Director] *also spent one hour searching his personal office and a further two hours searching the storage area across from the Assistant Deputy Directors's* [sic] *office.*
>
> [Two CPS employees] *searched throughout D Unit over the course of the summer of 2005. They looked through all the desks, desk drawers, filing cabinets, and, shelving structures in the D-1 and D-2 main offices.* [The two CPS employees] *continued their search into the Team Leader's area which included searching the office, the desk, cupboards and filing cabinets. They examined all the log books stored there by cross referencing the outside covers against the actual dates within the log books.*
>
> *Every area of the D unit offices and work spaces were searched and the book could not be found.*
>
> [Emphasis added]

[38] I considered Ontario Order PO-2257 as it describes the lengths to which a public body must go to demonstrate whether or not responsive records exist. The relevant portion is as follows:

> *A number of previous orders have identified the requirements in reasonable search appeals (see Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744, acting-Adjudicator Mumtaz Jiwan made the following statement with respect to the requirements of reasonable search appeals:*
>
> > *…**the Act does not require the Ministry to prove with absolute certainty that records do not exist**. **The Ministry must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).***

> *I agree with acting-Adjudicator Jiwan's statement.*[10]
> [Emphasis added]

[39] I agree that the department does not have to prove with absolute certainty that the record does not exist. I believe based on its submission, a thorough search was conducted and for whatever reason, the records sought could not be found.

[40] I find that CPS has met the burden of proof in the circumstances.

3. Did CPS meet the implied duty to assist each applicant in each case?

[41] In Report F-2004-003, [5] to [15], I concluded that there is an implicit duty on the part of a government institution to make every reasonable effort to assist an applicant and to respond without delay to each applicant openly, accurately and completely.[11] This also means that the government institution must make an adequate search for all records responsive to the access request. In cases where HIPA also applies, the duty to assist is explicit.[12]

First Applicant

a) Assisting the Applicant

[42] The Applicant submitted an access to information request to CPS on or about August 25, 2004. We received the Applicant's Request for Review on September 29, 2004.

[43] In the package of documents provided by CPS to our office, we note that the Applicant completed a CPS form titled *Consent for Release of Information* (Consent for Release) consenting "*to the Saskatchewan Corrections releasing any information and reports containing my appeals/incident reports/appeal decision reports medical file*" to himself. The Applicant signed this form on July 8, 2004.

[44] On August 20, 2004, the Deputy Director, Programs with CPS, RPCC wrote the Applicant stating,

> *I am in receipt of your correspondence of **3 August 2004**, and **18 August 2004** within which you request full access to your medical file as well as all Incident*

[10] ON IPC Order PO-2257 at 3. Available online at www.ipc.on.ca/index.asp?navid=62.
[11] SK OIPC Report F-2004-003.
[12] Section 35 of HIPA.

> *Reports and decisions.* ***According to policy, you must apply for access to such information by completing an application form under the Freedom of Information and Privacy legislation****. For your convenience, I have attached the necessary form, which you need to complete, and subsequently forward to….*
>
> [Emphasis added]

[45] It is unclear why CPS had the Applicant complete the Consent for Release only later to inform him that instead he must submit a formal access to information request for what appears to be the same information.

[46] In the case where an individual first contacts a public body seeking access, our office has consistently encouraged public bodies to consider whether access may be provided informally rather than requiring an applicant to go through the formal application process. In the above case, CPS did not give the Applicant this opportunity but rather complicated matters by introducing the use of the Consent for Release form. This form is problematic in any event since it fails to distinguish between disclosure to a third party and an applicant exercising his or her right of access to their personal information. In addition, it does not appear that CPS personnel responded to the Applicant's informal requests in a timely fashion. Regardless of the reason, CPS needs to do more to streamline its processes to ensure future applicants will not have to go to the same lengths to achieve access.

b) Response Time & Search Efforts

[47] By way of letter dated October 26, 2004, CPS provided copies of some responsive records to the Applicant.

[48] On November 17, 2004, the Applicant, however, informed us that the department did not provide everything requested. In his letter of same, he indicated that

> *this package contained incident reports from 1-A, and east g, there was also some medical reports from the Doc and nurses. There was also court appearance warrants that weren't even requested, and these documents were from the public prosecutions office.* ***The documents I requested and didn't receive were the decision reports, my rebuttal letter explaining the I-A incident (alleged), and the west g incident****.*
>
> [Emphasis added]

[49] On March 18, 2005, we wrote CPS noting the Applicant's specific interest in "*decision reports, his rebuttal letter explaining the 1-A incident (alleged), and the west g incident*".

[50] In response, on July 5, 2005, the department advised us as follows:

> ***As I discussed with you, we have located additional responsive materials for*** [the Applicant] ***which were not included in our response to*** [the Applicant] ***of October 26, 2004****. As I advised you on July 4, 2005, we have prepared this information for disclosure to* [the Applicant] *and the remainder has been sent to him by* ***letter dated July 5, 2005*** *(enclosed item #7). In this letter,* […], *Access Officer, has advised* [the Applicant] *that we would be including this additional material with our submission to your office, so you may consider the records as part of the review.*
>
> …
>
> ***The information I have provided to your office takes into consideration all responsive materials Corrections and Public Safety has in its possession or under its control in terms of the information*** [the Applicant] ***has requested****.*
>
> [The Applicant] *has raised the issue with your office that he did not receive decision reports. Whenever there is an incident in a correctional facility, an incident report is prepared which includes outcomes to incidents. You will see an example of these reports in the first package of material sent to* [the Applicant]*. These reports are under the title, "Log Detail Report". There would not have been a separate decision report prepared on these incidents, as the report itself is all inclusive.*
>
> *In terms of* [the Applicant's] *issue of his* ***rebuttal letters*** *explaining the 1-A incident and West "G" incident (for your information 1-A and West "G" are units in the Regina Correctional Centre (RPCC), we have included copies to* [the Applicant] ***of all letters he has written various staff at the RPCC and to the best of our knowledge, there are no further letters we have in our possession****.*
>
> ***I would finally like to address the issue of the information which was not provided to*** [the Applicant] ***in*** [Access Officer's] ***letter dated October 26, 2004. The Head Office of Adult Corrections Branch has inquired with the Director's Assistant at the RPCC as to why this information would not have been forwarded to our office for consideration when*** [the Applicant] ***first filed his request and the RPCC was compiling the information for response, part of his file was with Director of the RPCC. This was an error on our part as to not ensure that all responsive materials were thoroughly searched for at the time we received*** [the Applicant's] ***request. We are thankful that*** [the Applicant] ***raised the issue of missing documents so we could visit this issue as to how records are searched for in facilities to respond to requests for information under the Act.***
>
> [Emphasis added]

[51] In its July 5, 2005 letter to the Applicant, CPS offered the following: "*I would like to apologize for any inconvenience this may have caused you. At the time your initial*

Access to Information Request was being processed, these additional records had not been filed on your main file with the RPCC."

[52] On July 18, 2005 the Applicant informed us that a letter he sent to the department (rebuttal letter explaining 1-A incident) was not provided as part of the second package of documents released to him by the department. The Applicant supported his assertion that his rebuttal letter should be on file with CPS by producing a copy of another document from the department that makes reference to it. As CPS advised our office that we received the same package of materials provided to the Applicant, we can confirm that this letter was not contained in the package.

[53] As the Applicant was still asserting that a document was missing, and due to the length of time CPS took to complete its search and provide additional responsive records, we wrote to CPS as follows:

> *…these comments and your letter do not provide a detailed accounting of the search activities, nor provide a satisfactory explanation as to why the department took over nine months to find additional records.*
>
> *In light of these shortcomings, we require an affidavit sworn by an employee having personal knowledge of the search efforts, not from someone relying on information from others. The affidavit should particularize the search efforts and should address the implied duty to assist.*

[54] CPS informed us that it would be unable to provide an affidavit for the following reasons:

> *It has been determined that the missing Director's Appeal file was located upon the Admin personnel returned* [sic] *from definite leave. As indicated previously, there was no program file as* [the Applicant] *was on remand.*
>
> *Owing to the two key staff members in this original search no longer being employed by the department nor the provincial government, this file is at a stalemate.*
>
> *The Department of Corrections and Public Safety is aware that the Appeal file was missed and that the fault is theirs but the suggested affidavit cannot be supplied as there is not a person still with the centre that can speak to the direct original search methods.*

[55] CPS further explained that,

> *The administrative assistant,* […]*, and director,* […]*, at the time of the initial search for* [the Applicant's] *records are both no longer employed by the provincial government.* [The Administrative Assistant] *and* [Director] *have both retired from public service.*

> *Owing to the fact that the two key members of the search team are no longer employed by neither the Department of Corrections and Public Safety nor the provincial government, a sworn affidavit cannot be provided to your office. Unfortunately, there is no one at the Regina Provincial Correctional Centre who can directly speak to the original search methods.*
>
> *Department officials are aware that fault for the oversight on the Appeal file lies with the department, and has implemented new procedures to ensure such omissions will not occur in the future.*

[56] As a follow-up on August 31, 2006, we requested the following from CPS:

> *With respect to the file, I* [OIPC Portfolio Officer] *have a few remaining questions, as follows:*
>
> 1. *Has the department provided us with copies of all responsive records to the Applicant's request? If not, please explain why this is the case. I am asking as I am unsure of what records exist in the files discussed below in your earlier email.*
> 2. *We are curious as to when* [the Administrative Assistant and Director] *left government. When was each of their last days in the office and why were they unable to provide affidavit evidence while still employed with government?*
> 3. *What new procedure(s) has the department implemented "to ensure such omissions will not occur in the future"? If these are complete, we would appreciate receiving a copy.*

[57] CPS responded indicating that,

> *I advised you that the files that were sent to the OIPC were intact and there was nothing outstanding.*
>
> [The Administrative Assistant's] *last day was at the end of June but her retirement date was at the beginning of September 2005.* [The Director's] *last day of work was mid April and his retirement date was the end of June 2005. Your request for the affidavit occurred on September 21, 2005 and both employees were no longer active with government and were therefore not able to respond to your request.*
>
> ***The procedures were not in writing but a verbally communicated understanding that the files would be kept together and where papers were removed then there would be a flag to talk to a person or a note the material was elsewhere**.*
>
> [Emphasis added]

[58] To address some of the above noted concerns, in a recent update, CPS informed us of the ongoing work underway to streamline its access to information process as follows:

> *First, a Microsoft Excel spreadsheet was created as a master register that lists: the date the request was received; the applicant's name; the nature of the request; the date the request is logged; the area and person the request is assigned to for research; the expiry date of the application; the date the response is completed; the response decision as to whether the material was granted; partial release or denial; the legislation that is cited in the decision to release; the file duration; an estimate of costs should one be required; and finally a column for OIPC review notice and file number. This spreadsheet encompasses the entire lifecycle of the Department of Corrections and Public Safety.*
>
> …
>
> *Thirdly, this office has undertaken a programme to overhaul records management practices in the Correctional Centres and in the Community Correctional offices. The department is aware that the current retention schedules for inmate and community program files are not long enough. To combat this issue, we have implemented a moratorium on the destruction of all correctional facility, alternative measures, and probation records until 2015. It is the department's goal to have a new Operational Records System approved and the currently stored file conversion underway by that time. At this time we are actively encouraging all the centres to utilize the SPM Gemini Warehouse to securely deposit their material instead of storing files on-site which can lead to material being improperly secured, inadvertently misplaced, or subject to the elements.*
>
> *Your second point asks for the efforts that the department has taken to deal with the education of the staff to ensure that there is an understanding of the steps and procedures involved in the Access to Information process. This office has established an internal website that posts: "Access to Information Protocol and Procedures"; ATI Food for Thought"; "RCMP Procedures" and the Access to Information application form.*
>
> …
>
> *In your point five, you enquire about the letters dated April 7, 2004, and March 16, 2004 that were not included in any of the response packets. This office requested the entire facility file on the applicant be forwarded for review prior to authoring this letter and we did locate the correspondence in question. Copies of the exchange are included with this letter and the Department of Corrections and Public Safety authorizes the release to the applicant.*
>
> *I cannot give you a date as to when the letters were located and placed on the applicant's file; however I can tell you that* [employee name] *has returned to the centre in a full-time capacity as the Director's secretary…. She undertook an enormous task in sifting through and filing the backlog of paperwork, organizing the files and ensuring there was a process in place that was understood by the administrative staff and members of the front office.*

[59] We applaud CPS for its efforts in working to improve its processes. We are particularly impressed with the diligence and persistence of the current FOIP Coordinator who succeeded in locating responsive records more than nine months after CPS declared

"*there was nothing outstanding*". Due to the length of time CPS took to complete its search and then report back to the Applicant, though it eventually produced and provided to the Applicant missing records at issue, I find, nonetheless, that the department did not meet the duty to assist.

Second Applicant

a) Response Time

[60] On August 23, 2005, CPS informed the Applicant of the following:

> *I would like to apologize for the delay in responding to you. Staff at the correctional centre have advised* […], *Freedom of Information Co-ordinator that your request was faxed to central office for processing on July 5, 2005.* ***However, we did not receive your request until August 15, 2005. It would appear that the fax did not go through when sent on July 5, 2005, and a follow-up call was not made to ensure receipt of your request.***
>
> *I wish to inform you that the* ***response time of 30 days has been extended*** *another 30 days to* ***September 3, 2005****, pursuant to clause 12(1)(a)(i) of The Freedom of Information and Protection of Privacy Act, as your application necessitates a search through a large number of records.*
>
> [Emphasis added]

[61] It took CPS over one month to realize that it did not forward the request to the central office for processing resulting in the initial response being provided over 30 days after receipt of the Applicant's application. In its response letter, CPS informed the Applicant of its decision to extend the response deadline. CPS did not, however, respond in writing within the extension period. Rather, CPS took three additional months after the expiry of the time extension deadline to formally respond to the Applicant. I find that as the department did not provide timely responses to the Applicant, in this respect, it did not meet the duty to assist.

b) Search Efforts

[62] As stated earlier, in order to meet the duty to assist, a government institution must also demonstrate that it conducted an adequate search for responsive records.

[63] On December 7, 2005, CPS wrote the Applicant stating,

> *I have been advised that you have been speaking with* […], *Freedom of Information Coordinator, and* […], *Team Leader at the SPCC several times since the beginning of September, and have been provided verbal updates to the search efforts in locating these records.*
>
> *There have been several staff involved with search efforts to locate the records, and the total time spent in trying to locate the specific Unit and Institution sign-in logs has been in excess of 15 hours. I would like to assure you that every effort has been made to locate the records you are requesting. While searching for these records,* [Team Leader] *has advised us that log books before and after the dates you were requesting have been located, however, the log books within the dates you were requesting were not located.*
>
> *Given the above, it is with regret that I must inform you the requested information cannot be found. As these records cannot be found, I must give notice pursuant to clause 7(2)(e) of The Freedom of Information and Protection of Privacy Act that the records do not exist. However, we will keep this request open in the case the records you have requested are located, at some time.*

[64] In terms of what constitutes an adequate search, I considered a helpful resource on conducting and documenting searches for responsive records from British Columbia's Information and Privacy Commissioner's Office, *Tips for DMIPS and Freedom of Information and Privacy Coordinators: Conducting An Adequate Search Investigation under the Freedom of Information and Protection of Privacy Act.*[13] Step 3 of the document is titled, *Determining the Adequacy of the Search*. It offers the following guidance:

> *Ask yourself or staff:*
>
> - *Who conducted the search?*
> - *Which files or departments were searched?*
> - *Which ones weren't searched and why not?*
> - *How much time was spent searching for records?*
> - *Based on the applicant's concerns, are there any additional program areas that should be searched in order to ensure that every reasonable effort was made?*

[13] Available online: http://www.oipcbc.org/advice/Guidelines_for_Adequate_Search_Investigations.pdf

[65] In Order 01-47, the Information and Privacy Commissioner for British Columbia at [32] described the standard it imposes when considering a public body's search efforts as follows:

> *ICBC argues that it "acted fairly" in attempting to search for the records. Of course, the test here is not whether ICBC acted "fairly" in searching for records. As I said at p. 5 of Order 00-32, [2000] B.C.I.P.D. No. 35:*
>
> > *Given my findings in this case, it is worth repeating what I have said before – for example, in Order 00-15, Order 00-26 and Order 00-30 – about the standards imposed by s. 6(1) on a public body's search for records.* ***Although the Act does not impose a standard of perfection, a public body's efforts in searching for records must conform to what a fair and rational person would expect to be done or consider acceptable. The search must be thorough and comprehensive. In any inquiry such as this, the public body's evidence should candidly describe all the potential sources of records, identify those it searched and identify any sources that it did not check (with reasons for not doing so). It should also include how the searches were done and how much time its staff spent searching for the records***.[14]
>
> [Emphasis added]

[66] I adopt these considerations in assessing the adequacy of a search in Saskatchewan.

[67] In terms of the search efforts expended in this case, I find that CPS did meet the duty to assist. The search, however, should have been conducted within the original 30 day response deadline.

4. In the case of the first Applicant, did CPS properly invoke section 21 of *The Freedom of Information and Protection of Privacy Act* and section 38(1)(a) of *The Health Information Protection Act*?

[68] Sections 21 of FOIP and 38(1)(a) of HIPA enable a government institution/trustee to withhold information from an applicant if release could reasonably be anticipated to result in a particular harm (physical or mental health or safety) coming to an individual, either the applicant or someone else.

[14] BC OIPC Order 01-47 at 10. Available online at www.oipc.bc.ca/orders.

[69] CPS notified the Applicant that it withheld certain information for this reason as indicated in its letter dated July 5, 2005. The relevant portions of that letter are as follows:

> *By letter dated October 26, 2004,* [Access Officer] *responded to* [the Applicant] *(enclosed item #4). Some of the information was severed from the responsive materials pursuant to section 21 of the Act as it could threaten the mental or physical health or safety of an individual and pursuant to subsection 29(1) of the Act as it contained information about an identifiable individual other than* [the Applicant] *(as defined by subsection 24(1) of the Act). Further, some of the information* [the Applicant] *was requesting was deleted pursuant to clause 38(1)(a) of The Health Information Protection Act as it could endanger the mental or physical health or safety of the applicant or another person.*
>
> …
>
> *As I discussed with you, we have located additional responsive materials for* [the Applicant] *which were not included in our response to* [the Applicant] *of October 26, 2004.*
>
> …
>
> *Some of the information in this additional package has been severed pursuant to section 8 and 21 of The Freedom of Information and Protection of Privacy Act as it could threaten the safety or mental health of an individual. Further, some of this information has been severed pursuant to clause 38(1)(a) of The Health Information Protection Act as it could endanger the mental or physical health of an individual.*

a) Section 21 of FOIP

[70] The applicable provision of FOIP is as follows:

> ***21*** *A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual.*

[71] Most of the information withheld under this provision, section 21 of FOIP, includes names, signatures, and in some cases, phone numbers of Peace Officers with Correctional Services of Canada, National Parole Board members, and provincial government employees.

[72] In Investigation Report F-2007-001, I stipulated what must be demonstrated in order for section 21 of FOIP to apply as follows:

> *[106] Procedure 1.e. sets up a different test than* ***section 21 of FOIP****. The latter provides that "****A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual****".*

> *[107]* ***We have commented in the past that the threat to safety or health should be capable of a reasonable expectation of harm and that the harm must be causally connected with the possible access to the information***.[15]
>
> [Emphasis added]

[73] CPS has not offered any specifics as to what harm(s), if any, could reasonably be expected to come to any person if the Applicant was granted access to certain information presently withheld. Consequently, CPS has not met the burden of proof in this respect.

[74] I find that the exemption is not applicable in the circumstances.

b) Section 38(1)(a) of HIPA

[75] In a past Report, I determined that CPS is a trustee for purposes of HIPA[16].

[76] The only section of HIPA applied by CPS to any severed information is section 38(1)(a). It reads as follows:

> ***38****(1) Subject to subsection (2), a trustee may refuse to grant an applicant access to his or her personal health information if:*
>
> *(a) in the opinion of the trustee, knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the applicant or another person;*

[77] Before determining if section 38 of HIPA applies, I must first confirm that we are dealing with personal health information as defined by section 2(m) of HIPA.

[78] Section 2(m) of HIPA is reproduced as follows:

> ***2*** *In this Act:*
>
> …
>
> *(m)* ***"personal health information"*** *means, with respect to an individual, whether living or deceased:*
>
> *(i) information with respect to the physical or mental health of the individual;*
>
> *(ii) information with respect to any health service provided to the individual;*
>
> *(iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information*

[15] SK OIPC Investigation Report F-2007-001.
[16] SK OIPC Report F-2006-001 [117] "*CPS is a government institution that qualifies under section 2(t) of HIPA as a trustee*."

> *derived from the testing or examination of a body part or bodily substance of the individual;*
>
> *(iv) information that is collected:*
>
> *(A) in the course of providing health services to the individual; or*
>
> *(B) incidentally to the provision of health services to the individual; or*
>
> *(v) registration information;*

[79] In terms of what constitutes personal health information of the Applicant, I find this to include the following: physical or mental health information about the Applicant contained on Inmate Warrants Reports; information contained on Doctor's Notes; the Applicant's own references to medical problems in letters to various individuals; details (cautions) contained in admitting forms to the RPCC; information contained on Nurse's Notes sheets; and medication information listed on Regina Correctional Centre Medication Administration Charting Records.

[80] On certain records, such as contained in Nurse's Notes, the Doctor's name and signature are severed with section 38(1)(a) of HIPA cited for the reason. In addition to this information, on other Nurse's Notes sheets, CPS also severed some of the Applicant's personal health information [section 2(m)(i) information with respect to the physical or mental health of the individual (i.e. diagnosis) and (ii) information with respect to any health service provided to the individual (i.e. medications)] citing section 38(1)(a) of HIPA.

[81] Consideration of the provision requires a determination of whether there is a reasonable basis for concluding that disclosure could be expected to result in any specific harm contemplated, as stated in my Report H-2007-001 as follows:

> *[44] …Where there is a reasonable basis for believing that a person's health (physical or mental) or safety will be endangered by disclosing a record or portions therein to the requestor, the trustee of the record will have properly invoked the section.*[17]

[82] The department's submission lacks particularity. It does not specify what harms would come to whom if CPS released the severed information to the Applicant. After further discussing with CPS, CPS informed us that it

[17] SK OIPC Report H-2007-001.

> *consents to the release of the information that was erroneously severed under The Freedom of Information and Protection of Privacy Act section 21 and The Health Information Protection Act clause 38(1)(a) after section 29(2)*[18] *is properly applied to the information.*

[83] Accordingly, the information to which severance was applied is releasable except where section 29(1) of FOIP otherwise applies.

5. In the case of the first Applicant, did CPS properly invoke section 29(1) of FOIP?

[84] Section 29(1) of FOIP provides as follows:

> ***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.*

[85] Most of the record consists of the Applicant's personal information as defined by section 24(1) of FOIP (i.e. criminal history). Also contained within some of the documents, however, is information about other inmates involved in certain incidents with the Applicant. A number of records released to the Applicant have the name of other inmates masked (Log Detail Reports, March 29, 2004 email). This masked information constitutes the personal information of someone other than the Applicant. Therefore, as required by section 29(1), consent of the data subject is required before said information may be released. I find, therefore, that CPS appropriately withheld these data elements in the circumstances.

[86] With many of the records released to the Applicant, the only information severed was the name, signature and business phone number of provincial or federal government employees. CPS did not claim that this information constituted the personal information of those employees; rather, the section applied was 21 of FOIP. I have already determined above at [74] that section 21 does not apply.

[87] In my Report F-2005-001, I determined that the following does not constitute the personal information of employees under the Act:

[18] CPS later confirmed the reference to 29(2) of FOIP was in error: the proper provision is 29(1) of FOIP.

(a) Is the severed information (phone numbers, worker's names, employee numbers, and SIN) personal information as defined by section 24 of FOIP?

[12] The definition of "personal information" in the Act is expansive [section 24]. It includes personal information about an identifiable individual that is recorded in any form and includes:

> *"…(b) information that relates to the education or the criminal or* ***employment history of the individual****…; (d) any* ***identifying number, symbol or other particular assigned to the individual, other than the individual's health services number*** *as defined by The Health Information Protection Act; (e) the home or business address,* ***home or business telephone number*** *or fingerprints of the individual; 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."*

[13] Section 24 was considered by a previous Saskatchewan Commissioner in Report No. 2003/014. Page 10 of that Report reads, "…Pursuant to section 24(1)(k), ***the name by itself is not personal information****."*

…

[15] In the case of this review, the names of employees are severed from some of the responsive records, but only when linked with other data elements.

(b) The name of an individual employee may not constitute personal information on its own, but would it if linked to other data elements that constitute personal information under the Act?

[16] Labour argues that section 24(1)(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] applies to the severed items as described in paragraph [12]. Not all the severed data elements are linked directly to an individual worker's name.

…

[25] The final data element to consider is whether the severed phone numbers are personal information as defined under the Act.

[26] Labours [sic] *contention is as follows:*

> *"We also withheld by blocking out the direct phone number of an individual worker pursuant to section 29(1) and 24(1)(e) of FOIP."*

[27] Labour's application of this section is inconsistent since some phone numbers are left untouched and were released to the Applicant, yet two other phone numbers were severed and withheld.

…

> *[29]* ***We adopt the same conclusion that the names of employees of a government institution and their respective work phone numbers are not personal information under the Act***.[19]
>
> [Emphasis added]

[88] I find that the same applies in the present case. This changes, however, when there is linkage of an employee's name to other details of a more personal nature contained within a record. For example, in Ontario Order PO-1772, the Assistant Commissioner made the following determination with respect to this issue:

> *The undisclosed information in this appeal can be divided into two main categories:*
>
> *(a) the names of the Correctional Officers involved in the altercation with the appellant; and*
>
> *(b) details concerning the altercation.*
>
> *The Ministry and the appellant both submit that the records contain the appellants personal information. I concur.*
>
> *The Ministry also submits that the records contain the personal information of the Correctional Officers. In particular, the Ministry states:*
>
> > *…****information in records which describes the behaviour and actions of involved correctional staff should be viewed as the personal information of both the appellant and the involved staff in this case.*** *The appellant has commenced a civil suit which alleges that involved correctional staff at [the Centre] assaulted him while he was in custody.*
>
> *In support of its position, the Ministry relies on the findings of former Assistant Commissioner Irwin Glasberg in Order P-721, where he found that:*
>
> > *Previous orders have held that* ***information about an employee does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position. Where, however, the information involves an evaluation of the employee's performance or an investigation of his or her conduct, these references are considered to be the individual's personal information****.*
>
> *All of the records that remain at issue in this appeal were prepared by Correctional Officers during the course of discharging their professional responsibilities as employees of the Ministry.* ***Previous orders have determined that references to a government employee contained in records created in the normal course of discharging employment responsibilities is not "about" the individual employee, and does not qualify as the employee's "personal information"*** *under section 2(1) of the Act (see Orders 139, 194, P-157, P-257,*

[19] SK OIPC Report F-2005-001.

> *P-326, P-377, P-477, P-470, P-1538 and M-82 and Reconsideration Order R-980015). However, as the Ministry points out in its representations, where the information is associated with the employee's performance or conduct, other orders have determined that this information is "about" the individual employee, and qualifies as the employee's "personal information" (see Orders 165, 170, P-256, P-326, P-447, P-448, M-120, M-121 and M-122).*
>
> *Some of the records contain information which describes injuries suffered by individual Correctional Officers as a result of their altercation with the appellant. I find that this information is properly characterized as "about" the employees in a personal sense, and qualifies as their personal information for the purposes of section 2(1).*
>
> *Although the records at issue in this appeal were prepared by Correctional Officers during the normal course of discharging their employment responsibilities,* ***the appellant****, through his lawyer,* ***has made allegations of improper conduct on the part of these employees****, and has put the Ministry of the Attorney General on notice that he intends to take action against the Crown based on the alleged misconduct.* ***In my view, these actions by the appellant relate directly to the conduct of the Correctional Officers and, consistent with past orders, I find that the information is "about" these employees and qualifies as their "personal information" in the circumstances****.*
>
> *All of the pages 1, 7 and 9-16 have been disclosed to the appellant, with the exception of the name or signature of the Correctional Officer who prepared the report or took the photograph.* ***Although a name alone does not normally qualify as "personal information", in my view, when associated with other information relating to that individual, in this case the Correctional Officer's involvement in an altercation with the appellant that may become the subject of a civil law suit, the name, even when it is the only non-disclosed information, qualifies as "personal information"****.*[20]
>
> [Emphasis added]

[89] I adopt such an approach for purposes of this review.

[90] As indicated in a CPS memorandum dated April 7, 2004, the Applicant called into question the professional conduct of certain CPS employees during an incident involving the Applicant that occurred on March 11, 2004. The Applicant received copies of documents (Log Detail Reports) detailing that incident but the names of involved employees were withheld. In the circumstances, as professional conduct constitutes an employee's employment history as per section 24(1)(b) of FOIP, I find that it constitutes the personal information of those employees. Accordingly, without the consent of each

[20] ON IPC Order PO-1772 at 9-10.

employee in question as required by section 29(1) of FOIP, CPS must continue to withhold said information from the Applicant.

6. Did CPS properly invoke section 13(1)(a) of *The Freedom of Information and Protection of Privacy Act* to records withheld from the first Applicant?

[91] In the materials provided to us, CPS withheld 9 documents in full asserting that these were "*provided in confidence from Correctional Services Canada*."

[92] The provision at issue in FOIP is as follows:

> ***13****(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:*
>
> *(a) the Government of Canada or its agencies, Crown corporations or other institutions;*

[93] The records to which CPS applied section 13(1)(a) of FOIP include:

- A report about the Applicant pulled from RADAR Reintegration), 4 pages;
- A facsimile cover sheet on Correctional Services Canada letterhead with handwritten comments, 1 (Reports of Automated Data Applied to page; and
- Offender Admission Form, 4 pages.

[94] The RADAR report appears to be information that is not usually available to the public as it most likely is only accessible to those assigned access privileges. Also, along the footer of the report is the copyright symbol, Correctional Services Canada. CPS offered the following as to the origins of the report and right of use:

> *The material on file from Correctional Services Canada is not available to this department in any manner unless it is deemed to be required knowledge by Correctional Services Canada. We do not have access to the federal database, and we cannot and do not contact Correctional Services Canada to request material on persons detained in provincial correctional centres. … The material is the property of Correctional Services Canada and was provided in confidence to the centre to ensure an understanding of the subject so he could be placed in the appropriate level of custody. This material will not be released.*

[95] The facsimile cover sheet that transmitted the Offender Admission Form sent from Oskana Centre in Regina to the RPCC clearly states that what follows is privileged and confidential.

[96] Correctional Services Canada's website provides the following with respect to the nature of the Oskana Centre:

> *The Oskana Centre is owned and operated by CSC* (Correctional Service of Canada) *and provides accommodation, programming, supervision, and support to offenders who are returning to the community on conditional release.*[21]

[97] I incorporate by reference my analysis of section 13(1)(a) of FOIP in my Report F-2006-002.[22]

[98] I find that the first part of the test, what types of agencies are captured by section 13(1)(a), has been met as the federal *Access to Information Act's*[23] Schedule 1 lists Correctional Services Canada as a government institution.[24]

[99] As CPS has demonstrated that it obtained the information contained in the withheld 9 documents in confidence from Correctional Services Canada, I find that the exemption applies in the circumstance.

[100] I am grateful to the parties for their cooperation throughout this lengthy review process. I want to specifically acknowledge the thoroughness and professionalism of the department's current FOIP Coordinator.

V. RECOMMENDATIONS

First Applicant

[101] I recommend that CPS continue to deny access to the first Applicant to the severed information contained within the following: Log Detail Reports dated March 11, 2004, pages 1 and 2, 7:30-3:30; Log Detail Reports dated March 11, 2004, pages 1 and 2, 19:45; and Log Detail Report dated March 29, 2004, 13:03; and the March 29, 2004 email.

[21] Available online: http://www.csc-scc.gc.ca/text/releases/pra/04/05-14_e.shtml.
[22] SK OIPC Report F-2006-002.
[23] *Access to Information Act* (R.S., 1985, c. A-1), Schedule 1.
[24] Available online: http://www.infocom.gc.ca/acts/view_article-e.asp?intArticleId=93.

[102] I recommend release, to the first Applicant, of all information severed, save that referenced above at [101], withheld by CPS on the basis of section 21 of FOIP and section 38(1)(a) of HIPA.

[103] I recommend that CPS continue to withhold the 9 documents from the first Applicant to which section 13(1)(a) of FOIP is applied.

Second Applicant

[104] I recommend that CPS ensure that, in the course of upgrades to its information management system currently underway, specific attention is focused on reducing the risk that parts of an inmate's record can go missing without adequate explanation and that an access request can be too easily frustrated by the disappearance of those responsive records.

Dated at Regina, in the Province of Saskatchewan, this 29th day of February, 2008.

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