

**SASKATCHEWAN**  
**OFFICE OF THE**  
**INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT F-2014-002**

**Saskatchewan Crop Insurance Corporation**

**Summary:**

In March 2011, an Applicant submitted an access to information request to Saskatchewan Crop Insurance Corporation (SCIC) for records about the number of cultivated and seeded acres claimed by a third party. SCIC withheld all the records, citing sections 15(1)(b)(i), 15(1)(f) and 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review with the Office of the Saskatchewan Information and Privacy Commissioner (OIPC). In its submission to the OIPC, SCIC stated it was no longer relying on the exemptions it raised in its response to the Applicant, but that it would rely on section 29(1) of FOIP to withhold all of the information in question. Further, toward the end of the review, it raised sections 19(1)(e) and 19(1)(f) of FOIP to withhold the information in question. The Commissioner found that section 29(1) of FOIP was not applicable. Further, the Commissioner found that neither sections 19(1)(e) nor 19(1)(f) of FOIP applied. However, since the information appeared to be third party business information, the OIPC also considered the applicability of section 19(1)(b) of FOIP. The Commissioner found that section 19(1)(b) of FOIP did apply. Therefore, the Commissioner recommended that SCIC continue to withhold the information in question.

**Statutes Cited:**

*The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, ss. 2(1)(d), 2(1)(d)(ii), 2(1)(j), 15(1)(b)(i), 15(1)(f), 19(1)(b), 19(1)(e), 19(1)(f), 19(2), 24(1), 29(1), 53(2)(b); *The Freedom of Information and Protection of Privacy Regulations*, c. F-22.01 Reg. 1; *The Crop Insurance Regulations*, c. C-47.2 Reg 1, s. 6; *The Crop Insurance Act*, S.S. 1983-84, c. C-47.2; *The Saskatchewan Crop Insurance Corporation Act*, S.S. 2012, c. S-12.1, s. 2(m).

**Authorities Cited:** Saskatchewan OIPC Review Reports F-2013-003, F-2012-003, F-2012-001/LA-2012-001, F-2010-001, F-2005-003, LA-2013-002, LA-2013-001; Alberta IPC Order F2010-009, F2003-004.

**Other Sources**

**Cited:** Saskatchewan OIPC *Helpful Tips: OIPC Guidelines for Public Bodies/Trustees in Preparing for a Review.*

**I BACKGROUND**

[1] On March 9, 2011, Saskatchewan Crop Insurance Corporation (SCIC) received the following access to information request: “Cultivated and seeded acres (2001 to 2010 inc) claimed by tenant [name of tenant] on my land [legal land description].”

[2] In a letter dated April 1, 2011, SCIC responded to the Applicant by stating:

Access to the records you have requested is denied pursuant to Section 15(1)(b)(i), Section 15(1)(f) and Section 19(1)(b) of [The] Freedom of Information and Protection of Privacy Act (The Act). The information requested from SCIC is considered personal to a third party and cannot be released without written consent. For your information, I have included a copy of the above-noted Sections of the Act.

[3] On April 7, 2011, my office received a Request for Review from the Applicant.

[4] On or about May 6, 2011, my office notified both parties of its intention to undertake a review.

[5] On November 28, 2012, my office received SCIC’s submission dated November 23, 2012, Index of Records (Index) and a copy of the responsive records. In its submission, SCIC changed its position to withhold the information under sections 15(1)(b)(i), 15(1)(f) and section 19(1)(b) *The Freedom of Information and Protection of Privacy Act* (FOIP)<sup>1</sup>. It stated it was instead relying on section 29(1) of FOIP:

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<sup>1</sup>*The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01

In a letter dated April 1, 2011 to the applicant, the access to records were denied pursuant to Section 15(1)(b)(i), Section 15(1)(f) and Section 19(1)(b) of *The Freedom of Information and Protection of Privacy Act (FOIP)*. The information requested from Saskatchewan Crop Insurance Corporation (SCIC) is considered personal and cannot be released without written consent. **Therefore, Section 29(1) of FOIP is more applicable to this situation and the previous sections were quoted in err.**

[emphasis added]

[6] Above, SCIC raised a new exemption not originally cited in its section 7 response to the Applicant. My office's practice is not to consider new discretionary exemptions in a review unless a public body can demonstrate that raising the discretionary exemption will not prejudice the Applicant.

[7] However, my office will consider mandatory exemptions even if they were not raised at the time the public body responded to the applicant's request. In a similar situation, discussed in former Saskatchewan Information and Privacy Commissioner Gary Dickson, Q.C.'s Review Report F-2012-003, the government institution raised two additional exemptions, one being a mandatory exemption, in its submission. The former Commissioner stated the following:

[5] We received a submission from the Ministry dated January 9, 2008. In its submission, the Ministry claimed additional exemptions, 22(b) and 19(1)(b). My office wrote to the Ministry on January 14, 2008. We determined that, notwithstanding the Ministry failed to identify those two exemptions two years earlier when it responded to the original access request, those sections would be considered in this Review for the following reasons. Since section 22(a) and 22(c) were originally raised there would be no prejudice to the Applicant to include subsection 22(b). **Section 19(1)(b) is a mandatory exemption, which my office would normally consider during a Review even if it is not raised by the government institution in its original section 7 response to the Applicant.**<sup>2</sup>

[emphasis added]

[8] Even though SCIC did not cite section 29(1) of FOIP in its section 7 response, as noted earlier, I will consider it nonetheless as is a mandatory exemption. I will also consider

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<sup>2</sup>Saskatchewan Information and Privacy Commissioner (hereinafter SK OIPC) Review Report F-2012-003, available at: [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

the application of section 19(1)(b) of FOIP as, on a cursory review, it appears that it may apply.

[9] Since SCIC stated it is not relying on sections 15(1)(b)(i) and 15(1)(f) of FOIP, I will not consider these discretionary exemptions in this Review Report.

[10] After our office provided its preliminary analysis, findings and recommendations in an attempt to resolve issues in this review informally, SCIC raised two new mandatory exemptions, sections 19(1)(e) and 19(1)(f) of FOIP. I will consider whether these mandatory exemptions are applicable in the discussion below. The appropriate time for raising any exemptions, however, is in the original section 7 response to the Applicant.

## II RECORDS AT ISSUE

[11] SCIC's Index describes the records at issue as follows:

Saskatchewan Crop Insurance (SCIC) Index of Records – File 050/2011			
Page Number(s)	Description	Section (s)	Comments/ Explanations
Crop year 2000: 1 - 8 Crop year 2001: 9 - 14 Crop year 2002: 15 - 20 Crop year 2003: 21 - 26 Crop year 2004: 27 - 32 Amended Crop year 2004: 33 - 41 Crop year 2005: 42- 48 Crop year 2006: 49 - 64 Crop year 2007: 65 - 73 Crop year 2008: 74 - 82 Crop year 2009: 83 - 93 Crop year 2010: 94 - 105	Seeded Acreage Report and Storage Grain Update		Contains customer information of cultivate [sic] acres reported to SCIC
106	System generated copy of customer's additional demographics		Outlines who is the operator of the contract and who SCIC has the authority to release information to.

107	SCIC Policy No. 112.40.00 - Authorization for the Release of Information		SCIC's policy that outlines criteria for the authorization for the release of information.
108	Release of Information Form		Sample copy to be completed by the contract holder.

[12] The Applicant provided further clarification of what he was requesting in a letter received by our office on July 18, 2013. He stated:

The seeded acreage [name of tenant] had paid me for in some years was a lot less than the cultivated acreage whereas the moisture condition did not warrant the difference.

I am not interested to find out the insured dollar value or the payout value. **I am just interested to find out the seeded acreage claimed** so I can compare it to what I was paid for.

[emphasis added]

[13] Based on the wording of the Applicant's original access to information request and the letter quoted above, page 106 is non-responsive to the Applicant's request. Therefore, it is not at issue in this review.

[14] Pages 107 and 108 noted on the Index are also not at issue as SCIC consented to the disclosure of these records to the Applicant in the course of this review.<sup>3</sup>

[15] Pages 1 to 105 appear to be *Seeded Acreage Report and Stored Grain Update* forms (Seeded Acreage Reports) as described in SCIC's Index with the following exceptions:

Pages 40 is an *Adjuster Supplementary Report* dated January 25, 2005. The contents include a handwritten list of legal land descriptions. There appears to be no information on this page that indicates the seeded acres claimed. Therefore, this page is non-responsive.

Page 41 is another *Adjuster Supplementary Report* also dated January 25, 2005. The contents include the adjuster's handwritten notes about quarters that were not in the

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<sup>3</sup>Pursuant to Saskatchewan Crop Insurance Corporation (hereinafter SCIC) email dated June 17, 2013 to SK OIPC.

books but in the Seeded Acreage Report and vice versa. It also includes comments about how quarters would not be insured but that production from certain acres would be pro-rated. It also states that unreported acres would be added to the Seeded Acreage Report but not be insurable. This information appears to be responsive because it appears as though the Applicant is seeking the seeded acres that were reported to SCIC.

Page 57 is a *Fieldperson Supplementary Report* dated July 13, 2006. The content on this page appears responsive because it discusses changes in the number of cultivated acres on a particular piece of land.

[16] To summarize, the records responsive to this request are pages 1 to 39 and pages 41 to 105 as they appear to contain information pertaining to cultivated and seeded acreage.

### III ISSUES

1. **Did Saskatchewan Crop Insurance Corporation properly apply section 29(1) of *The Freedom of Information and Protection of Privacy Act*?**
2. **Did Saskatchewan Crop Insurance Corporation properly apply section 19(1)(b) of *The Freedom of Information and Protection of Privacy Act*?**
3. **Did Saskatchewan Crop Insurance Corporation properly apply section 19(1)(e) of *The Freedom of Information and Protection of Privacy Act*?**
4. **Did Saskatchewan Crop Insurance Corporation properly apply section 19(1)(f) of *The Freedom of Information and Protection of Privacy Act*?**

### IV DISCUSSION OF THE ISSUES

[17] Section 2(1)(d) of FOIP defines “government institution” 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; or

(ii) any prescribed board, commission, Crown corporation or other body, or any prescribed portion of a board, commission, Crown corporation or other body, whose members or directors are appointed, in whole or in part:

(A) by the Lieutenant Governor in Council;

(B) by a member of the Executive Council; or

(C) in the case of:

(I) a board, commission or other body, by a Crown corporation; or

(II) a Crown corporation, by another Crown corporation;

[18] SCIC is a Crown corporation as described in subsection 2(1)(d)(ii) of FOIP. Further, it is listed in Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*.<sup>4</sup> Therefore, it is a government institution for purposes of FOIP.

**1. Did Saskatchewan Crop Insurance Corporation properly apply section 29(1) of *The Freedom of Information and Protection of Privacy Act*?**

[19] In order for section 29(1) of FOIP to apply, the information in question must qualify as “personal information” of someone other than the Applicant pursuant to section 24(1) of FOIP. Therefore, I will consider this first.

[20] Section 29(1) of FOIP reads 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.

[21] Information can be considered as personal information if it is personal in nature about an identifiable individual.<sup>5</sup> In Review Report LA-2013-001, former Commissioner Dickson

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<sup>4</sup>*The Freedom of Information and Protection of Privacy Regulations*, c. F-22.01 Reg. 1.

considered the following Order by the Office of the Information and Privacy Commissioner (IPC) of Ontario as follows:

[57] In Ontario IPC Reconsideration Order MO-2026-R the following is helpful:

The meaning of “about” the individual

**Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual** [Orders P-1409, R-980015, PO-2225].

The meaning of “identifiable”

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

[emphasis added]

[22] SCIC did not offer any argument to support its application of section 29(1) of FOIP to withhold the records. On the face of the records, it appears that none of the requested information is personal information. The information appears to pertain to the land (i.e., cultivated and seeded acres) and does not contain any identifiable information that reveals something of a personal nature about any individual.

[23] The Alberta IPC Order F2010-009 states that information concerning farming is business information rather than personal information:

[para 18] **Here, the information that the Public Body possibly disclosed consists of information about the Complainant’s farming operation and its financial numbers; information about livestock, feed and equipment; information about CAIS claims and payments; information about a crop insurance contract, insurance options, insurance claims and dollar values received for them; information about management practices; and information about carry over grain, grain storage and yield verification. None of this information is about the Complainant in his personal or natural capacity. Rather, it is business information about the Complainant’s sole proprietorship, which farms and**

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<sup>5</sup>SK OIPC Review Report LA-2013-001 at [57]; SK OIPC Review Report F-2010-001 at [127] and [128]. Both available at: [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

**grows crops.** I see that the Complainant also refers in his submissions to a “Ltd.” company, so some of the foregoing information may also be about a corporation.

...

[para 20] In his request for an inquiry and his submissions, the Complainant says that the Public Body disclosed information about his “consulting contract and dollar values”, arguing that it has nothing to do with his business of growing crops. The Complainant writes that this contract was “with” the Public Body. The Public Body responds that it does not have a consulting contract with the Complainant and that it believes that he is referring to his crop insurance contract.

[para 21] Even if the Complainant is referring to a contract other than his crop insurance contract with the Public Body, I would still find that the information in relation to the contract is not the Complainant’s personal information. A “consulting” contract, and the “values” associated with it, is still business information, as it is about a business endeavor or enterprise. Moreover, it is business information even if the contract is not with the Public Body at all. **It is the nature of the information – not the Public Body’s relationship to it – that determines whether it is “personal information”. In other words, the contract in question can indeed have nothing to do with the Complainant’s business of growing crops, and therefore nothing to do with the Public Body, but it is still business information rather than personal information. The same holds for information about the “Ltd.” company, which the Complainant says is not involved in growing crops and does not have crop insurance with the Public Body. To the extent that any of the information alleged to have been disclosed by the Public Body relates to this company, as opposed to the Complainant’s farming operation or his crop growing, it is still business information.**<sup>6</sup>

[emphasis added]

[24] In keeping with the above, I find that the information in question is not personal information as defined by section 24(1) of FOIP. Therefore, section 29(1) of FOIP does not apply.

**2. Did Saskatchewan Crop Insurance Corporation properly apply section 19(1)(b) of *The Freedom of Information and Protection of Privacy Act*?**

[25] Since section 19(1)(b) of FOIP is a mandatory exemption that, at least on a cursory view, may apply, I will formally consider its application.

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<sup>6</sup>The Office of the Information and Privacy Commissioner of Alberta (hereinafter AB IPC) Order F2010-009, available at: [www.oipc.ab.ca/pages/OIP/Orders.aspx](http://www.oipc.ab.ca/pages/OIP/Orders.aspx). Accessed on July 31, 2013.

[26] In order for section 19(1)(b) of FOIP to apply, firstly I must determine if a third party is involved. In former Commissioner Dickson's Review Report F-2012-003, he stated the following:

[65] **Fundamental to any meaningful analysis of section 19 is to identify the third party in question and then to proceed to identify the interests of that identified third party.** Given the inability of the Ministry to isolate and identify the third party(ies) in this case, there is no foundation upon which we can proceed with a section 19 analysis. **Without a 'third party', section 19 of FOIP is simply not engaged.**

[emphasis added]

[27] Section 2(1)(j) of FOIP defines "third party" as follows:

**2(1) In this Act:**

...

(j) **"third party"** means a person, including an unincorporated entity, other than an applicant or a government institution.

[28] In a review of the material before me, it appears that the third party is the land operator.<sup>7</sup> As such, I find that the land operator qualifies as a third party for purposes of FOIP as he is neither the Applicant nor a government institution.

[29] Section 19(1)(b) of FOIP states as follows:

**19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:**

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

[30] Pursuant to my office's normal practice when a public body raises a third party exemption, such as section 19(1)(b) of FOIP, on or about May 6, 2011, my office requested that SCIC provide my office with the third party's contact information. We

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<sup>7</sup>The Applicant is the owner of the land and the third party (the land operators) was a tenant of the land.

requested this to give the third party the opportunity to make representations to my office pursuant to section 53(2)(b) of FOIP.<sup>8</sup>

[31] My office, however, was not provided the third party's contact information as requested. It is also not clear if SCIC sought consent from the third party to release the information pursuant to section 19(2) of FOIP.<sup>9</sup>

[32] As outlined in former Commissioner Dickson's Review Report LA-2013-002, in order for section 19(1)(b) of FOIP to apply, three criteria must be fulfilled:

[31] I have approached third party information under section 18(1)(b) of [*The Local Authority Freedom of Information and Protection of Privacy Act*] and section 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP) in a consistent manner. To determine if section 18(1)(b) of LA FOIP applies, analysis is required of three distinct questions:

1. Is the information in question financial, commercial, scientific, technical or labour relations information?
2. Was the information supplied by the third party to the public body?
3. Was the information supplied in confidence implicitly or explicitly?<sup>10</sup>

[33] All three parts of this test must be met for the record to qualify for exemption under section 19(1)(b) of FOIP. If the record fails to meet even one part of the three part test, the record would not qualify.

**a. Is the information financial, commercial, scientific, technical or labour relations information?**

[34] The first part of the three-part test is to determine if the information in the responsive record is financial, commercial, scientific, technical or labour relations information. As

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<sup>8</sup>For more information regarding the involvement of third parties in our office's review process, please see SK OIPC *Helpful Tips: OIPC Guidelines for Public Bodies/Trustees in Preparing for a Review* at p. 6, available at: [www.oipc.sk.ca/resources.htm](http://www.oipc.sk.ca/resources.htm).

<sup>9</sup>*Supra* note 1 at section 19(2) states: **19(2)** A head may give access to a record that contains information described in subsection (1) with the written consent of the third party to whom the information relates.

<sup>10</sup>SK OIPC Review Report LA-2013-002, available at: [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

noted earlier, SCIC indicated it was no longer relying on section 19(1)(b) of FOIP. Therefore, I must make this determination on the limited information before me.

[35] It appears, on the face of the record, that the information may constitute “financial” information. The responsive records detail the “cultivated and seeded acres” by the tenant. In Review Report F-2005-003, former Commissioner Dickson defined financial information as follows:

[23] Alberta’s *Annotated Freedom of Information and Protection of Privacy Act* defines “financial information” as follows: **“includes information regarding the monetary resources or financial capabilities of a third party and is not limited to information relating to financial transactions in which the third party is involved (Orders 96-018 [pp.3-4], 2001-008 [42], F2002-002 [35]. Examples of “financial” information include information regarding insurance, past performance, estimated advertising costs and expected or proposed commission (Order 98-006 [61]).**

[24] Financial information within the record includes the fees and expenses proposed by MNP as necessary in completing the project. Other financial information includes the dollar amounts customers pay for utility rates.

[25] A broader explanation of what constitutes “financial information” is offered in Ontario/IPC, Order MO-1246. It reads, in part as follows:

*“Financial information relates to money and its use or distribution and must contain or refer to specific data. Examples of “financial” information include cost accounting method, pricing practices, profit and loss data, overhead and operating costs (Orders P-47, P-87, P-113, P-228, P-295 and P-394).*

...  
...

[27] Some material, particularly the proposed analysis of calculations/methodology, may be considered technical information as it pertains to the analysis that MNP will be required to undertake as part of their responsibilities under this proposal. However, this only applies to specific sections of the record only.<sup>11</sup>

[emphasis added]

[36] Further, Alberta IPC issued Order F2003-004 which described financial information as follows:

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<sup>11</sup>SK OIPC Review Report F-2005-003, available at: [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

[para 41] **The Commissioner has said that “financial information” includes:**

- **information relating to the monetary resources of the third party, such as the third party’s financial capabilities, and assets or liabilities, past or present** (Order 96-018)
- information regarding financial transactions, insurance, past performance, estimated advertising costs and commission expected or proposed in respect of the sales involved (Order 98-006)
- pricing strategy, revenues, contracts for goods and services, expenses (operating, capital and other) (Order 98-015)
- particular forecasts, estimated value of certain operations, cash-flow before interest and principal payments, income statements, **assets and liabilities**, financial position, debt repayment and interest statements, assumptions regarding financial status of third parties, draft contracts, offers and make-up of funds, bank debts, loans and banking arrangements, assessment of worth, investments of third parties, sales contracts with third parties, details of cash-flow, balance sheets and financial position of third parties (Order 99-040)<sup>12</sup>

[emphasis added]

[37] Based on the above, “assets” can be considered financial information. Individuals or businesses seek insurance coverage to protect their assets.

[38] The responsive records detail the cultivated and seeded acres or the assets of the tenant (or land operators).

[39] Since the responsive records detail the assets of the tenant (or land operators), then the records contain “financial information”. The first part of the three-part test is met.

**b. Is the information supplied by the third party?**

[40] The second part of the test requires determining if the information was “supplied” by the third party to SCIC.

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<sup>12</sup>AB IPC Order F2003-004, available at [www.oipc.ab.ca/pages/OIP/Orders.aspx](http://www.oipc.ab.ca/pages/OIP/Orders.aspx). Accessed on July 12, 2013.

[41] In Review Report F-2005-003, former Commissioner Dickson stated the following:

[17] Of additional assistance is Ontario's Information and Privacy Commissioner's (Ontario/IPC) Final Order MO-1846-F. It provides:

*"The requirement that information be "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706].*

*Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].*

*The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 10(1). The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by the third party, even where the contract is preceded by little or no negotiation [Orders PO-2018, MO-1706]."*

...

[19] We agree with the consistent approach taken by the other Commissioners in interpreting "supplied to"...

[42] The information in question appears to be provided by the third party. This is supported by the fact that section 6 of *The Crop Insurance Regulations*<sup>13</sup> requires the filing of seeded acreage reports by "every applicant or insured".<sup>14</sup> Section 6 of *The Crop Insurance Regulations* states:

**6 Every applicant or insured, as the case may be, shall file with the corporation in the form prescribed by the corporation:**

(a) **on or before June 25 or a date set by the corporation in each year, a seeded acreage report** declaring:

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<sup>13</sup>*The Crop Insurance Regulations*, c. C-47.2 Reg. 1.

<sup>14</sup>The term "applicant" is only defined for various sections of *The Crop Insurance Regulations* but is not defined for section 6. Also, the terms "applicant" or "insured" is not defined in *The Crop Insurance Act*, S.S. 1983-84, c. C-47.2, which was repealed by *The Saskatchewan Crop Insurance Corporation Act*, S.S. 2012, c. S-12.1 effective July 10, 2012. *The Saskatchewan Crop Insurance Corporation Act* does not define either of the terms either but defines "insurable person" at section 2(m) as follows: **2** In this Act:... (m) **"insurable person"** means: (i) with respect to crop insurance, the operator of a farm, as defined in the regulations, who has an insurable interest in an insurable crop on that farm; (ii) with respect to agricultural product insurance, a person who has an insurable interest in an insurable agricultural product.

- (i) the insured crops seeded in which the applicant or insured has an interest;
- (ii) the total acres seeded to each insured crop in which the applicant or insured has an interest at the time of seeding, and the number of acres seeded on summerfallow, stubble or irrigated acres;
- (iii) total acres in summerfallow;
- (iv) an estimate of all production of insured crops in storage in the current year;
- (v) total acres seeded to crops that are not insured crops; and
- (vi) any other relevant information the corporation may require respecting the matters mentioned in subclauses (i) to (v);

[emphasis added]

- [43] Pages 1 to 39, 42 to 56, and 58 to 105 appear to contain information supplied by the third party to SCIC pursuant to section 6 of *The Crop Insurance Regulations*.
- [44] The responsive information recorded on the *Adjuster Supplementary Report* on page 41 appears to be amendments that were made and needed to be made to a Seeded Acreage Report. The information does not appear to be any different in nature from the information recorded on the actual Seeded Acreage Reports. Therefore, I find that this information to be supplied by the third party.
- [45] Finally, the responsive information recorded on the *Fieldperson Supplementary Report* on page 57 also appears to be amendments that were made to a Seeded Acreage Report. Again, the information does not appear to be any different in nature from the information recorded on the actual Seeded Acreage Reports. I find this information to also be supplied by the third party to SCIC.
- [46] Therefore, I find that the second part of the test is met.

c. Was the information supplied in confidence, implicitly or explicitly by the third party to SCIC?

[47] In Review Report LA-2013-002, former Commissioner Dickson stated the following:

[49] In my Review Report F-2012-001/LA-2012-001 I laid out the tests to determine if a document was obtained in confidence implicitly or explicitly:

[29] The tests I rely upon to determine if a document was obtained in confidence explicitly or implicitly are found in my Report F-2006-002 as follows:

[56] The *Annotated Alberta Freedom of Information and Protection of Privacy Act* (Alberta's Annotated FOIP Act) publication offers definitions of the above-noted terms as listed below:

Page 5-16-5, discusses "provided in confidence, implicitly or explicitly".

In the past, factors that have been cited to support a finding that information has been supplied to a public body by a third party in confidence include:

- a. the existence of an express condition of confidentiality in an agreement between a public body and the third party (Orders 97-013 [23-27], 2001-008 [54], 2001-019 [15]);
- b. the fact that the public body requested the information be supplied in a sealed envelope (Order 97-013 [23-27]);
- c. the third party's evidence that it considered the information to have been supplied in confidence (Order 97-013 [23-27]);

...

[57] Also, the same tool defines "implicitly" as meaning,

**that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. In such cases, all relevant facts and circumstances need to be examined to determine whether or not there is an understanding of confidentiality** including whether the information was:

- a. communicated to the public body on the basis that it was confidential and that it was to be kept confidential;

- b. treated consistently in a manner that indicates a concern for its protection from disclosure by the third party prior to being communicated to the public body;
- c. not otherwise disclosed or available from sources to which the public has access; or
- d. prepared for a purpose which would not entail disclosure.

...

[32] I first note Ontario Information and Privacy Commissioner (IPC) Order PO-2180 which addresses what is reasonable in terms of expectations of the supplier of the information.

With respect to whether the information was supplied “in confidence”, part 2 of the test requires a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the affected party expects that the information would be treated confidentially; this expectation must be reasonable, and must have an objective basis. The expectation of confidentiality can arise implicitly or explicitly [Order M-169].

...

[50] The Information Commissioner of Canada’s resource, *Investigator’s Guide to Interpreting the ATIA*, provides some guidance as follows:

...the Federal Court in *Cyanamid Canada v. Minister of National Health and Welfare* (February 21, 1992) No.T-1970-89, T-2235-89, T-868-90 (F.C.T.D.) confirmed by F.C.A. (October 23, 1992), A-456-91, A-457-91, A-458-91, A-296-92, A-297-92 held that it is not sufficient that the applicant consider the information to be confidential, it must also be kept confidential by both parties and must not have been otherwise disclosed or available from sources to which the public has access. **In other words, the parties must be able to say that, the information was confidential when it was supplied to the institution and has remained confidential from the date of supply to the government up to the time of the decision not to disclose.**

[emphasis added]

[48] Therefore, I need to consider arguments and/or evidence that the third party supplied the information in confidence, implicitly or explicitly to the SCIC.

[49] Page 108 noted on the Index, which is not a responsive record at issue due to its content and as SCIC consented to its disclosure to the Applicant, is an *Authorization for the Release of Information* form. This form reads as follows:

**THE UNDERSIGNED**, (in addition to any rights, obligations, consents or authorizations contained within the statutory contract of crop insurance attached as Appendix "A: to The Crop Insurance Regulations as amended from time to time), **by executing this Authorization hereby consents to and authorizes Saskatchewan Crop Insurance, its successors or assigns to:**

- Obtain, gather, update and collate any information respecting the agricultural operations of the undersigned and
  - **Release or disclose any information within its possession, power or control pertaining to Crop Insurance contract number listed above including, but not limited to, any and all information Crop Insurance may have with respect to the agriculture operations of the undersigned listed below.**
- This information is for my personal use and will remain in effect until expressly cancelled in writing by the undersigned. This information can be sent to the following fax number and email address:

Fax: \_\_\_\_\_ Email: \_\_\_\_\_

- Name of individual, organization or institution to which information may be disclosed and a fax number or email address the undersigned wishes information to be sent to.**

Name: \_\_\_\_\_

Fax: \_\_\_\_\_ Email: \_\_\_\_\_ <sup>15</sup>

[emphasis added]

[50] It appears that the third party, the land operator, filled out the above form at some point because page 106 (which is not at issue as described in the “Records at Issue” section of this analysis) lists the organizations to whom SCIC may release information. Page 106 does not list the Applicant as an individual to whom the former tenant/land operator had authorized the release of information. This was stated by SCIC in its submission dated November 23, 2012, which was quoted earlier: “...[the Applicant] is not named on the Contract of Insurance nor is he named as Power of Attorney on the Contract of Insurance as shown on page 106 of the records.”

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<sup>15</sup>This form is also available on SCIC’s website at: [www.saskcropinsurance.com/cropinsurance/forms](http://www.saskcropinsurance.com/cropinsurance/forms). Accessed on July 12, 2013.

[51] By *not* listing the Applicant as an individual to whom information may be released, the land operator is implicitly stating that the information was supplied in confidence.

[52] The *Authorization for the Release of Information* form supports that the third party supplied the information in confidence. If the third party had intended for the information to be disclosed to the Applicant, it would have had to fill out the *Authorization for the Release of Information* form authorizing SCIC to disclose its information to the Applicant.

[53] Further, as stated in SCIC's submission dated November 23, 2012, keeping the information in confidence, unless the customer has authorized the release of his/her information to a third party, is in keeping with SCIC's policy 112.40.00 as follows:

...Please refer to page 107 of the records - Saskatchewan Crop Insurance Corporation (SCIC) Policy No. 112.40.00 which states "Should a third party request a customer's information, that customer must sign the Authorization for the Release of Information form authorizing the release of their information..."

[54] The policy in full states the following:

INTENT:

**To ensure that only customers and recognized designates have access to Saskatchewan Crop Insurance Corporation (SCIC) contract information.**

POLICY:

**All contract information is confidential and cannot be disclosed to anyone other than the customer or the designated Power of Attorney.**

Should a third party request a customer's information, that customer must sign the Authorization for the Release of Information from authorizing the release of their information.

An Authorization for the Release of Information form is also required when a customer wishes to receive their personal contract information via fax or email.

[emphasis added]

[55] The above policy supports the contention that SCIC manages the information supplied to it by its customers on a confidential basis. In other words, it appears to me that the normal course of dealing for SCIC's program is to not disclose the information to any party unless the customer has consented to the disclosure.

[56] The above policy, coupled with the *Authorization for Release of Information* form, supports that there was a mutuality of understanding of confidentiality at the time that the third party supplied the information to SCIC.

[57] I find this to be sufficient evidence in the circumstance that the third party supplied the information implicitly in confidence.

[58] Therefore, the three-part test for the proper application of section 19(1)(b) of FOIP is met, and section 19(1)(b) of FOIP is applicable to the responsive information in question.

**3. Did Saskatchewan Crop Insurance Corporation properly apply section 19(1)(e) of *The Freedom of Information and Protection of Privacy Act*?**

[59] Although I have already found that section 19(1)(b) of FOIP applies, for completeness sake, I will consider the application of the other third party exemptions raised during the review process by SCIC.

[60] After my office had sent its preliminary analysis, findings and recommendations in an attempt to informally resolve the issues on this file, SCIC's legal counsel raised two new mandatory exemptions:

In addition it is respectfully submitted that the Commission failed to consider the provisions of sections 19(1)(e) and (f) of *The Freedom Of Information And Protection Of Privacy Act*.

SCIC is a prescribed crown pursuant to section 19(1)(e). Accordingly, information relating to financial assistance provided by SCIC to an Operator cannot be disclosed. Also, pursuant to 19(1)(f) information supplied by an Operator to support an application for financial assistance, which would include a seeded acreage report, can also not be disclosed.

**In applying sections 19(1)(e) and (f), it should be understood also that the seeded acreage information is not only used to administer and apply to the provision of crop insurance indemnities, but is also used by SCIC to determine other financial assistance to be provided to an Operator, including but not limited to Unseeded Acreage Feature, Unseeded Acreage Buy-up Option, Gopher Damage Feature, Winterkill Feature for Fall Crops (Winter Wheat and Fall Rye), Pre-harvest Claims, Post-harvest Claims, Forage Program (Tame Hay, Greenfeed, Weather-Based Programs (Forage Rainfall and Corn Heat Unit), and SCIC provides annual or historic seeded acreage information for AgriStability.**

[emphasis added]

[61] Section 19(1)(e) of FOIP reads as follows:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(e) **a statement of financial assistance** provided to a third party by a prescribed Crown corporation that is a government institution; or

[emphasis added]

[62] In Review Report F-2013-003, former Commissioner Dickson stated the following:

[56] Finally, I must consider if each of these records would constitute “a statement of financial assistance”. I have not previously considered this term before. As such, I look to my colleague in the Northwest Territories’ Review Recommendation 05-049 which stated:

So the question then becomes, what is a “statement of financial assistance”? Section 24(1)(f) appears to be fairly unique in Canada. In fact, it appears that only Saskatchewan and Nunavut have similar provisions. Neither of these jurisdictions appears yet to have been asked to consider what, exactly, the provision means. We are therefore left with the “ordinary meaning” test. **The term “statement” has a number of meanings but, in connection with finances, the term usually means a document showing credits and debits. If one accepts that as the intended meaning in this provision, it seems to me that a statement which says “ABC Company received \$15,000.00 from BCC” would constitute a “statement of financial assistance” given to ABC Company.** Whether or not other jurisdictions would routinely disclose this information is irrelevant. Our Act, rightly or wrongly, prohibits the disclosure of this kind of information and we are bound by that.

That having been said, and keeping in mind always that exceptions to disclosure must be narrowly interpreted, I do not believe that section 24(1)(f) prohibits the public body from disclosing a list of the names of businesses which received loans. In my opinion, the mere fact that a company received a loan from BCC is not a “statement of financial assistance” in that it does not indicate credits and debits or any other details. A statement that financial assistance has been given to a particular company is not the same as a “statement of financial assistance given” to a company. There is nothing in the Act which, in my opinion, prohibits the public body from disclosing which companies have received financial assistance from BCC, provided that the details of that financial assistance are not disclosed.<sup>16</sup>

[emphasis added]

[63] No portion of the Seeded Acreage Reports appears to be a “statement of financial assistance”. Therefore, section 19(1)(e) of FOIP does not apply.

[64] Furthermore, the Applicant requested the number of cultivated and seeded acres that were claimed by the third party. To my understanding, the Applicant did not request any sort of statement of financial assistance.

**4. Did Saskatchewan Crop Insurance Corporation properly apply section 19(1)(f) of *The Freedom of Information and Protection of Privacy Act*?**

[65] Section 19(1)(f) of FOIP reads as follows:

**19(1)** Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(f) information supplied by a third party to support an application for financial assistance mentioned in clause (e).

[66] SCIC argued that seeded acreage information is not only used for the purposes of crop insurance, but also for the following:

In applying sections 19(1)(e) and (f), it should be understood also that the seeded acreage information is not only used to administer and apply to the provision of crop

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<sup>16</sup>SK OIPC Review Report F-2013-003, available at: [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

insurance indemnities, **but is also used by SCIC to determine other financial assistance to be provided to an Operator, including but not limited to Unseeded Acreage Feature, Unseeded Acreage Buy-up Option, Gopher Damage Feature, Winterkill Feature for Fall Crops (Winter Wheat and Fall Rye), Pre-harvest Claims, Post-harvest Claims, Forage Program (Tame Hay, Greenfeed, Weather-Based Programs (Forage Rainfall and Corn Heat Unit), and SCIC provides annual or historic seeded acreage information for AgriStability.**

[emphasis added]

[67] SCIC argued in general how the Seeded Acreage Reports may be used, but does not speak to this particular situation in hand. It appears that SCIC is broadly interpreting section 19(1)(f) of FOIP. At no point in the course of my office's review did SCIC offer any evidence that the third party supplied such information for the purposes of financial assistance. Former Commissioner Dickson stated that exemptions must be interpreted narrowly in his Review Report F-2012-001/LA-2012-001:

[81] It is my position that local authorities and government institutions have a duty to assist all applicants and interpret access requests broadly, **quite different from the application of an exemption which needs to be interpreted narrowly.** Our office has also explained this position in the *Helpful Tips* document.

FOIP and LA FOIP do not stipulate a duty to assist applicants. The OIPC however takes the position that there is an implied duty on the part of public bodies to take reasonable steps to ensure that they respond to access requests openly, accurately and completely. The duty to assist is explicit in HIPA.

While applicants have a responsibility to "*specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject matter to identify the record,*" many applicants do not have detailed knowledge about the types of records a public body/trustee maintains. In our view this kind of implied duty to assist is essential to meet the purpose of FOIP and LA FOIP. This is the standard that is clearly stated in HIPA.

It may be useful for a FOIP/HIPA Coordinator to contact an applicant directly to determine (a) if what the applicant is looking for is clear; (b) if the request can be accommodated informally outside of the FOIP, LA FOIP or HIPA; and (c) if the request can be clarified in the interests of focusing on certain key records and avoiding unnecessary costs to the applicant.<sup>17</sup>

[emphasis added]

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<sup>17</sup>SK OIPC Review Report F-2012-001/LA-2012-001 at [81], available at: [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

[68] Due to the lack of persuasive argument and the lack of evidence offered to my office by SCIC to substantiate its claim that the third party supplied the Seeded Acreage Reports for the purposes of financial assistance, I find that section 19(1)(f) of FOIP is not applicable.

## **V FINDINGS**

[69] I find that section 29(1) of *The Freedom of Information and Protection of Privacy Act* is not applicable to the responsive records.

[70] I find that section 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* applies to the responsive information in question contained on pages 1 to 39 and pages 41 to 105 of the responsive records.

[71] I find that section 19(1)(e) of *The Freedom of Information and Protection of Privacy Act* is not applicable to the responsive records.

[72] I find that section 19(1)(f) of *The Freedom of Information and Protection of Privacy Act* is not applicable to the responsive records.

## **VI RECOMMENDATIONS**

[73] I recommend that the Saskatchewan Crop Insurance Corporation continue to withhold the responsive records from release.

Dated at Regina, in the Province of Saskatchewan, this 25th day of March 2014.

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DIANE ALDRIDGE  
Acting Saskatchewan Information and  
Privacy Commissioner