



REVIEW REPORT 004-2022

Saskatchewan Power Corporation

September 13, 2022

Summary:

The Saskatchewan Power Corporation (SaskPower) received an access to information request from the Applicant under *The Freedom of Information and Protection of Privacy Act* (FOIP). SaskPower granted access to some records in full and in part claiming that the withheld information was exempt pursuant to sections 17(1)(a), (b)(i), (d), (g), 18(1)(b) and 29(1) of FOIP. The Applicant requested a review by the Commissioner of the application of the exemptions, search for records and the timeliness of the response pursuant to section 7 of FOIP. The Commissioner found that SaskPower properly applied the exemptions to portions of the records. The Commissioner also found that SaskPower's response to the access to information request was not sent within the legislative timelines, the search for records was reasonable and that SaskPower improperly withheld some information as non-responsive. The Commissioner recommended that SaskPower continue to withhold certain portions of the records, release the remaining portions and consider releasing the non-responsive information subject to exemptions.

I BACKGROUND

[1] On November 18, 2021, the Saskatchewan Power Corporation (SaskPower) received an access to information request from the Applicant under *The Freedom of Information and Protection of Privacy Act* (FOIP). The access to information request stated:

Property is SE 29 22 30 W 1st. The request is for all information concerning this High voltage electric line including:

- Any and all discussion concerning this line with [named individual] or the contractor who dug up the line.

- All costs and to whom to reroute this line to and far beyond the known out of compliance area.
- Any and all correspondences with the Minister who oversees SaskPower about the issue with magnetic fields

For clarity all information concerning the de-energizing and re-energizing this high voltage line and any and all information of compliance from where the contractor removed the dirt, plus information on when I signed the removal and placement of the line, and the map that I believed and signed with the information. I need all the information, correspondences with all involved on why the new line continued another one hundred and sixty meters, give or take a few meters, from last access request in 2018 to date.

- [2] On December 20, 2021, SaskPower responded to the Applicant releasing responsive records (referred to throughout as Group 1) and withholding portions pursuant to sections 17(1)(a), (b)(i), 18(1)(b) and 29(1) of FOIP. SaskPower advised the Applicant by email that more responsive records may or may not exist and that this would be confirmed when employees responsible for the records returned to the office in January 2022. SaskPower waived the fees for the access request. It did not issue a time extension pursuant to section 12 of FOIP.
- [3] On January 10, 2022, the Applicant asked my office to review SaskPower's decision to withhold information in the records and to extend the time for its response.
- [4] On February 15, 2022, SaskPower released more responsive records and withheld portions (referred to throughout as Group 2).
- [5] On March 4, 2022, my office sent a notification to SaskPower and the Applicant inviting them to provide a submission on the issues in the review.
- [6] Later that same day and at the request of my office, SaskPower sent another letter to the Applicant confirming that records were released on February 15, 2022. It stated that in addition to the exemptions claimed previously, it claimed sections 17(1)(d) and (g) of FOIP applied to some of those records.

[7] On March 14, 2022, my office sent a revised notification to SaskPower and the Applicant setting out my intention to undertake a review and inviting both parties to provide a submission. The notification advised the parties that the review would consider the application of sections 17(1)(a), (b)(i), (d), (g), 18(1)(b)(i), (ii) and 29(1) of FOIP, whether SaskPower conducted an adequate search for records and whether SaskPower had met its legislated timelines pursuant to section 7 of FOIP.

[8] SaskPower provided its Index of Records to my office on April 13, 2022, and following discussions with my office, it provided a Revised Index of Records on May 24, 2022.

[9] SaskPower provided a submission to my office on May 24, 2022. It subsequently provided another submission on its claim that records or portions of them were non-responsive. The Applicant did not provide a submission.

II RECORDS AT ISSUE

[10] SaskPower identified 230 pages of responsive records. It released 134 pages in full, 90 pages in part and withheld 6 pages in full. Appendix A is a table describing the records, the exemptions claimed, SaskPower's decision and my findings. Where there was a discrepancy between the submission, the Revised Index of Records and the redacted records, I relied on the redacted records.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

[11] SaskPower is a "government institution" pursuant to section 2(1)(d)(ii) of FOIP and section 3 and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I have jurisdiction to conduct this review.

2. Did SaskPower respond to the Applicant's access to information request within the legislated timelines?

[12] Section 7(2) of FOIP requires a government institution to respond to an applicant within 30 calendar days of receiving an access to information request. Section 7(2) of FOIP states, in part:

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

[13] In calculating the due date for a response required by section 7(2) of FOIP, the rules set out in *The Legislation Act* section 2-28 relating to the computation of time apply. These rules state:

- The first day the access request is received is excluded in the calculation of time [s. 2-28(3)].
- If the due date falls on a holiday, the time is extended to the next day that is not a holiday [s. 2-28(5)].
- If the due date falls on a weekend, the time is extended to the next day the office is open [s. 2-28(6)].
- As FOIP expresses the time in a number of days, this is interpreted as 30 calendar days, not business days.

(*Guide to FOIP*, Chapter 3, "Access to Records", updated June 29, 2021 [*Guide to FOIP*, Ch. 3], p. 28)

[14] SaskPower responded to the Applicant's access to information request, received on November 18, 2021, on December 20, 2021. SaskPower also advised the Applicant that it believed that additional responsive records may or may not exist and that the additional records would be reviewed against what was already provided when staff returned to the office in January 2022. However, applying the rules set out in section 2-28 of *The Legislation Act*, the due date for its response was December 20, 2021.

- [15] SaskPower considered the process that it decided to follow after release of its section 7 of FOIP letter to be informal and stated that the Applicant did not express any concerns about its decision to conduct the outstanding searches after the legislated timeline for its response. On February 16, 2022, SaskPower wrote to the Applicant disclosing additional records and stating that the access to information request was considered closed.
- [16] As noted above, on March 7, 2022 and at the request of my office, SaskPower provided a response to the Applicant pursuant to section 7 of FOIP addressing the additional responsive records.
- [17] SaskPower's submission does not address the timeliness of its response. The initial response to the Applicant's access to information request was sent by SaskPower within the 30-day timeline set out in section 7 of FOIP. However, the response was incomplete because it did not address the records held by staff who were absent at that time.
- [18] SaskPower released the Group 2 records to the Applicant on February 16, 2022, and provided its section 7 response to the Applicant on March 7, 2022; these were provided well beyond the legislated timeline to respond. As SaskPower has not provided any information or evidence to justify its late response, I find that SaskPower did not properly respond to the Applicant's access to information request in that a complete response was not sent within the legislated timelines.
- [19] I recommend that SaskPower review its policies or procedures for access to information requests to ensure it complies with its legal obligations under FOIP to process requests within the legislated timeline. I appreciate the desire for SaskPower to process access to information requests made under FOIP informally but there is no mechanism within FOIP for public bodies to do so and a requester can insist on compliance with FOIP. In this case, SaskPower should have completed its searches of all record holdings, including those of staff who were absent from the office during the holiday period, within the time required by FOIP.

3. Did SaskPower conduct a reasonable search for records?

[20] Section 5 of FOIP provides an applicant with a right of access to records in the possession or control of a government institution. Section 5.1(1) of FOIP requires a government institution to respond to an applicant's access to information request openly, accurately and completely. This means that institutions should make reasonable efforts to identify and seek out records responsive to an applicant's access to information request (*Guide to FOIP*, Ch. 3, p. 7).

[21] Sections 5 and 5.1(1) of FOIP provide:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

5.1(1) Subject to this Act and the regulations, a government institution shall respond to a written request for access openly, accurately and completely.

[22] The threshold for an adequate search is one of "reasonableness." In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.

[23] A reasonable search is one in which an employee, experienced in the subject matter of the records, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances (*Guide to FOIP*, Ch. 3, p. 7).

[24] When an applicant requests a review of the institution's search efforts, the institution should provide my office with detailed information about its efforts to conduct a search. The following are examples of the type of information that can be provided to my office:

- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.

- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by:
 - Alphabet
 - Year
 - Function
 - Subject
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see my office's resource, *Using Affidavits in a Review with the IPC*, available on my office's website.

(*Guide to FOIP*, Ch. 3, pp. 9 - 10)

[25] SaskPower provided my office with detailed information about the search it carried out for responsive records. It included an overview of the search strategy it uses in relation to all searches, specific details on the names and positions of staff responsible for search within each of its business units, names and positions of staff who conducted the searches, the dates of the searches, time spent searching, excerpts from the emails describing the searches and results of the searches.

- [26] With respect to the specific areas that were searched, SaskPower stated that it searched emails (received, sent and deleted), chat messages and the primary system used to document the work carried out on the Applicant's property, which is referred to as the Systems Analysis Program (SAP). It also searched the Contact Centre system which is where information relating to the Applicant's conversations with the Customer Service Representative department are stored. It did not search for physical records because the business process is electronic, and all physical records were searched and provided to the Applicant in response to a previous access to information request.
- [27] SaskPower asserted that following the release of the records, the Applicant emailed its office and advised, "I never received any information about the construction outlined in blue [in the attached photo]. Are you waiting for more information on this matter?" SaskPower stated that it advised the Applicant that no work was done in the identified area and therefore no records would exist.
- [28] I note that the Applicant continues to seek access to this information. In numerous past reports (e.g., my office's [Review Report 057-2021](#) concerning the Ministry of Immigration and Career Training), I have stated that FOIP does not require a government institution to prove with absolute certainty that records do not exist, but it must demonstrate that it has conducted a reasonable search. Based on the explanation provided by SaskPower, I am satisfied it has provided a reasonable explanation for why no records exist in relation to this work.
- [29] Considering the detailed information provided to my office about the business units, the staff who conducted searches, the dates when the searches were conducted, the repositories or record holdings that were searched and the time spent searching, I find that SaskPower's search for records was reasonable. I recommend it take no further action with respect to search.

4. Is there information in the records that is not responsive to the access to information request?

[30] SaskPower claimed that the following pages contained non-responsive information:

- Group 1: pages 17, 18 (and its duplicate 36), 42, 48, 52 (in part), 69, 88 (in part), 92 (in part), 105, 128, 144 (and its duplicate 148), 147, 159 (and its duplicate 161), 182 (in part), and 183 (in part)
- Group 2: pages 19 (in part), 21, 23 (in part), 26, 32 (in part), and 33

[31] When a government institution receives an access to information request, it must determine what information is responsive to the request.

[32] “Responsive” means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant’s request will be considered “not-responsive.” An applicant’s access to information request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive (*Guide to FOIP*, Ch. 3, p. 12).

[33] A public body can sever information from responsive records as non-responsive only if the applicant has requested specific information, such as his or her own personal information. The public body may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access request (*Guide to FOIP*, Ch. 3, p. 13).

[34] The purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If an institution has any doubts about its interpretation, it has a duty to assist the applicant by clarifying or reformulating the request (*Guide to FOIP*, Ch. 3, p. 13).

[35] Before I consider SaskPower’s claim that some information in the records was not responsive to the request, I note that the non-responsive information was not identified in

the letter sent pursuant to section 7 of FOIP. It was not until the Applicant received the Revised Index of Records from my office, that they understood some information was withheld as non-responsive.

- [36] Like my findings in my office's [Review Report 023-2017, 078-2017](#), best practice is to indicate when information is being withheld as non-responsive in the response sent pursuant to section 7 of FOIP and to give the reasons why. I recommend that SaskPower review and revise its policies and procedures to require its access to information responses to clearly indicate when information is being withheld as non-responsive and why.
- [37] Turning to the claim of non-responsiveness, the Applicant's access to information request was specific in that they sought access to information about a high voltage electrical line on an identified property including: discussions concerning the line, costs, removal, replacement of the line; location of the rerouted line; correspondence with the Minister regarding magnetic fields and information about de-energizing and re-energizing the line. They also sought access to all information/correspondences with all involved on why the new line continued to a specific location.
- [38] In its submission, SaskPower asserted that most of the information that was marked as non-responsive was "internal/external employee responses, opinions, system flags" in relation to the Applicant's relationship with its customer services department. Some are internal conversations among employees that have no bearing or relation to the request. It adds that the information is not associated with any information concerning high voltage lines, contractor discussions about the line, compliance and correspondence in relation to project work done on the Applicant's land by SaskPower.
- [39] The Applicant sought access to a broad range of information about the high voltage line on their property. The information that was withheld as non-responsive to the request is about internal processes and administrative matters unrelated to the Applicant's property or the voltage line on the property. It includes information about the customer service relationship between SaskPower and the Applicant, personal information about employees of SaskPower and how SaskPower internal systems were used.

[40] On its face, with some exceptions identified below, I find that the information withheld as non-responsive is sufficiently separate, distinct and unrelated to the request and is therefore, non-responsive.

[41] I am not persuaded that the severance made on Group 1, page 92 which explains the reason why specific work was being carried out, is non-responsive. As the reason or rationale for this work related to the high voltage hydro line, it appears responsive to the request. The severance made on Group 2, page 23, is a note about a conflict with SaskTel telephone lines. It also appears relevant to the decision about where to locate the new high voltage hydro line and therefore would be responsive to the request. Therefore, I find that the information withheld from Group 1, page 92 and Group 2, page 23 is responsive to the request and should be released, subject to any exemptions that may be found to apply. My detailed findings are set out in Appendix A to this Report.

[42] As noted in my office's [Review Report 132-2020](#), even if portions of a record are "clearly separate and distinct and entirely unrelated to the access request," I encourage government institutions to release the non-responsive portions subject to any exemptions that may be found to apply. Such an approach is consistent with advice provided in my blog, [What About the Non-Responsive Records?](#) I recommend that SaskPower consider releasing the portions of the records that I have found to be non-responsive, subject to any exemptions that may apply.

5. Did SaskPower properly apply section 29(1) of FOIP to the records?

[43] SaskPower withheld portions of the following pages claiming that they were exempt pursuant to section 29(1) of FOIP:

- Group 1: pages 20, 21, 40, 49, 130, 131 and 184
- Group 2: pages 5, 7, 19, 20, 23, 24, 25, and 32

[44] Section 29(1) of FOIP is a mandatory exemption that protects the privacy of individuals whose personal information may be contained in records that are responsive to a request

made by someone else. Section 29(1) of FOIP requires a government institution to have the consent of the individual whose personal information is in the record prior to disclosing it (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated: April 30, 2021 [*Guide to FOIP*, Ch. 4], p. 281).

[45] Section 29(1) of FOIP provides:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[46] In order for section 29(1) of FOIP to apply, the withheld information must qualify as third party “personal information.”

[47] Section 24(1) of FOIP defines “personal information” and provides some examples of the types of information that can be considered personal information. The list of examples of personal information is not exhaustive. To qualify as personal information, the information must, 1) be about an identifiable individual, and 2) be personal in nature. Sections 24(1)(b), (d) and (e) of FOIP are relevant in this review. Those sections provide:

24(1) Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

...

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

...

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

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

[48] In its submission, SaskPower asserted that it applied section 29(1) of FOIP to contact and personal information of employees and personal information of “non-applicant associated accounts.” It also asserted:

SaskPower submits that Non-SaskPower employees contact information is sensitive as the Applicant has a history of contacting parties on a consistent and regular basis, outside of normal working hours and for reasons outside of the services SaskPower is able to provide (i.e., ...). As well, third party employees have the right to be protected under [FOIP] as they are not Government employees.

[49] The information withheld from Group 1, page 49 (severance 27) is the SaskPower call for service record for another customer. It includes the individual’s name, home address and information about calls for service at the individual’s home. This qualifies as personal information as that term is defined in sections 24(1)(b) and (e) of FOIP. Therefore, I find that SaskPower properly applied section 29(1) of FOIP to Group 1, page 49 (severance 27). I recommend that SaskPower continue to withhold this information.

[50] The information withheld from Group 2, page 32 (severance 154) is the employee number of a SaskPower employee. SaskPower did not identify the provision in section 24(1) of FOIP that applies. I note that while the employee number is an identifying number as referred to in section 24(1)(d) of FOIP, it was used in their work product and identifies them in their professional or work capacity. It is not personal in nature and does not reveal anything personal about them. I also note the employee number was used in a document that was provided to a third-party contractor. Similar circumstances and information were involved in my office’s [Review Report 131-2019](#), where I found that a police officer’s badge number that appeared on a report generated in the course of their employment did not qualify as their personal information.

[51] The circumstances before me can be distinguished from those in my office’s Review Reports [127-2020](#) and [128-2020](#) which also involved SaskPower and employee numbers withheld pursuant to section 29(1) of FOIP. In those reports, the employee numbers were found in emails about staff absences, attendance records, communications about work performance and other management issues – a personal context. In those circumstances, I found that the employee numbers qualified as personal information pursuant to section

24(1)(d) of FOIP and should be withheld pursuant to section 29(1) of FOIP. Given the different context in which the employee number was used, the findings in Review Reports 127-2020 and 128-2020 do not apply here.

[52] Other information severed is the names, telephone numbers, email addresses or other contact information for employees of the Government of Saskatchewan, the Office of the Premier of Saskatchewan, private businesses and a Saskatchewan Rural Municipality. In one case (Group 2, page 24), the telephone number for the SaskPower Outage Centre and the name and contact details for a third-party contractor were withheld. I have repeatedly found in previous reports of my office that this type of information is not personal information because it is not personal in nature, and it is found in records prepared in a work or business context. Therefore, it is not associated with the individual in their personal capacity. This is the type of information that would normally appear on a business card. See for example, my office's [Review Report 301-2019](#) and [Review Report 186-2019](#).

[53] Signatures for some of the individuals referred to above were also withheld pursuant to section 29(1) of FOIP. In previous reports of my office, I have found that signatures of employees that appear in their work product or records generated in a work context, do not qualify as personal information. See for example my office's [Review Report 301-2019](#) and [Review Report 149-2019, 191-2019](#).

[54] With the exception of the information described in paragraph [49] above, I find SaskPower did not properly apply section 29(1) of FOIP in all other cases, because the information withheld does not qualify as personal information as defined by section 24(1) of FOIP. I recommend that SaskPower release this information. My detailed findings and recommendations are set out in Appendix A to this Report.

6. Did SaskPower properly apply section 17(1)(a) of FOIP to the records?

[55] SaskPower withheld information pursuant to section 17(1)(a) of FOIP from the following pages:

- Group 1: pages 5 (and its duplicate on pages 10 and 16), 13 (and its duplicate on page 37), 18 (and its duplicate on page 36), 34, 35, 38, 39, 44 (and its duplicate on page 45), 47, 48, 50, 51, 52, 68, 70, 78, 79, 80, 87, 88, 92, 94, 95, 96, 97, 98, 101, 103, 145 (and its duplicate on page 149), 151, 153, 155 (and its duplicate on page 158), 157, 163, 164, 166 (and its duplicate on page 174), 167 (and its duplicate on page 175), 168 (and its duplicate on page 176), 169 (and its duplicate on page 177), 170, 172, 173, 182, 183, and 184
- Group 2: pages 10, 13, 25, and 29

[56] Section 17(1)(a) of FOIP is a discretionary exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council. It provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[57] My office uses the following two-part test to determine if section 17(1)(a) of FOIP applies:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?

(*Guide to FOIP*, Ch. 4, pp.124 to 126)

[58] SaskPower asserted that the information withheld pursuant to section 17(1)(a) of FOIP qualifies as advice, recommendations, proposals and analyses. My office's *Guide to FOIP* sets out the following definitions of those terms:

“Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The

“pros and cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an option that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a government institution must make a decision for future action.

...

A “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.

A “proposal” is something offered for consideration or acceptance.⁴

“Analyses” (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its consistent elements.

(*Guide to FOIP*, Ch. 4, pp. 124-125)

[59] “Developed by or for” means the advice, proposals, recommendations, and/or analyses must have been created either: 1) within the government institution, or 2) outside the government institution, but for the government institution and at its request. An example of this would be by a service provider or stakeholder (*Guide to FOIP*, Ch. 4, p. 126).

[60] In other words, to be developed by or for the government institution, the advice, proposals, recommendations, analyses and/or policy options should:

- i) be either sought, be expected, or be part of the responsibility of the person who prepared the record
- ii) be prepared for the purpose of doing something, for example, taking an action or making a decision and
- iii) involve or be intended for someone who can take or implement the action.

(*Guide to FOIP*, Ch. 4, p. 127)

[61] The provision is not meant to protect the bare recitation of facts without anything further. The provision should be reserved for the opinion, policy or normative elements of advice and should not be extended to the facts on which it is based. The exception to this would be when the facts and advice are so intertwined as to preclude the release (*Guide to FOIP*, Ch. 4, p.128).

[62] The exemption does not generally apply to records or parts of records that reveal only the following:

- Advice was sought or given
- Particular persons were involved in the seeking or giving of advice or
- Advice was sought or given on a particular topic at a particular time.

(*Guide to FOIP*, Ch. 4, pp. 128-129)

[63] Drafts and redrafts of the advice, proposals, recommendations, analyses and/or policy options may be protected by the exemption. All the information in earlier drafts informs the end result even if the content of any one draft is not included in the final version (*Guide to FOIP*, Ch. 4, p. 128).

[64] SaskPower asserted that it applied section 17(1)(a) of FOIP to emails between SaskPower employees which set out advice, recommendations, proposals and analyses. It stated:

These exemptions were applied to the operational tasks and duties of the Distribution Engineering and Customer Consulting teams of SaskPower. The conversations between employees were to come to a common understanding and approach for the work to be undertaken. Some of these discussions were not finalized plans.

...

The redactions consist of interactions amongst SaskPower employees in context to current and future projects being completed on the Applicant's and the Rural Municipality land. This consists of, but is not limited to, advice by SaskPower employees (Management, Subject Matter Experts), as well as recommendations and high-level analysis between SaskPower employees about procedures and methods to complete the project as well as management of personnel involved. These emails discuss practices such as boreholes, splicing, policy application, movement of power lines and the specific engineering options and pricing options available to SaskPower.

Records in this category meet the requirements to be designated a “proposal”, as well as “analysis” because each project of this nature requires strict examination and application of policy options to incorporate a customer’s specific needs as well as maintain all safety standards. For this reason, we feel it meets the first part of the test for section 17(1)(a).

Further, all emails are exclusively between SaskPower employees, who are members of a government institution, which meets the second part of the test for section 17(1)(a).

[65] I find that the following information qualifies as proposals and analyses:

- Page 50 (severance 29) – the severed information is a technical analyses of magnetic field levels.
- Page 96 – is a proposal setting out an option for resolving the Applicant’s complaints and the supporting analyses.
- Pages 168 (severances 93, 94 and 95), 169,170, 172 – the withheld information sets out proposals for resolving the Applicant’s complaints and supporting rationale and analyses.

[66] Group 1, page 173 (first and second paragraphs of severance 99) qualifies as a recommendation as it sets out a suggested course of action by the privacy office to SaskPower staff, along with the rationale for the recommendation. Any factual information in the severances described in paragraph [65] above and this paragraph is so intertwined that it precludes the release of the information. I am satisfied the first part of the test has been met for this information.

[67] With respect to the second part of the test, having reviewed the contents of the emails including the sender and recipients, it appears the recommendation, proposals and analyses were developed by SaskPower staff for SaskPower as part of their responsibilities, were prepared for the purpose of determining the best course of action and involved staff who can take or implement the action. Therefore, the second part of the test for the application of section 17(1)(a) of FOIP has been met. For these reasons, I find that SaskPower properly applied section 17(1)(a) of FOIP to the information described in paragraphs [65] and [66] above. I recommend that SaskPower continue to withhold this information.

[68] The remaining information withheld pursuant to section 17(1)(a) of FOIP includes factual statements about information provided to or conversations with the Applicant, and background information about the Applicant's concerns and their relationship with SaskPower. The remaining information also includes requests for information, requests for advice, questions for staff, instructions provided by superiors to staff, information about internal processes and emails conveying attachments. None of this information would qualify as advice, recommendations, proposals or analyses for the purposes of section 17(1)(a) of FOIP. Therefore, I find that SaskPower did not properly apply section 17(1)(a) of FOIP to the information withheld on the remaining pages. The details of my findings and recommendations regarding section 17(1)(a) of FOIP are set out in Appendix A to this Report.

7. Did SaskPower properly apply section 17(1)(b)(i) of FOIP to the records?

[69] Considering my findings above in relation to section 17(1)(a) of FOIP, I need only decide if section 17(1)(b)(i) of FOIP applies to the severances made on Group 1, pages 5 (and its duplicates on pages 10 and 16), 13, 18 (and its duplicate on page 36), 34, 35, 44, 45, 47, 48, 50 (severance 28), 51, 52, 68, 70, 78, 79, 80, 87, 88, 92, 94, 95, 97, 98, 101, 103, 145, 149, 151, 153, 155 (and its duplicate on page 158), 157, 163, 164, 166 (and its duplicate on page 174), 167 (and its duplicate on page 175), 168 (severance 92 and its duplicate on page 177), 173, 176, 182, 183, and 184; and Group 2, pages 10, 13, 25, and 29.

[70] Section 17(1)(b)(i) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a government institution.

[71] The provision is intended to allow persons with decision-making responsibility to freely discuss the issues before them to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public (*Guide to FOIP*, Ch. 4 p. 131).

[72] Section 17(1)(b)(i) of FOIP provides as follows:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[73] My office uses the following two-part test when deciding whether section 17(1)(b)(i) of FOIP applies:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of a government institution, a member of the Executive Council, or the staff of a member of the Executive Council?

(*Guide to FOIP*, Ch. 4, pp. 132-133)

[74] “Consultation” means:

- The actions of consulting or taking counsel together; a deliberation, conference.
- A conference in which the parties consult and deliberate.

(*Guide to FOIP*, Ch. 4, p. 132)

[75] A consultation can occur when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation (*Guide to FOIP*, Ch. 4, p. 132).

[76] “Deliberation” means:

- the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision; or
- the consideration and discussions of the reasons for and against a measure by a number of councillors.

(*Guide to FOIP*, Ch. 4, p. 132)

[77] As noted above, factual material cannot be withheld under section 17(1)(b)(i) of FOIP, and it should be severed from information about consultations or deliberations if that is being withheld. “Factual material” means a cohesive body of facts, which are distinct from consultations or deliberations (*Guide to FOIP*, Ch. 4, p. 134).

[78] SaskPower asserted:

These exemptions were applied given the nature of the discussions and analysis of the functional challenges of SaskPower’s Distribution Engineering team tasked with leading the project work and the Customer Relations management team tasked with communicating with (the Applicant) and project team.

...

The redactions all relate to the views of one or more employees of SaskPower as to the appropriateness of a particular proposal or suggested action. In particular, the emails discussing measures in dealing with any concerns with project work done on applicant or the Rural Municipality Land. Records in this category meet the requirements to be designated a “consultation.” Further, emails discuss future courses of action with (the Applicant) are all with a view towards making a decision regarding (the Applicant) and the issues that they have brought forward in relation to work done by or will be done by SaskPower. These records meet the requirements to be designated a “deliberation.” The first part of the test is therefore met.

All emails are exclusively between SaskPower employees which meets the second part of the test for section 17(1)(b)(i).

[79] The information withheld from Group 1, pages 5 (duplicated on pages 10 and 16), 50 (severance 29), 51, 52, 68 (and the duplicate on page 70), 78, 79, 80, 87, 88 (severance 46), 92 (severances 47 and 48), 92 (severances 47 and 48 and the duplicates on page 95), 94, 96, 97, 98, 101, 103, 151 (severance 73, first paragraph only, and severance 74), 163, 164, 166 (severances 87 and 88 and their duplicates on page 174), 167 (except for severance 90,

and the duplicate on page 175), 168 (and the duplicate on page 176), 169 (and the duplicate on page 177), 170, 172, 173 (severance 100) 183 (severance 114), 184 (severance 115), and Group 2, page 10 (severance 3) includes discussions between SaskPower staff on the appropriate response to Applicant, plans to address the Applicant's concerns, the costs of various options, and appropriate internal review processes. I am satisfied this information qualifies as consultations or deliberations, and it meets the first part of the test.

[80] I now turn to the second part of the test. Based on the email recipients, senders and contents of the emails, it appears that the views of employees of SaskPower were sought about future actions and/or staff were engaged in a consideration of options with a view to making a decision. This information meets the second part of the test.

[81] Based on the preceding discussion, I find that SaskPower properly applied section 17(1)(b)(i) of FOIP to the information set out at paragraph [79] above.

[82] The following pages appear to include factual information about instructions and requests for instructions on process, a description of roles and responsibilities, conversations or experiences with the Applicant, the factors that went into calculation of cost of addressing the Applicant's concerns, and the transmittal of attachments: Group 1, pages 13 (and its duplicate on page 37), 18 (and its duplicate on page 36), 34, 35, 44 (and its duplicate on page 45), 47, 48, 50 (severance 28), 92 (severance 49), 145 (and its duplicate on page 149), 151 (severance 73 second paragraph), 153, 173 (severance 99 first paragraph), 182, 183 (severance 113), 184 (severance 115), and Group 2, page 10 (severance 4), 13, and 29. As this information appears to be factual, I find SaskPower did not properly apply section 17(1)(b)(i) of FOIP to it.

[83] The final decision or end result of a consultation or deliberation process is not protected by section 17(1)(b)(i) of FOIP (see, for example, my office's Review Reports [056-2017](#) and [416-2019](#)). SaskPower withheld information that records the final decision or instruction from the following pages: Group 1, pages 18, 88, 155, 157 and 158. I find that SaskPower did not properly apply section 17(1)(b)(i) of FOIP to this information.

[84] Questions that do not involve or relate to consultations or deliberations are not protected by section 17(1)(b)(i) of FOIP, such as questions about who will carry out a specific task or requests for factual information. Nor are instructions provided to staff regarding tasks where they are not related to consultations or deliberations. The following questions and instructions are not related to consultations or deliberations: Group 1, pages 155 (and its duplicate on page 158), 157, 166 (severance 86) and 167 (severance 90). I find that SaskPower did not properly apply section 17(1)(b)(i) of FOIP to this information.

[85] I find therefore, SaskPower did not properly apply section 17(1)(b)(i) of FOIP to the information described in paragraphs [82] to [84] of this Report.

[86] The details of my findings including recommendations regarding section 17(1)(b)(i) of FOIP are set out in Appendix A to this Report.

8. Did SaskPower properly apply sections 17(1)(d) and (g) of FOIP?

[87] SaskPower claimed that section 17(1)(d) of FOIP applied to Group 2, page 11. It also claimed that section 17(1)(g) of FOIP applied to Group 2 page 6 of FOIP. Those sections provide:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(d) plans that relate to the management of personnel or the administration of a government institution and that have not yet been implemented;

...

(g) information, including the proposed plans, policies or projects of a government institution, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

Section 17(1)(d) of FOIP

[88] Section 17(1)(d) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose plans that relate to the management of personnel

or the administration of a government institution which have not yet been implemented (*Guide to FOIP*, Ch. 4, p. 141).

[89] The provision protects as a class of record, plans that relate to the internal management of government institutions, for example, plans about the relocation or reorganization of government institutions or the management of personnel, and plans to abolish positions or programs (*Guide to FOIP*, Ch. 4, p. 141).

[90] To determine whether this exemption applies, my office applies the following three-part test:

1. Does the record contain a plan(s)?
2. Does the plan(s) relate to:
 - i) the management of personnel?
 - ii) the administration of the government institution?
3. Has the plan(s) been implemented by the government institution?

(*Guide to FOIP*, Ch. 4, pp. 141-142)

[91] My office's *Guide to FOIP* defines plan as a formulated and especially detailed method by which a thing is to be done; a design or scheme. A detailed proposal for doing or achieving something; an intention or decision about what one is going to do (*Guide to FOIP*, Ch. 4, p. 141).

[92] SaskPower asserted:

These exemptions were applied based on the functioning and analysis of multiple business units within SaskPower, and the management of employees in relation to labour and administration of personnel.

...

The records are emails between SaskPower employees relating to work requirements, hours and conditions of work. The emails discuss work to be completed, options and proposals, and intentions and decisions as they relate to the overall management of SaskPower employees associated with the project.

[93] The information withheld from Group 2, page 11 is a portion of one email showing a screen shot of an “operations list.” It sets out a breakdown of the work to be done to complete a specific task and the amount of time engaged in the different activities that comprise the task. However, it does not include any information about how the work will be carried out, by whom and when. The information on this record is similar to what would be found on an itemized invoice for services rendered. It does not qualify as a plan. The first part of the test for the application of section 17(1)(d) of FOIP has not been met and there is no need for me to consider whether parts two and three have been met. Therefore, I find that SaskPower did not properly apply section 17(1)(d) of FOIP to Group 2, page 11. The details of my findings and recommendations are set out in Appendix A to this Report.

Section 17(1)(g) of FOIP

[94] Section 17(1)(g) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose information, including the proposed plans, policies or projects of a government institution. It applies where disclosure could reasonably be expected to result in disclosure of a pending policy or budgetary decision (*Guide to FOIP*, Ch. 4, p. 150).

[95] My office uses the following two-part test to determine if section 17(1)(g) of FOIP applies:

1. Is it information of a government institution?
2. Could disclosure reasonably be expected to result in disclosure of a pending policy or budgetary decision?

(*Guide to FOIP*, Ch. 4, pp. 150-151)

[96] My office’s *Guide to FOIP*, Ch. 4 at p. 150 provides that “information” means facts or knowledge provided or learned as a result of research or study. Information withheld from Group 2, page 6 includes a calculation of costs to carry out specific work. The calculation of cost was carried out by SaskPower and therefore, I find that part one of the test has been met.

[97] My office's *Guide to FOIP* states a policy is a standard course of action that has been officially established by government. Budgetary means of or pertaining to a budget which is a periodic, (especially annual) estimate of revenue and expenditure (*Guide to FOIP*, Ch. 4, p. 151-152).

[98] SaskPower asserted:

SaskPower submits that the record(s) identified above were developed for the purpose of obtaining budgetary approval to proceed and include costs to SaskPower for work on a location adjacent to the Applicants. Release of this information may harm SaskPower's ability to negotiate with affected property owners who request this type of work from SaskPower. Accordingly, SaskPower submits that the Records were properly withheld on the basis of subsection 17(1)(g).

[99] The information withheld from Group 2, page 6 is a quotation for specific work or services provided by SaskPower. It does not qualify as a policy because it does not reflect a standard course of action established by government. It is specific to the costs associated with the work itemized in the document. It is also not a budgetary decision because it does not include an estimate of revenue and expenditures for SaskPower or any unit or department of SaskPower. It only sets out costs that could be charged if the work proceeded as described. For these reasons, I find that part two of the two-part test for the application of section 17(1)(g) of FOIP has not been met. Therefore, I find that SaskPower did not properly apply section 17(1)(g) of FOIP to this information. I will consider in the next part of this Report whether the information SaskPower severed pursuant to sections 17(1)(d) and (g) of FOIP is exempt pursuant to section 18(1)(b) of FOIP.

9. Did SaskPower properly apply section 18(1)(b) of FOIP?

[100] SaskPower claimed that information was exempt pursuant to section 18(1)(b) of FOIP. In some cases, it claimed only section 18(1)(b)(i) of FOIP and in other cases it claimed only section 18(1)(b)(ii) of FOIP; in some cases, it claimed both. Section 18(1)(b) of FOIP contains two requirements which are set out in paragraphs 18(1)(b)(i) and (ii). It is not possible to meet the criteria for the application of section 18(1)(b) of FOIP if only one of

parts (i) or (ii) exist. In the discussion that follows, I consider whether both requirements have been met.

[101] Given my findings above on the application of sections 17(1)(a) and (b)(i) of FOIP, I need only consider the following severances: Group 1, pages 44 (severance 19 and its duplicate on page 45), 97, 103, 104, 124, 164, 165, 180, 182, 183, and 184, and Group 2, pages 6, 10, and 11.

[102] Section 18(1)(b) of FOIP provides:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use; and

(ii) that has monetary value or is reasonably likely to have monetary value;

[103] Section 18(1)(b) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose financial, commercial, scientific, technical or other information, which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use *and* which has monetary value or reasonably likely to have monetary value (*Guide to FOIP*, Ch. 4, p. 164).

[104] In order to find that section 18(1)(b) of FOIP applies to a record, all three parts of the following test must be met:

1. Does the information contain financial, commercial, scientific, technical or other information?
2. Does the public body have a proprietary interest or a right to use it?
3. Does the information have monetary value for the public body or is it likely to?

(*Guide to FOIP*, Ch. 4, pp. 164-166)

1. Does the information contain financial, commercial, scientific, technical or other information?

[105] “Financial information” is information regarding monetary resources, such as financial capabilities, assets, liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a particular party (*Guide to FOIP*, Ch. 4, p. 164).

[106] “Commercial information” means information relating to the buying, selling or exchange of merchandise or services. This includes third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records (*Guide to FOIP*, Ch. 4, p. 164).

[107] “Technical information” is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge, which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information (*Guide to FOIP*, Ch. 4, p. 165).

[108] SaskPower’s submission does not directly address whether part one of the test for section 18(1)(b) of FOIP has been met. It stated:

SaskPower submits that the records identified above explicitly cover costs, budgeting and spending on work that has been or was to be completed within the scope of the project. This information has monetary value as it details the subsequent financial responsibilities associated with construction and labour projects within SaskPower and therefore passes the test for exemption.

[109] It also stated:

SaskPower submits that the records identified above reveal SaskPower's purchased and operated internal application and work management systems. SaskPower is under contract for these systems, and they were developed for and to be used only for internal purposes and workforce management. They are not available, nor shared publicly. The systems are customized and proprietary to carrying out SaskPower services. Information in these systems are considered confidential and at times restricted. The disclosure of information entered within these systems and/or screenshots that may outline system design would be harmful to SaskPower and could pose a cyber security risk if lost or shared beyond SaskPower employees. This system provides detailed quotes and information on projects throughout SaskPower and all business areas.

Accordingly, SaskPower submits that the Records were properly withheld on the basis of subsection 18(1)(b)(i)

- [110] The information withheld pursuant to this exemption includes two categories or types of information – costing information (Group 1, pages 44 (severance 19 and its duplicate on page 45), 97, 103, 104, 180, 182, 183, and 184, and Group 2, pages 6, 10, and 11); and information about the SAP system's physical appearance, as revealed by the screen shots (Group 1, pages 124, 164 and 165).
- [111] Some of the withheld costing information appears as the data elements in images of SaskPower's SAP system. They reveal, among other things, information about the costs of specific project work and how the costs were arrived at. Costing information also appears in emails or messages between SaskPower staff about costs of project work, methodology for calculating costs and factors considered in arriving at the costs. I find that this information is financial information. This approach is consistent with findings in previous reports of my office, such as [Review Report 133-2020](#).
- [112] The information about the SAP system's physical appearance is also revealed in the screen shots from the SAP system. This information reveals the visual design of portions of the system such as the graphics, page titles, table layouts, column headings, and other similar information. This is the type of information that would be revealed to all users of the SAP system. It is not financial, commercial, or scientific. While it is not necessary for me to decide the issue given my findings below, this information could be technical information.

[113] I find that SaskPower has met part one of the test in relation to the withheld costing information. I now turn to consider whether SaskPower has met part two of the test for the costing information. For the sake of completeness, I will also consider whether the information about the SAP system's physical appearance that is revealed in the screen shots meets part two of the test.

2. Does the public body have a proprietary interest or a right to use it?

[114] "Proprietary" means of, relating to, or holding as property (*Guide to FOIP*, p. 165).

[115] "Proprietary interest" is the interest held by a property owner together with all appurtenant rights, such as a stockholder's right to vote the shares. It signifies simply "interest as an owner" or "legal right or title" (*Guide to FOIP*, p. 165).

[116] "Owner" means someone who has the right to possess, use, and convey something; a person in whom one or more interests are vested (*Guide to FOIP*, p. 165).

[117] [Ontario's Freedom of Information and Protection of Privacy Act section 18\(1\)\(a\)](#) is similar to Saskatchewan's, but instead of proprietary interest or right of use, it uses the phrase "that belongs to the Government of Ontario or an institution." In Ontario [Order MO-1746](#), the phrase "belongs to" was found to mean "ownership" which makes it relevant for the interpretation of "ownership" in Saskatchewan's [section 18\(1\)\(b\)](#) of [FOIP](#). In Order MO-1746, the Adjudicator found:

...For information to "belong to" an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense – such as copyright, trademark, patent or industrial design – or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business to business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop that information.

[118] “Right of use” means a legal, equitable, or moral title or claim to the use of property, or authority to use (*Guide to FOIP*, p. 166).

[119] SaskPower’s submission does not explain how it meets part two of the test for the costing information. Nor is it evident from a review of the records. Therefore, I find that it has not established that it has a proprietary right or right to use the costing information in the withheld information.

[120] With respect to the screen shots of the SAP system, SaskPower stated that they “reveal SaskPower’s purchased and operated internal application and work management systems.” It added that it “is under contract for these systems” and subsequently explained that it has a license to use the system under a contract with the developer. I accept that SaskPower may have a right to use the SAP system, therefore, for any portions of the withheld information that include screen shots from the SAP system, I find that part two of the test has been met.

3. Does the information have monetary value for the public body or is it reasonably likely to?

[121] Part three of the test for the application of section 18(1)(b) of FOIP requires that the information at issue have or is reasonably likely to have monetary value for the government institution. Monetary value requires that the information itself have an intrinsic value. This may be demonstrated by evidence of potential for financial return to the government institution. An example of information that is reasonably likely to have monetary value might include a course developed by a teacher employed by a school board (*Guide to FOIP*, Ch. 4, p. 166-167).

[122] “Reasonably likely to” implies that the question is to be considered objectively. This means that there must be evidence that will, on a balance of probabilities, support the necessary finding (*Guide to FOIP*, Ch. 4, p. 167)

[123] With respect to the monetary value, SaskPower asserted:

SaskPower submits that the records identified above explicitly cover costs, budgeting and spending on work that has been or was to be completed within the scope of the project. This information has monetary value as it details the subsequent financial responsibilities associated with construction and labour projects within SaskPower and therefore passes the test for exemption.

According, SaskPower submits that the Records were properly withheld on the basis of subsection 18(1)(b)(ii).

[124] In considering the possible application of section 18(1)(b) of FOIP in my office's [Review Report 086-2018](#), I followed the Ontario Information and Privacy Commissioner's approach to the meaning of monetary value and found that the "mere fact that the institution incurred a cost to create the record does not mean it has monetary value" (see for example, Ontario Orders [PO-3464](#) and [PO-4030](#)). I will first consider the costing information and then turn to consider the information about SAP that would be revealed if the screen shots were released.

[125] To meet part three of the test for the application of section 18(1)(b) of FOIP, SaskPower must establish that the release of the severed information would deprive it of monetary gain. SaskPower's submission does not explain how the release of the costing information has any monetary value other than to claim that it provides details of "financial responsibilities" for construction and labour projects. Moreover, there is nothing on the face of the records that would suggest that SaskPower would be deprived of monetary gain if this information were released.

[126] With respect to the screen shots of the SAP system, I accept that disclosure of these screen shots may reveal some information about the system that is used by SaskPower for work management and the method used to develop fees for services. However, like the costing information, SaskPower has not demonstrated how this information has a monetary value to it or is reasonably likely to have a monetary value, and how release would deprive it of monetary gain.

[127] It is important to remember that section 61 of FOIP places the burden of justifying the application of the exemption on the government institution. That section provides:

61 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[128] In the circumstances of this review, I find that SaskPower has not established that the information withheld pursuant to section 18(1)(b) of FOIP is exempt. Therefore, I find that SaskPower has not properly applied section 18(1)(b) of FOIP. The details of my findings and recommendations are set out in Appendix A to this Report.

IV FINDINGS

[129] I find that I have jurisdiction to conduct this review.

[130] I find that SaskPower did not respond to the Applicant's access to information request within the legislated timeline.

[131] I find that SaskPower's search for records was reasonable.

[132] I find that the information withheld as non-responsive from Group 1, page 92 and Group 2, page 23 was responsive to the access to information request.

[133] I find that the remaining information withheld as non-responsive was not responsive to the access to information request.

[134] I find that SaskPower properly applied section 29(1) of FOIP to the information withheld from Group 1, page 49 (severance 27) and Group 2, page 24 (severances 144 and 145).

[135] I find that SaskPower did not properly apply section 29(1) of FOIP in the remaining records.

[136] I find that SaskPower properly applied section 17(1)(a) of FOIP to the following pages: Group 1, page 50 (severance 29), 96 (severance 56) 168 (severances 93, 94 and 95), 169, 170, 172, and 173 (second and third paragraphs of severance 99).

[137] I find that SaskPower did not properly apply section 17(1)(a) of FOIP to the remaining pages.

[138] I find that SaskPower properly applied section 17(1)(b)(i) of FOIP to the following pages: Group 1, pages 5 (duplicated on pages 10 and 16), 50 (severance 29), 51, 52, 68 (and the duplicate on page 70), 78, 79, 80, 87, 88 (severance 46), 92 (severances 47 and 48), 92 (severances 47 and 48 and the duplicates on page 95), 94, 96, 97, 98, 101, 103, 151 (severance 73, first paragraph only, and severance 74), 163, 164, 166 (severances 87 and 88 and their duplicates on page 174), 167 (and the duplicate on page 175), 168 (and the duplicate on page 176), 169 (and the duplicate on page 177), 170, 172, 173 (severance 100), 183 (severance 114), 184 (severance 115), and Group 2, page 10 (severance 3).

[139] I find that SaskPower did not properly apply section 17(1)(b)(i) of FOIP in all other cases.

[140] I find that SaskPower did not properly apply sections 17(1)(g) and (d) of FOIP.

[141] I find that SaskPower did not properly apply section 18(1)(b) of FOIP.

V RECOMMENDATIONS

[142] I recommend that SaskPower review its policies, procedures, and training programs to ensure that it meets the legislated timelines under FOIP.

[143] I recommend that SaskPower take no further action in regard to the search for records.

[144] I recommend that SaskPower release, subject to any exemptions that may apply, the information that it claimed was not responsive on the following pages: Group 1, page 92 and Group 2, page 23.

[145] I recommend that SaskPower consider releasing, subject to any exemptions that may apply, the other information that it claimed was not responsive to the request.

[146] With respect to sections 29(1), 17(1)(a), (b)(i), (d), (g), and 18(1)(b) of FOIP, I recommend SaskPower continue to withhold or release information or records as I have detailed in Appendix A to this Report.

Dated at Regina, in the Province of Saskatchewan, this 13th day of September, 2022.

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

Appendix A

Page	Description	Exemption(s) applied to the page	Withheld in full or in part	Findings and recommendations
Group 1				
5	Draft Letter	Sections 17(1)(a), (b)(i) of FOIP	Withheld in full	Withhold
10	Duplicate of 5	Sections 17(1)(a), (b)(i) of FOIP	Withheld in full	Withhold
13	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
16	Duplicate of 5	Sections 17(1)(a), (b)(i) of FOIP	Withheld in full	Withhold
17	Email	Not responsive	Withheld in full	Not responsive
18	Email	Not responsive, Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Not responsive, release other information
20	Referral Form	Section 29(1) of FOIP	Withheld in part	Release
21	Email	Section 29(1) of FOIP	Withheld in part	Release
34	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
35	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
36	Duplicate of 18	Not responsive, Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Not responsive, release other information
37	Duplicate of 13	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
38	Email	Section 17(1)(a) of FOIP	Withheld in part	Release
39	Email	Section 17(1)(a) of FOIP	Withheld in part	Release
40	Email	Section 29(1) of FOIP	Withheld in part	Release
42	Email	Not responsive	Withheld in part	Not responsive
44	Email	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Release
45	Duplicate of 44	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Release

47	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
48	Email	Sections 17(1)(a), (b)(i) of FOIP, not responsive	Withheld in part	Not responsive, release other information
49	Customer Profile	Section 29(1) of FOIP	Withheld in full	Withhold
50	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release severance 28, withhold severance 29
51	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
52	Email	Sections 17(1)(a), (b)(i) of FOIP, not responsive	Withheld in part	Not responsive, withhold other information
68	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
69	Email	Not responsive	Withheld in part	Not responsive
70	Email – partial duplicate of 68	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
78	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
79	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in full	Withhold
80	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
87	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
88	Email	Sections 17(1)(a), (b)(i) of FOIP, not responsive	Withheld in part	Not responsive, withhold other information
92	Email	Sections 17(1)(a), (b)(i) of FOIP, not responsive	Withheld in part	Release responsive information subject to exemptions, Withhold severances 47 & 48, release severance 49
94	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
95	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
96	Email	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Withhold

97	Email	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Withhold information severed pursuant to section 17(1)(b)(i), release remaining
98	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
101	Partial duplicate of 98	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
103	Email	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Withhold information severed pursuant to section 17(1)(b)(i), release remaining
104	Email	Section 18(1)(b) of FOIP	Withheld in part	Release
105	Email	Not responsive	Withheld in part	Not responsive
124	Email	Section 18(1)(b) of FOIP	Withheld in part	Release
128	Email	Not responsive	Withheld in part	Not responsive
130	Form	Section 29(1) of FOIP	Withheld in part	Release
131	Email	Section 29(1) of FOIP	Withheld in part	Release
144	Email	Not responsive	Withheld in part	Not responsive
145	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
147	Email	Not responsive	Withheld in part	Not responsive
148	Duplicate of 144	Not responsive	Withheld in part	Not responsive
149	Duplicate of 145	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
151	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release 1 st paragraph of severance 73, release severance 74, withhold remaining
153	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
155	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
157	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release

158	Duplicate of 155	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
159	Email	Not responsive	Withheld in part	Not responsive
161	Duplicate of 159	Not responsive	Withheld in part	Not responsive
163	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
164	Email	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Withhold severance 82 & 83, release remaining
165	Email	Section 18(1)(b) of FOIP	Withheld in part	Release
166	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release severance 86, withhold remaining
167	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release severance 90, withhold remaining
168	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold severances 93 to 95, release remaining
169	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
170	Email	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Withhold
172	Email	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in full	Withhold
173	Email	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release the first paragraph of severance 99, withhold remaining
174	Partial Duplicate of 166	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
175	Partial Duplicate of 167	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release severance in middle of page, withhold remaining
176	Duplicate of 168	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
177	Duplicate of 169	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Withhold
180	Change Service Notice	Section 18(1)(b) of FOIP	Withheld in full	Release

182	Call Centre Summaries	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP, not responsive	Withheld in part	Not responsive, release remaining
183	Call Centre Summaries	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP, not responsive	Withheld in part	Not responsive, release first severance, withhold remaining
184	Call Centre Summaries	Sections 29(1), 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Withhold severance 115, release remaining
Group 2				
5	Approval Form	Section 29(1) of FOIP	Withheld in part	Release
6	Email	Sections 17(1)(g), 18(1)(b) of FOIP	Withheld in part	Release
7	Approval Form	Section 29(1) of FOIP	Withheld in part	Release
10	Email	Sections 17(1)(a), (b)(i), 18(1)(b) of FOIP	Withheld in part	Withhold severance 126, release remaining
11	Email	Sections 17(1)(d), 18(1)(b) of FOIP	Withheld in part	Release
13	Email	Sections 17(1)(a), (b)(i)	Withheld in part	Release
19	Site Check Form	Section 29(1) of FOIP, not responsive	Withheld in part	Release 29(1) information, not responsive
20	Work Outline	Section 29(1) of FOIP	Withheld in part	Release 29(1)
21	Sketch	Not responsive	Withheld in part	Not responsive
23	Permit	Section 29(1) of FOIP, not responsive	Withheld in part	Release 29(1) information, release responsive information subject to exemptions
24	Outage Report	Section 29(1) of FOIP	Withheld in part	Release
25	Permit Application	Sections 17(1)(a), (b)(i), 29(1) of FOIP	Withheld in part	Release
26	Job Completion Form	Not responsive	Withheld in part	Not responsive
29	Site Readiness Check Form	Sections 17(1)(a), (b)(i) of FOIP	Withheld in part	Release
32	Certificate of Release	Section 29(1) of FOIP, not responsive	Withheld in part	Release 29(1), not responsive

33	Materials List	Not responsive	Withheld in part	Not responsive
----	-------------------	----------------	---------------------	----------------