



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 006-2025

Ministry of Labour Relations and Workplace Safety

September 3, 2025

Summary:

The Applicant submitted an access to information request to the Ministry of Labour Relations and Workplace Safety (LRWS) under *The Freedom of Information and Protection of Privacy Act (FOIP)*. LRWS denied access to records, which led to the Applicant requesting that the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) review the decision of LRWS to withhold. OIPC did so and issued Review Report 203-2024 where release was recommended of three records subject to the redaction of third-party personal information. Subsequent to that review, LRWS released the records to the Applicant. After the Applicant received the records, they believed that additional records should exist and requested that OIPC review the search efforts of LRWS.

In this report, the Commissioner found that LRWS had conducted a reasonable search for records, with the exception of employee notes of process meetings which may have possibly been created and not searched due to oversight. The Commissioner recommended that, within 90 days of the issuance of this Report, LRWS develop and implement policies or procedures that accurately reflect the records management practices of the OH&S division and that the use of text messaging on work-issued devices is not permitted. The Commissioner recommended that, within 30 days of the issuance of this Report, LRWS conduct a search for possible employee notes of process meetings related to the Applicant's file and issue a fresh section 7 decision to advise of the outcome either way. The Commissioner recommended that LRWS take no further action regarding the search for records, where it was found that LRWS had conducted a reasonable search.

I BACKGROUND

- [1] The Applicant commenced this process by filing an access request with the Ministry of Labour Relations and Workplace Safety (LRWS) on January 15, 2024. The Applicant's access request related to a complaint against their former employer of discriminatory action that they had filed with the Occupational Health & Safety (OH&S) division which is subsumed within LRWS. The Applicant requested and was denied the following:

Any and all communications and/or correspondence by interview (& notes taken thereof), postage paid mail, courier, voice telephone interview & message (& notes taken thereof), email transmission, social media message and/or text message arising out of complaint that I filed by email transmission to OH&S offices on November 1, 2023, so identified as "[Applicant's file number]"¹

This includes any documents or folder contents held as is noted above by any individual, party, or entity not limited to KGS Group or its representative(s), MLT Aikens LLP or its representatives, [Name 1], and/or Officers of the OH&S at Saskatchewan LRWS including, but not limited to [Name 2], [Name 3] & [Name 4].

- [2] The Office of the Saskatchewan Information and Privacy Commissioner (OIPC) issued [Review Report 203-2024](#) on December 19, 2024. That report dealt with a review of the exemptions that the Ministry of Labour Relations and Workplace Safety (LRWS) relied on to refuse the Applicant access to records in full. OIPC made recommendations to release records; LRWS agreed and subsequently released records subject to the redaction of third-party personal information in one record.
- [3] After receiving the records, the Applicant emailed OIPC on January 13, 2025. The Applicant expressed concerns that more records should exist than those provided to them by LRWS. On January 14, 2025, the Applicant requested that OIPC review the search efforts of LRWS. Accordingly, OIPC opened File 006-2025.

¹ The words in square brackets are amendments by OIPC to preserve the identity of the Applicant and various third-party individuals who are unconnected to this matter.

[4] The Applicant identified records they believed should have been located in the search conducted by LRWS. With the Applicant's permission, OIPC shared these details with LRWS on February 5, 2025. They included:

- Text message content, cell phone content, and investigative notes (other than interview notes).
- Call logs, interview lists, plans, etc." showing who may have been contacted in response to the Applicant's complaint [Applicant's file number] October 13, 2023.
- A decision document by OH&S Officers dated January 25, 2024.

[5] On February 6, 2025, LRWS provided OIPC with the following response, and it agreed that this be shared with the Applicant:

The Harassment and Discriminatory Action Prevention Unit (the Unit) within the Occupational Health and Safety branch does not use texting on their work-issued cell phones. Therefore, no records of this type exist to provide to the applicant.

There are no "planning" records. Interviews were only conducted with the applicant. The Unit would have requested the documents from the company and with that information would be able to make their decision.

Regarding the letter dated January 25, 2024, it appears that [the Saskatchewan Labour Relations Board (Labour Relations Board) Registrar] indicates that it was a working copy for another individual and was attached in error. The Ministry of Labour Relations and Workplace Safety does not have access to the records from the Labour Relations Board. They are a separate entity from LRWS. [The Applicant] would need to submit an access request to the LRB to obtain those records. In regard to "a decision document" relating to [the Applicant's] file, there is one dated February 12, 2024, and was provided to the applicant and the lawyer for the employer via mail and again during the review process for 203-2024.

Since the initial request of July 2024 was before my time as Access Coordinator for the ministry, I also searched through the file to be sure nothing was missed. I can advise that all records are electronic, there is no paper. The keywords I used to search were, "decision", interview", "January", "notes", "text", "text message", "witness", "planning", "plan". There were no records found that describe what the applicant is looking for.

- [6] The Applicant was not satisfied with the explanations provided by LRWS, and on February 10, 2025, requested that OIPC:

...proceed with the review of locate text message content, cell phone content, investigative notes, call logs, interview lists, plans, etc. showing who may have been contacted in response to my complaint [Applicant's file number] October 13, 2023, and for decision document by OH&S Officers dated January 25, 2024.

- [7] On February 12, 2025, OIPC notified LRWS and the Applicant that a review would proceed.
- [8] On March 21, 2025, OIPC received a submission from LRWS. LRWS asked that the submission not be shared with the Applicant. On March 28, 2025, OIPC received the Applicant's submission.

II RECORDS AT ISSUE

- [9] There are no records at issue as this is a review to determine whether LRWS has conducted a reasonable search for records.

III DISCUSSION OF THE ISSUES

1. Does OIPC have jurisdiction?

- [10] LRWS qualifies as a "government institution" as defined at section 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act (FOIP)*.² The notice of review contains reviewable grounds and, as such, OIPC has jurisdiction, and is undertaking, a review of this matter pursuant to PART VII of *FOIP*.

² [*The Freedom of Information and Protection of Privacy Act*](#), SS 1990-91, c. F-22.01, as amended.

2. Did LRWS conduct a reasonable search for responsive records?

[11] Section 5 of *FOIP* provides an applicant with a right of access to records in the possession or control of a government institution. It states:

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.

[12] Regarding the obligation to search for records, the threshold to be met is one of “reasonableness.” In other words, it is not a standard of perfection, but rather what a fair and rational person would expect or consider acceptable.³

[13] There are two circumstances where a government institution can validly claim the non-existence of a record pursuant to *FOIP*. The first circumstance is if a record exists, but it is not in the possession or control of the government institution to whom the request was made. If a government institution considers that another government institution has a greater interest and actual possession of the record, then the government institution should transfer the access request in accordance with section 11 of *FOIP*. This circumstance is irrelevant in this file as there was no transfer on the part of LRWS.

[14] The second circumstance that validates a claim of the non-existence of records is if a reasonable search failed to produce records. The threshold of “reasonableness” is met when the government institution expends a level of effort expected of any fair, sensible person searching areas where records are likely to be stored. A government institution may resort to the following avenues in its effort to search for records:⁴

- For personal information requests – explain how the individual who is the subject of the personal information is involved with the government

³ See OIPC [Review Report 338-2023](#) at paragraph [38].

⁴ See OIPC [Review Report 048-2025](#) at paragraph [30].

institution (i.e., client, employee, former employee, etc.) and why certain departments/divisions/branches were included in the search.

- 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 the organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
- Explain whether records stored off-site were searched and if not, explain why.
- Explain whether records that are in the government institution's control but also in the possession of a third party were searched and how. Third parties in this instance may include: a contractor or an information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets) and if not, why.
- Explain which folders within the records management system were searched and how these folders link back to the subject matter. 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.⁵

[15] If claiming that records do not exist, *FOIP* does not require that the government institution prove with absolute certainty that the records do not exist. This office will consider reasonable explanations for why a record would not exist, but a government institution still needs to demonstrate that it made reasonable efforts to physically search.

[16] Further to this, OIPC has stated that it is not reasonable for a government institution to rely on an employee's opinion that no records exist when deciding not to search. A government institution should not rely on memory alone as to whether records were created or not created.⁶

[17] When initially processing the Applicant's access request that was the subject of Review Report 203-2024, LRWS indicated that three LRWS employees spent approximately 45 minutes in total searching for the records in the file management system for the OH&S division. During the OIPC review of that file, the LRWS Access Coordinator conducted an additional one-hour search, in which each individual document provided by OH&S was searched. After the Applicant requested a review of the search efforts by LRWS and identified records they believed should exist in this matter, the LRWS Access Coordinator conducted an additional 30-minute search.

[18] What is being considered in this review is whether LRWS demonstrated its search was reasonable based on what records the Applicant believes were not located or should have been located according to the Applicant's belief.

a) text message content and cell phone content

⁵ On issuing affidavits, see OIPC resource, [Using Affidavits in a Review with the IPC](#).

⁶ See OIPC [Review Report 109-2023, 144-2023](#) at paragraph [29].

- [19] The Applicant provided the following arguments regarding their belief with respect to this item. It is important to note that the Applicant's submission is not based on personal knowledge of the investigative practices or records management practices of LRWS because they were not employed by LRWS or its OH&S division. The Applicant appears to speak in a general sense having never been employed in any capacity with LRWS or the OH&S division. As such, their claims were not backed by anything other than information and belief from others as referred to in the arguments below:

The coordinator's assertion that the unit does not text using government-issued phones diverts attention from the straightforward matter that a hands-on inspection of the government-issued phones is necessary. Texts typically remain on their originating devices unless they are intentionally deleted or transferred to storage. Therefore, without examining the device itself, any search remains incomplete. I have information that officers in Saskatchewan frequently use their work phones for texting and that they typically do not download this data to the Government's storage drives. The coordinator's information on behalf of the Ministry fails to mention any search was conducted on the officers' work-issued phones, or the Government's drives or its backup drives for cell-phone content.

The coordinator's phrases "would have requested" and "would be able" seems to be based on anecdotal belief rather than first-hand knowledge. The requested planning records, etc. may still exist on the officer's work-issued devices, but it appears that there has been no search of these devices, the governments drives or the government's backup drives.

[Emphasis added]

- [20] In its submission, LRWS indicated that its search considered the file management system (the "G Drive") for the "Harassment and Discriminatory Action Prevention" unit of OH&S. LRWS added that this was the only electronic drive it considered searching as the Applicant's original access to information request listed the OH&S division as the main institution in question. LRWS added that all files in the Harassment and Discriminatory Action unit of the OH&S division are required to be saved electronically to the G Drive. LRWS further added that OH&S officers are not permitted to use text messaging on their

work-issued cellphones. As a result, LRWS confirmed that its search strategy did not include a search of cell phones, including text messages.⁷

- [21] Regarding the Applicant's belief that text messages and other cell phone content should exist, LRWS advised it had requested these records from its OH&S division and were advised no such records exist. As discussed at paragraph [5] of this Report, LRWS had also agreed for this office to share with the Applicant that "the Harassment and Discriminatory Action Prevention Unit (the Unit) within the Occupational Health and Safety branch does not use texting on their work-issued cell phones." Based on the details provided to OIPC regarding its search efforts and its explanation for how it concluded these records do not exist, there will be a finding that LRWS conducted a reasonable search. However, there will be a recommendation that, within 90 days of the issuance of this Report, LRWS develop and implement policies or procedures that accurately reflect the records management practices of the OH&S division and that the use of text messaging on work-issued devices is not permitted. This policy will assist overall in the accurate management of information and records within the organization, and it will assist with future access requests for records.

b) investigative notes, call logs, interview lists, planning records

- [22] With respect to the remaining records that the Applicant believes should exist, LRWS shared that "there are no 'planning' records. Interviews were only conducted with the applicant. The Unit would have requested the document from the company and with that information would be able to make their decision". In addition, LRWS outlined to this office the keywords it used to search for the records sought by the Applicant and indicated no records were found.

⁷ OIPC inquired if LRWS has policies in place for its practices for records management use of text messaging. LRWS responded that "we do not have a formal policy. It is best practice within Government to use the G Drive for all files. Same with cell phones, there is no policy but it is expected and considered best practice."

- [23] In its submission, LRWS revealed that the OH&S division advised that no investigative notes are created. After the OH&S division reviews an applicant's initial information, it conducts an interview with the applicant. LRWS advised notes are only created during the interview process, which it released to the Applicant in response to Review Report 203-2024.
- [24] LRWS conceded that the OH&S division sometimes conducts team discussions regarding its investigative process, but notes are not commonly taken during such discussions. LRWS did not address whether in its investigation of the Applicant's file, the OH&S members engaged in team discussions, and if so, whether any notes were taken by any of the assigned members for their own personal record.
- [25] Based on the details provided by LRWS regarding its search efforts and its explanation for how it concluded these records do not exist, there will be a finding that LRWS conducted a reasonable search for records, with the exception of employee notes of process meetings which may have possibly been created and not searched due to oversight.
- [26] There is a recommendation that, within 30 days of the issuance of this Report, LRWS conduct a search for possible employee notes of process meetings that may have been created during process meetings where the Applicant's file information was discussed and which may not have been searched due to oversight. This includes paper or electronic records, or records that may exist in their email accounts.
- [27] Having conducted this new search for these records, there is also a recommendation that LRWS issue a fresh section 7 decision to the Applicant, with a copy to OIPC, that advises of the outcome of this search.

c) the decision document by OH&S Officers dated January 25, 2024

- [28] Regarding this item, the Applicant provided the following arguments:

...To the coordinator's description that the January 25, 2024 decision is merely a letter, I rely on [Labour Relations Board Registrar]'s June 14, 2024, correspondence to me that, pursuant to subsection 4-3(2) of The Act, the director had submitted a written document to the Board, and that under 4-3(3) of The Act, the director's document is an occupational health and safety officer's decision dated January 25, 2024, as having been met by the criteria of my July 1, 2024, application for "*any and all communications...arising out of the complaint that I filed*" purposefully worded to include all officers at the OH&S. The recommendation to initiate a new disclosure request involving [Labour Relations Board Registrar] as a separate entity to the exclusion of the January 25, 2024, decision shown to be in the officers' possession as was described by my application is offensive. I would just add that it appears the coordinator has seemingly joined in [Labour Relations Board Registrar]'s efforts to alter the appearance or reality of the yet to be seen January 25, 2024, document that is recorded as a decision.

- [29] LRWS has previously addressed this concern with the Applicant, and as outlined at paragraph [5] of this Report, agreed for this office to share with the Applicant that "it appears that [the Labour Relations Board Registrar] indicated that it was a working copy for another individual and was attached in error. The Ministry of Labour Relations and Workplace Safety does not have access to records from the Labour Relations Board."
- [30] The Applicant provided OIPC with a copy of the June 14, 2024 email that they received from the Saskatchewan Labour Relations Board's (Labour Relations Board) Registrar. An LRWS employee was copied on the email. The email had two PDF documents attached titled, *Selection of Adjudicator* (document). In the "Attachments" line of the email, one document is identified as "178823 PDF" and the other is identified as "178838 PDF." Each copy of the document itself appears to contain identical text, except that one references an OH&S decision date of February 12, 2024, and the other a decision date of January 25, 2024.
- [31] On July 5, 2024, the Labour Relations Board Registrar responded to the recipients of the June 14, 2024 email, noting that "upon review of my email below, please be aware that the first selection document, which refers to an Officer's decision dated January 25, 2024, was a draft issued and attached in error and should be disregarded by the parties." LRWS stated

that it did not retain a copy of this email or the attachments as it contained information that was not relevant.

- [32] Because the Applicant believed they had not received documentation regarding the January 25, 2024 decision, the Labour Relations Board Registrar advised them of the following on October 24, 2024:

Two selection of adjudicator documents were created for two different appeals, one involving you and one not involving you, on June 14, 2024.

Due to an error in the document creation, both of those documents contained the style of cause (such as the names and file number)... One of those documents, the one that references a decision on January 25, 2024, was intended for a different appeal with completely different parties.

Once again, to be clear, one of those selection documents (PDF “178823”) was intended for a different appeal that does not involve you. It contained the style of cause from your appeal in error.

On July 5, 2024, I informed the adjudicator and parties of LRB File No. 063-24 of that error and informed them that only the selection document “178838” pertains to the appeal in LRB File No. 063-24. The other document should be disregarded as it was issued and attached in error.

Given this information, I trust you understand the following:

- 1) There is no decision, to my knowledge, with regards to you that was rendered by an OH&S officer on January 25, 2024
- ...

- [33] Based on the above explanation, it appears that “PDF 178823” has nothing to do with the Applicant or was not intended to have anything to do with the Applicant. Rather, it appears it was a document that Labour Relation Board created in error but happened to contain details like the Applicant’s name and file number. LRWS also searched and confirmed it does not have a decision document in relation to the Applicant with this date in its record holdings.

- [34] As previously mentioned, a government institution is not required to prove to absolute certainty that a record does not exist. It only needs to show it has made reasonable efforts

to search, which can be helped by reasonable explanations. OIPC is satisfied that LRWS has demonstrated it made reasonable efforts to search for records related to this item and has supplemented this with reasonable explanations. Therefore, there will be a finding that LRWS conducted a reasonable search for “the decision document by OH&S Officers dated January 25, 2024.” There will also be a recommendation that LRWS take no further action regarding the search for this record.

IV FINDINGS

[35] OIPC has jurisdiction to conduct this review.

[36] LRWS has conducted a reasonable search for records, with the exception of employee notes of process meetings which may have possibly been created and not searched due to oversight.

V RECOMMENDATIONS

[37] I recommend that, within 90 days of the issuance of this Report, LRWS develop and implement policies or procedures that accurately reflect the records management practices of the OH&S division and that the use of text messaging on work-issued devices is not permitted.

[38] I recommend that, within 30 days of the issuance of this Report, LRWS conduct a search for records, as outlined at paragraph [26] of this Report, and issue a fresh section 7 decision to the Applicant, with a copy to OIPC, that advises of the outcome of this search.

[39] I recommend that LRWS take no further action regarding the search for records, with the exception of those outlined at paragraph [26] of this Report.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of September, 2025.

Grace Hession David
Saskatchewan Information and Privacy Commissioner