



REVIEW REPORT 053-2024

Saskatchewan Power Corporation

August 28, 2024

Summary: The Applicant made an access to information request to the Saskatchewan Power Corporation (SaskPower). SaskPower denied access to portions of the record pursuant to subsections 18(1)(b), (d), (e), (f), 19(1)(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act*. The Applicant asked the A/Commissioner to review SaskPower's decision. The A/Commissioner found that SaskPower did not properly apply any of its exemptions and recommended that SaskPower release all the information in the record to the Applicant within 30 days of the issuance of this Report.

I BACKGROUND

[1] On January 24, 2024, Saskatchewan Power Corporation (SaskPower) received the Applicant's access to information request, which was as follows:

- 1) 25 year contract between SaskPower and Iyuhana Solar
- 2) Provincial and/or Federal subsidies received by SaskPower that were used for the Iyuhana Solar contract
- 3) Report showing actual electricity [sic] generation from SaskPower solar facilities [sic] & purchases vs what electricity [sic] generation was estimated to be produced by solar facilities

[2] In correspondence dated March 1, 2024, SaskPower advised the Applicant it was withholding records pursuant to subsections 18(1)(b), (d), (e), (f), 19(1)(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). SaskPower also stated that records responsive to some portions of the Applicant's access request do not exist.

- [3] On March 4, 2024, the Applicant asked my office to review SaskPower's decision. On March 28, 2024, the Applicant confirmed with my office that they were only interested in a review of the exemptions applied to the first part of their access request (i.e., the 25-year contract SaskPower has with Iyuhana Solar).
- [4] On April 2, 2024, my office provided its notice of review to the Applicant and SaskPower. My office also provided notice to a third party, Greenwood Sustainable Infrastructure LLC (Iyuhana Solar).
- [5] On May 30, 2024, the third party provided its submission, and SaskPower provided its submission on June 3, 2024. The Applicant provided their submission on June 4, 2024.

II RECORDS AT ISSUE

- [6] The record is a 141-page agreement (agreement). SaskPower initially withheld portions of 38 pages pursuant to subsections 18(1)(b), (d), (e), (f), 19(1)(b) and 29(1) of FOIP.
- [7] During my review, my office noted that the last two pages of the agreement (pages 140 and 141) contain a list of standards. SaskPower described these as industry standards put out by the North American Electric Reliability Corporation (NERC). As the standards are publicly available on NERC's website, SaskPower agreed that it would release pages 140 and 141 to the Applicant in full, which it did on August 20, 2024. SaskPower also provided the Applicant with a link to NERC's website. This leaves 36 pages under review, as outlined in the Appendix.
- [8] SaskPower attached its Index of Records (index) to the agreement when submitting it to my office, so the page numbers on its index do not align with the page numbers on the agreement. For the Applicant's sake, I account for this in the Appendix; for example, page 12 on SaskPower's index is what the Applicant would see as page 6 on the agreement. In this Report, I refer to the page numbers on the agreement.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] SaskPower is a “government institution” pursuant to subsection 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*. Greenwood Sustainable Infrastructure LLC (Iyuhana Solar) is a third party pursuant to subsection 2(1)(j) of FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did SaskPower properly apply subsections 18(1)(b), (d), (e) and (f) of FOIP?

[10] SaskPower applied subsections 18(1)(b), (d), (e) and (f) of FOIP as outlined in the Appendix. These subsections provide as follows:

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;

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution;

(e) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution, or considerations that relate to those negotiations;

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

[11] Section 18 of FOIP is a discretionary class-based and harm-based provision, meaning, it contains both class and harm-based exemptions. It refers to the Government of Saskatchewan as a whole, and recognizes that government institutions, individually or collectively, may hold significant amounts of financial and economic information that is critical to the management of the provincial economy. The Government of Saskatchewan is responsible for managing many aspects of the province's economic activities in the interests of the people of Saskatchewan, by ensuring that an appropriate economic infrastructure is in place and by facilitating and regulating the activities of the marketplace (*Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 8, 2024 [*Guide to FOIP*, Ch. 4], p. 166). In general, it protects the Government of Saskatchewan's economic interests as follows:

Economic interests refers to both the broad interests of a government institution and, for the government as a whole, in managing the production, distribution and consumption of goods and services. This also covers financial matters such as the management of assets and liabilities by a government institution and the government institution's ability to protect its own or the government's interests in financial transactions.

[12] Subsection 18(1) of FOIP includes the requirement that access can be refused where it "could reasonably be expected to disclose" the protected information listed in the provisions. With the exception of subsection 18(1)(e) of FOIP, the subsections cited by SaskPower in this matter are harm-based provisions that are required to meet the threshold of "could reasonably be expected to", as considered by the Supreme Court of Canada in [Ontario \(Community Safety and Correctional Services\) v. Ontario \(Information and Privacy Commissioner\), 2014 SCC 31](#) as follows:

This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences"...

[13] I continue my review.

Subsection 18(1)(b) of FOIP

[14] It appears that SaskPower considered subclauses (i) and (ii) separately, or as if they are two separate provisions. Subclauses (i) and (ii) are conjoined by the word “and”, so my office considers that conditions in both subclauses (i) and (ii) must be read, and satisfied, together for the provision to apply.

[15] Subsection 18(1)(b) of FOIP is a discretionary class-based exemption. It 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. 170). My office uses the following three-part test to determine if a government institution properly applied this provision:

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

[16] In defense of subsection 18(1)(b) of FOIP, SaskPower submits as follows:

11...

...SaskPower submits that the redactions involved relate to a contract with a third party for purchases [sic] power. This contract contains information that was part of the successful RFP and the financial agreements of the contract. Further the agreement has technical information about SaskPower’s grid and the requirements to connect and operate at a component of the grid. The cost of individual contracts as well as technical information about the power system in Saskatchewan is all highly proprietary.

Information in these documents is considered confidential. The disclosure of the redacted information would be harmful to SaskPower and could pose a substantial legal

risk if lost or shared beyond SaskPower employees and the Third party as it would undermine future power agreement RFPs, as well as expose SaskPower to legal liability by the third party in this case.

14...

...SaskPower submits that the records identified above explicitly cover cost of power purchases for a specific plant. This information is the intellectual property of SaskPower and has monetary value as it details the results of a successful RFP.

[17] It appears that SaskPower submits the record contains both financial and technical information. The *Guide to FOIP*, Ch. 4 at pages 170-171, provides the following definitions:

- “Financial information” is information regarding monetary resources, such as financial capabilities, assets, and 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.
- “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.

[18] Regarding the second and third parts of the test, pages 172 and 173 of the *Guide to FOIP*, Ch. 4, offer the following definitions:

- “Proprietary” means of, relating to or holding as property. “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”.
- “Owner” means someone who has the right to possess, use and convey something; a person in whom one or more interests are vested.
- “Right of use” means a legal, equitable or moral title or claim to the use of property, or authority to use.

- “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.

[19] SaskPower has not outlined which exact portions of the record that it believes contains either financial or technical information. Upon review, however, it does appear that some portions contain financial information. For example, portions on pages 22 and 24 of the agreement outline some of SaskPower’s financial obligations, which may be considered financial information. It is not clear to me, though, where the record may contain technical information.

[20] Regardless, to have a proprietary use of information, and for the information to have monetary value (or potential monetary value), the government institution must demonstrate how disclosure of the information would harm its ability to, essentially, earn money from its investment. SaskPower raised subsection 18(1)(b) of FOIP in my office’s [Review Report 301-2023](#), and I said the following about the second and third parts of the test at paragraph [55] as follows:

[55] However, the question is whether SaskPower has demonstrated a proprietary interest in such information that would have monetary value for SaskPower. In my office’s [Review Report 132-2023](#) concerning the Saskatchewan Health Authority, I said the following at paragraph [26] about subsection 17(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act*, which is an equivalent provision:

[26] Ontario’s [Freedom of Information and Protection of Privacy Act](#) subsection 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 Information and Privacy Commissioner Office’s (IPC) [Order MO-1746](#), the phrase “belongs to” was found to mean “ownership” which makes it relevant for Saskatchewan’s [subsection 17\(1\)\(b\)](#) of LA [FOIP](#). In Order MO-1746, the adjudicator stated the following:

The Assistant Commissioner has thus determined that **the term “belongs to” refers to “ownership” by an institution, and that the concept of “ownership of information” requires more than the right to simply possess, use or dispose of information, or control access to the physical record in which the information**

is contained. 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 the information** (*Guide to LA FOIP*, Ch 4, pp. 139-140).

[Emphasis in original]

[21] At paragraph [56] of Review Report 301-2023, I went on to discuss that subsection 18(1)(b) of FOIP is intended to protect a government institution’s competitiveness in the marketplace in the same way a private corporation’s competitiveness would be protected under whichever relevant legislation would apply. I used the example of a tech company investing in research and development, building a technology, patenting it, and then earning money from marketing it. In that matter, SaskPower did not demonstrate that was the type of relationship that existed, and it did not do so here, either.

[22] As such, I find that SaskPower did not properly apply subsection 18(1)(b) of FOIP. I will now consider its reliance of subsection 18(1)(d) of FOIP.

Subsection 18(1)(d) of FOIP

[23] Subsection 18(1)(d) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution. This exemption is intended to protect a government institution’s ability to negotiate effectively with other parties. It provides similar protection as is provided third parties under subsection 19(1)(c)(iii) of FOIP. Pages 180 and 181 of the *Guide to FOIP*, Ch. 4, outline the following two-part test my office uses to determine if a government institution has properly applied subsection 18(1)(d) of FOIP:

1. Are there contractual or other negotiations occurring involving the Government of Saskatchewan or a government institution?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations?

[24] SaskPower submits as follows:

49...

...SaskPower submits that the record identified above are a final version of a successful RFP and the contract negotiated with the third party. The redacted contained the financial and non-financial terms of the third party's successful bid on the project. The release of the above noted information would harm SaskPower's ability to negotiate fairly with sellers, and those who feel SaskPower is a risk to their proprietary information.

[25] Page 181 of the *Guide to FOIP*, Ch. 4, states that "interfere" means to hinder or hamper. This provision requires that disclosure of the record "could reasonably be expected" to have the intended outcome, which means there needs to be a reasonable expectation of harm. The government institution should not assume the harm is self-evident; the harm must be described in a precise and specific way. Government institutions should also indicate the extent of the harm that would occur and provide facts to support its assertion. A government institution should answer, among other questions, what negotiations would be affected by disclosure, if they are ongoing or concluded, how disclosure would interfere with the negotiations, and if the information relates to issues already resolved.

[26] SaskPower describes the record as a "final version of a successful RFP and the contract negotiated with the third party". Once a contract is executed, negotiation is concluded. The exemption would generally not apply if a negotiation has concluded unless the government institution intends to use the same strategy in its negotiations again and the strategy has not been publicly disclosed (*Guide to FOIP*, Ch. 4, p. 181). SaskPower has not directly argued that disclosure of the withheld portions would harm its ability to negotiate using the same strategy in the future, although it said disclosure would harm its ability to "negotiate fairly with sellers." This is, however, not enough information or evidence to support the notion that there would be harm to any future negotiations. Neither part of the test is satisfied.

[27] I find, therefore, that SaskPower did not properly apply subsection 18(1)(d) of FOIP. I will now consider its reliance on subsection 18(1)(e) of FOIP.

Subsection 18(1)(e) of FOIP

[28] Subsection 18(1)(e) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of a government institution. It also covers considerations related to the negotiations. Examples of the type of information that could be covered by this exemption are the various positions developed by a government institution's negotiators in relation to labour, financial and commercial contracts. Subsection 18(1)(e) of FOIP is worded the same as subsection 17(1)(c) of FOIP. Although the context of the larger provisions is different (advice from officials versus economic and other interests), the same definitions and test can be applied. Pages 184 to 186 of the *Guide to FOIP*, Ch. 4, outlines the following two-part test my office uses to determine if a government institution has properly applied this exemption:

1. Does the record contain positions, plans, procedures, criteria, instructions, or considerations that relate to the negotiations?
2. Were the positions, plans, procedures, criteria, instructions, or considerations developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution?

[29] SaskPower submits as follows:

50...

...SaskPower submits that the records identified above have been created and developed for the purpose of providing SaskPower with options and analysis in contractual/RFP negotiations. These negotiations which were developed specifically for discussions in technology sharing/production, construction, funding and budgetary approvals. The release of the above noted information would harm SaskPower's ability to negotiate fairly with sellers, developers and would risk further negotiation in the near future.

[30] SaskPower has not stated, as per the first part of the test, if the record contains positions, plans, procedures, criteria, instructions, or considerations. As the first part of the test is not met, I find SaskPower did not properly apply subsection 18(1)(e) of FOIP. I will now consider subsection 18(1)(f) of FOIP.

Subsection 18(1)(f) of FOIP

[31] Subsection 18(1)(f) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution. Page 188 of the *Guide to FOIP*, Ch. 4, outlines the following test my office uses to determine if a government institution has properly applied this exemption:

Could disclosure reasonably be expected to prejudice the economic interests of the Government of Saskatchewan or a government institution?

[32] SaskPower submits as follows:

51...

... SaskPower submits that the record identified above prejudice the economic interests of SaskPower and the Government of Saskatchewan. The release of Power Purchase agreement and confidential information contained, could hinder any work on taking new RFPs to market for new Power Purchase Agreement. Releasing the successful financial agreements would undermine SaskPower's ability to negotiated [sic] Power Agreements in the future. The release of this information would also harm SaskPower's ability to establish working relationships with the contractors and service providers in the near future.

[33] The *Guide to FOIP*, Ch. 4 at page 190, offers the following definitions:

- Prejudice in this context refers to detriment to economic interests.
- "Economic interests" refer to both the broad interests of a government institution and, for the government as a whole, in managing the production, distribution and consumption of goods and services. This also covers financial matters such as the management of assets and liabilities by a government institution and the government institution's ability to protect its own or the government's interests in financial transactions.

[34] The *Guide to FOIP*, Ch. 4 at page 190, offers the following examples of harm to economic interests:

- Information in budget preparation documents which could result in segments of the private sector taking actions affecting the government's ability to meet economic goals (Note: approved budgets are not included as they are tabled in the Legislature as public documents).
- Background material to be used in establishing land costs which if released would affect revenue from the sale of the land.

[35] SaskPower discusses that harm may result but doesn't describe the extent of the harm or how it is probable that disclosure of the record would result in the harm. For example, if disclosure of the "Power Purchase agreement" could "hinder any work on taking new RFPs to market", SaskPower hasn't sufficiently elaborated or provided any evidence that would support its assertion. As the test is not met, I find SaskPower did not properly apply subsection 18(1)(f) of FOIP.

[36] I recommend SaskPower release the information where it applied subsections 18(1)(b), (d), (e) and (f) of FOIP within 30 days of the issuance of this Report. The exception to this is page 134 (redaction 49) on which SaskPower has also applied subsection 19(1)(b) of FOIP; I will also consider this redaction pursuant to subsection 19(1)(b) of FOIP.

3. Did SaskPower properly apply subsection 19(1)(b) of FOIP?

[37] I am reviewing subsection 19(1)(b) of FOIP on pages 68 (redaction 23), 69 (redaction 24), 107 (redaction 34), 108 (redaction 35), 109 (reaction 36) and 134 (redaction 49).

[38] Subsection 19(1)(b) of FOIP provides as follows:

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

...

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

[39] Subsection 19(1)(b) of FOIP is a mandatory, class-based exemption. It permits refusal of access in situations where a record contains financial, commercial, scientific, technical, or labour relations information that was supplied in confidence to a government institution by a third party (*Guide to FOIP*, Ch. 4, p. 203). My office uses the following three-part test to determine if a government institution has properly applied subsection 19(1)(b) of FOIP:

1. Is the information financial, commercial, scientific, technical, or labour relations information of a third party?
2. Was the information supplied by the third party to a government institution?
3. Was the information supplied in confidence implicitly or explicitly?

[40] In support of this provision, SaskPower submits as follows:

The third party in this request was contacted to review the Power Purchase Agreement in this to review their rights under Section 19 of The Act. They were sent the Agreement for Review on January 30, 2024 and responded on February 12, 2024. They identified several sections that they requested redacted under Section 19(1)(b). These sections constitute both financial and commercial information. The agreement included several financial requirements for the winning the contract and included pricing for services negotiated through the RFP and contract negotiations.

[41] The third party submits as follows:

Our position is that the Confidential Information relates to Section 19(1) of the Act in respect to the financial, commercial and technical information, which if disclosed, could reasonably be expected to impact our ability to be competitive on future RFP submissions with the Saskatchewan Power Corporation. Moreover, as we are a qualified proponent for the two by 100 MW Solar RFP (SaskPower's Inquiry # 1011473) that was submitted in April 2024 ("2024 Procurement") we see the Confidential Information, such as pricing (pursuant to the Tariff Schedule of the PPA), as being material for our competitiveness for said 2024 Procurement and future procurements with the Saskatchewan Power Corporation. By releasing our pricing information listed in the PPA into the public domain, this would allow our competitors to assess our pricing strategy and compromise our competitive position. This is in particular the case, as the pricing in the PPA is less than one year old and relates to a

project of identical type and size under the 2024 Procurement and anticipated future procurements by the Saskatchewan Power Corporation of more than 3,000 MW of renewable energy to the grid by 2025. We therefore, view our Confidential Information as falling within Section 19(1) of the Act.

[42] Earlier on I defined “financial” and “technical” information. The *Guide to FOIP*, Ch. 4 at page 204, defines “commercial” information as follows:

- Commercial information is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records. Types of information included in the definition of commercial information can include:
 - Offers of products and services a third-party business proposes to supply or perform.
 - A third-party business’ experiences in commercial activities where this information has commercial value.
 - Terms and conditions for providing services and products by a third party.
 - Lists of customers, suppliers or sub-contractors compiled by a third-party business for its use in its commercial activities or enterprises - such lists may take time and effort to compile, if not skill.
 - Methods a third-party business proposes to use to supply goods and services.
 - Number of hours a third-party business proposes to take to complete contracted work or tasks.

[43] For the second and third parts of the test, the *Guide to FOIP*, Ch. 4 at pages 205-208, offers the following definitions:

- “Supplied” means provided or furnished. Information may qualify as “supplied” if it was directly supplied to a government institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.
- “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the supplier of the information has stipulated how the information can be disseminated. “Implicitly” means the confidentiality is understood in the absence of a statement or agreement of confidentiality. “Explicitly” means it is clearly expressed or stated.

[44] Upon review, the redacted portions of pages 23 and 24 where SaskPower applied subsection 19(1)(b) of FOIP appear to contain information about how the third party's facility operates plus a description of its site plan. This portion does not contain any financial information as it does not describe the third party's financial assets or liabilities.

[45] In my office's [Review Report 306-2016](#), I considered a matter where an applicant requested agreements between the Ministry of Highways and Infrastructure (as it was known then) and the Canadian Pacific Railway Company. That report dealt with a similar type of agreement. I stated as follows at paragraphs [18] and [19]:

[18] The Ministry asserted that the portions of the agreement that describe project contribution, land for the facility and the design and specifications would qualify as commercial information. **The agreement does not relate to the buying and selling of merchandise or services, it relates to the commitments of each party to complete a project. The record does not qualify as commercial information.**

[19] CP has submitted that the agreement qualifies as technical information. The entire agreement does not qualify as technical information. A specific review of the section on design and specifications to determine if that would qualify as technical information showed it did not contain technical information. **It simply indicates which party will be responsible for the specifications and designs of certain features of the project and which party will have a right to review the specifications and designs. This does not qualify as technical information.**

[Emphasis added]

[46] Similarly, in this matter, the information on these two pages is not commercial in nature because it does not relate to the buying and selling of merchandise and services; it simply relates to the commitments of each party in the agreement. It is also not technical as it indicates the design or plan of the third party's facility and who has a right to review these. As such, the first part of the test is not met for pages 68 and 69.

[47] The portions of pages 107 to 109 that SaskPower disclosed to the Applicant indicate that this portion is a tariff schedule. A tariff is generally known to be a duty or tax that is imposed on imported or exported goods or services. The tariff schedule on these pages

appear to outline what SaskPower is obligated to pay the “supplier”, or at least this is what portions of the record released to the Applicant outline. The information may appear financial in nature, but it was not supplied by the third party to SaskPower as required by the second part of the test.

[48] The portion of page 134 released to the Applicant identifies this portion of the record as “SCHEDULE 1 – INDIGENOUS PARTICIPATION”. The portion withheld on page 134 pursuant to subsection 19(1)(b) of FOIP describes what the third party is obligated to provide. It is not clear how it is financial, commercial or technical information, and so the first part of the test is not met.

[49] In summary, I find SaskPower did not properly apply subsection 19(1)(b) of FOIP to the record. I recommend it release the information where it applied subsection 19(1)(b) of FOIP to the Applicant within 30 days of the issuance of this Report.

4. Did SaskPower properly apply subsection 29(1) of FOIP?

[50] SaskPower applied subsection 29(1) of FOIP on pages 62 (redaction 17), 66 (redactions 18 to 20) and 67 (redaction 21).

[51] Subsection 29(1) of FOIP provides as follows:

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

[52] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure or if disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP (*Guide to FOIP*, Chapter 6, “Protection of Privacy”, updated February 27, 2023 [*Guide to FOIP*, Ch. 6], p. 186).

[53] To engage the privacy provisions at Part IV of FOIP, the information must be “personal information” as defined by subsection 24(1) of FOIP. Subsection 24(1) of FOIP is not an exhaustive list; for information to be “personal information”, it must be:

1. About an identifiable individual, meaning the individual can be identified, or the information, when combined with information otherwise available, could reasonably allow the individual to be identified.
2. Personal in nature, meaning the information must reveal something personal about the individual.

[54] Regarding its reliance on subsection 29(1) of FOIP, SaskPower submits as follows:

SaskPower submits that it properly redacted part of this record as 29(1) as the contract contained personal signatures of several individuals, as well as the names and contact information from several people who are not Saskatchewan Government employees and qualify to have their information redacted.

[55] Upon review, redaction 1 on page 62 contains the email address of the third party’s general counsel. Page 66 contains two signatures; one signature is of SaskPower’s Executive Vice President, and the other is of the Assistant Secretary. SaskPower also withheld a couple portions with two different sets of initials indicating internal review. Page 67 contains the signature of the third-party representative.

[56] I have stated in past reports (e.g., [Review Report 205-2019, 255-2019](#)) that business card information is the type of information found on a business card of a professional and includes data elements such as their name, work address, work email, etc. The *Guide to FOIP*, Ch. 6 at page 37, also outlines that withholding recorded information that relates to the activities of public servants and other individuals in their professional capacities, including those who interact with government, would impede FOIP’s overarching goal of creating accountability and transparency over government activities. Such information should then be available to the public. As the email address is of the third party’s general counsel, they are using their email address in a professional capacity, including in their interactions with SaskPower. As such, I find SaskPower did not properly apply subsection 29(1) of FOIP to the general counsel’s email address on page 37 and recommend it release this information to the Applicant within 30 days of the issuance of this Report.

[57] In previous reports (e.g., [Review Report 220-2022](#), [255-2022](#) and [Review Report 155-2022](#)), I have found that signatures that appear in a work-related context or used in a work-related or professional capacity do not constitute personal information. The signatures on pages 66 and 67, plus the initials on page 66, all appear in a work-related or professional capacity, and so they are not personal information. Accordingly, I find that SaskPower did not properly apply subsection 29(1) of FOIP to the signatures and initials found on pages 66 and 67. I recommend it release this information within 30 days of the issuance of this Report.

IV FINDINGS

[58] I find I have jurisdiction to conduct this review.

[59] I find SaskPower did not properly apply subsections 18(1)(b), (d), (e) and (f) of FOIP.

[60] I find SaskPower did not properly apply subsection 19(1)(b) of FOIP.

[61] I find SaskPower did not properly apply subsection 29(1) of FOIP.

V RECOMMENDATION

[62] I recommend SaskPower release all the information in the record to the Applicant within 30 days of the issuance of this Report. See the Appendix for details.

Dated at Regina, in the Province of Saskatchewan, this 28th day of August, 2024.

Ronald J. Kruzeniski, KC
A/Saskatchewan Information and Privacy
Commissioner

Appendix

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		2	18(1)(b), (d), (e), (f)	Title of appendix	Release
		3	18(1)(b), (d), (e), (f)	Title of appendix	Release
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		6	18(1)(b), (d), (e), (f)	Titles same as redaction 2	Release
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72	66	18	29(1)	Signature	Release
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91	85	27	18(1)(b), (d), (e), (f)	Proponent bidding conditions	Release
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		31	18(1)(b), (d), (e), (f)	Proponent bidding conditions	Release
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120	114	41	18(1)(b), (d), (e), (f)	Proponent bidding conditions	Release
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