



REVIEW REPORT 079-2023, 080-2023

Ministry of Environment

May 30, 2023

Summary: The Applicant submitted four access to information requests to the Ministry of Environment (Environment). For two of the access requests, Environment provided records to the Applicant. However, for the remaining two access requests, Environment indicated that “no records exist”. The Applicant asked the Commissioner to undertake a review. The Commissioner found the Environment conducted a reasonable search for records. However, the Commissioner recommended that Environment release two non-responsive records to the Applicant within 30 days of issuance of his Report.

I BACKGROUND

[1] On January 27, 2023, the Applicant submitted four access to information requests to the Ministry of Environment (Environment). Each access to information request was as follows:

Copy of enforcement, correspondence and occurrence files in respect of fines and/or other penalties for violations of the Discharge and Discovery Reporting Standard by the City of Regina for their Wastewater (Discharge Water) Treatment Facility which discharges effluent into Wascana Creek.

[2] The first access request was for records from 2019 (Access Request #1). The second access request was for records from 2020 (Access Request #2). The third access request was for records from 2021 (Access Request #3). The fourth access request was for records from 2022 (Access Request #4).

- [3] Based on how the Applicant worded their access requests, Environment initially found there were no responsive records. Therefore, it determined it needed to contact the Applicant to clarify the access requests.
- [4] On February 23, 2023, Environment contacted the Applicant by telephone regarding what records they were seeking. Based on the telephone call, Environment revised the Applicant's four access requests to the following:
- Copy of all records pertaining to the Discharge and Discovery Reporting Standard by the City of Regina for their Wastewater (Discharge Water) Treatment Facility which discharges effluent into Wascana Creek.
- [5] On March 22, 2023, Environment responded to each of the access requests. For Access Requests #1 and #4, Environment provided records to the Applicant. However, for Access Requests #2 and #3, Environment indicated to the Applicant that no records exist.
- [6] On March 27, 2023, the Applicant requested a review by my office into Environment's responses that no records exist regarding Access Requests #2 and #3.
- [7] At the intake stage of my office's review process, the Applicant provided my office with links to the City of Regina's Wastewater Treatment Plant reports to the Water Security Agency for the years 2020 and 2021 as a basis for believing why records exist in response to Access Requests #2 and #3. The Applicant also provided my office with a link to the City of Regina's *Environmental Discharge and Release Reports for the year 2021* as another reason for believing why records exist. The Applicant identified the following dates to be searched: May 22, 2020, June 28, 2020, June 29, 2020, July 2020, and August 2020. They also noted August 29, 2021, August 31, 2021, September 3, 2021, September 15, 2021, October 17, 2021, and November 15, 2021.
- [8] My office forwarded the links and the dates from the Applicant to Environment to work towards an early resolution of the issue.

[9] Environment responded that it was able to identify additional responsive records based on the specific dates provided by the Applicant. Environment indicated that the specific dates enabled it to search its system in a way different from its initial search, which resulted in locating 2 additional responsive records: Discharge cases 2020-05-25T11:41:11 and 2020-06-25T13:25:59.

[10] However, Environment explained that it had also located “Non-Public Discharge cases,” but those records were considered non-responsive to the Applicant’s access requests. This is because the Applicant requested records pertaining to the “[Discharge and Discovery Reporting Standard](#)”. Reports of discharge in accordance with that standard are “public”. As such, non-public discharge cases would not be responsive to the Applicant’s requests. Nevertheless, at the intake stage of my office’s review process, Environment also offered to provide the non-public discharge cases to the Applicant as well. It provided discharge case 2020-07-10T12:12:56 to the Applicant.

[11] The Applicant indicated they wished for my office to review Environment’s search efforts for records.

[12] On April 19, 2023, my office notified both Environment and the Applicant it would undertake reviews of Environment’s efforts to search for records responsive to the Applicant’s Access Requests #2 and #3.

[13] On May 18, 2023, Environment provided its submission to my office. The Applicant did not provide a submission.

II RECORDS AT ISSUE

[14] At issue is Environment’s search efforts. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[15] Environment qualifies as a “government institution” as defined by subsection 2(1)(d)(i) of FOIP. Therefore, I find that I have jurisdiction to conduct this review.

2. Did Environment conduct a reasonable search for records?

[16] When a government institution receives an access to information request, the government institution should conduct a reasonable search for records responsive to the request. In a review with my office, government institutions must demonstrate they have conducted a reasonable search to locate records. A “reasonable search” is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records, which are reasonably related to the request. 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 (*Guide to FOIP*, Ch. 3, p. 8).

[17] As detailed in the background of this Report, the Applicant had provided links to reports by the City of Regina to support why they believe records exist. My office noted that the last page of City of Regina’s *Environmental Discharge and Release Reports for the year 2021* is a table of “Reportable Releases” for the year 2021. Four rows of the table (as shown below) details treated water leaving the City’s Wastewater Treatment Plant with levels exceeding the reportable limit. In the table, the City summarized that it, along with other organizations, worked with “regulators” to determine the cause of the reportable release.

| | | | | | |
|--------------|------|--|---|---------|----------------------------|
| Aug 29-30-21 | WWTP | The treated water leaving the WWTP had levels of benzo(a)pyrene above the reportable limit of 0.00001 mg/L. The level in the water entering the creek was 0.00002 mg/L. No exceedances were identified in downstream sampling. | The City, EPCOR, and the Coop Refinery Complex (CRC) worked with regulators to determine cause of the Reportable Release. Additional sampling was conducted downstream of the WWTP to determine the impacted area and associated levels. Detectable levels of benzo(a)pyrene were not detected within Wascana Creek. Work is ongoing to prevent similar events. Associated costs with the event were invoiced to the CRC. | Level 3 | Still under investigation. |
| ... | | | | | |
| 15-Sep-21 | WWTP | The treated water leaving the WWTP had levels of benzo(a)pyrene above the reportable limit of 0.00001 mg/L. The level in the water entering the creek was 0.000013 mg/L. No exceedances were identified in downstream sampling. | The City, EPCOR, and the CRC worked with regulators to determine cause of the Reportable Release. Additional sampling was conducted downstream of the WWTP to determine the impacted area and associated levels. Detectable levels of benzo(a)pyrene were not detected within Wascana Creek. Work is ongoing to prevent similar events. Associated costs with the event were invoiced to the CRC. | Level 3 | Still under investigation. |
| 17-Oct-21 | WWTP | The treated water leaving the WWTP had levels of benzo(a)pyrene above the reportable limit of 0.00001 mg/L. The level in the water entering the creek was 0.00001 mg/L. No exceedances that were correlated to the release were identified in downstream sampling. | The City, EPCOR, and the CRC worked with regulators to determine cause of the Reportable Release. Additional sampling was conducted downstream to determine reach and associated levels. Work is ongoing to prevent similar events. Associated costs with the event were invoiced to CRC. | Level 3 | Still under investigation. |
| 15-Nov-21 | WWTP | The treated water leaving the WWTP had levels of benzo(a)pyrene above the reportable limit of 0.00001 mg/L. The level in the water entering the creek was 0.00006 mg/L. No exceedances that were correlated to the release were identified in downstream sampling. | The City, EPCOR, and the CRC worked with regulators to determine cause of the Reportable Release. Additional sampling was conducted downstream to determine impacted area and associated levels. Detectable levels of benzo(a)pyrene were not detected within Wascana Creek. Additional treatment processes have been implemented by the CRC to remove benzo(a)pyrene from their wastewater. Associated costs were invoiced to the CRC. | Level 3 | Still under investigation. |

[18] However, my office noted that of the records provided by Environment to the Applicant, none of the records appear to be related to the above four reportable releases. My office sought an explanation from Environment why this might be the case.

[19] In response, Environment noted the definition of “discharge” as defined by *The Environment Management and Protection Act, 2010* (EMPA) refers to discharges “into the environment”. Subsection 2(1)(g) of EMPA says:

2(1) In this Act:

...
(g) “**discharge**” means a discharge, drainage, deposit, release or emission **into the environment**;

[Emphasis added]

[20] Environment noted that the term “environment” does not include things like lagoons at a sewage treatment facility. Subsection 2(1)(h) of EMPA defines the term “environment” as follows:

2(1) In this Act:

...
(h) “**environment**” means:

(i) air and the layers of the atmosphere;

(ii) land, including soil, subsoil, sediments, consolidated surficial deposits and rock;

(iii) water;

(iv) organic and inorganic matter and living organisms; and

(v) the interacting natural systems and ecological and climatic interrelationships that include the components mentioned in subclauses (i) to (iv);

[21] Therefore, only discharges “into the environment” are required to be reported to Environment. Environment explained that in most cases, it is the Water Security Agency that follows up with reportable discharges at sewage treatment facilities. It said:

In most cases involving reportable discharges at sewage treatment facilities, the ministry receives the initial notification but the Water Security Agency follow [sic] up with the facility with regard to further assessment or corrective actions.

[22] Based on Environment's explanation, I am satisfied that it would not have discharge case records related to the reportable releases set out in the table on the last page of the City of Regina's *Environmental Discharge and Release Reports for the year 2021*.

[23] Regarding the remainder of its search efforts, Environment provided details of its search efforts in five different systems or area:

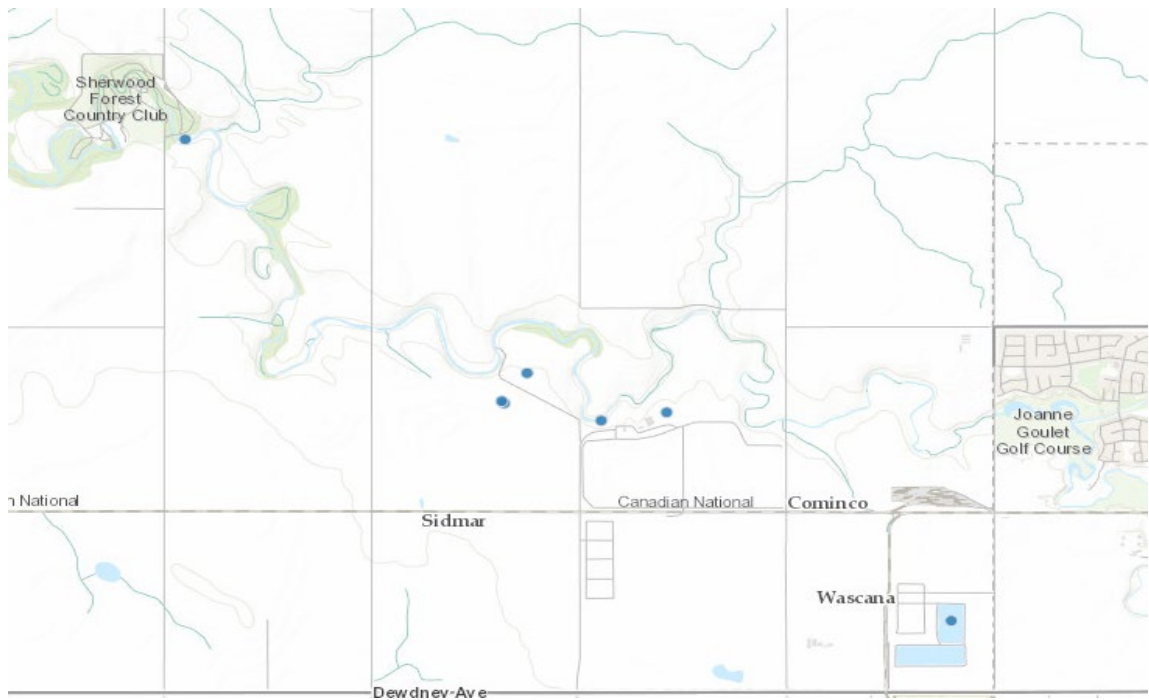
- Client Relationship Management (CRM) Integration
- CRM Application
- Environmental Management System (SEEMS)
- Industrial File Database (IFDB)
- RM Files

[24] Below is summary and analysis of Environment search efforts of each system or area

Client Relationship Management (CRM) Integration

[25] Environment described this system as an "internal web-based map where information is generated from our CRM application where information is entered". This map shows the location of where discharges has occurred. Environment located the site of the wastewater treatment plant on the map and noted the discharge cases within the area. From there, Environment searched through the details of each discharge case to determine if they were responsive to the Applicant's access request. During its initial search through records, Environment had identified one discharge case response to Access Request #1 and #4, but not for Access Requests #2 or #3.

[26] In its submission, Environment noted that public discharge cases or spills are made available to the public through an interactive map available here: "[Discharge Cases \(Spills\) Map](#)." Below is an image of the map of where the Regina Wastewater Treatment Plant is located:



[27] Each blue dot is a public discharge case. Environment provided my office with details of how it searched the details of each blue dot to determine if they were responsive except for the blue dot that appeared near the top left-hand corner of the image above. Therefore, in the course of this review, my office requested that Environment search its CRM Integration system regarding the discharge case represented by the blue dot and let my office know of its results. Environment reviewed the discharge case and consulted with an Environment Protection Officer (EPO). After reviewing the discharge chase, the EPO confirmed that the discharge case is not related to the operations of Regina’s wastewater treatment plant. Therefore, the discharge case is not responsive to the Applicant’s access request.

CRM Application

[28] Environment describes this system as an “internal application” that stores site, organization and [discharge] information”. It explained that its CRM Integration system pulls information from the CRM application.

- [29] Environment conducted the keyword search on the section and township number “31-17” of the legal land description of the wastewater treatment plant, “100 Fleming”, which is the address of the wastewater treatment plant. Based on these searched, it located three discharge cases that are “non-public”: 2020-07-10T12:12:56, 2021-09-03T16:14:15, and 2021-09-24T19:42:37. As described in the background of this report, the Applicant sought a copy of all records pertaining to the “Discharge and Discovery Reporting Standard”, which are considered “public” cases. As a result, Environment determined that these non-public cases were considered non-responsive to the Applicant’s access requests. Environment explained in its submission that it receives calls of non-public discharge or spill cases because the amount of discharge is not known at the time of the call. Once it receives further quantity information, Environment is able to update its information as to whether the discharge or spill case is considered public or non-public.
- [30] Nevertheless, as described in the background of this Report, Environment provided the non-public discharge case 2020-07-10T12:12:56 to the Applicant. Although the non-public discharge cases are not responsive to the Applicant’s request, I recommend that Environment release the discharge case 2021-09-03T16:14:15 and 2021-09-24T19:42:37 to the Applicant, subject to any exemptions in FOIP.

Environmental Management System (SEEMS)

- [31] Environment described this system as an “internal application that stores site and spill information” and “application provides file numbers for physical and digital files”. In its submission, indicated “key search words” were used to search SEEMS. Based on its search details, it appears that Environment searched SEEMS by using the Section number and Township number of the wastewater treatment plant’s legal land description “31-17”, which returned results such as “SW-31-17-20-W, Regina-City of Regina – Tertiary S.T.P. Storage Site”, “SW-31-17-20-W2, R.M. of Sherwood #159-City of Regina – Sewage Treatment Plant, Sherwood 159 Storag”, “SW-31-17-20-W2, R. M. of Sherwood #159-City of Regina – Primary Sewage Treatment Plant Storage Site”, “SW-31-17-20-W2, Regina – city of Regina – Lagoons Storage Site”. SEEMS provided the reference numbers for electronic files stored on a drive within Environment’s network. Environment searched

through those particular records on the drive. Environment also pulled the physical files related to its search results. However, Environment did not locate records responsive to the access request on its SEEMS system.

Industrial File Database (IFDB)

[32] Environment describes this system as a database “that contains information regarding sites and their applicable physical file number”. Environment conducted keyword searches of “31-17” and “water treatment”. However, no results were returned in the search for records.

RM Files

[33] Environment explained that rural municipality records are stored on a drive within its network and contains environmental information. It conducted a keyword search of “RM 159” (for the RM of Sherwood) but no results were returned.

[34] Based on the above explanations regarding discharges at sewage treatment plants and summary of its search efforts, I find that Environment had conducted a reasonable effort to search for records responsive to the Applicant’s access requests. I recommend that Environment take no further action regarding its search for records.

IV FINDINGS

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

[36] I find that Environment conducted a reasonable search for records responsive to the Applicant’s access requests.

V RECOMMENDATIONS

[37] I recommend that Environment release the discharge cases 2021-09-03T16:14:15 and 2021-09-24T19:42:37 to the Applicant, subject to any exemptions in FOIP within 30 days of issuance of this Report.

[38] I recommend that Environment take no further action regarding its search for records.

Dated at Regina, in the Province of Saskatchewan, this 30th day of May, 2023.

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