



## **REVIEW REPORT 106-2022**

### **Saskatchewan Telecommunications**

**February 21, 2023**

**Summary:**

The Applicant submitted an access to information request to Saskatchewan Telecommunications (SaskTel). After clarifying the access request with SaskTel, SaskTel proceeded to prepare a fee estimate, which included creating a query as well as developing a PowerShell script to search for records. It then issued its fee estimate to the Applicant. As a deposit, the Applicant paid 50% of the fee estimate. Then, SaskTel ran the query to search for responsive records as well as developing the PowerShell script to search for audit data. Based on the results, SaskTel prepared a second fee estimate. The second fee estimate included SaskTel's estimates for preparing the records. After receiving the second fee estimate, the Applicant appealed to the Commissioner. The Commissioner made several findings, including *The Freedom of Information and Protection of Privacy Act* does not allow government institutions to issue two fee estimates. He made recommendations including that SaskTel no longer expect payment of the fees set out in its fee estimate dated May 16, 2022. He recommended that SaskTel revise its fee estimate dated April 18, 2022 by eliminating the fee for searching for policies and procedures. Finally, he recommended that SaskTel continue to process the access request and provide a response to the Applicant within 30 days of issuance of this Report.

## **I BACKGROUND**

[1] On April 7, 2022, Saskatchewan Telecommunications (SaskTel) received the following six-part access to information request from the Applicant:

- The current SaskTel Policy, Procedures, Std Work or any other document that guides and offers administrative controls in order for Managers, Directors or VPs to gain access to employee emails.

- Any and all records created from September 2020 - present (including but not limited to emails, handwritten notes, text messages etc) regarding complaints and investigations about me.
- All records created, sent, or received by [Name of SaskTel employee] regarding me and any investigations, fact finding etc.
- Documentations regarding any records accessed or requested from my Health Services Records.
- All records sent or received to UNIFOR that references or has my name.
- All records regarding my committee work involvement.

[2] The Applicant provided my office with a recording of a telephone call they had with a SaskTel Privacy Manager. The call took place after SaskTel received the Applicant's access request and before it issued its fee estimate on April 18, 2022. In that recording, the Privacy Manager explained that SaskTel will send a fee estimate if the fee estimate will exceed \$100. The Privacy Manager clarified with the Applicant each part of the access request. For example, when clarifying the second part of the access request, the Privacy Manager asked if there were specific areas of SaskTel that the Applicant wanted to be searched since many different areas of SaskTel deal with complaints. The Applicant explained they wanted information related to discussions with and about themselves. Therefore, the Privacy Manager and Applicant agreed that the Applicant was seeking "all complaints and all investigations" so that particular part of the access request could not be narrowed. In that call, each part of the access request was clarified between the Privacy Manager and the Applicant; however, the scope of the request was not narrowed.

[3] Between April 7, 2022 and April 17, 2022, SaskTel and the Applicant communicated via email as well to clarify the details of the Applicant's access request. For example, the Applicant clarified the sixth part of their access request by indicating they were referencing the SaskTel Employees Network on Disability (SEND) and the SaskTel employment Equity union representative on the SaskTel/Unifor Joint Committee. Also, on April 13, 2022, SaskTel had approached the Applicant to seek further clarification since the Applicant was a part of the SEND committee. On April 14, 2022, the Applicant clarified:

“I am interested in knowing of any SEND emails that have been accessed by anyone other than myself.” SaskTel followed up with the Applicant on the same day to confirm the scope of the Applicant’s access request. On April 17, 2022, the Applicant confirmed the scope of the access request.

[4] I also note that in an email dated April 12, 2022 to SaskTel, the Applicant requested that the records be placed on a USB drive.

[5] On April 18, 2022, SaskTel issued a fee estimate. This fee estimate included some detail, but not time to prepare and sever records. It also included a \$60 fee for SaskTel to create a query to identify responsive records in its email system. The letter explained it can only provide an estimate of fees for preparing and severing the records once the query has been completed. It said:

You have requested access to a significant number of records that will take an equally significant amount of time to search for and prepare. In some cases, your request requires efforts to write a search scripts. Therefore, since the time required exceeds \$100, as per *The Freedom of Information and Protection of Privacy Act* (FOIP), **the following fee estimate is provided relating to your access request. In order to process your access request, the total estimate of fees outlined on the attached form totaling \$795.99 will be necessary. You will note that this total does not include the amount of time it would take to prepare and sever all the emails that would be retrieved, which is an estimate that can be provided once the query to retrieve the emails has been completed.** The fees have been calculated pursuant to section 6 of *The Freedom of Information and Protection of Privacy Regulations*. A copy is enclosed.

[Emphasis added]

[6] Enclosed with SaskTel’s letter was a three-page breakdown of the first part of the fee estimate. I note that the majority of the three-page breakdown reflects the estimated cost for searching for records, including a \$240 estimate for developing a PowerShell script to search for audit logs. The three-page breakdown is reproduced in Appendix A.

[7] On April 27, 2022, SaskTel received a payment of \$398.00, which was 50% of the estimated fees requested.

[8] Then, on May 16, 2022, SaskTel provided a further fee estimate to the Applicant. It said it developed a “search script” to identify records responsive to the Applicant’s access request. As such, it was able to provide an estimate to prepare and sever the records. It said:

Further to our letter dated April 18, 2022, we now have the remaining information required to fully respond to your request. The technical teams developed a search script for the electronic documents within your request. A significant amount of results were found. As we previously mentioned, the estimate we provided you did not include the amount of time it would take to prepare and sever all the emails that would be retrieved. We indicated the actual estimate can be provided once the query to retrieve the emails was been completed.

Responsive records have been found....

[9] Enclosed in the letter was a four-page breakdown of its fee estimate (see Appendix B). I note that this second fee estimate included the fees from the first fee estimate, and that SaskTel accounted for the \$398.00 paid by the Applicant in its calculation of the “additional deposit amount required”.

[10] In an email dated June 1, 2022, the Applicant requested a review by my office. In their request for review, the Applicant listed their concerns as follows:

I request a review of my Access to Information request received by SaskTel on April 7, 2022, on the bases [sic] of the government body:

1. did not keep to the regulatory 30-day timeline;
2. provided me with two estimates of fees. Payment of 50% of the first estimated fees was dependent on them providing me with another estimate of fees upon which further calculation of an estimate fee and its payment was conditional on processing my request to access my personal information held by SaskTel;
3. the estimate of fees included costs to me for SaskTel’s IT department to write a program to search for records;
4. inflated estimate of fees to deter my right of access (with limited exceptions), and
5. unilaterally changed the wording to item 5 of requested records to further inflate the estimated fees.

[11] On July 7, 2022, my office notified SaskTel and the Applicant that it would be undertaking a review.

[12] On September 6, 2022, my office received SaskTel's submission.

## **II RECORDS AT ISSUE**

[13] At issue is whether SaskTel is able to issue two fee estimates, if their fee estimate is reasonable, if SaskTel properly considered the Applicant's fee waiver request and if SaskTel met its legislated timeline. Therefore, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

[14] SaskTel is a "government institution" as defined by 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* (FOIP Regulations). Therefore, I find that I have jurisdiction to conduct this review.

### **2. Is SaskTel able to issue two fee estimates and did it meet its legislated timeline set out in subsection 7(2)(a) of FOIP?**

[15] SaskTel issued two fee estimates. The first was issued on April 18, 2022. Then, it issued a second on May 16, 2022. In this part of this Report, I will determine if FOIP allows for a government institution to issue more than one fee estimate and if SaskTel met its legislated timelines as set out in FOIP.

#### **a. When did SaskTel receive the Applicant's access request?**

[16] As noted in the background, SaskTel received the Applicant's access to information request on April 7, 2022.

[17] Subsection 7(2)(a) of FOIP provides that the government institution has 30 days to respond to an access to information request. Where an access to information request is unclear or

lacks sufficient detail to identify the record, the government institution must provide the applicant with the opportunity to provide more details. Subsection 6(3) of FOIP provides:

6(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.

[18] In cases where the government institution requires additional information, subsection 6(4) of FOIP clarifies when the 30-day clock begins. Subsection 6(4) provides:

6(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

[19] In its submission, SaskTel indicated it clarified the Applicant's access request pursuant to subsection 6(3) of FOIP and did not receive the access request until April 17, 2022. It said:

On Wednesday, April 13, 2022, SaskTel contacted the Applicant by email and phone to understand more about the records requested regarding the SEND committee work, as per subsection 6(3) of the Act.

...

SaskTel suggests the Application was not fully made until April 17, 2022, as explained by the events leading up to and including paragraph 13 of this submission, since it was only on April 17, 2022 that additional details were provided pursuant to subsection 6(3) such that the record requested could have been identified.

[20] As I noted in the background of this Report, SaskTel and the Applicant corresponded between April 7, 2022 and April 17, 2022 to clarify the details of the access request as what the Applicant had requested was overly broad. However, based on the email correspondence, the clarification appears pursuant to SaskTel's duty to assist under subsection 5.1(1) of FOIP, rather than subsection 6(3) of FOIP. For example, SaskTel's email to the Applicant dated April 14, 2022 said:

I did not receive a response to my voicemail that I left on April 13th nor did I receive a response to the email in which I referenced the voicemail sent shortly after calling you which is below in this email thread. Please let me know what you are looking for when it comes to your SEND and Equity committee work involvement. **We are preparing the quote as it was written**, but I'm wondering if you intended for the scope to be so large.

[Emphasis added]

- [21] Subsection 6(3) provides that a government institution must provide the applicant with the opportunity to provide more detail when an access to information is unclear or lacks sufficient detail to identify the record. Based on the above, SaskTel was able to identify the records sought by the Applicant. In other words, SaskTel had sufficient detail to identify the records. It was seeking clarification from the Applicant pursuant to subsection 5.1 of FOIP (duty to assist) and not pursuant to subsection 6(3) of FOIP.
- [22] I find that SaskTel received the Applicant's access request on April 7, 2022.
- [23] If SaskTel relies on subsection 6(3) of FOIP in the future, I recommend that it inform the applicant in writing that it is seeking additional detail pursuant to subsection 6(3) of FOIP soon after it physically receives the access request. Once the applicant provides sufficient detail, SaskTel should inform the applicant it has received sufficient detail and inform the applicant of the date the access request is deemed to be made pursuant to subsection 6(4) of FOIP. If the applicant does not respond within 30 days, then I recommend SaskTel notify the applicant that the access request is deemed to be abandoned pursuant to subsection 7.1(2) of FOIP.

**b. First Fee Estimate**

- [24] Subsection 9(2) of FOIP requires a government institution to provide a fee estimate where the cost for providing access to records exceeds the prescribed amount of \$100. This prescribed amount is found in subsection 7(1) of the FOIP Regulations. Further, subsection 7(2) of the FOIP Regulations provides that applicants are not required to pay any fees beyond what is originally estimated (*Guide to FOIP*, Chapter 3: "Access to Records", updated June 29, 2021 (*Guide to FOIP*, Ch. 3), p. 50).
- [25] Subsection 9(3) of FOIP provides that the 30-day deadline for a government institution to respond to an access request is suspended once the fee estimate is sent and remains suspended until the applicant notifies the government institution that the applicant wishes to proceed with the application (*Guide to FOIP*, Ch. 3, p. 56).

- [26] Subsection 9(4) of FOIP provides that the government institution can require the applicant to pay a 50% deposit of the fee estimate. The applicant must pay this deposit before the government institution commences its search for records (*Guide to FOIP*, Ch. 3, p. 56).
- [27] Earlier, I found the access request was received by SaskTel on April 7, 2022. Then, on April 18, 2022, SaskTel provided a fee estimate to the Applicant, which was day 11 of the 30-day time period for SaskTel to process and respond to the access request. Therefore, the 30-day clock was suspended on day 11 until the Applicant paid a deposit.
- [28] On April 27, 2022, SaskTel received payment of a 50% deposit of the estimate dated April 18, 2022. Therefore, SaskTel had 19 days remaining to respond to the access request. SaskTel began its search efforts, which included developing scripts to query its Microsoft Outlook system. From the query, SaskTel indicated it was able to estimate the work required to prepare the records. SaskTel indicated that it, “updated the outstanding components of the fee estimate and sent the notice to the Applicant on May 16, 2022.”
- [29] While I understand that the approach taken by SaskTel to search for records to be comprehensive and likely resulted in a more precise (and lower) fee estimate, FOIP does not allow for more than one fee estimate. Subsection 9(4) of FOIP provides that the fee estimate is to be issued prior to the search being completed. It provides:
- 9(4) Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that **does not exceed one-half of the estimated amount before** a search is commenced for the records for which access is sought.
- [30] In this case, SaskTel issued the second fee estimate *after* it completed a search for records.
- [31] In [Order MO-1718](#), the Office of the Information and Privacy Commissioner of Ontario (ON IPC) reviewed a case involving the City of Ottawa. The City of Ottawa issued a fee estimate for programming custom queries. The City of Ottawa’s fee estimate only included estimates for search costs and not preparation costs. The City of Ottawa recognized the



largeness of the fee estimate, the City of Ottawa determined it would not charge for preparation costs. Ultimately, the ON IPC upheld the fee estimate of \$1825.00. The ON IPC said:

The City appears prepared to provide some of the information requested (i.e. the canned information) at a nominal cost. **The City has demonstrated that in order to retrieve the balance of the information, significant search and/or programming time is required.** This situation may not be optimal and perhaps the City could do more in the future to make this information accessible at a lower cost. But, this concern is not relevant to my consideration of whether the City's fee is in accordance with the Act and regulations. **I am convinced that the City's estimate is based on a thorough and good faith consideration of the steps reasonably necessary to respond to the request, and I find that it is in compliance with the Act and regulations.**

[Emphasis added]

[32] I note that SaskTel does not need to do something similar to that of the City of Ottawa by not charging the Applicant preparation fees. FOIP provides for reasonable cost recovery associated with providing individual access to records.

[33] So how was SaskTel to have come up with a fee estimate for preparation of records if it did not run a query first? Preparing a fee estimate will require the government institution to bear costs to prepare the fee estimate. The costs can include identifying a representative sampling of responsive records upon which to base an estimate. For example, requesting that a couple of employees from different areas of SaskTel that likely had responsive records (Industrial Relations, Health Services, Human Resources) and requested those employees to conduct a keyword search for the Applicant's name in their Outlook account. Based on the results of their keyword searches, SaskTel could have multiplied that number times the # of employees within each area of SaskTel to come up with an estimate. For example, if an employee within Human Resources conducted a keyword search of their Outlook email account for the Applicant's name. If the result is 30 pages of emails, then SaskTel can multiply 30 pages with the number of employees (or number email accounts) within the human resources department. Similarly, an employee within Industrial Relations could do a keyword search of their Outlook email account for the Applicant's name. If the result is 47 pages of emails, then SaskTel can multiply 47 emails with the # of employees (or number of email accounts) within Industrial Relations. I recognize that this method is

likely to result in a less precise and greater fee estimate. However, I find that FOIP simply does not allow for government institutions to issue more than one fee estimate. If it did, then the applicant who agreed to the first fee estimate by paying a 50% deposit but disagrees with the second part, are left having made a payment to the government institution but are provided with no records. The government institution must only issue one fee estimate within the 30-day response deadline. Applicants can only agree to go ahead by paying a deposit once they know what the maximum fees will be. Issuing a fee estimate in multiple parts does not allow for applicants to make an informed decision.

[34] Since FOIP does not contemplate a government institution issuing two fee estimates, then I find that the 30-day clock resumed when the Applicant paid a 50% deposit on the April 18, 2022 fee estimate. That is, SaskTel should have issued a response pursuant to section 7 of FOIP in 19 days. In other words, SaskTel should have issued a section 7 decision to the Applicant by May 16, 2022, unless it extended the time period pursuant to subsection 12(1) of FOIP.

[35] I find that SaskTel did not meet the legislated timeline to issue a section 7 decision.

[36] I find that FOIP did not allow for SaskTel to issue two fee estimates. Therefore, I find that SaskTel is only able to seek the payment of fees set out in its April 18, 2022 fee estimate.

[37] For the remainder of this Report, I will only consider the fees set out in SaskTel's fee estimate dated April 18, 2022.

### **3. Are the fees estimated by SaskTel reasonable?**

[38] Section 9 of FOIP provides that SaskTel issue a fee estimate to the Applicant where the amount will exceed the prescribed fee of \$100. FOIP provides for reasonable cost recovery associated with providing individuals access to records. A "reasonable fee estimate" is one that is proportionate to the work required on the part of the government institution to respond efficiently and effectively to an applicant's access request. A fee estimate is equitable when it is fair and even-handed, that is, when it supports the principle that

applicants should bear a reasonable portion of the cost of producing the information, they are seeking but not costs arising from administrative inefficiencies or poor records management practices (*Guide to FOIP*, Ch. 3, pp. 49-50).

[39] Generally, there are three kinds of fees that a government institution can include in a fee estimate:

1. Fees for searching for records;
2. Fees for preparing records; and
3. Fees for the reproduction of records.

[40] The following is an analysis of the three kinds of fees to determine if SaskTel's fee estimate is reasonable.

**a. Fees for searching for a responsive record**

[41] Fees for searching for a responsive record are pursuant to subsection 6(2) of the FOIP Regulations.

[42] The government institution should develop a search strategy when preparing its fee estimate. Fees for search time consists of every half hour of manual search time required to locate and identify responsive records. For example:

- staff time involved with searching for records;
- examining file indices, file plans or listings of records either on paper or electronic;
- pulling paper files/specific paper records out of files; and
- reading through files to determine whether records are responsive.

[43] As noted in the background, the Applicant listed five concerns in their request for review, including SaskTel's fee estimate for SaskTel's "IT department to write a program to search for records". SaskTel's strategy of creating queries and/or scripts to search for records is a

part of its search strategy. Therefore, I am considering SaskTel's fee estimate to create a query and a PowerShell script in this section of this Review Report.

*Creating a query and a PowerShell script to search*

[44] Contained with SaskTel's fee estimate were the following:

- An estimate of 4 half-hour increments for SaskTel "to create query in system to scan all emails of all employees for anything containing the name [Applicant's name] and run export of results dating back to September 2020." The estimated fee was \$60.
- An estimate of 16 half-hour increments for SaskTel to "create powershell script to pull the information and the audit logs regarding who had accessed and read the emails. Default retention of access/read logs is 90 days. There is a possibility for a cache to exist going back 365 days. Quote is for writing the script and filtering the audit logs generated...". The estimate fee was \$240.

[45] SaskTel calculated its fee to create the query and the PowerShell script pursuant to the fee set out in subsection 6(2) of the FOIP Regulations, which provides:

6(2) Where time in excess of two hours is **spent in searching for a record** requested by an applicant or in preparing it for disclosure, a fee of \$15 for each half-hour or portion of a half-hour of that excess time is payable at the time when access is given.

[Emphasis added]

[46] There is nothing in FOIP or its regulations that prevents a government institution from using technology such as a query or a PowerShell script to search for responsive records such as emails. I note that the ON IPC has found it appropriate for public bodies to search for records through custom queries (for example, ON IPC's [PHIPA Decision 127](#) and [Order MO-1718](#)).

[47] However, subsection 6(2) of the FOIP Regulations contemplates the time "spent in searching" for a record. Activities such as creating a query or a PowerShell script are not activities spent "in searching" for a record. They are activities contemplated under subsection 6(3) of the FOIP Regulations, which provides:

6(3) Where a search and retrieval of electronic data is required to give access to a record requested by an applicant, **a fee equal to the actual cost of the search and retrieval, including machinery and operator costs**, is payable at the time when access is given.

[Emphasis added]

- [48] In my office's [Review Report 064-2016 to 076-2016](#), I considered a matter where the public body determined it required technical support to retrieve records. Therefore, it prepared a fee estimate of the costs under subsection 6(3) of the FOIP Regulations. In that Report, I said:

Certainly, if the Applicant would have been in agreement with this approach, and there was evidence that the calculation under subsection 6(3) of the FOIP Regulations would have been less expensive than subsection 6(2) of the FOIP Regulations, it could have been acceptable to calculate the fee in that manner. But as I have already established, Highways did not communicate with the Applicant prior to issuing the estimate of costs and has not shown my office evidence that it calculated the fee each way before determining which fee would be less expensive.

- [49] In keeping with what I said in [Review Report 064-2016 to 076-2016](#), when deciding whether to develop a query or a PowerShell script to search for responsive records or request employees to manually search for records, government institutions should choose the option that favours the Applicant. That is, the option that results in the lower fee is likely the option that favours the Applicant.

- [50] Regarding the creation of a query to search for responsive emails, SaskTel estimated four half-hour increments (or two hours total) to create a query to search all email accounts of SaskTel at a rate of \$15 per half-hour, which is the rate set out pursuant to subsection 6(2) of the FOIP Regulations. SaskTel's fee estimate was \$60. SaskTel indicated that the alternative was to ask all 3300 SaskTel employees to conduct a manual search of their email accounts to identify responsive records. It noted that my office's *Guide to FOIP* said that generally, it should take 3 minutes to search one active email account and transfer the results to a separate folder or drive. Therefore, SaskTel argued that if it asked each of its 3300 employees to take 3 minutes to search for responsive records, that would result in a fee estimate of \$4,950 to search for responsive records. Therefore, SaskTel argued its fee

estimate of four half-hour increments (or two hours) to search all of SaskTel email accounts is both efficient and effective in responding to the Applicant's broad access request.

[51] I note that the Applicant used phrases such as "any and all records" and "all records". As such, based on the wording of the access request, emails responsive to the Applicant's access request could have resided in any area of SaskTel. Further, based on materials provided to me by both SaskTel and the Applicant, the Applicant did not narrow the areas in which SaskTel was to complete its search for records. Therefore, creating a query to search all of SaskTel's email records for an estimated fee of \$60 is reasonable. The query was a more comprehensive and precise method that likely resulted in a much smaller fee than a manual search would have. I also note that SaskTel could have prepared this fee estimate pursuant to subsection 6(3) of the FOIP Regulations (which contemplates the actual cost of the search and retrieval including machinery and operator costs), rather than the rate of \$15 per half-hour as set out in subsection 6(3) of the FOIP Regulations. Therefore, SaskTel's fee estimate of \$60 works in the favour of the Applicant.

[52] Regarding the creation of a PowerShell script to search for audit logs regarding who had accessed and read SEND emails, SaskTel's submission said the following:

View and access logs for inboxes are available within SaskTel systems, but for something this specific, they need to be produced using technical expertise by way of searching via a powershell script. Accordingly, the time associated with the search effort was made up of the time the staff required to create the powershell script to query the results from the Microsoft Outlook platform. Time to run the query and export the results was not included. Again, in SaskTel's view, the fee estimate provided to the Applicant reflects a reasonable portion of the cost of producing the information considering the scope and work required on SaskTel's part to respond to the request.

[53] [Microsoft's website](#) supports SaskTel's assertion that a PowerShell script is the solution when retrieving auditing data. It provides:

When there are situations where you need to manually retrieve auditing data for a specific investigation or incident, particularly for longer date ranges in larger organizations, using the Search-UnifiedAuditLog cmdlet may be the best option. This article includes a PowerShell script that uses the cmdlet that can retrieve 50,000 audit records (each time you run the cmdlet) and then export them to a CSV file that you can format using Power Query in Excel to help with your review. Using the script in this

article also minimizes the chance that large audit log searches will time out in the service.

[54] The Applicant sought the specific data of who accessed SEND emails. As such, based on Microsoft's website, a PowerShell script is the method on how to access such data. Manually searching for such data through thousands of events recorded in an audit log would be inefficient and time-consuming, which would likely result in a much greater fee estimate.

[55] I find that SaskTel's strategy of searching for records responsive to the Applicant's access request by creating a query to search for emails and a PowerShell script to search through audit data are options that favour the Applicant. I find that the fees for creating a query to search for emails and a PowerShell script are reasonable.

[56] I recommend that SaskTel amend its policies and procedures so that it prepares fee estimates for activities such as creating a query or a PowerShell script pursuant to subsection 6(3) of the FOIP Regulations in the future. This would allow SaskTel to legitimately prepare higher fees that reflect the actual costs for the programming work.

### ***Remaining search fees***

[57] SaskTel's fee estimate for searching for records included estimates to search for the following:

- Policy and Procedures (estimate of \$15.00 for one half-hour increment).
- Health Services (estimate of \$30.00 for two half-hour increments).
- Industrial Relations (estimate of \$120.00 for eight half-hour increments).
- Records Regarding Committee Work (estimate of \$30.00 for two half-hour increments).
- Human Resources (estimate of \$15.00 for one half-hour increment).
- CCTS and CRTC Complaints and Investigation (estimate of \$15.00 for one half-hour increment).
- Trouble Ticketing Systems (Tracs) (estimate of \$75.00 for five half-hour increments).
- C&ES Customer Contact Database (Lotus Notes) (estimate of \$30.00 for two half-hour increments).

[58] In its submission, SaskTel said the following regarding how it arrived at its estimates for search:

SaskTel referred to the Guide to conclude that all the components of the fee estimate were allowable for inclusion and reasonable. When the request was received, a list of teams that may have responsive records was established, consistent with creating a search strategy, as suggested in the Guide. Teams within SaskTel that had records and those who would likely have records were contacted for estimates regarding how long it would take to conduct a search, their specific retention period, and the approximate amount of records they thought their search would yield to make up the components of the fee estimates in question. Teams were told:

1. to provide the length of time they would estimate a search of such nature would include,
2. to provide the amount of records they would anticipate finding if they were to conduct a fulsome search, and
3. not to complete the search.

When the teams responded with their approximate amount of time required to search, SaskTel used their inputs to create the component related to searching for the record in the fee estimate provided to the Applicant. SaskTel separated the teams and their search efforts within the estimate to create a line-by-line breakdown of the fees. Statements within the estimate such as “locating all records” refer to the estimated search effort that would be required. This process is consistent with the Guide’s “Steps when charging fees,” step 3.

[59] My office sought copies of correspondence between SaskTel’s Corporate Counsel & Regulatory Affairs (the team responsible for processing and responding to access requests) and different areas of SaskTel that describe how SaskTel arrived at its estimated amount of time to search for records. SaskTel provided my office copies of emails.

[60] Based on a review of the emails, I note that some teams contacted by SaskTel’s Corporate Counsel & Regulatory Affairs by reporting an estimated number of hours to search for records. For example, Health Services reported it would take approximately one hour to search for responsive records. Therefore, SaskTel’s fee estimate was \$30 for two half-hour increments. Further, Industrial Relations reported it would take approximately three to four hours to search for any handwritten notes or electronic records. Therefore, SaskTel’s fee estimate was for \$120 for eight half-hour increments (or four hours). The fee estimates appear low given the broadness of the Applicant’s access request and the volume of records



involved. As such, I find that SaskTel's fee estimates for manually searching for records to be reasonable.

[61] However, I find that SaskTel should not have included a fee estimate to search for policies and procedures. Section 65 of FOIP provides that government institutions are to make policies and procedures available to the public. It says:

**65(1)** Every government institution shall take reasonable steps to:

(a) make available on its website all manuals, policies, guidelines or procedures that are used in decision-making processes that affect the public by employees of the government institution in administering or carrying out programs or activities of the government institution; or

(b) provide those documents when requested in electronic or paper form.

(2) Any information in a record that a head would be authorized to refuse to give access to pursuant to this Act or the regulations may be excluded from manuals, policies, guidelines or procedures that are made available or provided pursuant to subsection (1).

[62] Section 65 of FOIP requires a government institution to make its policies and procedures available to the public. Based on section 65 of FOIP, I recommend that SaskTel make the policies and procedures available to the Applicant without any fees.

**b. Fees for preparing records**

[63] SaskTel's April 18, 2022 fee estimate included the following fees for preparing and severing records:

- Industrial Relations (estimate of \$200 to sever approximately 200 pages)
- Legal (estimate of \$15 for approximately 20 pages)

[64] Fees for preparing the record for disclosure is pursuant to subsection 6(2) of the FOIP Regulations. Preparation includes time spent preparing the record disclosure, including the time anticipated to be spent physically severing exemption information from records (Guide to FOIP, Ch. 3, p. 53).

[65] The test related to reasonable time spent on preparation is that generally it should take an experienced employee two minutes per page to physically sever (*Guide to FOIP*, Ch. 3, p. 54).

[66] Below is an analysis of each of the estimates for preparing/severing records to determine if they are reasonable.

***Industrial Relations (estimate of \$200 to sever approximately 200 pages)***

[67] SaskTel estimated there to be approximately 200 pages of responsive records from Industrial Relations. Subsection 6(2) of the FOIP Regulations provides that, where time in excess of two hours is spent in preparing records for disclosure, government institutions may charge a fee of \$15 for each half-hour or portion of a half-hour.

[68] At a rate of two minutes per page, it would take approximately 400 minutes to physically sever the records. At a rate of \$15 for each half-hour (or portion of a half hour), then the estimate would be \$200. I find that SaskTel's fee estimate for preparing records from Industrial Relations to be reasonable.

***Legal***

[69] SaskTel estimates there to be approximately 20 pages of records related to complaints and investigations dating back to September 2020. According to the guidelines in the Guide to FOIP, at a rate of two minutes per page, it would take approximately 40 minutes to physically sever. At a rate of \$15 for each half-hour (or portion of a half-hour, then the estimate would be \$20. SaskTel's fee estimate is \$20. Therefore, I find that SaskTel's fee estimate for preparing records from Legal is reasonable.

**c. Fees for reproduction**

[70] Fees for the reproduction of records are pursuant to subsection 6(1) of the FOIP Regulations. If the applicant requests the record to be on a portable storage device, FOIP provides that the government institution can charge the actual cost of any portable storage device that is used to provide the records pursuant to subsection 6(1)(b.1) of the FOIP Regulations (*Guide to FOIP*, Ch. 3, p. 54). Subsection 6(1)(b.1) of the FOIP Regulations provides:

6(1) Where access to a record or part of a record is given by providing the applicant with a copy of the record, the following fees are payable at the time when access is given:

...

(b.1) for electronic copies, the actual cost of the portable storage device provided to the applicant;

[71] The Applicant had requested that the records be stored on a USB drive.

[72] SaskTel's fee estimate for reproduction was \$10.00, which is the cost of a 16 GB USB key.

[73] I find that SaskTel's fee estimate for reproduction to be reasonable.

[74] Overall, SaskTel has demonstrated that its estimated fees were reasonable except for the manual search.

[75] I recommend that SaskTel do the following:

- I recommend that SaskTel no longer expect payment of the fees set out in its fee estimate dated May 16, 2022.
- I recommend that SaskTel revise its fee estimate dated April 18, 2022 by eliminating the fee for searching for policies and procedures.
- Since the Applicant has already paid a deposit on the fee estimate dated April 18, 2022, I recommend that SaskTel proceed to continue to process the access request and provide a response to the Applicant within 30 days of issuance of this Report.

**4. Do the circumstances exist for a fee waiver and did SaskTel exercise its discretion properly?**

[76] [Form A](#) in Part II of the FOIP Regulations is an access to information form that individuals may fill out when submitting an access request. On the form, there is a box that individuals may check if they are requesting a waiver of processing fees. It provides:

Check if requesting waiver of processing fee:

I request that payment of the processing fee related to this request be waived because payment will cause me substantial financial hardship. Details are as follows: (Use reverse of form if additional space is required).

[77] In their access to information request, the Applicant checked the box requesting a waiver of fees.

[78] Subsection 9(5) of FOIP provides as follows:

**9(5)** Where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee.

[79] The prescribed circumstances in which a head may waive payment of fees is as set out in subsection 9(1) of the FOIP Regulations as follows:

**9(1)** For the purposes of subsection 9(5) of the Act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

(a) if payment of the prescribed fees will cause a substantial financial hardship for the applicant and, in the opinion of the head, giving access to the record is in the public interest;

(b) if the application involves the personal information of the applicant;

(c) if the prescribed fee or actual cost for the service is \$100 or less.

[80] When one or more of the circumstances set out in subsection 9(1) of the FOIP Regulations exist, the head will need to exercise their discretion to waive the payment of fees or not. Waiving the fees are not necessary but the head must demonstrate that they have exercised their discretion properly. Therefore, I must first determine if a circumstance set out in

subsection 9(1) of the FOIP Regulations exist. If so, then I must determine if the head exercised their discretion properly.

**a. Does a circumstance set out in subsection 9(1) of the FOIP Regulations exist for a fee waiver?**

[81] In its submission, SaskTel explained that the Applicant did not provide any evidence of financial hardship. Therefore, the circumstance set out in subsection 9(1)(a) of the FOIP Regulations did not exist. Further, SaskTel indicated that the fee estimate exceeded \$100. Therefore, the circumstance set out in subsection 9(1)(c) of the FOIP Regulations did not exist. However, it considered the circumstance in subsection 9(1)(b) of the FOIP Regulations. Based on a review of the wording of the Applicant's access request, the access request involves the Applicant's personal information. Therefore, I find that the circumstances for a fee waiver per subsection 9(1)(b) of the FOIP Regulations exist.

**b. Did the head exercise their discretion properly?**

[82] In order to properly exercise discretion to determine whether an applicant should be excused from paying all or part of the fee, the head of a public body should consider all relevant factors, evidence and the purposes of FOIP.

[83] SaskTel provided the following regarding its decision to not waive the payment of fees:

The fact that the Applicant had not provided any evidence of financial hardship was considered, as per subsection 9(1)(a). The estimated fees, which greatly exceeded \$100, were considered as per subsection 9(1)(c). **The information being of personal nature was noted and weighed against the other considerations, chief among them being the sheer volume of amount of records involved. The associated internal costs of retrieving the records that cannot be reflected in the fees was also considered.**

[Emphasis added]

[84] Based on the above, I find that SaskTel's decision to not grant the fee waiver is based on a relevant factor. Its decision was not based on irrelevant factors. I find that SaskTel has exercised its discretion properly in not waiving the fees.

**5. Did SaskTel alter the Applicant's access request to inflate the fees?**

[85] The Applicant was concerned how SaskTel “unilaterally changed the wording to item 5 of requested records to further inflate the estimates fees”. SaskTel’s May 16, 2022 fee estimate provided:

Time to prepare and sever the documents: **emails sent to or received from UNIFOR by anyone within SaskTel.** 2732 pages of results, approximately 2 emails per page. 1821 minutes = 61 half hours or portion thereof. Estimated at 2 minutes per 6 emails.

[Emphasis added]

[86] Since I am only considering the fees set out in the fee estimate issued April 18, 2022, I find that I do not have to consider this issue.

**IV FINDINGS**

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

[88] I find that SaskTel received the Applicant’s access request on April 7, 2022.

[89] I find that FOIP does not allow for government institutions to issue more than one fee estimate.

[90] I find that SaskTel did not meet the legislated timeline to issue a section 7 decision.

[91] I find that SaskTel is only able to seek the payment of fees set out in its April 18, 2022 fee estimate, minus the fee for searching for policies and procedures.

[92] I find that SaskTel’s strategy of searching for records responsive to the Applicant’s access request by creating a query to search for emails and a PowerShell script to search through audit data are options that favour the Applicant.

- [93] I find that the fees for creating a query to search for emails and a PowerShell script are reasonable.
- [94] I find that SaskTel's fee estimate for manually searching for records to be reasonable.
- [95] I find that SaskTel's fee estimate for preparing Industrial Relations records is reasonable.
- [96] I find that SaskTel's fee estimate for preparing records from Legal is reasonable.
- [97] I find that SaskTel's fee estimate for reproduction to be reasonable.
- [98] I find that SaskTel has exercised its discretion properly in not waiving the fees.

## **V RECOMMENDATIONS**

- [99] I recommend that SaskTel amend its policies and procedures so that it prepares fee estimates for activities such as creating a query or a PowerShell script pursuant to subsection 6(3) of the FOIP Regulations in the future. This would allow SaskTel to legitimately prepare higher fees that reflect the actual costs for the programming work.
- [100] If SaskTel relies on subsection 6(3) of FOIP in the future, I recommend that it inform the applicant in writing that it is seeking additional detail pursuant to subsection 6(3) of FOIP soon after it physically receives the access request.
- [101] I recommend that SaskTel do the following:
- I recommend that SaskTel no longer expect payment of the fees set out in its fee estimate dated May 16, 2022.
  - I recommend that SaskTel revise its fee estimate dated April 18, 2022 by eliminating the fee for searching for policies and procedures.
  - Since the Applicant has already paid a deposit on the fee estimate dated April 18, 2022, I recommend that SaskTel proceed to continue to process the access request and provide a response to the Applicant within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 21st day of February, 2023.

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



**Appendix A**

**LOCATING and PREPARING RECORDS (s. 6(2) of the FOIP Regulations)**

<b>Records Requested</b>	<b>Description of Information and Search Details</b>	<b>Estimated 1/2 Hour Increments</b>	<b>Quote</b>
<b>Policy and Procedures</b>	Locating current SaskTel Policy, Procedures and Standard work or any other documents that guides and offers administrative controls in order for Managers, Directors or VPs to gain access to employee emails. Includes pulling the Business Code of Conduct, Security Policies, Privacy Policies, Notices of Privacy on Corporate Devices, etc.	1	\$ 15.00
<b>Health Services</b>	Locating all records and documentation relating to any access or access requested of Health services records dating back to September 2020.	2	\$ 30.00
<b>Industrial Relations</b>	Locating the records within the IR file, search for handwritten notes and any electronic records outside of the file dating back to September 2020.	8	\$ 120.00
	Preparing and severing the documents, approximately 200 pages at 2 minutes per page, divided into half hour increments.	13	\$ 200.00

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<p><b>Email Query:</b>  <b>Emails created, sent or received by [REDACTED] about [REDACTED]</b>  <b>Emails regarding complaints and investigations pertaining to [REDACTED]</b></p>	<p>CyberSecurity Team to create query in system to scan all emails of all employees for anything containing the name [REDACTED] and run export of results dating back to September 2020. Time quoted only includes effort to create the query, run time of the query is not chargeable to the applicant.</p>	<p>4</p>	<p>\$ 60.00</p>
<p><b>Emails regarding [REDACTED] records accessed or requested from Health Services</b>  <b>Emails sent to or received from UNIFOR by anyone within SaskTel</b></p>	<p>Time to prepare and sever the documents estimated at 2 minutes per 6 emails. Total emails are unknown and quote would have to be revised if query work is approved by applicant.</p>		<p>\$ -</p>
<p><b>Emails regarding [REDACTED]' Committee Work that had been accessed by anyone other than herself.</b></p>	<p>Create powershell script to pull the information and the audit logs regarding who had accessed and read the emails. Default retention of access/read logs is 90 days. There is a possibility for a cache to exist going back 365 days. Quote is for writing the script and filtering the audit logs generated, effort for both does not depend on retention period.</p>	<p>16</p>	<p>\$ 240.00</p>
	<p>Time to prepare and sever the documents estimated at 2 minutes per 6 emails. Total emails are unknown and quote would have to be revised if query work is approved by applicant.</p>		<p>\$ -</p>
<p><b>Records Regarding Committee Work (not including emails, since email search would be conducted by query above)</b></p>	<p>Locating Equity Committee work records in Industrial Relations that are handwritten and electronic, but not emails as those would be covered by the email query above, dating back to September 2020.</p>	<p>2</p>	<p>\$ 30.00</p>
<p><b>Human Resources</b></p>	<p>System search for any Human Resource records dating back to September 2020.</p>	<p>1</p>	<p>\$ 15.00</p>

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<b>Legal</b>	Search for Complaints and Investigations dating back to September 2020. Includes time to prepare and sever the information, approximately 20 pages.	1	\$ 15.00
<b>CCTS and CRTC Complaints and Investigation</b>	Search SaskTel CCTS and CRTC records and referrals database for any complaints and investigations dating back to September 2020.	1	\$ 15.00
<b>Trouble Ticketing Systems (Tracs)</b>	Compile history of complaint tickets made through trouble ticketing system, 18 months worth of data is retained. Can be extracted one by one, through email. Amount of effort required to do a "typical" search and extract would be 2 hours. If more than average records be found, this would increase.	5	\$ 75.00
<b>C&amp;ES Customer Contact Database (Lotus Notes)</b>	Trouble tickets regarding complaints that have been escalated, documented in separate Lotus Notes database. Time to search would be approximately 30 minutes, however, process to extract depends on how many records are found, manual screenshots would be necessary, approximately 3 minutes per escalation.	2	\$ 30.00
<b>SubTotal</b>			<b>\$ 845.00</b>
<b>MINUS 2 HOURS PROVIDED FREE OF CHARGE TO SEARCH FOR THE RECORD AND/OR PREPARE THE RECORD FOR DISCLOSURE (S15/half hour x 2 hours free, s. 6(2) of the FOIP Regulations)</b>			<b>(\$60.00)</b>
<b>PHOTOCOPYING / REPRODUCTION COSTS (s. 6(1) of the FOIP Regulations)</b>			
	Cost of USB Key, Mtech 16 GB		<b>\$10.99</b>
<b>Total</b>			<b>\$ 795.99</b>
<b>DEPOSIT REQUIRED – 50% OF TOTAL ESTIMATE OF COSTS</b>			<b>\$ 398.00</b>

**Appendix B**

**LOCATING and PREPARING RECORDS (s. 6(2) of the FOIP Regulations)**

<b>Records Requested</b>	<b>Description of Information and Search Details</b>	<b>Estimated 1/2 Hour Increments</b>	<b>Quote</b>
<b>Policy and Procedures</b>	Locating current SaskTel Policy, Procedures and Standard work or any other documents that guides and offers administrative controls in order for Managers, Directors or VPs to gain access to employee emails. Includes pulling the Business Code of Conduct, Security Policies, Privacy Policies, Notices of Privacy on Corporate Devices, etc.	1	\$ 15.00
<b>Health Services</b>	Locating all records and documentation relating to any access or access requested of Health services records dating back to September 2020.	2	\$ 30.00
<b>Industrial Relations</b>	Locating the records within the IR file, search for handwritten notes and any electronic records outside of the file dating back to September 2020.	8	\$ 120.00
	Preparing and severing the documents, approximately 200 pages at 2 minutes per page, divided into half hour increments.	13	\$ 200.00

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<p><b>Email Query:</b>  <b>Emails created, sent or received by [REDACTED] about [REDACTED] Emails regarding complaints and investigations pertaining to [REDACTED] Emails regarding [REDACTED]'s records accessed or requested from Health Services [REDACTED] Emails sent to or received from UNIFOR by anyone within SaskTel.</b></p>	<p>CyberSecurity Team to create query in system to scan all emails of all employees for anything containing the name [REDACTED] and run export of results dating back to September 2020. Time quoted only includes effort to create the query, run time of the query is not chargeable to the applicant.</p>	4	\$ 60.00
	<p>Time to prepare and sever the documents: emails created, sent or received by [REDACTED] about [REDACTED], regarding complaints, investigations or fact finding. 66 pages of results, approximately 2 emails per page. 44 minutes = 2 half hours or portions thereof. Estimated at 2 minutes per 6 emails.</p>	2	\$30.00
	<p>Time to prepare and sever the documents: emails created, sent or received about [REDACTED] regarding fact finding. 367 pages of results, approximately 2 emails per page. 244 minutes = 9 half hours or portion thereof. Estimated at 2 minutes per 6 emails.</p>	9	\$135.00
	<p>Time to prepare and sever the documents: emails regarding complaints and investigations pertaining to [REDACTED]. 337 pages of results, approximately 2 emails per page. 224 minutes = 8 half hours or portion thereof. Estimated at 2 minutes per 6 emails.</p>	8	\$120.00
	<p>Time to prepare and sever the documents: emails sent to or received from UNIFOR by anyone within SaskTel. 2732 pages of results, approximately 2 emails per page. 1821 minutes = 61 half hours or portion thereof. Estimated at 2 minutes per 6 emails.</p>	61	\$915.00

<p><b>Emails regarding</b> [REDACTED]</p>	<p>Create powershell script to pull the information and the audit logs regarding who had accessed and read the emails. Default retention of access/read logs is 90 days. There is a possibility for a cache to exist going back 365 days. Quote is for writing the script and filtering the audit logs generated, effort for both does not depend on retention period.</p>	<p>16</p>	<p>\$ 240.00</p>
<p><b>Committee Work that had been accessed by anyone other than herself.</b></p>	<p>Time to prepare and sever the documents estimated at 2 minutes per 6 emails. Entire query log to be provided without severing.</p>	<p>0</p>	<p>\$ 0</p>
<p><b>Records Regarding Committee Work</b></p>	<p>Locating Equity Committee work records in Industrial Relations that are handwritten and electronic, dating back to September 2020.</p>	<p>2</p>	<p>\$ 30.00</p>
<p><b>Human Resources</b></p>	<p>System search for any Human Resource records dating back to September 2020.</p>	<p>1</p>	<p>\$ 15.00</p>

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<b>Legal</b>	Search for Complaints and Investigations dating back to September 2020. Includes time to prepare and sever the information, approximately 20 pages.	1	\$ 15.00
<b>CCTS and CRTC Complaints and Investigation</b>	Search SaskTel CCTS and CRTC records and referrals database for any complaints and investigations dating back to September 2020.	1	\$ 15.00
<b>Trouble Ticketing Systems (Tracs)</b>	Compile history of complaint tickets made through trouble ticketing system, 18 months worth of data is retained. Can be extracted one by one, through email. Amount of effort required to do a "typical" search and extract would be 2 hours. If more than average records be found, this would increase.	5	\$ 75.00
<b>C&amp;ES Customer Contact Database (Lotus Notes)</b>	Trouble tickets regarding complaints that have been escalated, documented in separate Lotus Notes database. Time to search would be approximately 30 minutes, however, process to extract depends on how many records are found, manual screenshots would be necessary, approximately 3 minutes per escalation.	2	\$ 30.00
<b>SubTotal</b>			<b>\$ 2045.00</b>
<b>MINUS 2 HOURS PROVIDED FREE OF CHARGE TO SEARCH FOR THE RECORD AND/OR PREPARE THE RECORD FOR DISCLOSURE</b> ( $\$15/\text{half hour} \times 2 \text{ hours free, s. 6(2) of the FOIP Regulations}$ )			<b>(\$60.00)</b>
<b>PHOTOCOPYING / REPRODUCTION COSTS (s. 6(1) of the FOIP Regulations)</b>			
	Cost of USB Key, Mtech 16 GB		\$10.99
<b>Total</b>			<b>\$ 1,995.99</b>
	<b>DEPOSIT REQUIRED – 50% OF TOTAL ESTIMATE OF COSTS</b>		<b>\$ 998.00</b>
	<b>MINUS \$398.00 ALREADY PROVIDED</b>		<b>(\$398.00)</b>
	<b>ADDITIONAL DEPOSIT AMOUNT REQUIRED</b>		<b>\$600.00</b>