



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 331-2023

Water Security Agency

July 24, 2024

Summary:

The Applicant submitted an access to information request to the Water Security Agency (WSA). WSA in its response withheld the record, in part, pursuant to subsections 19(1)(c)(i), 19(1)(c)(ii), and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review of WSA's decision. Upon review, the Commissioner found that WSA did not conduct a reasonable search and recommended it conduct a new search for records within 30 days of the issuance of this Report. The Commissioner also found that WSA properly applied subsection 29(1) of FOIP in severing some information in the record but not all. The Commissioner recommended the WSA continue to withhold some of the information in the record pursuant to subsection 29(1) of FOIP but release that which he found did not apply. Finally, the Commissioner found that WSA and the third party did not sufficiently demonstrate that subsection 19(1)(c)(i) and 19(1)(c)(ii) of FOIP apply and recommended WSA release the information withheld pursuant to these provisions to the Applicant with 30 days of the issuance of this Report.

I BACKGROUND

[1] On October 18, 2023, the Applicant submitted an access to information request to the Water Security Agency (WSA) under *The Freedom of Information and Protection of Privacy Act* (FOIP) for:

- copies of the surveys and justification WSA used to determine where the ditch blocks went to return the works back to natural. For example, 3 quarters had 2 ditch blocks installed and 3 quarters had 1 ditch block installed.

- Correspondence from WSA discussing and authorizing the installation of culverts with caps.
- Correspondence and reports, etc. where WSA determined that the illegal ditches named in the RFA, I had to submit, would not negatively affect/impact my land.

(December 1, 2021 to present day. [Name and file number removed]... I believe.)

- [2] By way of letter dated November 17, 2023, WSA responded to the Applicant denying access to the record in part pursuant to subsections 19(1)(c)(i), (ii), and 29(1) of FOIP.
- [3] On November 28, 2023, the Applicant in correspondence with WSA sent some follow-up questions specific to the information that was released. These questions were not answered and on December 5, 2023, the Applicant reached out to the WSA to follow up on their query from November 28, 2023.
- [4] In a letter dated December 6, 2023, WSA's General Counsel responded to the Applicant explaining that WSA does not provide further justification regarding decisions made, interpret content provided, or provide further assessments of potential future impacts. As such, it asserted, the WSA had disclosed all documents responsive to the access request and considered the request fulfilled. That same day, the Applicant responded to the WSA commenting on the letter from WSA's General Counsel and explaining that they would like to file another request for access to information.
- [5] On December 12, 2023, in response to the Applicant's email from December 6, 2023, WSA's General Counsel explained that the Applicant could submit a new access to information request but reiterated that answering specific follow-up questions regarding the technical details of documentation received in response to an access request was not within WSA's scope of technical expertise.
- [6] On the same day, the Applicant in response to WSA's General Counsel letter reiterated the questions asked on November 28, 2023. They also broadened the scope of their original request, asking new questions. On December 13, 2023, the WSA for a final time expressed that the Applicant's access to information request in question was deemed fulfilled.

- [7] On December 15, 2023, in correspondence with my office, the Applicant requested a review of WSA's decisions with respect to previous access to information requests and included a new request not in their previous requests for information.
- [8] On January 5, 2024, my office established that the Applicant was requesting a review of the responses related to two separate access requests and decided that its review of these responses would be treated separately.
- [9] In correspondence on January 23, 2024, the Applicant confirmed the scope of the present review as:
- Determining whether WSA correctly applied subsections 19(1)(c)(i), (ii), and 29(1) of FOIP to the records released; and
 - Determining whether WSA conducted an adequate search to locate all responsive records for the request.
- [10] On February 1, 2024, my office notified the Applicant, WSA and an affected third party that my office will be undertaking a review. My office invited all parties to provide submissions on the matter. My office also requested from WSA a copy of the record and Index of Records (index). Also on the same day, WSA provided the third party with a notice of the review as per subsection 52(1) of FOIP.
- [11] In correspondence on February 22, 2024, WSA provided my office with copies of the records at issue and an index. On February 27, 2024, WSA sent my office an updated index as the copy previously sent had an incomplete header.
- [12] On March 18, 2024, WSA provided a submission to my office. The third party provided their submission to my office on March 19, 2024. No submission was received from the Applicant.

II RECORDS AT ISSUE

[13] WSA identified 18 pages of responsive records, comprising an internal memorandum (memo) to a file, an email from a source external to the WSA and a memo attached to this email. Nine pages were released in full and nine withheld in part pursuant to subsections 29(1), 19(1)(c)(i) and (ii) of FOIP. See the Appendix for more details.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[14] WSA qualifies as 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*. Therefore, I find I have jurisdiction to conduct this review.

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

[15] Section 5 of FOIP provides:

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

[16] The *Guide to FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023, (*Guide to FOIP*, Ch. 3) at page 3, provides that section 5 of FOIP establishes a right of access by any person to records in the possession or control of a government institution, subject to limited and specific exemptions, which are set out in FOIP.

[17] As per page 12 of the *Guide to FOIP*, Ch. 3, subsection 5.1(1) of FOIP requires a government institution to respond to an applicant’s access to information request openly, accurately and completely. This means that government institutions should make reasonable effort to not only identify and seek out records responsive to an applicant’s access to information request, but to explain the steps in the process. The threshold that

must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.

[18] Page 12 of the *Guide to FOIP*, Ch. 3, also explains that a reasonable search is one in which an employee, experienced in the subject matter of the records, expends a reasonable effort to locate records which are reasonably related to the request. What is reasonable depends on the request and related circumstances. The government institution should provide my office with detailed information about its efforts to conduct a search.

[19] Further, the *Guide to FOIP*, Ch. 3 at page 13, provides that applicants must establish the existence of a reasonable suspicion that a government institution is withholding a record or has not undertaken an adequate search for a record. Sometimes this can take the form of having possession of or having previously seen a document that was not included with other responsive records or media reports regarding the record. An applicant is expected to provide something more than a mere assertion that a document should exist.

[20] Page 13 of the *Guide to FOIP*, Ch. 3, explains that a review by the Commissioner of a government institution’s search efforts can occur in one or both of the following situations:

1. The government institution issued a section 7 decision letter indicating records do not exist.
2. The applicant believes there are more records than what the government institution provided.

[21] In this case, the Applicant in correspondence with my office contended that the WSA is not releasing all records that it should be releasing.

[22] As provided on page 14 of the *Guide to FOIP*, Ch. 3, it is difficult to prove a negative, therefore, FOIP does not require a government institution to prove with absolute certainty that records do not exist.

[23] The *Guide to FOIP*, Ch. 3 at pages 14 to 15, states that when a government institution receives a notice of a review from my office requesting details of its search efforts, some or all of the following can be included in the government institutions' submission (not exhaustive):

- For personal information requests – explain how the individual is involved with the government institution (i.e., client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by:
 - Alphabet
 - Year
 - Function
 - Subject
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the government institution's control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).

- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee’s search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see [Using Affidavits in a Review with the IPC \(oipc.sk.ca\)](#).

[24] The Applicant, in correspondence with my office, indicated that they did not receive the items underlined and emphasized below:

- copies of the surveys and justification WSA used to determine where the ditch blocks went to return the works back to natural. For example, 3 quarters had 2 ditch blocks installed and 3 quarters had 1 ditch block installed.
- Correspondence from WSA discussing and authorizing the installation of culverts with caps.
- Correspondence and reports, etc. where WSA determined that the illegal ditches named in the RFA, I had to submit, would not negatively affect/impact my land.

[Emphasis in original]

[25] My office’s notice to WSA asked if it considered the items listed in paragraph [24] as responsive to the request and if it searched for them. WSA, in response, indicated that records relating to the three points in the Applicant’s request were located and partially released to the Applicant.

[26] Specifically, WSA stated:

- Points 1 and 3 of the request are responded to on pages 1 – 16 of the responsive records package. This internal memo includes aerial photographs and assessments at multiple land locations that are easily identified throughout the memo. It is the assessment of the author of this memo, through review of the information included

in the memo, that drainage of identified land locations does not drain to the Applicant's land.

- Point 2 of the request is responded to in pages 16-18, page 18 in particular identifies the discussion and authorization to block culverts.

[27] WSA, in its brief submission to my office on this topic, asserted that the request to search for and retrieve records was sent to WSA employees who were involved with the Request for Assistance (RFA) file number as indicated on the Applicant's Access to Information request form. According to the WSA, as the Applicant included both a specific time period and a file number, the scope of the search was easily defined. It is WSA's opinion that based on the specificity of the wording of the request all responsive records were located for the request.

[28] It appears from my office's review of copies of correspondences between WSA and the Applicant that, beyond the documents released, the Applicant wanted some justification and rationale regarding decisions made. It appears then that WSA believes that although the responsive records within WSA's possession and control have been released, its inability to provide any records that contain a justification, is the basis of the Applicant's dissatisfaction.

[29] I am however not convinced that WSA's search for records was adequate for purposes of FOIP, based on the information provided to my office. For instance, the WSA provided no specific information on how the search was conducted, by whom, etc. Overall, there is simply a lack of details regarding the search conducted which is what my office requires to determine if the search was reasonable.

[30] In my office's [Review Report 025-2021, 079-2022](#), I stated:

As Social Services' documented search efforts provided to my office and the Applicant did not include the granular details of its search efforts, I find Social Services did not conduct a reasonable search for records. I recommend that Social Services conduct a new search for records by completing the [Checklist](#), provide a copy of the completed Checklist to the Applicant and if it locates any additional records that are responsive to

the Applicant's two access to information requests, it provide those records to the Applicant subject to any exemptions.

[31] I take the same approach in this case. I find that WSA did not conduct a reasonable search for records. I recommend that within 30 days of the issuance of this Report, WSA conduct a new search for records by completing my office's [Responsive Records Search Checklist](#) (Checklist), provide a copy of the completed Checklist to the Applicant and if it locates any additional records that are responsive to the Applicant's access to information requests, it provide those records to the Applicant subject to any exemptions.

3. Did WSA properly apply subsection 29(1) of FOIP?

[32] WSA applied subsection 29(1) of FOIP to some information on record 1 at pages 2, 6, 9, 13, 14, and 15; record 2 at page 1; and record 2a at pages 1 and 2 (see the Appendix for more details). The WSA contended this information qualifies as personal information pursuant to subsection 24(1)(k)(i) and (ii) of FOIP.

[33] My office's *Guide to FOIP*, Chapter 6, "Protection of Privacy" (*Guide to FOIP*, Ch. 6) at page 186, explains that 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.

[34] The *Guide to FOIP*, Ch. 6 at page 187, further states that section 29 of FOIP only applies to "personal information" as defined by section 24 of FOIP.

[35] Subsection 29(1) of FOIP provides:

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

[36] Subsection 24(1) of FOIP defines “personal information” and provides some examples of the types of information that can be considered “personal information”. The following subsections are relevant in this review:

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

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[37] As per the *Guide to FOIP*, Ch. 6 at page 32, to constitute personal information, the information must be about an identifiable individual; and the information must be personal in nature.

[38] I now turn to consider if the information severed from the nine pages under review qualifies as personal information and if it is exempt pursuant to subsection 29(1) of FOIP.

[39] The WSA in its submission argued that all instances of the application of subsection 29(1) of FOIP meet the qualification of personal information per subsections 24(1)(k)(i) and (ii) of FOIP as the names, along with the remaining released information included in the document would reveal personal information about the individuals.

[40] The *Guide to FOIP*, Ch. 6 at page 63, provides that a name alone is not personal information unless release of the name itself would reveal personal information about the individual. Subsection 24(1)(k) of FOIP deals with the names of individuals and when they constitute personal information. Subsection 24(1)(k) of FOIP provides two types of situations where the name of an individual could constitute personal information:

1. The name is personal information when it appears with other personal information.
2. Disclosing the name alone would reveal personal information about the individual.

[41] From a review of pages 2, 6, 9, 13 and 15 of record 1, WSA withheld the names of landowners but disclosed other information pertaining to their lands. My review of record 1 at page 14 (severances 1 and 2) of the record reveals that the WSA released some information but withheld a name which appears to be the Applicant's last name. My office, in telephone conversation with WSA on July 5, 2024, confirmed that this was indeed the Applicant's name.

[42] As noted above, the name withheld on page 14 of record 1 (severance 1 and 2), appearing with an aerial photograph and an assessment of the image, is the Applicant's name. Subsection 31(1) of FOIP provides:

31(1) Subject to Part III and subsection (2), an individual whose personal information is contained in a record in the possession or under the control of a government institution has a right to, and:

- (a) on an application made in accordance with Part II; and
- (b) on giving sufficient proof of his or her identity;

shall be given access to the record.

[43] The *Guide to FOIP*, Ch. 6 at page 288, explains that subsection 31(1) of FOIP provides that upon application an individual is entitled to their own personal information contained within a record unless an exemption under Part III or subsection 31(2) of FOIP applies.

[44] In the present case, the WSA has not demonstrated that any exemption applies to prevent the release of the Applicant's personal information. I find that WSA did not properly apply subsection 29(1) of FOIP to the Applicant's name on page 14 of record 1. I recommend that WSA release the Applicant's name redacted on page 14 of record 1 within 30 days of the issuance of this Report.

- [45] Using the land locations on the record, my office on July 7, 2024, utilized the land title search function on the Information Services Corporation (ISC) website to retrieve the names of the landowners withheld on pages 2 (severance 1), 6 (severance 1), 9 (severance 1), 13 (severances 1, 2, 3, 4) and 15 (severance 1). This and additional information including the parcel number, number of acres and land description were publicly accessible at no fee.
- [46] Per my review of pages 2 (severance 1) and 9 (severance 1) of record 1, WSA withheld the name of a landowner but released aerial photographs and land locations of their lands. As the name of the landowner is publicly available, section 3 of FOIP indicates FOIP does not apply; therefore, I find that WSA did not properly apply subsection 29(1) of FOIP to pages 2 (severance 1) and 9 (severance 1) of record 1. I recommend that WSA release the name on these pages to the Applicant within 30 days of the issuance of this Report.
- [47] On record 1, WSA at page 6 (severance 1) withheld the names of landowners but disclosed an aerial photograph, and the land location and information about correspondence on their land. Again, WSA withheld the names of individuals appearing as (severance 1, 2, 3, 4) on page 13. These names were associated with other information on the page which was released in full. On page 15 (severance 1), a landowner's name related to some statistics on the page was withheld.
- [48] It is established that the information under consideration on pages 6, 13 and 15 of record 1 is about identifiable individuals as these individuals have been named. I will now determine if the information in question is personal in nature. Page 34 of the *Guide to FOIP*, Ch. 6, states that information is personal in nature if the information reveals something personal about the individual.
- [49] I note that the names withheld on page 6 (severance 1), are two separate first names appearing with the same last name. Through an ISC search, my office discovered that the one of the names is publicly available as the owner of the land. Further, these names

appeared with information indicative of an action taken by WSA with respect to the RFA submitted by the Applicant.

[50] Importantly, it appears the RFA submitted by the Applicant refers to the persons whose names have been withheld on page 6 (severance 1) and the Applicant has already indicated their name in the access to information request under review. Also, WSA during the review explained that when a person submits an RFA, they are copied in correspondences from WSA to landowners affected by the RFA submitted. Therefore, it appears the Applicant will already have knowledge of the action taken by WSA and the names of the persons involved.

[51] In my office's [Review Report 047-2022](#), I found that:

[22] When determining if exemptions in FOIP and HIPA apply, government institutions should consider whether applying the exemption would give rise to an absurd result. This is based on a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences...

[23] Previous reports of my office (see for example, my office's Review Reports 215-2020, 171-2019, and 164-2021, and blogs Absurd Result and Absurd Result II) have found that the absurd result principle applies in the following circumstances:

- The requester provided the information to the government institution.
- The requester was present when the information was presented to the public body and
- The information is clearly within the requester's knowledge.

[25] Applying the absurd result principle, I find that the information ...is not exempt...because it would be absurd to find it exempt in the circumstances described above.

[52] I find the same in the present case. It appears that the information withheld on page 6 (severance 1) is already known to the Applicant and it will be absurd to withhold it from them pursuant to subsection 29(1) of FOIP. Therefore, I find that WSA did not properly apply subsection 29(1) of FOIP to the names on page 6 of record 1 and recommend it release this to the Applicant within 30 days of the issuance of this Report.

- [53] The names withheld on page 13 of record 1 (severance 1, 2, 3, 4) were related to an aerial photograph, land locations and notes on a RFA appearing on the page. The RFA notes on page 13 of record 1 were again indicative of an action taken by WSA with regards to the RFA submitted by the Applicant as relates to some names listed (six names of individuals and what appears to be a business name) in severance 1. These notes also indicated the relationship between two other individual's (severances 2 and 3) and the fact that one of these persons was waiting for an action to be taken and was in touch with the individuals' named in severance 4.
- [54] My analysis of page 13 (severance 1) confirmed that one of the names withheld is a business name. As stated in the *Guide to FOIP*, Ch. 6 at page 33, individual means natural persons (human beings) and the use of the word individual in subsection 24(1) of FOIP makes it clear that the protection provided relates only to a natural person or human being. Therefore, a business name is not personal information and subsection 29(1) of FOIP will not apply to this information. The remaining withheld names appear with information indicating that the named persons did not get acknowledgement letters relating to the Applicant's RFA.
- [55] The Applicant on their RFA indicated that the lands owned by the names withheld on page 13 (severance 1) were related to the RFA. Therefore, as previously indicated, the Applicant, should have been copied in correspondences from WSA to the landowners named on page 13 (severance 1). As the landowner did not receive these correspondences it could reasonably be inferred that no letters were sent. Therefore, subsequently withholding this information from the Applicant gives rise to an absurd result. Therefore, I find that WSA did not properly apply subsection 29(1) of FOIP to page 13 (severance 1) of record 1 and I recommend it release this to the Applicant within 30 days of the issuance of this Report.
- [56] Further, my analysis of record 1 revealed that disclosing the names of the individuals withheld on page 13 (severances 2 and 3) will disclose information personal to these persons as the relationship between them is indicated on the record. However, the Applicant has already indicated their names in the access to information request under

review. Therefore, it appears the relationship that will be revealed by disclosing the names of the individuals withheld on page 13 (severances 2 and 3) is already known to the Applicant.

[57] Based on my analysis of absurd results in paragraphs [51] and [52], it appears that the information withheld on page 6 (severances 2 and 3) is already known to the Applicant and it will be absurd to withhold it from them pursuant to subsection 29(1) of FOIP. Therefore, I find that WSA did not properly apply subsection 29(1) of FOIP to page 13 (severance 2 and 3).

[58] On page 15 (severance 1), WSA withheld the name of an individual associated with an aerial photograph, some land locations, and the recommended number of ditch blocks to be installed on their land. On pages 14 and 15 of record 1, the land locations on which the ditch blocks are proposed to be installed have already been made available. As with the other ISC searches referenced above, since the land locations have been made available by WSA, the name of landowner could be easily accessed. Further, disclosing that a specific number of ditch blocks is proposed to be installed on the said persons land in response to the Applicant's RFA reveals nothing personal in nature and cannot be considered personal information. I find that WSA did not properly apply subsection 29(1) of FOIP to page 15 (severance 1).

[59] The information on page 1 of record 2 is a cover email to a memo. The name of the sender of the email (severance 1) and the information in their signature line which is their name, professional designation and what appears to be the business card information of an individual providing professional services has been withheld as severance 3. A google search of their name and business information shows that this information is listed on a public website. Further, it appears the memo attached to the email is communicating an assessment developed for the WSA and the identified third party.

[60] Also, the names withheld on page 13 (severance 4) appear to be the names of a WSA employee and the professional involved in the RFA process referred to in paragraph [59] above.

[61] Page 36 of the *Guide to FOIP*, Ch. 6, identifies business card information as a category of information found not to qualify as “personal information”. *Business card information* is defined as the type of information found on a business card (name, job title, work address, work telephone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. This is considered “business contact information” and not personal information.

[62] In my office’s [Review Report 003-2024](#), I noted:

[62] ... SHC redacted the email addresses of individuals acting in their professional capacities but who are not government employees. For example, SHC redacted the email addresses of employees of the Saskatoon Tribal Council throughout the records at issue. It also redacted the name and email address of an employee at Rely Ex Consulting at page 2. While such information is about identifiable individuals, such information is not personal in nature. Therefore, I find that SHC did not properly apply subsection 29(1) of FOIP...

[63] I take the same approach here. I find the information of the individual performing professional services and the name of the WSA employee on pages 1 of record 2 (severances 1 and 3) and 13 (severance 4) is not personal information and WSA did not properly apply subsection 29(1) of FOIP in withholding this information. I recommend the WSA release this information to the Applicant within 30 days of the issuance of this Report.

[64] Again, on page 1 of record 2 (severance 2), the name of an individual to whom a memo relates is redacted. The memo involves a combination of options, which are related to the RFA requested by the Applicant. Additionally, the memo also references a drainage network approval that the named party is seeking approval to undertake. As reference is made to a network approval which a named individual is seeking to undertake, their name appears with other personal information and qualifies as personal information pursuant to subsection 24(1)(k)(i) of FOIP.

[65] I find that WSA properly applied subsection 29(1) of FOIP to the individual's name on page 1 of record 2 (severance 2) and recommend that WSA continue to withhold this information.

[66] Pages 1 and 2 of record 2a are the memo previously referenced in this Report. Severance 1 and part of severance 3 on page 1 of this record reveal the name and professional designation of the sender of this memo which is the same as the information of the individual referred to in paragraph [59]. I find that WSA did not properly apply subsection 29(1) of FOIP to this information. I recommend that within 30 days of the issuance of this Report, the WSA release to the Applicant the information withheld on page 1 of record 2a severance 1 and part of severance 3).

[67] Further, the names of the individuals requesting approval for the drainage network approval as appearing on page 1 of record 2a (severances 2, the other part of 3, and 4) and page 2 of record 2a (severances 1 and 2) of the record have been withheld. As I found in paragraph [64] these names qualify as the individuals' personal information pursuant to subsection 24(1)(k)(i) of FOIP.

[68] I find that WSA properly applied subsection 29(1) of FOIP in severing the names on pages 1 (severance 2, part of severance 3 and 4) and 2 (severance 1 and 2) of record 2a. I recommend that WSA continue to withhold this information.

4. Did WSA properly apply subsections 19(1)(c)(i) and (ii)?

[69] WSA also redacted information on pages 1 (severance 4, and 5) and 2 (severance 1, and 2) of record 2a pursuant to subsections 19(1)(c)(i) and (ii) of FOIP.

[70] Subsections 19(1)(c)(i) and (ii) of FOIP provide as follows:

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

...

(c) information, the disclosure of which could reasonably be expected to:

- (i) result in financial loss or gain to;
- (ii) prejudice the competitive position of;

...

a third party

[71] Page 215 of my office's *Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access" (*Guide to FOIP*, Ch. 4), explains that subsection 19(1)(c) of FOIP is a mandatory, harm-based provision. It permits refusal of access in situations where disclosure could reasonably be expected to result in the harms outlined at subclauses (i), (ii) and (iii).

[72] As stated in subsection 2(1)(j) of FOIP:

2(1) In this Act:

...

(j) "**third party**" means a person, including an unincorporated entity, other than an applicant or a government institution.

[73] In this case, the third party is a person (land renter). As such, the person qualifies as a third party for purposes of subsection 2(1)(j) of FOIP.

[74] As it has been established that there is a third party involved, I will first consider subsection 19(1)(c)(i) of FOIP. Then I will consider subsection 19(1)(c)(ii) of FOIP.

i. Subsection 19(1)(c)(i) of FOIP

[75] Page 216 of the *Guide to FOIP*, Ch. 4, outlines the following two-part test my office uses to determine if subsection 19(1)(c)(i) of FOIP applies:

1. What is the financial loss or gain being claimed?
2. Could release of the record reasonably be expected to result in financial loss or gain to a third party?

[76] Pages 216 and 217 of the *Guide to FOIP*, Ch. 4, provide the following definitions:

- “Financial loss or gain” must be monetary, have a monetary equivalent or value (e.g., loss of revenue or loss of corporate reputation).
- “Could reasonably be expected to” means there must be a reasonable expectation that disclosure could result in financial loss or gain to a third party.

[77] The *Guide to FOIP*, Ch. 4 at pages 217 and 218, provides that government institutions should not assume that the harm is self-evident. The harm must be described in a precise and specific way to support the application of the provision. The expectation of harm must be reasonable, but it need not be a certainty. The evidence of harm must:

- Show how the disclosure of the information would cause harm;
- Indicate the extent of harm that would result; and
- Provide facts to support the assertions made.

[78] WSA, in its submission, argued that if the severed information were to be released to the Applicant, the information could be used in efforts to block work being done towards a larger drainage network project. Further it argued, if the progress of this drainage network were delayed, the financial impact would be loss of farmable acreage, which could reasonably be expected to financially impact the landowner’s ability to rent farmable land.

[79] Regarding subsection 19(1)(c)(i) of FOIP, the affected third party, also argued as follows:

Release of this information will affect the drainage approval we are currently working towards with the WSA on an existing drainage network of approximately 3400 acres... If this drainage approval fails 340 acres will be permanently flooded...the remaining 3060 acres will be severely affected, making them very difficult to farm... 340 acres is approximately \$550.00 per acre for 50 years is upwards of \$9, 350, 000.00. The remaining 3060 acres will become very difficult to farm due to the small potholes that will hold water until late into the spring. That cost is immeasurable in turning to go around the potholes which uses more fuel, more seed and fertilizer and causes more wear and tear on equipment...and reduces the sustainability of my farm.

[80] My office, in a telephone conversation with the third party on June 27, 2024, sought to clarify their submission. They explained that their argument was that the drainage network

approval they sought to undertake could proceed with approval from WSA and that is what they are currently working towards. The third party added that if the information is released to the Applicant, they could use it to obstruct the approval.

[81] In terms of the first part of the test, both WSA and the third party identified the financial loss being claimed as the loss of farmable acreage. The third party further provided an estimated monetary value of the anticipated financial loss after 50 years. Again, WSA and the third party argued that if released, the information could be used by the Applicant to block the network approval they seek to undertake, which will subsequently affect their farmland and result in the financial loss indicated.

[82] Regarding the second part of the test, the *Guide to FOIP*, Ch. 4 at page 217, provides that “could reasonably be expected to” means there must be a reasonable expectation that disclosure could result in financial loss or gain to a third party. The Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 SCR 674, 2014 SCC 31 (CanLII) at [54] set out the standard of proof for harms-based provisions as follows:

... 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.”

[83] In the present case, WSA only states that it is reasonable to expect that the Applicant would take the withheld information to impact progress with the drainage network approval. The third party also only explains that the information could be used by the Applicant to obstruct the approval. This is merely an assertion. They have not provided evidence to support this claim. Further, during the review, WSA explained to my office that the assessment in the memo (record 2a) is related to a drainage network that the third party is working on with some other persons. WSA added that although the drainage network approval will not include the Applicant’s land, if this project were approved, it would divert

water around the Applicant's land thus removing the concern of flooding impacts. If this is the case, then I am not persuaded as to how the Applicant would want to use the information to impact progress with the potential drainage approval. If the Applicant is not impacted, I fail to see the harm in releasing the information.

[84] In an email from WSA on July 16, 2024, WSA highlighted its concerns regarding any reference to the drainage network approval in my Review Report, however I note that on page 1 of record 2a, WSA has already released the name of this project to the Applicant in the subject line and body of the memo.

[85] Importantly, the *Guide to FOIP*, Ch. 4, at pages 217-218 references *Astrazeneca Canada Inc. v. Canada (Minister of Health)*, where the Federal Court stated that proof of harm for the equivalent provisions in the federal *Access to Information Act*, required reasonable speculation because “in many circumstances a party cannot rely on harm from past disclosures as evidence of reasonably expected harm because past disclosures of that type of evidence may never have occurred”. Nonetheless, the party seeking to exempt the information must put forward something more than internally held beliefs and fears. Forecasting evidence, expert evidence and evidence of treatment of similar elements of proof or similar situations are frequently accepted as a logical basis for the expectation of harm.

[86] Also, in my office's [Review Report 138-2021, 185-2021](#), I stated:

[231] Social Services provided detail regarding the potential harm that it did not want used in the Report; however, it did not provide sufficient detail or evidence to support the claim. The third party also provided arguments about why this exemption should apply, but also did not provide sufficient detail or evidence to support its claims...

[232] The standard here is “could reasonably be expected to”, which is higher than just a mere possibility. There must be an objective basis supported by facts or evidence that the alleged harm is more than probable. While Social Services has alleged a potential outcome if the information was released, it did not provide evidence to support the outcome is more than probable.

[87] I take the same approach in this case. I find that WSA and the third party have not sufficiently demonstrated that subsection 19(1)(c)(i) of FOIP applies to pages 1 and 2 of record 2a (severance 4 and 5) and (severance 1 and 2) respectively.

ii. **Subsection 19(1)(c)(ii) of FOIP**

[88] Pages 221 and 222 of the *Guide to FOIP*, Ch. 4, outline the two-part test my office applies in determining whether subsection 19(1)(c)(ii) of FOIP applies:

1. What is the prejudice to a third party's competitive position that is being claimed?
2. Could release of the record reasonably be expected to result in the prejudice?

[89] Page 221 of the *Guide to FOIP*, Ch. 4, explains that prejudice in this context refers to detriment to the competitive position of a third party. Competitive position means the information must be capable of use by an existing or potential business competitor, whether that competitor currently competes for the same market share. For example:

- Information that discloses the profit margin on a private company's operations.
- Marketing plans, including market research surveys, polls.
- Information that reveals the internal workings of a private company.

[90] WSA's submission provides that the content of the information severed from pages 1 and 2 of record 2a constitutes the internal workings of a private company, in this case a farmer, as well as plans for future development of their farming operations. Also, the third party in their submission argues that the release of the information to the Applicant will allow the Applicant to have a competitive advantage over them. The third party further contends that if the Applicant is given information, they may use it to stop the drainage approval they are currently working on, regardless of whether it affects the Applicant or not.

[91] It is not clear from WSA and the third party's arguments how the third party and the Applicant are engaged in any competitive position that will be prejudiced by the disclosure

of the records. Therefore, I find that the first part of the test is not met. As both parts of the test must be met, I will not consider the second part of the test.

[92] In conclusion, I find that WSA and the third party have not sufficiently demonstrated that subsection 19(1)(c)(ii) of FOIP applies to pages 1 and 2 of record 2a (severance 4 and 5) and (severance 1 and 2) respectively. I recommend WSA release the information withheld on pages 1 and 2 of record 2a pursuant to subsection 19(1)(c)(i) and (ii) to the Applicant within 30 days of the issuance of this Report.

IV FINDINGS

[93] I find I have jurisdiction to undertake this review.

[94] I find that WSA did not conduct a reasonable search for records.

[95] I find that WSA properly applied subsection 29(1) of FOIP to some information on records 2 and 2a. See the Appendix for details.

[96] I find that WSA did not properly apply subsection 29(1) of FOIP to some information on records 1, 2 and 2a. See the Appendix for details.

[97] I find that WSA and the third party have not sufficiently demonstrated that subsections 19(1)(c)(i) and (ii) of FOIP apply to pages 1 and 2 of record 2a (severance 4 and 5) and (severance 1 and 2) respectively.

V RECOMMENDATIONS

[98] I recommend that within 30 days of the issuance of this Report, WSA conduct a new search for records by completing my office's [Responsive Records Search Checklist](#), provide a copy of the completed Checklist to the Applicant and if it locates any additional

records that are responsive to the Applicant's access to information requests, it provide those records to the Applicant subject to any exemptions.

[99] I recommend that WSA continue to withhold some information withheld pursuant to subsections 29(1) of FOIP as set out in the Appendix.

[100] I recommend that WSA release the information withheld pursuant to subsections 29(1), 19(1)(c)(i) and (ii) of FOIP, as set out in the Appendix, to the Applicant within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 24th day of July, 2024.

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

Appendix

Record Number	Page Number	Redaction Number	Record Type	FOIP Exemptions Applied by WSA	IPC Findings	IPC Recommendations
1	2	1	Internal memo to file	29(1)	29(1) does not apply	Release
1	6	1	Internal memo to File	29(1)	29(1) does not apply	Release
1	9	1	Internal memo to file	29(1)	29(1) does not apply	Release
1	13	1- 4	Internal memo to file	29(1)	29(1) does not apply	Release
1	14	1 and 2	Internal memo to file	29(1)	29(1) does not apply	Release
1	15	1	Internal memo to file	29(1)	29(1) does not apply	Release
2	1	1 and 3	Cover Email for Memo attachment	29(1)	29(1) does not apply	Release
2	1	2	Cover Email for Memo attachment	29(1)	29(1) applies	Continue to withhold
2a	1	1 and 3	Memo Attachment	29(1)	29(1) applies in part	Release the name of the person providing professional services but continue to withhold other names
2a	1	2	Memo Attachment	29(1)	29(1) applies	Continue to withhold
2a	1	4	Memo Attachment	29(1), 19(1)(c)(i), 19(1)(c) (ii)	29(1) applies, 19(1)(c)(i), 19(1)(c) (ii) do not apply	Continue to withhold name pursuant to 29(1), release other information.
2a	1	5	Memo Attachment	19(1)(c)(i), 19(1)(c)(ii)	19(1)(c)(i), 19(1)(c)(ii) do not apply	Release
2a	2	1 and 2	Memo Attachment	29(1), 19(1)(c)(i), 19(1)(c) (ii)	29(1) applies, 19(1)(c)(i), 19(1)(c)(ii) do not apply	Continue to withhold name pursuant to 29(1), release other information.