



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 365-2021

Saskatchewan Labour Relations Board

October 24, 2022

Summary:

The Applicant submitted an access to information request to the Saskatchewan Labour Relations Board (LRB). LRB initially advised the Applicant that records did not exist pursuant to subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant then asked my office to undertake a review of LRB's response. During the review, however, LRB released an audio recording to the Applicant. As the Applicant believed that parts of their testimony were missing from the recording, the review then focused on this, as well as what else they sought, but were told does not exist. In the end, the Commissioner found that LRB conducted a reasonable search and recommended that it take no further action regarding its search efforts.

I BACKGROUND

[1] On December 1, 2021, the Saskatchewan Labour Relations Board (LRB) received the following access to information request from the Applicant:

I wish to access and receive a copy of ALL emails that I sent to [names redacted] and ALL emails sent to me from their office (email addresses: [Applicant's email address], [Applicant's email address] or [Applicant's email address]) in connection with [information redacted] held on May 22-23, 2018. This would constitute from the beginning of my application and after the hearing was held. November 2017 – September 2021.

Above. I wish to have all copies of evidence I provided in the hearing [information redacted] held on May 22-23, 2018, that I presented and was heard and acknowledged by [name redacted] QC presiding. I wish to have copies of my testimony on those days.

I want answers to some questions about the final decision that was submitted to CANLII. [Name of individual] ERO was present and the final decision does not list

him in who was present. My testimony was not in the final decision. Attached are my emails requesting specific information.

- [2] On December 21, 2021, LRB responded to the Applicant's access to information request with the following:

You are further advised that the following records you wish to access do not exist at the Saskatchewan Labour Relations Board:

- 1) "I wish to have copies of my testimony on those days." – Your testimony was provided orally on May 22 & 23, 2018, and there is no transcript.
- 2) "I want answers to some questions about the final decision that was submitted to CANLII. [Name of identifiable individual] ERO was present and the final decision does not list him in who was present. My testimony was not in the final decision. Attached are my emails requesting specific information"

For your information, this notification has been provided pursuant to clause 7(2)(e) of *The Freedom of Information and Protection of Privacy Act*.

- [3] On January 14, 2022, the Applicant requested for review by my office.

- [4] On January 18, 2022, my office provided notification to the Applicant and the LRB of my office's intention to undertake a review of LRB's search efforts. Also on this date, the Applicant responded to my office's notification of review message to them with the following:

...I believe that my communications with you and the emails I sent in support of my position are self explanatory. There are other reviews that are on going in your office that I believe are relevant and to which I have submitted information. Proceed ahead.

- [5] From January 20, 2022 to September 21, 2022, the Applicant sent to my office several emails explaining why they believe records should exist.

- [6] On April 18, 2022, LRB provided its submission to my office.

II RECORDS AT ISSUE

- [7] As this file involves a review of search efforts, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] LRB qualifies as a “government institution” pursuant to subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 3(a) and Part I in the Appendix of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Therefore, I have jurisdiction to conduct this review.

2. Did LRB conduct a reasonable search?

[9] At first, LRB stated that parts of the Applicant’s access to information request did not exist pursuant to subsection 7(2)(e) of FOIP, which provides as follows:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...

(e) stating that access is refused for the reason that the record does not exist;

[10] As such, my office asked LRB to undertake a review of its search efforts. My office reviews search efforts in two situations: 1) the government institution issued a subsection 7 response indicating records do not exist; or 2) the Applicant believes there are more records than what the government institution provided (*Guide to FOIP*, Chapter 4, “Access to Records”, updated June 29, 2021 [*Guide to FOIP*, Ch. 4], p. 8).

[11] On December 21, 2021, however, LRB informed the Applicant as follows:

...Upon further review, however, the Board does have audio recordings of the hearing that took place on May [SIC]-23, 2018. As a general rule, these recordings are not released for public use but the recordings of the two hearing dates should address your request for a copy of your testimony

You can find a link to the recordings here: [website address]

You should download your copy of the recordings as they will be removed from cloud storage in the future...

[12] On September 1, 2022, the Applicant advised my office that they did not receive copies of their testimony in the recordings given at the [information redacted] hearing on May 22-23, 2018. They added that they also had not received answers to questions about the final decision that was submitted to CANLII.

[13] Because LRB provided the Applicant with copies of the recorded testimony, my review of LRB's search efforts for the recordings will consider the Applicant's claim that parts of their testimony was absent from the recordings provided to them. My review will also consider how LRB concluded records responsive to the Applicant's question regarding how LRB decided which parts of the testimony it would provide to CANLII do not exist.

[14] When a government institution receives an access to information request, the government institution should conduct a reasonable search for records responsive to the request. In a review with my office, government institutions must demonstrate they have conducted a reasonable search to locate records. A "reasonable search" is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records, which are reasonably related to the request. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable (*Guide to FOIP*, Ch. 3, p. 35).

[15] A government institution can build a search strategy by considering the following:

- 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 and subfolders).
- If the record has been destroyed, provide copies of the 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.

(Guide to FOIP, Ch. 3, pp. 9-10)

[16] The above list is meant to be a guide. Providing the above details is not a guarantee that my office will find the search conducted was reasonable. Each case will require different search strategies and details depending on the records requested.

[17] In its submission to my office, LRB provided details of its search efforts. This included who conducted the search as follows:

- The search for records was overseen by the Board Registrar of the Saskatchewan Labour Relations Board.

[18] Further in its submission, LRB provided details of where it conducted its search:

- Searches were conducted email accounts of employees and former employees within the scope of the search.
- Searches were also conducted in employees' files located in the top-level network directory which contains all folders and non-email files for LRB.
- Further searches were conducted in all files on the hard drives of computers belonging to employees within the scope of the search.
- More searches were conducted in the calendar events on the LRB Shared Office Calendar and the personal calendars of employees within the scope of the search.
- Additional locations that were searched included the legal database electronic file for LRB [information redacted] and the paper record of LRB File No [information redacted].

[19] In addition to the above, further details provided by LRB include the following:

- These searches resulted in 68 (471 pages) email records responsive to the access to information request filed by the Applicant.
- The legal database electronic file and paper record were both searched for all exhibits (physical evidence) filed by the parties (including the Applicant) in hearing on May 22 & 23, 2018. This resulted in 77 pages of documents marked as exhibits (including summary sheets). Those exhibits were advanced by email to the Applicant.
- The search terms used included the following: “[Applicant’s email address]”, “[Applicant’s alternate email address]”, “[Applicant’s other alternate email address]”.
- Subsequently to the review request, LRB identified that digital audio recordings of the May 22 & 23, 2018 hearing dates may technically contain the raw information sought by the Applicant with the Applicant’s testimony included. To release files that may be used by the Applicant, the Board converted recordings to “windows

media player” files, usable on any windows device, and has released those digital audio files to the Applicant by cloud storage.

- [20] First, to address the recordings on April 6 and 7, 2022, the Applicant indicated to LRB via email that they were unable to download the audio recording from the link provided.
- [21] On August 29, 2022, the Applicant indicated to my office that they downloaded the audio recording from the link sent to them by LRB, but they were unable to play the recording.
- [22] On September 1, 2022, the Applicant indicated that they were able to play the audio recording but asserted that their testimony was missing from the recording.
- [23] On September 21, 2022, my office indicated to the Applicant that it had listened to the audio recording and identified testimony from the Applicant in the recording. From the email link LRB sent to the Applicant on April 6, 2022, there were two separate audio files for each of the two days on which the LRB hearings with the Applicant occurred. The Applicant asserted that Day 1 of the hearing had five separate files and Day 2 had one file.
- [24] In my office’s [Review Report 016-2021](#) at paragraph [31], I stated that applicants set the parameters of their search request, so public bodies can conduct a reasonable search of records. As such, there is some onus on the Applicant to establish their basis for believing records exist, such as by providing supporting evidence. For the recordings, the Applicant did not provide such evidence or a submission on the matter. The Applicant indicated to my office that they listened to parts, but did not listen to the entire duration of the audio files to determine if their testimony was included. Based on this, as well as the information LRB provided regarding its search efforts, which I outlined at paragraphs [18] to [20] of this Report, I find LRB’s search efforts regarding the recordings were reasonable. I recommend LRB take no further action with respect to the recordings.
- [25] In terms of the second part of the Applicant’s request, I find LRB’s explanations for the steps it took to search for these records as reasonable. The individual who conducted the search was an appropriate person to conduct it, and where they searched (e.g., in emails

and paper and electronic file folders) are expected places for them to search. I note LRB's search also resulted in many documents, including emails and other records, being provided to the Applicant. I recommend that LRB take no further action regarding its search for these records.

IV FINDING

[26] I find that LRB conducted a reasonable search.

V RECOMMENDATION

[27] I recommend that LRB take no further action regarding its search efforts.

Dated at Regina, in the Province of Saskatchewan, this 24th day of October, 2022.

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