

KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 146**

Date: **2025 09 11**
File No.: **KBG-WB-00017-2023**
Judicial Centre: **Weyburn**

BETWEEN:

RANDOLPH DEAN SCHILLER

APPLICANT

- and -

GOVERNMENT OF SASKATCHEWAN (MINISTRY OF
EDUCATION)

RESPONDENT

Appearing:

Kelly Onyskevitch and Courtenay Phillips
Randolph Dean Schiller

for the respondent
self-represented applicant

FIAT
September 11, 2025

MITCHELL J.

I. OVERVIEW

[1] Mr. Randolph Dean Schiller appeals pursuant to ss. 57 and 58 of *The Freedom of Information and Protection of Privacy Act*, SS 1990-91, c F-22.01 [*FIPPA*], from the decision made by the Government of Saskatchewan, Ministry of Education [Ministry], to continue to withhold certain information following the release of Review Report 217-2022 issued by Saskatchewan's Information and Privacy Commissioner [Commissioner], and indexed as *Saskatchewan (Education) (Re)*, 2023 CanLII 64089

(Sask IPC) [*Report*].

[2] In the *Report*, the Commissioner recommended that virtually all the information which the Ministry had redacted from its response to Mr. Schiller's initial access to information request should be disclosed to him. The Ministry complied with most of the Commissioner's recommendations; however, it continued to refuse to disclose personal and professional information relating to certain public servants involved in the matter.

[3] Subsequently, Mr. Schiller brought this appeal under s. 58 of the *FIPPA*.

[4] These reasons explain why I conclude Mr. Schiller's appeal must be dismissed.

II. BACKGROUND

[5] Mr. Schiller initially filed an access to information request with the Ministry pursuant to s. 6 of the *FIPPA*, asking for release of the following information:

All communication (electronic, digital, facsimile, verbal) with respect to SARS-Cov-2, Covid 19, Sars COVID-2, other relating terminology such as Wuhan Virus and all related variants between Holy Family RCSSD #140 and its representatives AND Minister of Education and its representatives.

[Emphasis in original]

[6] Mr. Schiller stipulated he sought access to all such information generated between January 1, 2020, and December 31, 2021.

[7] By letter dated June 24, 2022, a representative of the Ministry provided a response to Mr. Schiller. Attached to this correspondence were extensive copies of the requested records, some of which were redacted.

[8] Ms. Dawn Campbell, who serves as the Ministry's Director for

Legislative Services and Privacy, described the extent of those records in her affidavit sworn October 27, 2023 [Campbell Affidavit], which was filed on this appeal. At para. 5 of the Campbell Affidavit, she averred as follows:

5. A total of 452 pages of records were identified as being related to [Mr. Schiller's] request. The Ministry withheld information on 88 pages of records. Of those 88 pages, 41 pages were withheld in part and 47 pages were withheld in full.

[9] In its response to Mr. Schiller's request, the Ministry explained that it denied access to certain records pursuant to:

- (i) Subsection 17(1)(a) of the *FIPPA* relating to recommendations, analysis, or policy options developed for a government institution or the Minister of Education;
- (ii) Subsection 17(1)(c) of the *FIPPA* relating to plans or procedures developed for negotiation purposes on behalf of the Government of Saskatchewan;
- (iii) Subsection 17(1)(g) of the *FIPPA* relating to information the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision;
- (iv) Subsection 18(1)(b)(i) of the *FIPPA* relating to financial, commercial, scientific, technical, or other information in which the Government of Saskatchewan has a proprietary interest and is reasonably likely to have monetary value;
- (v) Subsection 19(1)(b) of the *FIPPA* relating to confidential financial, commercial, scientific, technical, or labour relations information supplied to a government institution by a third party; and

- (vi) Section 29(1) of the *FIPPA* relating to personal information possessed by a government institution of an individual to whom the information relates.

[10] Dissatisfied with the Ministry's response to his access to information request, Mr. Schiller took the matter to the Commissioner. The Commissioner's office proceeded to conduct a review under Part VI of the *FIPPA*.

[11] The Commissioner issued the *Report* on July 13, 2023. In it, the Commissioner concluded that the Ministry had failed to validate its claims for withholding information based on ss. 17(1)(a), 17(1)(c), 17(1)(g), 18(1)(b)(i), and 19(1)(b) of the *FIPPA: Report* at para 75. As well, the Commissioner determined that the Ministry had appropriately invoked s. 29(1) of the *FIPPA* to some portions of the record, but not to all: *Report* at para 74.

[12] Section 57(1) of the *FIPPA* provides that a government agency has 30 days within which to notify the Commissioner and an applicant whether it will follow the Commissioner's recommendations. Consequently, on August 14, 2023, the Ministry advised it would partially comply with those recommendations. The Ministry disclosed all information it had previously withheld, except for personal information – including business or personal contact information – of certain public servants. The Ministry maintained such information was exempt from disclosure pursuant to s. 29(1) of the *FIPPA*.

[13] Upon learning of the Ministry's continued refusal to disclose all the information he requested, Mr. Schiller initiated this appeal pursuant to s. 58 of the *FIPPA*.

III. ISSUE

[14] The sole issue presented on this appeal is whether the Ministry erred when

it invoked s. 29(1) of the *FIPPA* to maintain its refusal to release personal or professional information. The withheld information included names, professional e-mail addresses, and cell phone numbers of certain public servants.

[15] The following reasons explain why I conclude:

- (a) It is not necessary to review the withheld records *in camera*, and
- (b) Mr. Schiller's appeal must be dismissed.

IV. ANALYSIS

A. Law

[16] An appeal under s. 58 of the *FIPPA* is not an appeal from the Commissioner's recommendations. Rather it is "an appeal from a decision of the head of a government institution, regarding the implementation of those recommendations". See: *Leo v Global Transportation Hub Authority*, 2018 SKQB 323 at para 34 [*Leo*].

[17] Such an appeal is a hearing *de novo*. See: ss. 58(1)(a) of the *FIPPA*. Accordingly, I must assess the matter "afresh, based on the evidence provided by the parties on appeal": *Leo* at para 35.

[18] Furthermore, I am not bound by the Commissioner's recommendations, nor must I defer to those recommendations or to the impugned decision of the head of a government institution. See: *Leo* at para 35.

[19] As explained in *Leo* at para 37, an appeal under s. 58 of the *FIPPA* is comprised of two stages, namely:

- (1) Stage 1 involves a reviewing judge determining if it is necessary to review the disputed records *in camera*. If it is not necessary, the

matter is at an end and the appeal must be dismissed. If an *in camera* review is necessary, the appeal moves to Stage 2.

- (2) Stage 2 involves a reviewing judge looking at the records and, taking into account the parties' submissions and the relevant legal principles, deciding what, if any, order is warranted as contemplated in ss. 58(5) through 58(8) of the *FIPPA*.

[20] Throughout these stages, the onus of proving why access to the contested records should be denied rests on the head of the government institution at issue – in this case, the Ministry. See: s. 61 of the *FIPPA*; *Leo* at para 36.

[21] With these general legal principles identified, I embark upon Stage 1 of the two-part inquiry under s. 58 of the *FIPPA*.

B. Stage 1: Should the Records in Question Be Examined *In Camera*?

[22] On this aspect of the appeal, the threshold which an appellant must meet is “very low”. See: *Leo* at para 43, quoting *Britto v University of Saskatchewan*, 2017 SKQB 259 at para 26, 13 CPC (8th) 187 [*Britto*].

[23] In *Britto* at para 26, Danyliuk J. stated, “in virtually every case” it will be necessary for a judge to review *in camera* the records for which an exemption from disclosure is claimed (To similar effect, see: *Tompson v Saskatoon*, 2023 SKKB 247 at para 23, in relation to *The Local Authority Freedom of Information and Protection of Privacy Act*, SS 1990-91, c L-27.1 [*LAFIPPA*]). He explained that because such an appeal is a *de novo* proceeding, and because the Commissioner or a head of a government institution typically do not “provide particulars of the documents nor the reasons for ... denying access” to them, a judge must independently review the documents to ensure compliance with *FIPPA*.

[24] Kalmakoff J. (as he then was) in *Leo* endorsed these remarks. However, he also acknowledged there may be “plain and obvious” cases where “the appeal does not even raise an arguable point, that a judge could properly determine the matter without reviewing the records in question”: *Leo* at para 43.

[25] I acknowledge the tenor of the case-law as reflected in *Britto* and *Leo* is to the effect that in virtually every s. 58 of the *FIPPA* appeal, the Stage 1 inquiry is a mere formality. Yet, it should be remembered that it remains a discretionary inquiry. In my view, it is open to a reviewing judge on Stage 1 to consider not only the recommendations offered by the Commissioner and the reasons provided by the head of a governmental agency declining to follow those recommendations, but also all evidence provided on this appeal by a respondent when deciding whether or not to review the contested records *in camera*. Were this not so, Stage 1 would effectively be rendered redundant.

[26] Exercising my discretion, I have concluded that on this appeal it is unnecessary for me to review the withheld records *in camera*. This is because the explanation which the Ministry provides for their non-disclosure persuades me that Mr. Schiller’s appeal lacks merit and would certainly fail on Stage 2.

[27] As noted, the Ministry filed the Campbell Affidavit on this appeal, and it forms part of the appeal record. The Campbell Affidavit in paras. 12 to 17 explains in detail why certain records were deliberately withheld. I reproduce those paragraphs below, as their content is most relevant to my determination on this appeal. Those paragraphs read as follows:

The Remaining Withheld Records

12. On pages 300-302 is a table that sets out the allocation of the bulk purchased masks and reusable face shields for the various school divisions and other educational institutions in Saskatchewan. The various contact person are employees of

the several school divisions and other education institutions. The Ministry is withholding the names and email addresses of the contact persons for the various school divisions and other educational institutions that were set out in the table as this information is not made publicly available. This information would reveal where the individuals worked.

13. Page 444 contains a table that sets out the names and addresses of the various school divisions in Saskatchewan along with the names, email addresses and phone numbers of the contact persons for those various school divisions. Again, these individuals are employees of the various school divisions. The Ministry is withholding the names, phone numbers and email addresses of those contact persons set out in that table as this information is not made publicly available. This information would reveal where the individuals worked.
14. On pages 245 and 246, the Ministry is withholding the email address of the Chief Medical Health Officer of Saskatchewan. Most Government of Saskatchewan employees, including me, have their contact information (setting out location of work, phone number, and email address) made available to the public via the Government of Saskatchewan Directory. Some employees, such as Crown Prosecutors, do not have their place of work set out but do not have their email addresses listed in the government directory or otherwise made available to public. In the case of the Chief Medical Officer, no contact information is made available to the public.
15. The remaining email addresses withheld on pages 245 and 246 (along with the one email address withheld on page 240) are email addresses that are not available to the public. I conducted online searches of the individuals whose email addresses were redacted and could not locate their email addresses (when I could locate any information about them). The withheld email addresses fall into three different categories.
 - a. First, there are the email addresses of individuals working with Indigenous educational organizations (including Treaty Six Educational Council, Sakewew High School, Peter Ballantyne Cree Nation Educational Authority, Treaty Educational Alliance, etc.) I am aware that these redacted email addresses

are not made available to the public. I am advised that the remaining email addresses of individuals working with Indigenous educational organizations that are not redacted were available online at the time the request was made.

- b. Second, there are the email addresses of individuals working with non-Indigenous educational organizations (i.e. Briercrest Christian Academy, Living Sky School Division, Saskatchewan Teachers Federation, etc.) I am aware that these redacted email addresses are not made available to the public. I am advised that the remaining email addresses of individuals working with non-Indigenous educational groups that are not redacted were available online at the time the request was made.
- c. Finally, there is an email group list that is available only inside the Government of Saskatchewan that would allow an email to be sent to all of the Directors of Education in the province.

16. On page 352, the Ministry is continuing to withhold the email address of Carrie Dornstauder. I am aware that the Saskatchewan Health Authority does not make the email addresses of individuals publicly available. I conducted an online search and could not locate an email address for Carrie Dornstauder.

17. On pages 353 and 431, the Ministry is continuing to withhold the cellular phone number, as opposed to the work phone number, of Chad Fingler. I conducted an online search was able to locate Chad Fingler's email address and a phone number associated with Chad Fingler, but I was not able to locate the cell phone number that is being withheld.

[Emphasis added]

[28] Here the Ministry invokes s. 29(1) of the *FIPPA* as the justification for not releasing information which the Commissioner suggested should be disclosed. Section 29(1) provides as follows:

Disclosure of personal information

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.

[29] The Ministry argues, and I agree, that s. 29(1) creates a mandatory exemption. Mandatory exemptions open with language such as, “a head shall refuse” or words to similar effect. Only four mandatory exemptions are found in the *FIPPA*. In addition to s. 29, these mandatory exemptions are:

- (a) Section 13 relating to records received in confidence from other governments including the Government of Canada; other provincial and territorial governments, and a foreign government or its institutions;
- (b) Section 16 relating to documents which contain confidential information provided to the Provincial Cabinet; and
- (c) Section 19 relating to third party information.

[30] Of these mandatory exemptions, s. 29 stands apart as it pertains to personal information which is in the possession of a government institution. The purpose of this exemption is to protect the privacy of those persons, and ensure their personal information is not disclosed without their prior and express consent.

[31] It is well-settled that personal privacy is a value so fundamental to modern society, it warrants constitutional protection under s. 8 of the *Canadian Charter of Rights and Freedoms*. See: *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 25, [2002] 2 SCR 773, quoting *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403 at paras 65-66 [*Dagg*], per La Forest J. (dissenting, but not on this point). Indeed, in *Dagg* at para 69 La Forest J. explicitly identified, “the privileged, foundational position of privacy interests in our social and

legal culture”.

[32] The operation of s. 29(1) is informed by s. 24 of the *FIPPA*. Section 24 defines personal information as information about an identifiable individual which is personal in nature. For present purposes, the relevant portions of s. 24(1) read as follows:

Interpretation

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:

...

e) the home or business address, home or business telephone number or fingerprints of the individual;

...

(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.

[33] As well, ss. 29(2)(p) of the *FIPPA* is relevant to the issue at hand. It creates an exemption for the disclosure of personal information, as follows:

29(2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:

...

(p) if the information is publicly available, including information that is prescribed as publicly available;

[Emphasis added]

[34] “Publicly available” information is information “available or accessible

by the citizenry at large”: *Lukács v Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140 at para 69, 386 DLR (4th) 163. In addition to personal information, this would include an individual’s professional information. However, only if professional information such as business emails or cellphone numbers is publicly available can it be disclosed without the approval of the individual in question. See, especially: *D’Arcy Hande v University of Saskatchewan* (21 May 2019) Saskatoon, QBG-SA-01222-2018 (Sask QB) at paras 30-31 (interpreting to s. 28(1) of the *LAFIPPA*, a provision complementary to s. 29 of *FIPPA*).

[35] Applying these various statutory provisions to the evidence filed on this appeal, I am persuaded that it is not necessary for me to review the redacted records *in camera*. The Campbell Affidavit amply and more than adequately explains why the Ministry continued to redact personal and professional information of employees of various public or governmental institutions. Indeed, one wonders why such information needs to be disclosed to Mr. Schiller, or any other member of the public for that matter, and to what end.

[36] Accordingly, for these reasons, I must dismiss Mr. Schiller’s appeal at Stage 1 of the two-stage analysis mandated by s. 58 of the *FIPPA*. Consequently, there is no need to proceed to Stage 2.

C. Costs

[37] The final issue to address is costs. The Ministry did not ask for its costs, should it be successful on this appeal. In these circumstances, I will exercise my discretion and decline to make any order of costs.

V. ORDERS

[38] In summary, I make the following orders:

- (1) It is unnecessary to engage in a Stage 1 inquiry under s. 58 of the *FIPPA*, and review the documents *in camera*;
- (2) Mr. Schiller's appeal is dismissed; and
- (3) No costs are awarded.

J.
G.G. MITCHELL