



REVIEW REPORT 056-2017

Global Transportation Hub Authority

July 5, 2018

Summary:

The Global Transportation Hub Authority (GTH) denied access to a portion of records responsive to the Applicant's request pursuant to subsections 16(1)(a), 16(1)(d), 17(1)(a), 17(1)(b)(i), 17(1)(c), 17(1)(f), 18(1)(b), 18(1)(e), 18(1)(f), 22(a), 22(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that some of the exemptions applied to portions of the record and recommended release of the remainder of the record.

I BACKGROUND

[1] The Applicant submitted an access to information request pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) which was received by the Global Transportation Hub Authority (GTH) on January 12, 2017, requesting access to:

...documents referenced in entries 3, 5, 8, 9, 10, 11, 14, 15, 16, 17, 19, 25, 41 from our document list provided to the auditor entitled GTH East Land Transactions.

[2] By letter dated February 10, 2017, the GTH responded to the request denying access in part pursuant to subsections 16(1)(a), 16(1)(d), 17(1)(a), 17(1)(b)(i), 17(1)(c), 17(1)(f), 18(1)(b), 18(1)(e) and 18(1)(f) of FOIP. The GTH also fully withheld one record from the Applicant pursuant to subsections 22(a) and 22(b) of FOIP.

[3] The Applicant requested a review of this decision by my office on March 16, 2017. My office provided notification to the GTH and the Applicant of our intention to conduct the review on March 17, 2017 and invited both parties to make a submission. My office received a submission from the GTH on June 1, 2017. Upon receipt of the submission, the GTH added reliance on subsection 29(1) of FOIP to a portion of information found on one of the pages. Therefore, the GTH is relying on subsections 16(1)(a), 16(1)(d), 17(1)(a), 17(1)(b)(i), 17(1)(c), 17(1)(f), 18(1)(b), 18(1)(e), 18(1)(f), 22(a), 22(b) and 29(1) of FOIP.

II RECORDS AT ISSUE

[4] The responsive record is 95 pages. The GTH has fully released 16 pages and has withheld information in full or in part on the remaining 79 pages.

[5] In circumstances where the GTH has applied more than one exemption, if I find an exemption applies to portions of the information, I will not be considering the other exemptions the GTH has applied to those same portions of information.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] The GTH is a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP. Thus, I have authority to conduct this review

2. Does subsection 22(b) of FOIP apply to this record?

[7] The Ministry applied subsection 22(b) of FOIP in full to five pages it identified as record #3. Subsection 22(b) of FOIP is a discretionary exemption and provides:

22 A head may refuse to give access to a record that:

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;

[8] This provision is meant to capture records prepared by or for legal counsel (or agent of the Attorney General) for a public body in relation to the provision of advice or services by legal counsel (or agent of the Attorney General).

[9] In order for subsection 22(a) of FOIP to apply, the following two part test must be met:

1. Were the records “prepared by or for” an agent or legal counsel for a public body?
2. Were the records prepared in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

[10] I will now determine if the GTH has met each part of the test.

1. Were the records “prepared by or for” an agent or legal counsel for a public body?

[11] For this part of the test to be met, the record must be “prepared”, as the term is understood, in relation to the advice or services or compiled or created for the purpose of providing the advice or services.

[12] In order to qualify, the person preparing the record must be either the person providing the legal advice or legal service or a person who is preparing the record in question on behalf of or for the use of, the provider of legal advice or legal related services. For FOIP, a government institution can include any government institution and not just the one applying the exemption.

[13] In its submission, the GTH asserts that the record was prepared by the Ministry of Justice for the GTH. From a review of the record, I agree. It is clearly a communication prepared

by the Crown Counsel with the Ministry of Justice for the GTH. Therefore, the first part of the test has been met.

2. *Were the records prepared in relation to a matter involving the provision of advice or other services by the agent or legal counsel?*

[14] *Legal advice* means a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications. *Legal service* includes any law-related service performed by a person licensed to practice law.

[15] The prepared record does not have to constitute legal advice or legal services to qualify for this part of the test. However, it must relate back to a matter that involves the provision of legal advice or service.

[16] In its submission, the GTH outlines that the record represents the legal opinion and advice of the Ministry of Justice in response to the legal advice sought by the GTH. From a review of the record, I can confirm that it is a letter where the Justice lawyer is clearly providing legal advice to the GTH on a particular issue. Therefore, the second part of the test has been met.

[17] I find subsection 22(b) of FOIP applies to pages 1 to 5 of this record.

[18] These are the only pages which the GTH has applied subsection 22(a) of FOIP. As I have found that subsection 22(b) of FOIP applies, I will not consider subsection 22(a) of FOIP.

3. Does subsection 17(1)(a) of FOIP apply to this record?

[19] The GTH applied subsection 17(1)(a) of FOIP to information found on pages 6 - 9, 50 - 52, 55, 57 - 59, 77, 78 and 92 - 94.

[20] Subsection 17(1)(a) of FOIP is a discretionary exemption and provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[21] This exemption is meant to allow for candor during the policy making process, rather than providing for the non-disclosure of all forms of advice or all records related to the advice. In order for information to qualify under this exemption, all three parts of the following test must be met.

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Is the advice, recommendations, proposals, analyses and/or policy options:
 - i. either sought, expected, or be part of the responsibility of the person who prepared the record; and
 - ii. prepared for the purpose of doing something, for example, taking an action or making a decision; and
 - iii. involve or be intended for someone who can take or implement the action?
3. Was the advice, recommendations, analyses and/or policy options developed by or for the public body?

[22] I will now determine if the GTH has met each part of the test.

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?

[23] *Advice* includes the analysis of a situation or issue that may require action and the presentation of options for future action, but not representation of facts. *Advice* has a broader meaning than recommendations. *Recommendations* relate to a suggested course of action. Recommendations are generally more explicit and pointed than advice. *Proposal, analyses* and *policy options* are closely related to advice and recommendations

and refer to the concise setting out of the advantages and disadvantages of particular courses of action.

- [24] In its submission, the GTH asserts that the information found on page 6 and 57 contains advice and analyses prepared by the GTH to support the assembly of land, attainment of business development targets, delivery of capital plans and the overall execution of directives and strategic plans. Further, the GTH advises that the information that has been withheld on pages 50 to 52 is a string of emails between government officials that provides advice, recommendations and analysis and was developed to support strategic decision making.
- [25] From a review of the record, I agree that the information that the GTH has withheld in pages 6, 50, 51, 52 and 57 would qualify as advice, proposals, recommendations or policy options. Therefore, the first part of the test has been met for the information found on these pages.
- [26] The GTH has also demonstrated that portions of the information withheld on pages 7, 9 and 92 to 94 would also qualify and the first part of the test has been met. However, some of the information found on these page would not. In addition, the portions of information that the GTH has applied this exemption to found on pages 8, 55, 58, 59, 77 and 78 would not qualify as advice, proposals, recommendations, analyses or policy options.
- [27] For example, some of the information provides updates in regards to prospective tenants of the GTH, some of the information is publicly available, and some of the information appears to outline plans for the GTH. Therefore, the first part of the test has not been met for that information.
- [28] I will now assess whether the second part of the test has been met.

2. Is the advice, recommendations, proposals, analyses and/or policy options:

- i. either sought, expected, or be part of the responsibility of the person who prepared the record; and***

- ii. prepared for the purpose of doing something, for example, taking an action or making a decision; and*
- iii. involve or be intended for someone who can take or implement the action?*

[29] For this part of the test to be met, the information does not have to have arrived at the person which can take or implement the action in order to qualify as advice, recommendations, proposals, analyses and/or policy options.

[30] In its submission, the GTH has provided information that supports that the information meets this part of the test. For example, the GTH has outlined that the information on pages 6, 7, 9, 57, 92, 93 and 94 is part of a Chief Executive Officer (CEO) report that was prepared by the President and CEO of the GTH for the Board of the GTH and guides the board members around strategic priorities and its progress against them. Further, it is prepared to ensure the organizational objectives are achieved. It also includes recommendations to achieve those objectives. The information found in the email chains on pages 50 to 52 involves officers of the GTH. The emails includes analyses of situations and recommendations for next steps. Therefore, the second part of the test has been met for these pages.

3. Was the advice, recommendations, analyses and/or policy options developed by or for the public body?

[31] For information to be developed by or for a public body, the individual developing the information should be an official, officer or employee of the public body. Alternatively, the individual should be contracted to perform services, be specifically engaged in an advisory role, or otherwise have a sufficient connection to the public body. The role of the individual should be explained by the public body.

[32] When looking at the second part of the test, the GTH outlined the roles of those involved in the development of these records. Therefore, from a review of the record I am satisfied that this part of the test has been met.

[33] I find that subsection 17(1)(a) of FOIP applies to the information that has been withheld on pages 6, 50, 51, 52 and 57 and the portions of information found on pages 7, 9, 92, 93 and 94 that my office will identify to the GTH.

4. Does subsection 17(1)(f)(i) of FOIP apply to this record?

[34] The GTH applied subsection 17(1)(f)(i) of FOIP to information found on pages 10 to 12, 62, 63 and 79 to 81.

[35] Subsection 17(1)(f)(i) of FOIP is a discretionary exemption and provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) agendas or minutes of:

(i) a board, commission, Crown corporation or other body that is a government institution;

[36] This provision is intended to protect agendas and/or meeting minutes as they relate to decision making within public bodies. The government institution must demonstrate that the agenda or minutes are those of one of the bodies noted in the provision and it can only be applied to the records of that body. In order for this exemption to be found to apply, both parts of the following test must be met:

1. Is the record an agenda of a meeting or minutes of a meeting?
2. Was it a meeting of a board, commission, Crown Corporation or other body that is a government institution?

[37] I will now assess if each part of the test has been met.

1. Is the record an agenda of a meeting or minutes of a meeting?

[38] The GTH has applied this exemption to three separate records that are titled *2012 Minutes GTHA Board Meeting* for the three separate meeting dates of March 22, 2012 (pages 10 to

12), September 19, 2012 (pages 62 and 63) and November 22, 2012 (pages 79 to 81). It is clear from a review of these pages that they are the minutes of a GTH Board meeting. Therefore, the first part of the test has been met for these pages.

2. Was it a meeting of a board, commission, Crown Corporation or other body that is a government institution?

[39] As outlined above, the GTH is a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP. Therefore, I am satisfied that these pages represent meeting minutes of a government institution.

[40] I find that subsection 17(1)(f) of FOIP applies to the information withheld on pages 10 to 12, 62, 63 and 79 to 81.

5. Does subsection 16(1)(a) of FOIP apply to this record?

[41] The GTH applied subsection 16(1)(a) of FOIP to pages 82 to 91 in full.

[42] Subsection 16(1)(a) of FOIP is a mandatory exemption and provides:

16(1) A head shall refuse to give access to a record that discloses a confidence of Executive Council, including:

(a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

[43] Subsection 16(1) is a mandatory class-based exemption. It should be noted that subsections 16(1)(a) through (d) are not an exhaustive list. Therefore, even if none of the subsections are found to apply, the introductory wording must still be considered. In other words, a government institution must consider if the information is a confidence of Executive Council.

[44] Executive Council consists of the Premier and Cabinet Ministers. Executive Council is also referred to as Cabinet. The *Federal Access to Information and Privacy Legislation*

Annotated 2015 (Canada: Thomas Reuters Canada Limited, 2014) generally defines cabinet confidences as:

...in the broadest sense, the political secrets of Ministers individually and collectively, the disclosure of which would make it very difficult for the government to speak in unison before Parliament and the public.

[45] Subsection 16(1)(a) of FOIP specifically protects records that contain advice, proposals, recommendations, analyses or policy options developed from sources outside of Executive Council for presentation to the Executive Council. The definition of advice, proposals, recommendations, analyses or policy options has been covered in paragraph [23] of this report.

[46] A draft memorandum that was created for the purpose of presenting proposals and recommendations to Cabinet but that was never actually presented to Cabinet remains a confidence. Equally, a memorandum in final form is a confidence even if it has not been presented to Cabinet.

[47] In a review of the record, this is a Decision Item memorandum addressed to the former Premier and all Cabinet Ministers. It outlines an issue and a recommended course of action, and includes supporting analysis. Therefore, it meets the criteria for subsection 16(1)(a) of FOIP. In its submission, the GTH has advised that the memo was withdrawn before being presented to Cabinet. However, as outlined above it still remains a confidence.

[48] I find subsection 16(1)(a) of FOIP applies to pages 82 to 91.

6. Does subsection 18(1)(b) of FOIP apply to this record?

[49] The GTH has applied subsection 18(1)(b) of FOIP to information found on pages 15 to 49 of FOIP.

[50] Subsection 18(1)(b) of FOIP is a discretionary exemption and provides:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use; and;

(ii) that has monetary value or is reasonably likely to have monetary value;

[51] In order for this exemption to be found to apply, all three parts of the following test must be met:

1. Does the information contain financial, commercial, scientific, technical or other information?
2. Does the public body have a proprietary interest or a right to use it?
3. Does the information have monetary value for the public body or is it likely to?

[52] I will now assess each part of the test.

1. Does the information contain financial, commercial, scientific, technical or other information?

[53] In its submission, the GTH has outlined that these pages contain financial and commercial information of the GTH.

[54] *Financial information* is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a particular party.

[55] *Commercial information* means information relating to the buying, selling or exchange of merchandise or services. This includes third party associations, past history, references

and insurance policies and pricing structures, market research, business plans and customer records.

[56] The GTH has outlined that these pages are the GTH's 2012-13 Business Plan that was the first formal business plan presented to the Board of Directors and approved. As such, it includes foundational principles and critical strategies that are still employed by the GTH today. In addition, it asserts the document includes financial information such as forecasts and budgeted information.

[57] From a review of these pages, I agree that it contains financial information as outlined by the GTH. In addition, information found in these pages also qualifies as commercial information. For example, as noted by the GTH it includes the identification and mitigation of enterprise risks and its capital plan. Therefore, I am satisfied that the withheld information found in the business plan qualifies as financial and commercial information. Therefore, the first part of the test has been met.

2. Does the public body have a proprietary interest or a right to use it?

[58] *Proprietary interest* is the interest held by a property owner together with all appurtenant rights, such as a stockholder's right to vote the shares. In other words, the public body must be able to demonstrate rights to the information.

[59] In its submission, the GTH outlines that it did have a proprietary interest or right to use the business plan. It asserts that the business plan in its entirety was internally generated by the GTH and not disclosed outside of the GTH other than to the Treasury Board.

[60] In the Information and Privacy Commissioner of Ontario Order MO-1746, Appeal MA-030101-2 (Toronto District School Board), the Adjudicator noted:

The Assistant Commissioner has thus determined that the term "belongs to" refers to "ownership" by an institution, and that the concept of "ownership of information" requires more than the right to simply to possess, use or dispose of information, or control access to the physical record in which the information is contained. For

information to “belong to” an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense - such as copyright, trade mark, patent or industrial design - or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business-to-business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, there is a quality of confidence about the information, in the sense that it is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the courts will recognize a valid interest in protecting the confidential business information from misappropriation by others....

[61] I agree with the Adjudicator in this case. This business plan is confidential business information of the GTH. Further, it contains confidential financial information of the GTH. The GTH has a proprietary interest in this information. Therefore, the second part of the test has been met.

3. Does the information have monetary value for the public body or is it likely to?

[62] *Monetary value* may be demonstrated by evidence of potential for financial return to the public body. An example of information that is reasonably likely to have monetary value might include a course developed by a teacher by a school board. The mere fact that the public body incurred a cost to create the record does not mean it has monetary value for the purposes of this section.

[63] In its submission, the GTH outlines that the business plan drove the strategic direction for the year and still includes foundational principles that guide it today. Further, the GTH outlines that if the business plan was disclosed it would provide insight to the GTH's competitors in regards to its business planning process, strategies and components of its cost structure.

[64] Although the GTH is a government institution, it operates as a business. Releasing this information could potentially put the GTH in a competitive disadvantage with its

competitors. Therefore, I agree that the business plan holds a monetary value for the GTH and the third part of the test has been met.

[65] I find subsection 18(1)(b) of FOIP applies to the information that has been withheld on pages 15 to 49.

7. Does subsection 18(1)(f) of FOIP apply to this record?

[66] The GTH applied subsection 18(1)(f) of FOIP to information found on pages 7 to 9, 58 to 61, 67, 69, 70 and 92 to 94.

[67] Subsection 18(1)(f) of FOIP is a discretionary exemption and provides:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

[68] In this context, *prejudice* refers to detriment to economic interests. *Economic interests* refers to both the broad interests of a public body and for the government as a whole, in managing the production, distribution and consumption of goods and services. The term also covers financial matters such as the management of assets and liabilities by a public body and its ability to protect its own or the government's interests in financial transactions.

[69] For this provision to apply there must be objective grounds for believing that disclosing the information could result in prejudice. The public body does not have to prove the prejudice is probable, but needs to show that there is a "reasonable expectation" of prejudice if any of the information were to be released. All three parts of the following test must be met:

1. Is there a clear cause and effect relationship between the disclosure and the prejudice which is alleged?
2. Is the prejudice caused by the disclosure more than trivial or inconsequential?

3. Is the likelihood of prejudice genuine and conceivable?

[70] I will now assess each part of the test.

1. Is there a clear cause and effect relationship between the disclosure and the prejudice which is alleged?

[71] The information found on pages 7, 8 and 9 make up part of the CEO report. In its submission, the GTH has asserted that this information contains confidential business updates that relate to its strategic business plan. Further, the GTH noted that sharing this information could cause the GTH to lose its competitive position in a tight industry.

[72] I agree with the GTH for the information found on pages 8, 59, 67 and 70. This part of the test has also been met for portions of information the GTH has withheld on pages 58, 60, 61, 69, 92, 93 and 94. It outlines specific strategies and negotiations with potential and existing clients of the GTH. The cause and effect relationship between disclosure and the prejudice is evident.

[73] However, this is not apparent in the information that has been withheld on pages 7 and 9 and other portions of information found on pages 58, 60, 61, 69, 92, 93 and 94. For example, some of the information is simply factual. Other information speaks to workforce resourcing within the GTH organization. There is information that relates to publicly made announcements. That type of information would not qualify under this exemption. Therefore, the first part of the test has not been met for pages 7 and 9 and portions of the information found on pages 58, 60, 61, 69, 92, 93 and 94.

[74] I will now assess if the second part of the test has been met for information found on pages 8, 59, 67 and 70 and portions of information found on pages 58, 60, 61, 69, 92, 93 and 94.

2. Is the prejudice caused by the disclosure more than trivial or inconsequential?

[75] In its submission, the GTH asserts that if this information is released, it will cause the foundational strategies to become available to customers and competitors alike, which

could erode its bargaining position with future clients and competitiveness with other inland ports.

[76] The GTH operates unlike many other public bodies as a business in a highly competitive market. I agree that the prejudice caused by the disclosure is more than trivial or inconsequential. Therefore, the second part of the test has been met.

3. Is the likelihood of prejudice genuine and conceivable?

[77] The GTH has provided arguments outlining that the prejudice is conceivable because it is likely the information would be widely disseminated if released to the Applicant. This would increase the risk of the information becoming available to competitors, thus increasing the likelihood of prejudice. I agree with the GTH and therefore the third part of the test has been met.

[78] I find that subsection 18(1)(f) of FOIP applies to the information that has been withheld on pages 8, 59, 67 and 70 and the portions of information that has been withheld on pages 58, 60, 61, 69, 92, 93 and 94 that my office will identify to the GTH.

8. Does subsection 17(1)(b)(i) of FOIP apply to this record?

[79] The GTH applied subsection 17(1)(b)(i) of FOIP to information found on pages 7, 9, 55, 58, 60, 61, 69, 77, 78, 92, 93 and 94.

[80] Subsection 17(1)(b)(i) of FOIP is a discretionary exemption and provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[81] This provision is meant to permit public bodies to consider options and act without constant public scrutiny. A *consultation* occurs when the views of one or more officers or employees of a public body are sought as to the appropriateness of a particular proposal or suggested action. A *deliberation* is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. It refers to discussions conducted with a view towards making a decision. It is important to note that this provision is not meant to protect the bare recitation of facts, without anything further.

[82] In order to qualify, the opinions solicited during a consultation or deliberation must:

1. Be either sought, expected, or be part of the responsibility of the person who prepared the record; and
2. Be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[83] In addition, public bodies should identify those individuals involved in the consultation or deliberation. As the GTH has applied subsection 17(1)(b)(i) of FOIP, the consultations or deliberations must involve officers or employees of a government institution.

[84] The information that has been severed on pages 77 and 78 is an email exchange between officials of the GTH. From a review of the record, this information is clearly a consultation between the GTH employees in order to take an action. Therefore, the information found on these pages qualifies under this exemption.

[85] The remaining information I am considering under subsection 17(1)(b)(i) of FOIP does not appear to be a consultation or deliberation. Examples of types of information I am considering here include status updates on various GTH projects, informational items related to prospective purchases, and information that would be publicly available.

[86] In its submission, the GTH outlined a few arguments surrounding the information in these records. It asserts that the updates in the reports were generated following a series of

deliberations. The end result of consultations and deliberations are not protected under this provision. The actual consultations and deliberations are protected.

[87] Further, the GTH outlines that that these records were generated to encourage discussion by the Board at the quarterly board meeting with a goal of making a decision with respect to various operational issues. I note that while the information in these pages may result in consultations and deliberations going forward, what is in these pages would not qualify. Therefore, subsection 17(1)(b)(i) of FOIP does not apply to the information on pages 7, 9, 55, 58, 60, 61, 69, 92, 93 and 94.

[88] I find however that subsection 17(1)(b)(i) of FOIP applies to the information that has been withheld on pages 77 and 78.

9. Does subsection 17(1)(c) of FOIP apply to this record?

[89] The GTH applied subsection 17(1)(c) of FOIP to information found on page 55.

[90] Subsection 17(1)(c) of FOIP is a discretionary exemption and provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution, or considerations that related to those negotiations;

[91] This provision covers positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the public body. It also covers considerations related to the negotiations.

[92] To qualify under this exemption, all three parts of the following test must be met:

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the contractual or other negotiations?

2. Were they developed for the purpose of contractual or other negotiations?
3. Were the contractual or other negotiations being conducted by or on behalf of a public body?

[93] I will now assess each part of the test.

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the contractual or other negotiations?

[94] A *plan* is a formulated and especially detailed method by which a thing is to be done; a design or scheme. *Positions* and *plans* refer to information that may be used in the course of negotiations. *Procedures, criteria, instructions* and *considerations* are much broader in scope, covering information relating to the factors involved in developing a particular negotiating position or plan.

[95] In its submission, the GTH outlined that this information includes considerations related to history of particular properties surrounding the GTH. From a review of the record, I agree. This information is considerations surrounding negotiations going forward. I find the first part of the test has been met.

2. Were they developed for the purpose of contractual or other negotiations?

[96] For this part of the test to be met, the contractual or other negotiations can be concluded, ongoing or future negotiations. In its submission, the GTH has outlined that this information was prepared for the purpose of land negotiations. I agree and therefore, the second part of the test has been met.

3. Were the contractual or other negotiations being conducted by or on behalf of a public body?

[97] Under FOIP, this can include an individual government institution or the Government of Saskatchewan as a whole and an outside party. The GTH has outlined in its submission that the contractual negotiations were a joint effort of two government institutions – the

GTH and the Ministry of Central Services. Therefore, the third part of the test has been met.

[98] I find subsection 17(1)(c) of FOIP applies to the information that has been withheld on page 55.

10. Is there personal information in this record?

[99] There are protection of privacy requirements under FOIP that must be considered. 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.

[100] In order for information to be found to be personal information, there must be an identifiable individual and the information must be personal in nature. Subsection 24(1) of FOIP provides examples of types of information that is considered personal in nature. Subsection 24(1)(j) and (k) of FOIP provides:

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:

...

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(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.

[101] When reviewing the record, my office noted that there were individuals’ names connected with information about the individual that would qualify as personal information pursuant

to subsections 24(1)(j) and 24(1)(k)(i) and (ii). This information can be found on pages 50, 55 and 94.

[102] I do note that the information found on pages 50 and 55 was part of the information that qualified under other exemptions. However, if those exemptions had been found not to apply, FOIP would require the names to be protected under subsection 29(1) of FOIP.

[103] I find that subsection 29(1) of FOIP applies to the individuals' names found on pages 50, 55 and 94.

[104] In response to the draft report, the GTH advised my office it intends to comply with the recommendations.

IV FINDINGS

[105] I find subsection 22(b) of FOIP applies to pages 1 to 5 of this record.

[106] I find that subsection 17(1)(a) of FOIP applies to the information that has been withheld on pages 6, 50, 51, 52 and 57 and the portions of information found on pages 7, 9, 92, 93 and 94 that my office will identify to the GTH.

[107] I find that subsection 17(1)(f) of FOIP applies to the information withheld on pages 10 to 12, 62, 63 and 79 to 81.

[108] I find subsection 16(1)(a) of FOIP applies to pages 82 to 91.

[109] I find subsection 18(1)(b) of FOIP applies to the information that has been withheld on pages 15 to 49.

[110] I find that subsection 18(1)(f) of FOIP applies to the information that has been withheld on pages 8, 59, 67 and 70 and the portions of information that has been withheld on pages 58, 60, 61, 69, 92, 93 and 94 that my office will identify to the GTH.

[111] I find subsection 17(1)(b)(i) of FOIP applies to the information that has been withheld on pages 77 and 78.

[112] I find subsection 17(1)(c) of FOIP applies to the information that has been withheld on page 55.

[113] I find that subsection 29(1) of FOIP applies to the individuals' names found on pages 50, 55 and 94.

V RECOMMENDATIONS

[114] I recommend the GTH continue to withhold information found on pages 1 to 5, 6, 8, 10 to 12, 15 to 49, 50, 51, 52, 55, 57, 59, 62, 63, 67, 70, 77, 78 and 79 to 91.

[115] I recommend the GTH continue to withhold portions of information found on pages 7, 9, 58, 60, 61, 69, 92, 93, 94 that I will identify to the GTH.

[116] I recommend the GTH release portions of information found on pages 7, 9, 58, 60, 61, 69, 92, 93, 94 that I will identify to the GTH.

Dated at Regina, in the Province of Saskatchewan, this 5th day of July, 2018.

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