



REVIEW REPORT 086-2019

Ministry of Central Services

May 1, 2020

Summary:

The Applicant submitted a request for review of the Ministry of Central Services (Central Services) decision to deny access to requested records pursuant to subsections 18(1)(d), 18(1)(e), 18(1)(f), 19(1)(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that Central Services had not appropriately applied subsections 18(1)(d), 18(1)(e), 18(1)(f), and 29(1) of FOIP to the responsive records. The Commissioner found that Central Services had appropriately applied subsection 19(1)(b) of FOIP to certain portions of the records but the exemption was not appropriately applied to other portions. The Commissioner recommended Central Services withhold certain portions of the responsive records and release the remaining portions.

I BACKGROUND

[1] On January 17, 2019, the Ministry of Central Services (Central Services) received an access to information request for information regarding a certain parcel of land. The timeframe of the request was January 1, 2015 to January 1, 2019. The request was as follows:

1. All correspondence with 3346286 Manitoba Ltd and/or Shindico, including initial tender offer submission for Competition Regina RG5002-2018, letters of intent and signed lease agreement(s) including negotiations of both the interior and exterior premise.
2. Copies of any & all applications for rezoning, plans and permits obtained & development permits submitted directly or by the owner of the property on behalf of any Saskatchewan governmental bodies, including Department of Highways, Saskatchewan Police Commission, Saskatchewan Water Corporation and Public Employees Pension Board and the approval or refusal of the submission.

3. Copy of any correspondence, letters, offers, leases with Saskatchewan Water and [the certain parcel of land].

4. Copies of all feasibility studies done on the property including all soil testing.

5. Copy of awarded contract(s) for [the certain parcel of land] Job No. HWY19002 issued Dec 12, 2018 and closed January 7, 2019.

6. Copies of any other awarded contracts, tenders, leases, letters of intent other than aforementioned for [the certain parcel of land] by any governmental body.

[2] On March 6, 2019, the Applicant received a response to their access to information request advising that portions of the requested records were being withheld pursuant to subsections 18(1)(d), 18(1)(e), 18(1)(f), 19(1)(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On March 25, 2019, the Applicant requested my office review Central Services' application of the exemptions to the responsive records.

[4] On April 8, 2019, my office notified Central Services, the Applicant and the Third Party of my intention to undertake a review.

II RECORDS AT ISSUE

[5] Central Services identified three records totalling 47 pages responsive to the Applicant's request, which it described in the index of records below:

Record Number	Page Number(s)	Description	Exemptions	Status
1	Pages 1 to 36	Contract between Central Services and Stantec Architecture Ltd. for design services at [a certain parcel of land]	29(1)	Released to the Applicant in part. The signature and initials of the individual representing Stantec Architecture Ltd. were redacted.

2	Pages 1 to 7	Letter of intent between Central Services and 3346286 Manitoba Ltd.	18(1)(d), 18(1)(e), 18(1)(f), and 19(1)(b)	Withheld in full
3	Page 1 to 4	Amended letter of intent between Central Services and 2246386 Manitoba Ltd.	18(1)(d), 18(1)(e), 18(1)(f), and 19(1)(b)	Withheld in full

- [6] In an email dated March 4, 2020, Central Services clarified that it was only relying on subsections 18(1)(d), 18(1)(e) and 18(1)(f) of FOIP to withhold certain portions of the letter of intent and the amended letter of intent. Specifically, section 4 “Rent” on page 2 of the amended letter of intent (Record 3) and Section 4 “Rent” and section 6.1.3 “Basic Operating Cost” on page 3 of the letter of intent (Record 2). Subsection 19(1)(b) of FOIP was being applied to both of these records to withhold in full.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

- [7] Central Services qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

- [8] Shindico Realty Inc. qualifies as a third party pursuant to subsection 2(1)(j) of FOIP.

2. Does subsection 29(1) of FOIP apply to the record?

- [9] 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.

[10] Central Services applied subsection 29(1) of FOIP to the name and signature of a Stantec Architecture Inc. representative and a witness on pages 21 and the initials of the Stantec representative on page 27 of the 36 page record.

[11] In Review Report 149-2019 and 191-2019, my office provided the following regarding the application of subsection 29(1) of FOIP to signatures:

[85] SaskTel severed signatures or written initials of individuals from 11 pages of the records. The initials and signatures include employees of SaskTel, the City of Regina and a third party business.

[86] In order for subsection 29(1) of FOIP to apply, the information in the record must first qualify as “personal information” as defined by subsection 24(1) of FOIP; however, it is not an exhaustive list.

[87] In the past, I have defined work product as information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. Work product is not considered personal information. Further, my office has found that business card information is not personal in nature and would not qualify as personal information. Finally, in the past, my office has determined that signatures do not constitute personal information when made in a work-related capacity. However, a signature may be personal in nature outside of a professional context. In this case, all of the records were created in a professional context and constitute work product.

[88] Past decisions have not only found that work product of employees of public bodies should be released, my office’s decisions have also found that work product of employees of private organizations do not qualify as personal information.

[89] The signatures in question do not qualify as personal information. I find that subsection 29(1) of FOIP does not apply to the portions of the record in question...

[12] This same analysis applies to the application of subsection 29(1) of FOIP to the signature and initials of the Stantec Architecture Inc. representative and a witness signature as they are included in the contract in a work capacity it would not qualify as personal information.

[13] I find that subsection 29(1) of FOIP does not apply to the portions of the record in question.

[14] I recommend that Central Services release the portions of the record it had withheld pursuant to subsection 29(1) of FOIP.

3. Does subsection 19(1)(b) of FOIP apply to the record?

[15] Subsection 19(1)(b) of FOIP provides:

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

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

[16] Central Services applied subsection 19(1)(b) of FOIP to withhold in full the seven page letter of intent and the four page amended letter of intent. Central Services' submission provides as follows:

The Responsive Records in this case contain the temporary arrangements and **negotiated terms** of the relationship between the Government and the Third Party relating to the Government's use of the Premises during the negotiating period for a final lease. **The Responsive Records are documentation that includes both information of the Government and information of the Third Party.**

...

With respect to the definition of Financial Information of the Third Party, the Responsive Records include the **negotiated terms for payment rates** and formulas to be paid by the Government for its occupation and use of the Premise under the Letter of Intent. This information is about the third party's financial revenue for the use of the Premise. **The information in the Responsive Record is the negotiated information that is simultaneously providing information about the Government's economic interests and the Third Party's financial status.**

The Commercial nature of the Responsive Records is clear from the responsive records' titles and internal references to the process to reach mutual agreements about how the Government would have temporary occupancy of the landlord's premise. **The Third Party's response to the Competition is cited in the Responsive Record...**

...

The information in the Responsive Records is, as stated above, a compilation of the proposal response provided to the Government by the Third Party in response to the Competition. Added to the proposal information are the negotiated terms and conditions agreed to between the Government and Third Party to reach the documentation of their negotiations for the temporary arrangement between them. The Third Party information originates from their response to the Competition and their negotiated terms and conditions. The amendment document, Letter of Intent

Amendment (the second Responsive Record) was written by the Third Party and incorporates the original Letter of Intent document (the first responsive record). This part of the Responsive Record clearly was directly supplied to the Government by the Third Party.

The IPC Guide with respect to mutually generated information also includes the description of the content of the resulting document is revealing of the Third Party's information that was included. The Government submits that the Responsive Records are built from the Third Party response to the Competition and the Third Party's financial capacity information regarding both the payment terms included in the Responsive Records and the conditions and other terms they are required to fulfil...

...

[emphasis added]

[17] The Third Party's submission provides as follows:

...We have received and reviewed the above information requests, and object to the disclosure of the December 22, 2017 Letter of Intent (the "Letter of Intent"), as well as the Letter of Intent Amendment, dated May 11, 2018 (the "Amendment").

In both instances 19(1)(b) of [FOIP] would apply. Specifically the Letter of Intent, and the Amendment are, in their entirety commercial information supplied in confidence to a government institution by a third party.

...

These documents were prepared with an aim to winning a contract, in this case a lease agreement, with the Ministry of Central Services. This is a clear offer of services, and the terms of the agreement are the terms and conditions for providing those services.

...

The Letter of Intent and Amendment were provided to a government institution (the Ministry of Central Services).

...

The Office of the Saskatchewan Information and Privacy Commissioner considered this issue in Review Report 031-2015. The Commissioner found that the third party's entire proposal package in response to an RFP [Request for Proposal] constituted commercial information, and that the record must be withheld. The same principles applies in this case. The Letter of Intent and Amendment were part of an RFP process for leases accommodations. Both documents constitute commercial information supplied in confidence to the Ministry of Central Services.

[18] In my office's *Guide to FOIP, Chapter 4* (updated February 4, 2020), at page 191, provides the following three part test can be applied:

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?
2. Was the information supplied by the third party to a government institution?
3. Was the information supplied in confidence implicitly or explicitly?

[19] *Supplied* means provided or furnished. Records can still be “supplied” even when they originate with the government institution (i.e. the records still may contain or repeat information extracted from documents supplied by the third party). However, the third party objecting to disclosure will have to prove that the information originated with it and that it is confidential. The following are examples of information not supplied by a third party:

- information that reflects the viewpoints, opinions or comments of government officials;
- reports resulting from factual observations made by government inspectors; and
- the terms of a lease negotiated between a third party and a government institution.

[20] The letter of intent was a letter from Central Services to the Third Party that appears to be outlining terms to reach a lease agreement. There are also some handwritten amendments to the letter initialed by one of the parties. The amended letter of intent is a letter from the Third Party to Central Services modifying certain terms from the original letter of intent based on discussions between the parties.

[21] Central Services’ submission has outlined that the information in the letter of intent and the amended letter of intent are a compilation of information with some information being the government’s information, other information being information from the Third Party’s proposal, as well as some negotiated information. Based on my office’s review of the record, it was unclear what information specifically in the two records were “supplied” by the Third Party.

[22] On February 28, 2020, my office requested Central Services provide a copy of the request for proposal competition document and a copy of the Third Party’s proposal submitted in response to the competition to assist in the analysis of the application of this exemption.

[23] On March 3, 2020, Central Services provided a copy of the request for proposal competition document to my office. While this document showed the type of information Central Services was requesting the third parties provide in their proposals, it did not provide my office with the clarity needed to determine what information in the letter of intent and amended letter of intent, the third party supplied versus what was negotiated between the parties. On March 4, 2020, my office again requested a copy of the Third Party's proposal that was submitted to Central Services in response to the competition. On April 14, 2020, Central Services provided my office with a copy of the Third Party's proposal document.

[24] My office reviewed the Third Party's proposal to assist in determining what information in the letter of intent and amended letter of intent had been supplied to Central Services by the Third Party. Based on my review, the square footage being rented differed in all of the documents so that the dollar figure did not match. While the dollar amounts per square foot were not specifically referenced in the Proposal document, the rates used for the Office Space Base Rent (referred to as Main Floor Office Space Base Rent in the amended letter of intent) and Property Tax Rent could be calculated using the figures provided in the proposal document. As well, one of the floor plans in the letter of intent also appeared in the proposal document. Beyond that, it was not apparent on a review of the face of the record that any of the other information in the letter of intent or amended letter of intent had been supplied in the Third Party's proposal document.

[25] Therefore, based on the information provided to my office, the only information that I can conclude was supplied by the Third Party to Central Services is the cost per square foot for the Office Space Base Rent/Main Floor Office Space Base Rent and Property Tax Rent.

[26] In the future, when Central Services is claiming a third party exemption over records it has prepared using information supplied by a third party, it should ensure that its submission and supporting documentation clearly outline what information was supplied. This could be done by providing a copy of the originating document where the Third Party supplied the information, in this case the proposal document. As well, clearly indicating how that

information was supplied when it is not apparent on the face of the record, such as in this case where the cost per square foot was not plainly identified in the proposal.

[27] In Review Report 229-2015, the Commissioner found that unit prices in a contract between Saskatchewan Government Insurance and a third party qualified as commercial information of the third party. This was later upheld by Justice Zarzeczny in *Canadian Bank Note Limited v. Saskatchewan Government Insurance*, 2016 SKQB 362.

[28] I find that the cost per square foot for the Office Space Base Rent/Main Floor Office Space Base Rent and Property Tax Rent to be commercial information.

[29] In Review Report 109-2015, my office found that the nature of the information submitted by third parties in response to an RFP would be regarded as confidential by a reasonable person.

[30] Additionally, in Central Services' request for proposal competition document, it indicated that bids would not be open to the public and contained the following confidentiality clause:

1.6 Confidentiality

The Ministry and the Proposer acknowledge and agree that your Proposal, the Offer Form, is a confidential document and all financial information therein, including cost per unit of space, basic rent, building upgrades, taxes, operating costs, total monthly or annual costs, any proposal inducements or tenant improvements information provided, is confidential

[31] Therefore, I find that the cost per square foot for the Office Space Base Rent/Main Floor Office Space Base Rent and Property Tax Rent to have been supplied explicitly in confidence.

[32] As I have found that all three parts of the test have been met, I find that Central Services appropriately applied subsection 19(1)(b) of FOIP to the cost per square foot for the Office Space Base Rent/Main Floor Office Space Base Rent and Property Tax Rent. While I have not found that the total dollar amount for these two figures was supplied by the Third Party, the release of the total dollar amount, along with the total square footage Central Services

was considering leasing at that time would allow for the calculation of this information. As such, subsection 19(1)(b) of FOIP would apply.

[33] Therefore, I recommend Central Services continue to withhold the dollar amount per square foot and total dollar amount of the Office Space Base Rent/Main Floor Office Space Base Rent and the Property Tax Rent.

4. Does subsection 18(1)(d) of FOIP apply to the record?

[34] Subsection 18(1)(d) of FOIP provides:

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

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution;

[35] In my office's *Guide to FOIP, Chapter 4* (updated February 4, 2020), at page 168, provides the following two-part test for the consideration of this exemption:

1. Are there contractual or other negotiations occurring involving the Government of Saskatchewan or a government institution?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations?

[36] Prospective or future negotiations could be included within this exemption, as long as they are foreseeable. It may be applied even though negotiations have not yet started at the time of the access to information request, including when there has not been any direct contact with the other party or their agent. However, a vague possibility of future negotiations is not sufficient. There must be a reasonable fact-based expectation that the future negotiations will take place.

[37] Once a contract is executed, negotiation is concluded. The exemption would generally not apply unless, for instance, the same strategy will be used again and it has not been publicly disclosed.

[38] There must be a reasonable expectation that disclosure could interfere with contractual or other negotiations.

[39] Central Services' submission dated May 24, 2019, indicated that, "the responsive records that relate to and from the negotiated terms and conditions that exist currently and are subject to further negotiations between the Government and the successful candidate from the competition." However, in an email dated February 28, 2020, Central Services clarified that while negotiations were still on going at the time the access to information request was received, at the time of writing this report, "the lease negotiations are complete and the final lease of the property is now [sic] place."

[40] As the negotiations are now complete, I am not persuaded that subsection 18(1)(d) of FOIP applies. As such, I find that Central Services has not demonstrated that subsection 18(1)(d) of FOIP applies to the responsive records.

5. Does subsection 18(1)(e) of FOIP apply to the record?

[41] Subsection 18(1)(e) of FOIP provides:

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

...

(e) 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 relate to those negotiations;

[42] Subsection 18(1)(e) of FOIP is a discretionary, class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for the purpose of

contractual or other negotiations by or on behalf of a government institution. It also covers considerations related to the negotiations.

[43] Examples of the type of information that could be covered by the exemption are the various positions developed by a government institution's negotiators in relation to labour, financial and commercial contracts.

[44] In my office's *Guide to FOIP, Chapter 4* (updated February 4, 2020), at page 173, provides the following two-part test for the application of this exemption:

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the negotiations?
2. Were the positions, plans, procedures, criteria, instructions or considerations developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution?

[45] In Review Report 244-2018, my office discussed the application of subsection 18(1)(e) of FOIP as follows:

[78] Pages 2 to 7 is a guidance letter sent from the pCPA to three third party manufacturers. In other words, the letter has been shared with third parties.

[79] Interim Order PO-3649-I issued by the Information and Privacy Commissioner of Ontario (ON IPC) discusses the exemption subsection 18(1)(e) in the Ontario's *Freedom of Information and Protection of Privacy Act* equivalent to subsection 18(1)(e) of FOIP. The ON IPC Order states:

Generally speaking, section 18 is designed to protect certain economic interests of institutions covered by the *Act*. Sections 18(c), (d) and (g) all take into consideration the *consequences* which would result to an institution if a record was released. In contrast, sections 18(a) and (e) are concerned with the *type* of the record, rather than the consequences of its disclosure.

[80] Subsection 18(1)(e) of Saskatchewan's FOIP is also concerned with the type of record rather than the consequence of its disclosure. The ON IPC Order also discusses the reasoning behind the creation of the exemption. The Order concluded the following:

...the first two parts of the test in section 18(1)(e) are met when the record discloses the ministry's bargaining strategy or the instructions given to the officials who carried out the negotiations. In my view, these strategies and pre-determined

courses of action would be discussed internally at the ministry, and not shared with third parties.

[81] The Order concluded that email communications, correspondence and notes of meetings between the public body in that case and a third party which set out each of the parties' positions as well as draft and final agreements did not qualify as positions, plans, procedures, criteria, instructions or considerations in the context of that exemption.

[82] I adopt this reasoning for the purposes of subsection 18(1)(e) of FOIP. Therefore, because pages 2 to 7 of the record have been shared with parties involved in the negotiations, it does not qualify as positions, plans, procedures, criteria, instructions or considerations for the purpose of this exemption.

[46] I adopt this analysis for the purposes of this review. The responsive records, the letter of intent and amended letter of intent, were provided to the Third Party it was negotiating lease terms with. As such, the information does not qualify as positions, plans, procedures, criteria, instructions, or considerations for the purpose of this exemption.

[47] I find that Central Services has not demonstrated that subsection 18(1)(e) of FOIP applies to the responsive records.

6. Does subsection 18(1)(f) of FOIP apply to the record?

[48] Subsection 18(1)(f) of FOIP provides:

18(1) A head may refused 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;

[49] Subsection 18(1)(f) of FOIP is a discretionary, harm-based exemption. It permits refusal of access in situations where release could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution.

[50] In my office's *Guide to FOIP, Chapter 4* (updated February 4, 2020), at page 176, provides the following test that can be applied to determine if this exemption applies to information in a record:

Could disclosure reasonably be expected to prejudice the economic interests of the Government of Saskatchewan or a government institution?

“Could reasonably be expected to” means there must be a reasonable expectation that disclosure could prejudice the economic interests of the government institution or the Government of Saskatchewan...

The government institution does not have to prove that a harm is probable, but needs to show that there is a “reasonable expectation of harm” if any of the information were to be released. In *British Columbia (Minister of Citizens' Service) v. British Columbia (Information and Privacy Commissioner)*, (2012), Bracken J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm.

Government institutions should not assume that the harm is self-evident. The harm must be described in a precise and specific way in order to support the application of the provision.

...

A reasonable expectation of prejudice to economic interest is not established by simply asserting that disclosure of records would result in financial loss or that it would interfere in future business dealings. Nor is it established by the mere prospect of heightened competition flowing from disclosure...

While direct evidence of specific future harm is not required, there must be an explanation based on the evidence to establish that the harm feared is more than speculative or “merely possible”. The evidence must be more than conjecture: *Canada (Information Commissioner) v Toronto Port Authority*, 2016 FC 683.

Prejudice in this context refers to detriment to economic interests.

Economic interests refers to both the broad interests of a government institution and, for the government as a whole, in managing the production, distribution and consumption of goods and services. This also covers financial matters such as the management of assets and liabilities by a government institution and the government institution's ability to protect its own or the government's interests in financial transactions.

[51] Central Service's submission provided:

...the economic interests of Government would clearly include arrangements and management of real property assets, which for one of the main functions of the services

that the Central Services Ministry provides for Government and Government entities. The Ministry's functions as the central agency to Government in managing real property assets and arrangements for accommodations for Government. It is submitted that in the present context, there is no real question that the Government as a landlord and owner of the premises engages the economic interests of Government.

...

The Government submits both parts of the economic interests' description in the IPC Guide are triggered for the analysis of this issue. The broad interests of Government as a whole and the particular economic interests that are involved in the specific negotiations. Prejudice in this context refers to a detriment to the economic interests... The Government submits that its position and risk of a detrimental effect is based upon the Government's unique position as a public body that engages, and must engage in a commercial market place.

...

The prejudice that being required to disclose its positions, negotiation strategy and resultant negotiated settlement of pricing for leases in the competitive commercial real estate market poses an increased impediment on the Government's bargaining position. Commercial landlords that are private entities are not required to respond to access to information requests about their negotiated arrangements, incentives or pricing.

Government is a major landlord/tenant in the commercial real estate market place. As such, the details and information about the activities of Government in this marketplace could affect the market. Having disclosed information about the Government's strategies and plans could have a significant impact on the cost of space to and could impact the negotiations of private sector landlords and tenants. In particular, as the information in the Responsive Records is with respect to documenting the temporary arrangements while the parties complete negotiations for a final lease, the risk that this information about the Government's position on this temporary arrangement would influence and lead to conclusions in the market would be de-stabilizing. The conclusions would be based on minimal or partial information and may result in indications that the Government had determined its market rents are higher or lower than would be statistically accurate.

...

The Government has taken a general position that where circumstances dictate it is appropriate, the Government will follow the marketplace rather than lead it and in communities where the Government is a major tenant providing lease information could have a significant impact on driving market rates.

[52] In Ontario Information and Privacy Commissioner's (ON IPC) Order MO-2462, it provides the following regarding the application of its equivalent of prejudice to economic interests:

I have carefully reviewed the City's representations and the records at issue. For the reasons that follow, I am satisfied that information which relates to any terms and

conditions that were in the process of being, or had been negotiated between the City and the successful proponent, relating to the negotiation of a long-term ground lease in respect of the Guild Inn Restoration Project, including all ancillary documentation, qualifies for exemption under section 11(d) of the *Act*.

...

However, as stated above in the Background section to this order, the City has reached an agreement in principle with Centennial College and the TRCA for the development of a new Cultural Heritage Institute for the College on the site, with a letter of intent pending. In my view, **until a deal between the City, the College and the TRCA has been consummated, the terms and conditions that had been discussed and were being negotiated between the City and the successful proponent with respect to the Guild Inn Restoration Project, including ancillary correspondence related to these issues, could reasonably be expected to prejudice the City's negotiations with Centennial College and result in financial harm to the City.**

In particular, I make the following findings regarding the thirteen records that fall into this category.

Record 8 contains the terms of a letter of intent entered into between the successful proponent and the City regarding the future negotiation of a long-term ground lease for the Guild Inn Restoration Project. In my view, disclosure of this record at this time could reasonably be expected to impact the negotiation of a letter of intent between the City and Centennial College, which would be injurious to the City's financial interests.

I also find that Records 2, 4, 5, 7, 11, 22, 27, 28 and 29 contain terms and conditions that were being negotiated by the City and the successful proponent regarding a ground lease for the Guild Inn Restoration Project. I am satisfied that **disclosure of these records at this time could reasonably be expected to be injurious to the City's financial interests as it prepares to enter negotiations with Centennial College** over a ground lease for the redevelopment of the site.

...

[emphasis added]

[53] As noted in this Order, the negotiations were ongoing and until final agreements were reached that disclosure of this information could cause harm. In this case, at the time of writing this Report, the negotiations are complete and a lease has been finalized. In ON IPC Order PO-2289, it provides:

The ORC Submits:

...disclosure of the pricing information in the Lease can reasonably be expected to harm the economic interests or competitive position of the ORC or to harm the financial interests of the Government of Ontario.

...one of the main responsibilities of the ORC is the leasing of property from third parties where additional space is required for the Government of Ontario. The ORC is obliged to ensure a competitive process and cost-effective solutions in the leasing of property. It can be seen that it is in the financial interests of the ORC and the Government and in the public interest for the ORC to be able to keep pricing matters confidential to ensure their competitive position in the market and obtain the best pricing available. The lease containing the information at issue has already been executed, as opposed to being the subject of any ongoing negotiations. In addition, the age of the lease (which was executed in 1993) tends to refute any claims of prejudice to any future negotiations or renegotiations.

Based on the materials before me, I am not persuaded that disclosing the information at issue could reasonably be expected to prejudice the ORC's economic interests or competitive position. The ORC has not provided the "detailed and convincing" evidence required to demonstrate that the harms it alleges are not merely speculative.

[54] While Central Services has indicated that release of the information could cause harm, I am not persuaded that the harms alleged are more than speculative. As such, I find that Central Services has not demonstrated that subsection 18(1)(f) of FOIP applies to the responsive records.

IV FINDINGS

[55] I find that Central Services has appropriately applied subsection 19(1)(b) of FOIP to withhold the dollar amount per square foot and total dollar amount of the Office Space Base Rent/Main Floor Office Space Base Rent and the Property Tax Rent.

[56] I find that Central Services has not appropriately applied subsection 19(1)(b) of FOIP to the remaining portions of the record.

[57] I find that Central Services has not appropriately applied subsections 18(1)(d), 18(1)(e), 18(1)(f), and 29(1) of FOIP to the responsive records.

V RECOMMENDATIONS

[58] I recommend Central Services continue to withhold the dollar amount per square foot and total dollar amount of the Office Space Base Rent/Main Floor Office Space Base Rent and the Property Tax Rent.

[59] I recommend Central Services release the remaining portions of the records.

Dated at Regina, in the Province of Saskatchewan, this 1st day of May, 2020.

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