



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 147-2018, 197-2018, 008-2019, 073-2019

INVESTIGATION REPORT 192-2018, 221-2018, 058-2019

Ministry of Justice

April 16, 2020

Summary:

An individual submitted three access to information requests, three breach of privacy complaints and one request for correction of personal information to the Ministry of Justice (Justice). The individual then submitted requests for review of the responses received to the access to information requests and the request for correction of personal information as well as requested the Commissioner investigate their privacy breach complaints. For the access to information decisions, the Commissioner found that the exemptions applied to some portions of the responsive records and could be withheld, and in other cases found that the exemptions claimed did not apply and recommended release of that information. Additionally, the Commissioner made recommendations that Justice develop and implement policies or procedures related to records management of text messages and emails as well as conduct an additional search for responsive records. The Commissioner also found that Justice had responded appropriately to the correction of personal information request, but recommended Justice develop and implement policies or procedures to ensure it seeks clarification to gain sufficient details about what correction of personal information is being requested. Finally, the Commissioner made recommendations for Justice to develop and implement policies and procedures to ensure the data minimization principle is adhered to and outline what personal information is required to be collected to enroll in programs administered by the specified Justice Branch. The Commissioner also recommended Justice consider developing an intake form that would ensure all parties are in agreement about what services or programs an individual is interested in.

I BACKGROUND

[1] This Report deals with a number of requests for review and requests for investigation that the individual (herein referred to as the Applicant) submitted to my office involving the Ministry of Justice (Justice). The Applicant submitted an access to information request for their personal information, which resulted in:

- A request for review of Justice's decision to partially deny access to records to their personal information request;
- An alleged privacy breach complaint and request to have our office to investigate their allegations that Justice had breached the Applicant's privacy when verifying their identity to process their request for personal information;
- A request for review of partial denial of access to records related to how Justice processed their original access to information request, including the verification of their identity;
- An alleged privacy breach complaint and request for investigation to my office of their allegations that Justice had inappropriately collected, used and disclosed the Applicant's personal information, based on their partial access to the responsive records in their original personal information request;
- A correction of personal information request and request for my office to review Justice's decision to deny the request for correction based on the Applicant's assertion that they had been inaccurately associated with a Justice program;
- An alleged breach of privacy complaint and request for my office to investigate their allegations that their personal information had been inappropriately collected, used or disclosed during the processing of their original personal information request, based on partial access to handwritten notes they received from one of their access requests (IPC File: 197-2018); and
- An access to information request and request for review of the partial denial of the Applicant's request for records related to the processing of the Applicant's correction of personal information request.

[2] I will discuss each of these requests in detail below.

IPC File: 147-2018

- [3] On November 3, 2017, the Applicant submitted an access to information request to Justice requesting:

I am requesting access to my own personal information:

...

I'd like to request all records held by [name of Ministry of Justice employee] and Saskatchewan Justice and Attorney General, [within a specific Branch of Justice], to include all computer logs, appointment schedules, internal/external meetings, telephone meetings, notes, documents, correspondence, records of postal/mail packages, emails, cellular/text records and to include where personal information collected was used and disclosed related to [name of Applicant] and the [originating province] [specified Unit], [names of individuals], [location in originating province] Police Department, Family Services of [area of originating province], [originating province] Ministry of Public Safety and Solicitor General for date ranges June 2013 to present.

- [4] On November 29, 2017, Justice responded advising that portions of the responsive records were being withheld pursuant to subsections 15(1)(b)(i) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [5] On July 30, 2018, the Applicant contacted my office requesting a review of the exemptions applied to the responsive records and Justice's search efforts to identify responsive records.
- [6] On August 15, 2018, my office notified the Applicant and Justice of my intention to undertake a review of this matter.
- [7] In the partial release of records on November 29, 2017, Justice partially withheld page 7 of the responsive record. On September 24, 2018, Justice released page 7 to the Applicant in full.
- [8] On September 28, 2018, Justice advised the Applicant that it was still relying on subsection 29(1) of FOIP, but no longer relying on subsection 15(1)(b)(i) of FOIP, instead relying on subsection 14(a) and section 21 of FOIP.

IPC File: 192-2018

- [9] On August 3, 2018, the Applicant emailed Justice to submit their breach of privacy concerns related to Justice's actions to verify their identity:

In the email (below) dated November 29, 2017, [name of Justice employee A] wrote: "The information provided in your previous email was sufficient for the [name of unit referred to in Justice's response] to validate your identity. Thank you for that."

I did not give [name of Justice employee A] consent to collect, use and disclose my personal information with a "[unit referred to in Justice's response]" to validate my identity.

In my email (below) to [name of Justice employee A] on November 24, 2017, I was specific with whom [they] could disclose the personal information [Justice employee A] collected from me: "I don't have an issue with your office engaging [name of Justice employee B] to verify the information I provide your office for validation."

- [10] On September 17, 2018, the Applicant contacted my office to advise that they had not received a response from Justice regarding their privacy breach complaint.
- [11] On September 19, 2018, Justice responded to the Applicant's concern advising it had mistakenly referred to the specified Branch of Justice as a differing name and that it had not shared their information outside of the Branch specified by the Applicant.
- [12] Following receipt of Justice's response to the Applicant's concern, the Applicant advised they wished to proceed with their request for my office to investigate this matter. On September 21, 2018, my office notified the Applicant and Justice of my intention to undertake an investigation of this matter.

IPC File: 197-2018

- [13] On August 15, 2018, the Applicant emailed Justice requesting access to:

All records held by [name of Justice employee A], [name of Justice employee C], [name of Justice employee B] related to my November 3, 2017 access to personal

information request for date ranges November 3, 2017 to present. I am requesting all records related to me to include by November 3, 2017 access to personal information request held by [name of Justice employee C] for date ranges November 3, 2017 to present. I am requesting all records related to me to include my November 3, 2017 access to personal information request held by [name of Justice employee B] for date ranges November 3, 2017 to present. This access to personal information request includes where personal information collected from my November 3, 2017 access to personal information request, requested from [name of Justice employee A] to verify my identity, which... unit validated my identity and all records as to where [name of Justice employee A], [name of Justice employee C], [name of Justice employee B] disclosed information [name of Justice employee A] collected about verifying my identity.

[14] On September 21, 2018, Justice responded withholding portions of the responsive records pursuant to subsections 14(a), 15(1)(c), 15(1)(m), 17(1)(a), 17(1)(b)(i), 17(1)(c), 22(a), 22(b) and 22(c) of FOIP.

[15] On September 27, 2018, my office notified the Applicant and Justice of my intention to undertake a review of this matter.

IPC File: 221-2018

[16] Along with the privacy breach complaint for IPC File: 192-2018 submitted by the Applicant, the Applicant also raised privacy concerns related to a record that was released to the Applicant, in part, from their access to information request (IPC File: 147-2018) stating:

I would also like to submit a privacy breach complaint regards [sic] to the records from [name of Justice employee B] received from [name of Justice employee A] on November 29, 2017... I believe my privacy was breached. I did not give [name of Justice employee B] consent to collect, use and disclose my personal information.

[17] On October 10, 2018, Justice responded to the Applicant's privacy breach concern indicating that limited personal information was collected to initiate the Applicant's relocation. Justice also took the position that a privacy breach had not occurred as any collection, use or disclosure of the personal information was done so with the requisite authority under FOIP.

[18] On October 18, 2018, my office notified Justice and the Applicant of my intention to undertake an investigation.

IPC File: 008-2019

[19] On November 8, 2018, the Applicant submitted a correction of personal information request to Justice stating:

I'd also like to make a formal complaint about [name of Justice employee B] fabricating information about my involvement with [a Justice program]... [Name of Justice employee B] did not work with [originating province] to transport me to initiate the process in [location in Saskatchewan]. I relocated to [location in Saskatchewan] to live and work and was referred to [name of Justice employee B] by [name of individual], an employee of a community charity organization for help... [Justice employee B] would not assist my needs that had nothing to do with [the Justice program]. I request the Ministry of Justice immediately correct this inaccurate information.

[20] On January 7, 2019, Justice responded to the Applicant's correction request stating:

Please be advised the Ministry of Justice has carefully reviewed your request for correction and determined that there is no error or omission... In accordance with clause 32(2)(b) of FOIP, the Ministry has placed a copy of this letter on your file to note that a correction was requested but not made.

[21] On January 8, 2019, the Applicant submitted a request for review to my office.

[22] On January 9, 2019, my office notified Justice and the Applicant of my intentions to undertake a review of the correction of personal information decision.

IPC File: 058-2019

[23] On November 8, 2018, along with the request for personal information (IPC File: 008-2019), the Applicant also submitted a privacy breach complaint related to the processing of access to information request 147-2018. In email communications between Justice and the Applicant, the Applicant clarified that their privacy concern related to handwritten meeting notes where their personal information appeared to be discussed.

[24] On February 12, 2019, Justice responded to the Applicant's privacy breach concern taking the position that no privacy breach had occurred as the actions taken by Justice with the personal information were in accordance with FOIP.

[25] On February 13, 2019, the Applicant requested my office undertake an investigation into their privacy concerns.

[26] On February 20, 2019, my office notified the Applicant and Justice of our investigation.

IPC File: 073-2019

[27] On February 5, 2019, the Applicant submitted an access to information request for records related to the processing of their correction of personal information request (008-2019) stating:

I'd like to request all information related to consultations and with whom, if anyone, was consulted during the following review for my attached request for correction of records...

[28] On March 8, 2019, Justice responded to the Applicant's request stating some of the requested record had been withheld in full pursuant to subsections 17(1)(a), 17(1)(b)(i) and section 22 of FOIP.

[29] On March 8, 2019, my office received the Applicant's request for my office to review this matter.

[30] On March 14, 2019, my office notified the Applicant and Justice of my intention to undertake a review of this matter.

II RECORDS AT ISSUE

[31] In the notification emails to Justice on the IPC Files: 147-2018, 197-2018 and 073-2019, my office requested Justice provide an index of records. When Justice forwarded its submission and copy of responsive records to my office, an index of records was not included.

[32] My office followed up with Justice and again requested the index of records for these files. In response to this request, Justice advised that it was not prepared to provide my office with an index of records due to concerns with creating additional records related to this program and our office's position that the index of records would be shared with the Applicant.

[33] In a September 15, 2017 blog entitled, *NOTICE: Change of Practice – Index of Records*, issued by the Commissioner, provides:

As of November 1, 2017, when withheld records are subject to a review, this office will be requesting an index of records from the public body and will provide a copy to the applicant upon receipt (except when subsection 7(4) is invoked)...

...

My office has indicated that it will ask the public body whether the submission can be disclosed to the applicant. If the public body says no, that position will be respected and the submission will not be sent to the applicant. The IPC does not and will not disclose the actual records.

The index of records is in a different position it is not the representation. It is a list of the records which the public body is refusing to give the applicant.

The index of records allows the applicant to see the exact number and types of records involved and the exemptions applied to each. Sharing this with the applicant provides my office with an opportunity to clarify if the records listed are what the applicant is interested in but also gives us the ability to explore the possibility of narrowing his or her request. This may result in less effort down the road by all and result in a more timely resolution. I hope this modification of practice will result in narrowed requests, less work and earlier resolution of reviews by my office. Finally, if a report is issued, it is easier to point out whether or not this office agrees to exemptions applied to specific records, page and line items and make recommendations accordingly.

...

The public body should NOT provide any confidential comments in the index of records. Those confidential comments should be included only in the submission. This includes content to which a mandatory exemption would apply... Subject lines may help further in describing records if it would reveal information to which an exemption applies.

...

[34] My office's *Rules of Procedure* (Revised June 10, 2019), provides the following regarding the index of records:

Index of records

2-7 (1) The index of records by the public body shall include but is not limited to the following information:

- a record number or page number assigned by the public body;
- a general description of the record such as a letter, email, memo, note, agreement indicating who it was from who it was sent to and the date;
- the number of pages in the record;
- the section of subsection numbers of the exemptions claimed for that record; and
- the status of the record, whether released to the applicant in part, full or withheld in full.

(2) The commissioner's office will provide a copy of the index of records to the applicant unless subsection 7(4) of FOIP or LA FOIP has been invoked or the commissioner's office determines not to release the index of records.

[35] As noted in the blog quoted above on, my office has provided direction for public bodies to not include confidential comments in the index of records. Additionally, records that a public body is claiming solicitor-client privilege over and are providing an affidavit of records rather than a copy of the records to make a *prima facie* case, our office does not require a public body to include details about those documents on the index of records that is shared with the Applicant.

[36] Had Justice prepared an index of records, it could have assisted the Applicant in understanding the types of records that are at issue, and may have resulted in a more focused review. Creation of an index of records also would have assisted my office when reviewing the application of exemptions to the responsive records.

[37] As Justice has refused to prepare any index of records for these files, my office prepared its own very generalized indexes for the responsive records, with the exception of those records Justice claimed solicitor-client privilege applied to, to assist in organizing the records at issue that will be addressed in this Report.

IPC File: 147-2018

[38] Justice provided my office with seven pages of records. Not all pages had been withheld from the Applicant. Therefore, my review will consist of the four pages of handwritten notes that were withheld in part, as follows:

Page number	Redaction number	Description	Exemptions applied
1	1, 15	Handwritten notes	Section 21 and subsections 14(a), and 29(1) of FOIP
1	2, 3, 4, 8, 9, 10, 12, 14	Handwritten notes	Subsection 14(a) of FOIP
1	5	Handwritten notes	Section 21 and subsection 29(1) of FOIP
1	6, 7, 11, 13, 16, 17, 18	Handwritten notes	Subsection 14(a) and section 21 of FOIP
2	1, 17, 18	Handwritten notes	Subsection 14(a) and section 21 of FOIP
2	2, 5, 6, 7, 9, 12, 13, 14, 19	Handwritten notes	Subsection 14(a) of FOIP
2	3, 4, 8, 10, 11, 15, 16, 20	Handwritten notes	Subsections 14(a) and 29(1) and section 21 of FOIP
3	1, 2, 3, 4, 5,	Handwritten notes	Section 21 and subsections 14(a), and 29(1) of FOIP
3	6	Handwritten notes	Subsection 14(a)
3	7, 9, 10	Handwritten notes	Subsection 14(a) and section 21 of FOIP
3	8	Handwritten notes	Subsection 14(a) of FOIP
4	1, 3, 4, 13	Handwritten notes	Subsection 14(a) of FOIP
4	3, 10	Handwritten notes	Subsections 14(a) and section 21 of FOIP
4	5, 6, 7, 8, 9, 11, 12, 14, 15	Handwritten notes	Subsections 14(a) and 29(1) and section 21 of FOIP

IPC File: 197-2018

[39] Justice provided my office with 139 pages of records. Not all pages of this record had been withheld from the Applicant. Therefore, my review will consist of the four records that contained redactions, totalling four pages, as follows:

Record Number	Number of Pages	Description	Withheld in Full or in Part	Exemptions applied
8	1	Handwritten notes	Withheld in Part	Subsections 14(a) and 15(1)(m) of FOIP
10	1	Handwritten notes	Withheld in Part	Non-Responsive
22	1	Email communication	Withheld in Full	Subsections 15(1)(c) and 17(1)(b)(i) of FOIP
31	1	Email communication	Withheld in Part	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP

[40] Justice also claimed solicitor-client privilege over three records totalling seven pages. Justice did not provide a copy of these pages of the records and instead provided a statement of records and an accompanying letter to allow my office to determine if it had made a *prima facie* case that subsection 22(a) of FOIP applies.

IPC File: 073-2019

[41] Justice provided my office with 59 pages of records. Justice did not withhold all of these pages from the Applicant. Therefore, my review will consist of the 10 records, totalling 33 pages, as follows:

Record Number	Number of Pages	Description	Withheld in Full or in Part	Exemptions applied
6	3	Email communication	Withheld in Part	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP

7	2	Email communication	Withheld in Part	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP
12	1	Email communication	Withheld in Part	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP
13	2	Handwritten notes	Page 1 withheld in part, page 2 withheld in full	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP
15	1	Email communication	Withheld in Part	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP
16	2	Email communication	Withheld in Part	Subsections 17(1)(a), 17(1)(b)(i) and 22(a) of FOIP
23	3	Email communication with Attachment	Page 1 withheld in part, pages 2 and 3 withheld in full	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP
24	1	Email communication	Withheld in Part	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP
27	17	Email communication with Attachment	Pages 1 and 2 withheld in part, pages 3 through 17 withheld in full	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP
29	1	Handwritten notes	Withheld in full	Subsections 17(1)(a) and 17(1)(b)(i) of FOIP

[42] Justice also claimed solicitor-client privilege over 22 records totaling 69 pages. Justice did not provide a copy of these pages of the records and instead provided an affidavit of records, along with an email providing additional details, to allow my office to determine if it had made a *prima facie* case that subsection 22(a) of FOIP applies.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct these reviews and investigations?

[43] Justice qualifies as a “government institution” as defined by subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to review and investigate these matters.

2. Did Justice’s actions breach the Applicant’s privacy when processing their requests?

[44] The Applicant submitted two privacy breach complaints to Justice related to their concerns with the processing of their original personal information request. In IPC File 192-2018, the Applicant expressed concerns about the actions taken by Justice to confirm their identity as part of that process. In IPC File 058-2019, the Applicant expressed concerns with personal information collected, used or disclosed to process the Applicant’s request based on one page of handwritten meeting notes.

IPC File: 192-2018

[45] Before processing the Applicant’s personal information request, Justice indicated it would need to verify the Applicant’s identity. Subsection 31(1) of FOIP provides the following regarding requesting access to personal information:

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

(a) on an application made in accordance with Part II; and

(b) on giving sufficient proof of his or her identity;

shall be given access to the record.

[46] Along with its submission provided to my office regarding this matter, Justice provided a copy of Justice’s Access and Privacy Branch resource, *Verifying the Identity of an Applicant*, which provides:

This document provides guidance on establishing the identity of an applicant when they submit an access to information request for personal information...

Records containing personal information may be very sensitive in nature, so care must be taken to ensure that proper safeguards are in place when these types of records are released... When providing an applicant to personal information, a government institution must be satisfied that the individual receiving the information is indeed the individual the information is about or a duly appointed representative of that person.

...

Whenever possible, records containing personal information should be picked up in person by the applicant; this allows for the surest verification. It will, however, not always be possible for applicants to present themselves in person to receive responsive records. When records are to be sent to applicants... reasonable steps must be taken to ensure that the records are adequately protected and the applicant's identity is verified. It is not recommended that government institutions release records containing personal information if they are not reasonably able to confirm the applicant's identity.

...

Verifying the identity of an applicant who does not present themselves in person is more difficult. Prior to mailing or emailing records to an applicant, reasonable efforts must be made to verify the applicant's identity... Whenever possible, speak to the applicant to verify this information. If an applicant cannot be spoken to in person, government institutions should proceed with caution in releasing records containing personal information.

[47] When communicating with the Applicant, Justice suggested a couple of options to verify their identity, including having the Applicant attending the Justice office in person with government issued identification or speaking by telephone or via skype. The Applicant indicated they were unable to accommodate any of these options. The Applicant offered to instead provide details that would be in the records that they felt it would be reasonable to assume others would not be aware of. The Applicant stated Justice could share this information with a specified employee in a Branch of Justice that the Applicant indicated would be able to verify the information being provided.

[48] Justice agreed to collect this information in an effort to verify their identity. The Applicant provided details regarding their interaction with the specified Branch employee and indicated they consented to Justice's FOIP Coordinator sharing this information with the specified Justice employee to verify their identity.

- [49] Based on a review of copies of email communications and details provided by Justice in their submission, Justice's FOIP Coordinator forwarded this information to the specified Justice employee identified by the Applicant and their Director to determine if the information provided was sufficient for the specified Justice Branch to verify the Applicant's identity.
- [50] Following this consultation, the Justice FOIP Coordinator responded that sufficient detail had been provided to confirm their identity, but mistakenly referred to the specified Justice Branch by the incorrect name.
- [51] The Applicant questioned why an area, other than the specified Justice Branch, had been consulted with. The FOIP Coordinator responded indicating this was an error and that it had intended to say the specified Justice Branch.
- [52] The Applicant continued to have concerns about who their personal information was shared with and subsequently submitted their privacy breach complaint regarding who their information was shared with to confirm their identity and what information had been disclosed.
- [53] Justice reviewed the Applicant's privacy concerns and found that no privacy breach had occurred and indicating it had authority to use the Applicant's personal information pursuant to subsection 28(a) of FOIP:

28 No government institution shall use personal information under its control without the consent given in the prescribed manner of the individual to whom the information relates, except:

(a) for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose;

- [54] Based on the documentation provided to my office, there is no indication that the FOIP Coordinator shared the Applicant's personal information with any other area besides the specified Justice Branch. Justice had outlined that in its response to the Applicant that,

even without their consent, FOIP provided authority for Justice to use the Applicant's personal information for the purpose it was obtained. In this case, the Applicant provided this information to allow Justice to verify the Applicant's identity to process their access to information request, which is what Justice did.

- [55] I find that Justice had authority for the use of the Applicant's personal information to verify their identity to process their request and that no privacy breach occurred in this case.

IPC File: 058-2019

- [56] In the Applicant's privacy breach complaint regarding the processing of their request, IPC File 058-2019, the Applicant stated:

I'd like to submit a complaint against [name of three Justice employees] for breaching my privacy; collecting, using and/or dis losing [sic] my personal information and without my consent. Last November 2017, I emailed a request for access to information from the Ministry of Justice and believe [names of three Justice employees] inappropriately breached my privacy, collected, used and/or disclosed my personal information without my consent after I made this request in November 2017.

- [57] Justice responded to the Applicant's privacy breach complaint as follows:

We wish to advise you that we have considered the details of your privacy concern and would like to provide you with our conclusion.

We understand your concern is in regards to one page of handwritten notes made by [name of Justice's FOIP Coordinator] in [their] notebook during a discussion on November 10, 2017, with [names of two employees in the specified Justice Branch] with respect to your access to information request [IPC File: 147-2018]. As part of our assessment we have considered your concerns in relation to the record, but because exemptions have been applied to this record, we are unable to provide any details as it pertains to the severed portions of this record.

Personal information is defined in subsection 24(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Clause 24(1)(f) of FOIP provides:

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

...

(f) the personal opinions or views of the individual except where they are about another individual;

The personal information on the record in question includes the following opinions or views about you.

...

The discussions between [Justice's FOIP Coordinator and the employees in the specified Justice Branch] on matters related to processing your access to information request [IPC File: 147-2018] is consistent with the purpose of the Access and Privacy Branch's mandate. Therefore, any collection, use or disclosure of your personal information that is consistent with the purpose of processing your access request [IPC File: 147-2018] is authorized pursuant to FOIP...

A privacy breach occurs when there is a collection, use or disclosure of personal information without the requisite authority in FOIP to do so. We find [Justice's FOIP Coordinator and the employees of the specified Justice Branch] had authority to collect, use and disclose your personal information for the purpose of processing your access to information request [IPC File: 147-2018]. Therefore, we have concluded that privacy breach has not occurred in this circumstance.

[58] Justice relied on sections 25 and 28 of FOIP, and subsections 26(1)(b) and 29(2)(a) of FOIP. Those sections and subsections provide as follows:

25 No government institution shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the government institution.

26(1) A government institution shall, where reasonably practicable, collect personal information directly from the individual to whom it relates, except where:

...

(b) the information is information that may be disclosed to the government institution pursuant to subsection 29(2);

...

28 No government institution shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:

(a) for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose; or

(b) for a purpose for which the information may be disclosed to the government institution pursuant to subsection 29(2).

...

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:

(a) for the purpose for which the information was obtained or compiled by the government institution or for a use that is consistent with that purpose;

[59] In the handwritten notes at issue, it appears the FOIP Coordinator and the specified Justice Branch were discussing, in a general way, challenges that they may face when trying to verify the Applicant's identity. The points documented do not appear to be directly related to the Applicant. The discussion of this information seems reasonable, as there is a need to verify the Applicant's identity to process their personal information request.

[60] However, the other information discussed was background about the length of time the Applicant was involved in the Justice program and the opinion of the employee in the specified Justice Branch for why the Applicant chose not to remain in the program. This information does not appear to relate to the processing of the request and I am unclear why this information was necessary for the purposes of verifying the Applicant's identity.

[61] When a government institution collects, uses or discloses personal information, the data minimization principle should be considered. Data minimization requires a government institution to collect, use or disclose the least amount of personal information necessary for the purpose.

[62] I am not persuaded that personal information related to the length of time the Applicant was involved in the program or the opinion of the employee of the specified Justice Branch for why the Applicant chose not to remain in the program, were reasonably necessary for the purpose of verifying the identity of the Applicant in order to process this request.

[63] I find that Justice did not adhere to the data minimization principle when using the Applicant's personal information for the processing of their request.

[64] I recommend Justice develop and implement a policy or procedure to ensure the data minimization principle is adhered to when processing access to information requests to ensure it is consistent in what it collects, uses and discloses and the purpose for those actions (i.e. identity verification purposes).

3. Did the specified Justice's Branch inappropriately collect, use or disclose the Applicant's personal information related to programs and services provided by that Branch?

[65] In IPC File: 221-2018, the Applicant submitted a privacy breach complaint alleging that Justice had inappropriately collected, used and disclosed their personal information, based on the portions of the handwritten notes they had gained access to, in part, through their access to information request (IPC File: 147-2018).

[66] Justice's investigation report provided that the information at issue included the name, marital status and age of the individual, personal opinions or view of the individual and opinions of another individual with respect to the individual. Justice's investigation report provided that this information was considered personal information as defined by subsections 24(1)(a), (f) and (h) of FOIP:

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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

...

(f) the personal opinions or views of the individual except where they are about another individual;

...

(h) the views or opinions of another individual with respect to the individual;

[67] Justice's investigation report provided that it had authority to collect the personal information pursuant to subsection 26(1)(b) of FOIP. Additionally, Justice indicated it had

authority to collect and disclose that information pursuant to subsections 29(2)(a), 29(2)(m) and 29(2)(u) of FOIP, as well as subsection 16(c) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Finally, Justice indicated it had authority to use personal information pursuant to subsections 28(a) and 28(b) of FOIP. Those subsections provide as follows:

26(1) A government institution shall, where reasonably practicable, collect personal information directly from the individual to whom it relates, except where:

...

(b) the information is information that may be disclosed to the government institution pursuant to subsection 29(2);

...

28 No government institution shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:

(a) for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose; or

(b) for a purpose for which the information may be disclosed to the government institution pursuant to subsection 29(2).

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:

(a) for the purpose for which the information was obtained or compiled by the government institution or for use that is consistent with that purpose;

...

(m) where necessary to protect the mental or physical health or safety of any individual;

...

(u) as prescribed in the regulations.

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16 For the purposes of clause 29(2)(u) of the Act, personal information may be disclosed:

...

(c) where disclosure may reasonably be expected to assist in the provision of services for the benefit of the individual to whom the information relates;

[68] While Justice's position is that the Applicant was involved in a Justice program and any collection, use or disclosure of that information was related to that purpose, the Applicant is of the opinion that it was seeking general services and had not intended to enter any Justice program.

[69] It appears Justice collected minimal personal information about the Applicant to initiate the Applicant's enrollment in the program. Justice's collection of the Applicant's personal information for this purpose appears to have complied with the data minimization principle by only collecting limited information for this purpose.

[70] However, based on the material provided to my office, it does not appear there were any agreements or forms completed for enrollment in this program or any documentation forwarded by the originating province. Justice's understanding of the assistance, the Applicant was seeking, would have been based on verbal communication with the originating province. While it appears that Justice only collected limited personal information about the Applicant, it may have assisted both Justice and the Applicant had documentation been used to outline what type of assistance or services that the Applicant was seeking.

[71] Based on the handwritten notes that were responsive to the Applicant's initial request, it does appear that the employee of the specified Justice Branch was using and disclosing information to arrange appointments for the Applicant to obtain access to a variety of public assistance programs. However, based on the notes and Justice's submission, the employee of the specified Justice Branch did not use the Applicant's name, and provided general descriptions that do not appear to provide a level of detail that would allow the identification of the Applicant.

[72] The handwritten notes also show discussions between the employee of the specified Justice Branch and their contacts in the originating province that had contacted Justice to arrange

for the Applicant to enroll in the program. The personal information disclosed to the contacts in the originating province relate to the Applicant's wishes to not proceed with the Justice program and the opinion of the employee of the specified Justice Branch for the reason the Applicant was making this decision. It appears the disclosure of the Applicant's personal information was done in an effort to assist the Applicant.

[73] It appears all actions taken with the personal information - the collection, use and disclosure of the personal information - were based on Justice's interpretation of the program it believed the Applicant was interested in enrolling in. In Investigation Report 059-2018, my office considered subsection 28(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), which is the equivalent of subsection 29(2)(a) of FOIP and provided the following considerations for relying on this disclosure provision:

[18] In order to rely on subsection 28(2)(a) of LA FOIP, "purpose" and "consistent purpose" are important concepts to understand. Service Alberta's *FOIP Guidelines and Practices* (2009) at page 260, states the following:

The *purpose* means the purpose of which the information was collected... A public body can use the information for that purpose. Typical purposes include the administration of a particular program, the delivery of a services and other directly related activities.

...

A *consistent purpose* is one that has a direct and reasonable connection to the original purpose and that is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses the information...

[74] When Justice was contacted by the Applicant's originating province, it is the position of the employee of the specified Justice Branch that the personal information collected was based on their understanding that the Applicant was interested in enrolling in the Justice program. Justice would have had authority to collect personal information pursuant to subsections 26(1)(b) and 28(a) of FOIP. Use and disclosure of the Applicant's personal information was consistent with the purpose that it was collected, which was to allow Justice to arrange appropriate services for the Applicant's enrollment into the program.

The use and disclosure of personal information would be authorized pursuant to subsections 28(a) and 29(2)(a) of FOIP.

[75] I agree with Justice, that FOIP would have provided it with authority for the actions it was taking with the personal information. However, Justice and the Applicant have conflicting views on what services or programs the Applicant was intending to gain access to or enroll in. While Justice has stated forms related to this program exist, it is my understanding none were completed as the Applicant chose not to proceed with enrollment into the program. In the future, Justice should take steps to confirm directly with individuals what services or programs they are requesting to ensure all parties have the same understanding of the purpose. The development of intake forms, if they do not already exist, may assist Justice in ensuring all parties are clear on the purpose.

[76] I find that Justice had authority for the collection, use and disclosure of personal information, though it could have done more to confirm directly with the Applicant what specific services or programs the Applicant was requesting to ensure all parties have the same understanding of the purpose.

[77] I recommend Justice develop and implement policies and procedures that outline what personal information is required to be collected to initiate enrollment in any program administered by this Branch of Justice.

[78] Although I did not find that a privacy breach occurred in this case, I recommend Justice develop and implement an intake form to ensure an understanding between Justice and individuals about what programs or services an Applicant is requesting.

4. Has Justice responded appropriately to the Applicant's request for correction?

[79] Section 32 of FOIP provides:

32(1) An individual who is given access to a record that contains personal information with respect to himself or herself is entitled:

(a) to request correction of the personal information contained in the record if the person believes that there is an error or omission in it;

(b) to require that a notation be made that a correction was requested but not made; or

(c) if the request has been disregarded, to be advised of the reason for which it has been disregarded.

(2) Within 30 days after a request pursuant to clause (1)(a) is received, the head shall advise the individual in writing that:

(a) the correction has been made;

(b) a notation pursuant to clause (1)(b) has been made; or

(c) the request has been disregarded, setting out the reason for which the request was disregarded pursuant to section 45.1.

(3) Section 12 applies, with any necessary modification, to the extension of the period set out in subsection (2).

[80] As it is applicants alleging errors, applicants must provide some argument to support the request for correction. A request for correction must, at a minimum:

1. Identify the personal information the applicant believes is in error. That personal information must be the personal information of the applicant and not of a third party;

2. The alleged error must be a factual error or omission;

3. The request must include some evidence to support the allegation of error or omission. Mere assertions will not suffice; and

4. The proposed correction must be clearly stated and cannot be a substitution of opinion.

[81] The provision is not intended to function as an avenue of appeal, or redress, for an individual who is disappointed in a decision or disagrees with it.

[82] Records of an investigatory nature cannot be said to be “incorrect”, “in error”, “incomplete”, “inexact” or “ambiguous” if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded

information that is determinative of whether a correction request should be granted, but rather whether what is recorded accurately reflected the author's observations, perception of events and impressions as they existed at the time the records were created.

[83] The Applicant is of the view they were erroneously associated with the Justice program when they were referred to the employee in the specified Justice Branch.

[84] Justice has taken the position that the Applicant's personal information does not contain any errors or omissions, and therefore no correction was made to the records. However, pursuant to subsection 32(2)(b) of FOIP, Justice did make a notation that the request was received but not made.

[85] My office followed up with Justice to clarify what records or portions of records Justice had considered when determining whether or not an error or omission existed and what evidence or supporting documentation it had considered. Justice responded stating:

1) The Ministry considered the first four pages of the responsive records to the applicant as part of [IPC File: 147-2018]... In addition, the Ministry also considered the individual's allegations.

2) The individual provided no supporting documents to confirm [their] allegations. Our Branch had a discussion with [the employee of the specified Justice Branch] about the records and the allegations. [The employee of the specified Justice Branch] provided an overview of the program and recounted [their] interactions with the individual that coincided with how the program operates. We also considered the individual's allegation. There was nothing in those allegations that led us to believe that there was an error or omission in the records.

[86] Based on the material provided by the Applicant to Justice, it does not appear the Applicant specified what information in the record they were claiming contained an error or omission, simply that they had been inaccurately associated with the Justice program. Additionally, Justice asserts that the Applicant did not provide them with any documentation to support their assertion that they were not involved with the Justice program. When submitting a request for correction or amendment of their personal information or personal health information to a public body or trustee, the Applicant must specify what personal

- information in the record contains an error or omission and provide information to support that claim. That does not appear to have occurred in this request.
- [87] The Applicant had submitted a number of access to information requests at the time the correction of personal information request was submitted to Justice. It is not clear how Justice came to the conclusion to focus solely on the first four pages of the responsive records in IPC File 147-2018. While the first four pages of IPC File 147-2018, which the Applicant gained access to in part, do not have any specific references to the Justice program, the emails between Justice and the Applicant when verifying their identity, contain references by Justice that the Applicant was part of the Justice program.
- [88] Additionally, Justice's submission for IPC File 147-2018 for the application of exemptions revolve around Justice's assertion that the Applicant was requesting records related to their involvement in the Justice program and its search efforts were limited to those areas and employees that administer the Justice program.
- [89] The Applicant should be as specific as possible about the portions of the record that they believe contains an error or omission and provide documentation to support those claims. On the other hand, public bodies also have an obligation to gain the clarification necessary to allow them the ability to complete their review of the records and provide a full response to the request. If the information provided did not provide the clarity that Justice needed to determine which records, or portions of records the Applicant was intending to request a correction of their personal information or if there was not any supporting documentation, Justice should have taken steps to gain the information necessary to clarify.
- [90] I find Justice responded appropriately to the correction of personal information request.
- [91] I recommend Justice develop and implement a policy of procedure for correction of personal information requests to ensure it is taking appropriate steps to gain sufficient details about the correction of personal information being requested.

5. Has Justice conducted a reasonable search to identify records responsive to the Applicant's request?

[92] FOIP does not require a government institution to provide with absolute certainty that records responsive to an access to information request do not exist. It must, however, demonstrate that it has conducted a reasonable search to locate them.

[93] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

[94] When conducting a review of a government institution's search efforts, details are requested that help my office understand the level of effort made to locate the records. The submission to my office should outline the search strategy, which can include:

- For personal information requests – explain how the individual is involved with the public body (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests -tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
 - Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject

- Consider providing a copy of your organizations record schedule and screen shots of the electronic directory (folders & subfolders). If the record has been destroyed, provide copies of record schedules and/or destruction certificates
- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the public body's control have been searched such as a contractor or information service provider.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cellular telephones (cell phones), tablets).
- Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
 - For electronic folders – indicate what key terms were used to search if applicable.
- On what dates did each employee search?
- How long did the search take for each employee?
- What were the results of each employee's search?
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the IPC resource, Using Affidavits in a Review with the IPC available on our website.

[95] The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

[96] In the Applicant's requests for reviews for IPC files 147-2018 and 197-2018, the Applicant also requested that my office review Justice's search efforts for the responsive records.

[97] For file 147-2018, the Applicant's request for review to my office stated that they felt there were records missing from the ones Justice identified as being responsive to the request, including text messages between the Justice employee and the Applicant. However, in Justice's notes it appears the employee of the specified Justice Branch had documented text

message communication between themselves and the Applicant. As with any other official government record, Justice should ensure that text message communications are managed in accordance with its records management practices. What format Justice chooses to retain those records in, whether saving copies of the text messages or, as in this case, making notes of the text message communication, is at the discretion of Justice. Nonetheless, Justice should ensure guidelines for its records management practices for text messages are properly outlined in a policy or procedure.

[98] In both cases, Justice had the employee from the specified Justice Branch conduct a search of the records. Based on discussions with Justice, it is my understanding that any records that Justice has associated with the Justice program are stored in a safe. As such, the search was conducted on any paper records in the safe, as well as the email account of the employee from the specified Justice Branch, this included inbox, sent emails, junk emails and deleted items folders.

[99] As well, for the search for responsive records relating to Justice's processing of the Applicant's original personal information request (197-2018), Justice requested the FOIP Coordinator and the employee and Director in the specified Justice Branch to also conduct a search of their email accounts. From the details provided regarding Justice's search, it focused on emails, with the exception of any paper records stored in the safe that houses the Justice program records. Justice's submission discusses the consideration of paper records stored for the purposes of administering the Justice program, and any emails in the specified employee's email accounts. However, it does not discuss if any paper records or electronic records related to the processing of the Applicant's access to information request, outside of any emails identified in the email accounts.

[100] In Review Report 301-2017, 302-2017, 303-2017, 304-2017 and 003-2018, my office provided the following comments regarding electronic records management:

[49] In Archives' resource *Basic Records Management Practices for Saskatchewan Government*, it provides the following regarding electronic records management:

An electronic or digital record is any item of information that is created, recorded or stored on any medium in or by a computer system or other similar device. **These records must be managed in the same manner as records in other formats.** Electronic records that are subject to records management requirements including e-mail and other electronic messages, social media and website and cloud computing.

As *The Archives and Public Records Management Act* is media neutral, the management of electronic records (including e-mail) should be integrated with other records management practices for records in the custody or under the control of each institution.

[50] Central Services should ensure its practices for managing emails is documented in a policy or procedure to ensure emails are managed in the same manner as all other records.

[51] My office does encourage public bodies to include email accounts in their search strategy for emails, however it is the office's opinion that public bodies also consider any other electronic and physical files where emails might be saved. As Central Services has advised that the Deputy Minister's office does not retain copies of emails outside of their outlook email accounts, there are not any other files for Central Services to consider. However, my office does encourage Central Services integrate its emails into its records management system.

...

[53] I recommend Central Services develop an email management policy or procedure to ensure emails are managed in the same manner as all other records.

[101] I recommend Justice conduct an additional search for records responsive to IPC File: 197-2018 to ensure all paper and electronic records were located.

[102] I recommend Justice develop and implement an electronic communication management policy or procedure to ensure these text messages and emails are managed in the same manner as all other records.

6. Is there information non-responsive to the Applicant's access to information request?

[103] When a government institution receives an access to information request, it must determine what information is responsive to the access to information request.

[104] Responsive means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an Applicant's request will be considered "non-responsive". The Applicant's access to information request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

[105] A government institution can sever information as non-responsive only if the Applicant has requested specific information, such as their own personal information. The government institution may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access to information request.

[106] Although Justice's submission did not address it, a portion of record 10 was marked as non-responsive. Based on a review of that portion of the record, I do not see how it relates at all to the Applicant's request. Therefore, I find it is non-responsive to the Applicant's access to information request. See Appendix A for details.

7. Has Justice made a *prima facie* case that solicitor-client privilege applies to the withheld portions of the records?

[107] In IPC File 197-2018, Justice applied solicitor-client privilege to three of the 40 responsive records. Justice withheld records 2 and 5 in full, each consisting of one page, claiming solicitor-client privilege. Page 1 of Record 6 was released in part, however, the remaining portions of the five page record was withheld as solicitor-client privilege. Justice provided my office with a statement of records certified by a Justice lawyer and an accompanying letter to the statement of records.

[108] In IPC File 073-2019, Justice applied solicitor-client privilege to 22 records totaling 69 pages. While Justice's affidavit of record showed that the majority of the email communications either involved communication with the solicitor(s), five of these emails appeared to be emails between Justice employees. My office requested clarification as to how these records constitute solicitor-client privilege. Justice clarified that three of these

records were employees gathering information requested by the solicitor in order to provide their legal opinion. The other two records were emails between a Justice employee and their Director forwarding the solicitor's legal opinion and discussing the advice provided.

[109] The exemption for solicitor-client privilege is found under subsection 22(a) of FOIP, which provides:

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

(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

...

[110] My office has established the following test for subsection 22(a) of FOIP:

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Was the communication intended to be confidential?

[111] As noted earlier, the majority of communications involve legal counsel. Others however, do not. I commented on the continuum of legal advice and how communications that are not between solicitor and client may be captured under solicitor-client privilege, including Review Report 004-2017, 153-2015 – Part II and Review Report 283-2016. In those reports I reference the Alberta's Office of the Information and Privacy Commissioner's *The Basics of Solicitor-Client Privilege*, which provides the following:

Documents that are not actually passed between the solicitor and client may be part of the continuum of legal advice, or reveal information subject to solicitor-client privilege.

More examples of records found to be part of the continuum of legal advice:

- a discussion between two public officials about how to frame the question that is to be asked of the lawyer (Order F2007-008 at para. 12)
- written communications between officials or employees of a public body, in which they quote or discuss the legal advice given by the public body's solicitor (Order 99-013 at paras. 62-63; Order 2001-025 at para. 67)

- communications discussing the application of legal advice given by a solicitor (Order 96-020 at para. 133)
- an employee's notes regarding a solicitor's legal advice, and comments on that advice (Order 99-027 at para. 95)
- notes "to file" in which legal advice is quoted or discussed (Order F2005-008 at para. 42)
- solicitors' briefing notes and working papers that are directly related to the seeking or giving of legal advice (96-017 at para. 30)

[112] I am satisfied that the records are a communication between solicitor and client or are part of the continuum. Therefore, the first part of the test has been met.

[113] In the accompanying letter from Justice it stated, "the responsive records involved legal services associated with providing advice on access to information request and alleged privacy breaches related to the applicant." I am satisfied that the second part of the test is met. I am also satisfied that these were intended to be confidential and therefore the third part of the test is met.

[114] Although I have not reviewed these portions of the records, I find that Justice has made a *prima facie* case that subsection 22(a) of FOIP applies to this portion of the record. Justice had also raised that if my office did not find that solicitor-client privilege applied, that it was also relying on subsection 22(b) and 22(c) of FOIP. As I have found that Justice has made a *prima facie* case for the application of 22(a) of FOIP, there is no need to consider the application of subsections 22(b) or 22(c) of FOIP to these records.

[115] I find that Justice has made a *prima facie* case that subsection 22(a) of FOIP applies to the records.

[116] I recommend that Justice continue to withhold the records to which it has claimed solicitor-client privilege.

8. Did Justice appropriately apply subsection 14(a) of FOIP to the redacted portions of the records?

[117] Subsection 14(a) of FOIP provides:

14 A head may refuse to give access to a record, the release of which could reasonably be expected to prejudice, interfere with or adversely affect:

(a) relations between the Government of Saskatchewan and another government;

[118] Justice applied this exemption to all of the redacted portions of the record in IPC File 147-2018, with the exception of redaction number 5 on page 1 of the record. The redactions in this record are mainly names of employees, the area of government they are employed in or other agencies they are employed by, as well as their work telephone number. Additionally, some of the redactions refer to other details or arrangements about the Applicant's involvement in the program. In IPC File 197-2018, Justice redacted a portion of record 8 which refers to some details about how records related to the Justice program are stored and protected.

[119] Section 14 of FOIP is a harm-based discretionary provision. For this provision to apply there must be objective grounds for believing that disclosing information could result in the harm alleged.

[120] My office's resource *IPC Guide to FOIP – Chapter 4: Exemptions from the Right of Access* (December 10, 2019) (Guide to FOIP), provides the following definitions and consideration for the application of subsection 14(a) of FOIP:

Injurious means harmful; tending to injure.

Prejudice in this context refers to detriment to intergovernmental relations.

To *interfere with* means to obstruct or make much more difficult.

To *adversely affect* is to have harmful or unfavorable impact.

The term *relations* in this context are intended to cover both formal negotiations and more general exchanges and associations between the Government of Saskatchewan and other governments.

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.

The expectation of harm must be reasonable, but it need not be a certainty. The evidence of harm must:

- show how the disclosure of the information would cause harm;
- indicate the extent of harm that would result; and
- provide facts to support the assertions made.

[121] In regards to IPC File 147-2018, Justice's submission discusses the confidential nature of the Justice program and concerns that the release of the responsive records could harm its relationship with its contacts related to this program.

[122] As discussed in the portion of this Report that addresses whether or not Justice appropriately responded to the Applicant's correction of personal information request, there is nothing in this record that references the program that Justice asserts the Applicant participated in. There is no mention of any sort of program in the actual handwritten notes.

[123] Additionally, many of the details in the record the Applicant would already have knowledge of or would have eventually come to have knowledge of, had the Applicant chosen to continue with the Justice program. Many of the services or agencies that Justice was in contact with to assist with the Applicant's enrollment into the program are publically available and are not services established specifically to administer this program. I am not persuaded that anything in this record would reveal information related to this program that could reasonably be expected to cause any harm contemplated by this provision.

[124] For IPC File 197-2018, Justice applied subsection 14(a) of FOIP to a portion of record 8. As discussed in the review of Justice's search efforts for responsive records, Justice explained what manner records related to the Justice program are stored. The redacted portion of this record again refers to the manner in which they are stored and provides additional detail about the safeguarding of these records. However, I am not persuaded

that the general statement included in this portion of the record would cause any harm that is contemplated by this provision.

[125] I find that Justice has not appropriately applied subsection 14(a) of FOIP to the records. See Appendix A for details.

9. Did Justice appropriately apply subsection 29(1) of FOIP to the redacted portions of the records?

[126] In IPC File 147-2018, Justice applied subsection 29(1) of FOIP to portions of the responsive records on pages 1 through 4 and 7, but later released the redacted portion on page 7. Therefore, I will only consider the portions redacted in pages 1 through 4 where Justice has applied subsection 29(1) of FOIP.

[127] Subsection 29(1) of FOIP states:

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.

[128] Subsection 24(1) of FOIP provides an enumerated list of examples of what is considered personal information under FOIP as follows:

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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) **Repealed.**

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in *The Health Information Protection Act*;

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

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(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.

[129] As noted above, the list at subsection 24(1) of FOIP is a list of examples. It is not meant to be exhaustive. There may be other information that qualifies as personal information, if two elements exist:

1. Is there an identifiable individual? and
2. Is the information personal in nature?

[130] Justice's submission provided the following to support its position that subsection 29(1) of FOIP applied to portions of the responsive records:

The place where a person is employed and the position held by that person both fit the broad definition of personal information as defined in subsection 24(1) of FOIP. Further, FOIP also specifically identifies the following as examples of personal information related to employment in clauses 24(1)(b) and (e)...

Accordingly, the Ministry submits that such information is “personal information” within the meaning of FOIP.

The Ministry acknowledges that FOIP then goes on to remove certain elements of employment information from the definition of personal information in clauses 24(2)(a) and (c):

24(2) “Personal information” does not include information that discloses:

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a government institution or a member of the staff of a member of the Executive Council;

...

(c) the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;

However, these exemptions apply only to employees of government institutions, and not to employees of other employers. Neither of these exemptions describe contact information of employees of local authorities, employees of the federal government or employees of Community Based Organizations, etc. As such, the name of employees who are not employees of government institutions is personal information of those individuals, and therefore should not be disclosed.

...

This exemption is being applied to business card information and work product information of employees of organizations other than government institutions subject to FOIP. The names of employees of organizations that are not employees of government institutions subject to FOIP have been consistently removed unless that individual has provided her or his consent, which was the case for pages 5 and 6. The Ministry submits that such information is in fact personal information as defined in the FOIP.

[131] In Review Report 186-2019, my office found that business card information would not be considered personal information, as follows:

[25] ...the Ministry has also applied subsection 29(1) of FOIP to cellular telephone numbers of a third party business employee. In its submission, the Ministry indicated

that the cellular telephone number was withheld because if released it would disclose personal information of an identifiable individual as the number is not publicly available.

[26] Business card information is the type of information found on a business card (name, job title, work address, work phone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. Further, in Review Report 149-2019, 191-209 [sic], I noted that business card information does not qualify as personal information when found with work product. Work product is 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 also not considered personal information.

...

[28] In Review Report F-2010-001, Review Report F-2012-006 and Review Report LA-2013-002, my office noted that section 4.01 the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which applies to every organization that collects, uses or discloses personal information in the course of “commercial activities”, carves out business contact information from the type of personal information that requires protection.

[29] Subsection 2.1 of PIPEDA defines “business contact information” as, “information that is used for the purpose of communicating or facilitating communication with an individual in relation to their employment, business or profession such as the individual’s name, position name or title, work address, work telephone number, work fax number or work electronic address.” This supports the conclusion that business card information is not meant to be personal information for the purposes of subsection 24(1) of FOIP when it appears in work product.

[30] The cellular telephone number, therefore, constitutes business card information and does not qualify as personal information in this instance. I recommend that the Ministry release it to the Applicant.

[132] The individuals identified in this record would have been acting in their work capacity when communicating with the employee in the specified Justice Branch to arrange services for the Applicant. Further, Justice has indicated in its submission that the contact information and names of these individuals is business card information. I find that Justice has not appropriately applied subsection 29(1) of FOIP to the records. See Appendix A for details.

10. Did Justice appropriately apply section 21 of FOIP to the redacted portions of the records?

[133] Section 21 of FOIP states:

21 A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual.

[134] Justice applied subsection 21 of FOIP to redactions 1, 5 and 15 of page 1; redactions 3, 4, 5, 6, 7, 8, 10 11, 13, 16, 17 and 18 of page 2; of IPC File 147-2018.

[135] Justice's submission claims that very little detail regarding this program is available to the general public. Justice noted concerns about the release of employee names and business telephone numbers that were contacted to arrange services for the Applicant.

[136] Section 21 of FOIP uses the word **could** versus "*could reasonably be expected to*" as seen in other provisions of FOIP. The threshold for *could* is somewhat lower than a reasonable expectation. The requirement for *could* is simply that the release of the information *could* have the specified result. There would still have to be a basis for asserting the harm *could* occur. If it is fanciful or exceedingly remote, the exemption should not be invoked. For this provision to apply, there must be objective grounds for believing that disclosing the information *could* result in the harm alleged.

[137] Chapter 4 of the Guide to FOIP provides the following test that can be considered for the application of section 21 of FOIP:

1. What is the harm identified?
2. Does the harm constitute damage or detriment and not mere inconvenience?
3. Is there a connection between disclosure and the anticipated harm?

[138] Based on a review of the records, it appears the Applicant only attended one of the appointments arranged by the specified Justice Branch to administer services for the Applicant. The Applicant provided my office with a copy of the business card that they

received from the individual that administered this service. For the other appointments arranged by the specified Justice Branch that the Applicant did not attend, the Applicant did not meet with these employees and did not access any of the services they were arranging. Because these individuals were arranging services in this particular case, does not mean they would be involved in the future so I am unsure how this could result in a danger to their safety.

[139] Again, there is nothing in the handwritten notes that associates the notes with the Justice program. The individuals referenced in this record were acting in their work capacity to assist in arranging services for the Applicant. These services are publicly accessible and these employees assist individuals in a number of different situations to gain access to these services. I am not persuaded that release of the names of the employees, the areas of government or other agency they are employed with or their work telephone numbers could threaten the safety or the physical or mental health of an individual.

[140] I find that Justice has not appropriately applied section 21 of FOIP to the records. See Appendix A for details.

11. Has Justice appropriately applied subsections 17(1)(a) or 17(1)(b)(i) of FOIP to the records?

[141] Subsections 17(1)(a) and 17(1)(b)(i) of FOIP 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;

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

- [142] In IPC File: 197-2018, Justice applied subsection 17(1)(b)(i) of FOIP to record 22 and applied subsections 17(1)(a) and 17(1)(b)(i) of FOIP to record 31. Justice also applied subsections 17(1)(a) and 17(1)(b)(i) of FOIP to records 6, 7, 12, 13, 15, 16, 23, 24, 27 and 29 withheld in IPC File: 073-2019.
- [143] The responsive records in IPC Files: 197-2018 and 073-2019 are email communications and handwritten notes related to the processing of two of the Applicant's requests – the Applicant's initial personal information request (IPC File: 147-2018) and their correction of personal information request (IPC File: 008-2019).
- [144] Justice's submission for the application of subsection 17(1)(a) of FOIP in IPC File: 197-2018, provides that "the portion of the document in question contains advice and analyses with respect to a draft response to the applicant." Its submission in respect to the application of subsection 17(1)(b)(i) of FOIP provides that, "the Ministry submits that one portion of a document relates to a privacy investigation and the other relates to a draft response. The email was circulated to those who were involved either the privacy investigation or in the response and those individuals were being consulted or were deliberating the issue. The individuals involved were employees of the Ministry."
- [145] Justice's submission for the application of subsections 17(1)(a) and 17(1)(b)(i) of FOIP for IPC file 073-2019 provides as follows:

The records in question relate to research into section 32 of FOIP and consultations and deliberations that occurred and the notes that reflect those conversations and deliberations in order to determine if there was an error or omission in records identified by the Applicant.

The research into section 32 of FOIP contain analysis and policy options in terms of its treatment by the Commissioner, by commissioners in other jurisdictions with similar provisions and of analogous case law. The official who is doing the research has pulled commissioner decisions and case law that he finds relevant and highlights paragraphs that he believes is pertinent to the issue under consideration. As such, it qualifies as an analysis of these decisions. These records and portions of records contain advice in terms of how the provision can be interpreted, including recommendations and policy options regarding the best way forward on the file.

The notes reflect a conversation that captured an official's interactions with the Applicant and also of the program at issue that was the result of the Applicant alleging there was an error or omission in a record. These notes fall within the definition of an analysis because it was an examination of an allegation in detail.

...

The Ministry submits the records where subclause 17(1)(b)(i) has been applied involve a consultation and deliberations between officials discussing the analysis, policy options, recommendations and advice regarding the research into section 32 of FOIP. Subclause 17(1)(b)(i) has also been applied to notes that involve consultations and deliberations with an official about the allegations by the Applicant that there is an error or omission in certain records created by the official.

[146] In Chapter 4 of the Guide to FOIP it provides the following two-part tests for the application of subsections 17(1)(a) and 17(1)(b)(i) of FOIP:

Test for subsection 17(1)(a)

The following two-part test can be applied:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options? and
2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?

Test for subsection 17(1)(b)(i)

The following two-part test can be applied:

1. Does the record contain consultations or deliberations? and
2. Do the consultations or deliberations involve officers or employees of a government institution, a member of the Executive Council or staff of a member of the Executive Council?

[147] As described in Justice's submission above, the records at issue are emails and handwritten notes between Justice employees discussing the requests, potential challenges and options for responding to the request and the consideration of relevant research in order to prepare a response for the Applicant. The records clearly are developed by and for the government institution and involve employees of the government institution. Therefore, provided the

information in the records fits the definition of the type of information described in subsections 17(1)(a) or 17(1)(b)(i) of FOIP, the two part test would be met.

[148] However, Chapter 4 of the Guide to FOIP, also stipulates that neither provision is meant to protect factual information:

The provision is not meant to protect the bare recitation of facts, without anything further. The provision should be reserved for the opinion, policy or normative elements of advice, and should not be extended to the facts on which it is based. The exception is where the advice and facts may be so intertwined as to preclude release.

Factual material means a cohesive body of facts, which are distinct from advice, proposals, recommendations, analyses and/or policy options. It does not refer to isolated statements of fact, or to the analyses of the factual material. Factual material refers specifically to information that cannot be withheld under section 17(1) and which must be separated from advice, proposals, recommendations, analyses and/or policy options if those are being withheld. Where factual information is intertwined with advice or recommendations in a manner whereby no reasonable separation can be made, then the information is not factual material and can be withheld.

The exemption does not generally apply to records or parts of records that in themselves reveal only the following:

- that advice was sought or given;
- that particular persons were involved in the seeking or giving of advice; or
- that advice was sought or given on a particular topic or at a particular time.

If releasing this information reveals the substance of the advice, recommendations, proposals, analyses and/or policy options, the government institution can withhold this information.

[149] Section 17 of FOIP is a discretionary class-based provision. It is intended to allow for candor during the decision-making process.

[150] As will be described in more detail below, most of the records are discussing relevant legislation and research to the right of correction. A lot of the email content is factual information about what the legislation provides in Saskatchewan as well as other jurisdictions and research of general guidance about the right of correction. I am not

persuaded that this information would reveal any information that is protected by section 17 of FOIP.

[151] However, in other instances, the Justice employees communicating by email are discussing a particular provision in the legislation or research related to guidance on this specific provision. Based on Justice's submission it appears in those cases the employees are researching or discussing these specific provisions in order to determine what course of action to take in order to respond to the request. In which case, disclosure of those portions of the record would reveal information related to Justice's decision-making process or allow for accurate inferences.

[152] Below, I will discuss in additional detail the information that Justice has withheld from the Applicant pursuant to subsections 17(1)(a) and 17(1)(b)(i) of FOIP:

IPC File: 197-2018

- **Record 22** (Justice only applied subsection 17(1)(b)(i) of this page of the record): Justice withheld this email communication in full, rather than severing it in the same manner as the other emails in this file. The email communication relates to the Applicant's privacy breach complaint and seeks factual information about the matter. Based on my review of the records, it does not appear to be a response to these inquiries and the questions being asked are factual in nature and would not qualify as information defined in subsections 17(1)(a) or 17(1)(b)(i) of FOIP.
- **Record 31:** The first paragraph in this email communication is between government employees where one employee is recommending a particular course of action for responding to a request from the Applicant. This portion would qualify as a recommendation, therefore, subsection 17(1)(a) of FOIP would apply. However, the second paragraph in this email is factual in nature about the Applicant's participation in the Justice program. As this information is factual in nature and does not fit the definition of the type of information protected by either subsection 17(1)(a) or 17(1)(b)(i) of FOIP.

IPC File: 073-2019

- **Records 6 and 7:** Both of these email communications were withheld in part. Many of the emails in the two threads are the same. In these two email communications the two Justice employees are discussing the correction request in terms of procedure and legislative obligations as well as quoting relevant reports

from my office on the topic. Most of the redactions in these records are factual information that would not qualify as any of the information described in these two exemptions. However, some of the withheld portions, if released, would allow for the drawing of accurate inferences as it appears Justice is referencing specific provisions that would allow for the drawing of accurate inferences of consultations or deliberations regarding what actions are being contemplated in order to respond to the Applicant's request. Therefore, subsection 17(1)(b)(i) of FOIP would apply to some portions of these records.

- **Records 12 and 15:** With the exemption of the last sentence withheld in record 12, the statements redacted in these email communications are referencing specific provisions that Justice appears to be contemplating in order to determine how to respond to the request. The release of either of these statement would allow for the drawing of accurate inferences related to Justice's deliberations of the application of a particular provision of the legislation. Therefore, subsection 17(1)(b)(i) of FOIP would apply.
- **Record 13:** These handwritten notes appear to summarize a telephone conversation between the employee of the specified Justice Branch and two contacts from the Applicant's originating province. The notes appear to contain factual information, about the Applicant's requests and involvement with the Justice program. This information would not qualify for exemption under either subsection 17(1)(a) or 17(1)(b)(i) of FOIP.
- **Record 16:** In this email communication, one of the Justice employees is requesting the other conduct some research into the application of a particular provision it appears to be contemplating in order to respond to the Applicant's request. For the most part, the release of withheld portions of this record would allow for the drawing of accurate inferences related to consultations or deliberations related to a particular course of action. Therefore, subsection 17(1)(b)(i) of FOIP would apply to some portions of the record.
- **Records 23 and 24:** Records 23 and 24 start with the same email communication, with Record 23 being the originating email that contains the attachment and Record 24 capturing the responses to that initial email. In the email communications and the attachment, it appears the content of the email and attachment are factual information about the right of correction and quotes from court decisions that may be relevant or provide them with insight about the right of correction. It appears to be general in terms of the right of correction and does not appear to provide any insights into what specific direction Justice intends to take or contain any advice or recommendations. I am not persuaded that this information would qualify as information defined in subsections 17(1)(a) or 17(1)(b)(i) of FOIP.
- **Record 27:** This record is an email communication between two Justice employees and an attachment that summarizes jurisdictional research about the right of correction. The research outlined in the attachment is purely factual regarding the

right of correction in different jurisdictions which includes quoting their relevant legislation and in some cases quoting or summarizing relevant reports/order or court decision regarding the right of correction. The email communication appear to be discussing the research on the topic, however it is not in a manner to consult or deliberate on a particular course of action or makes any types of recommendations regarding action to take. The content is very general regarding the right of correction itself, not about the decisions to be made about how to respond to the Applicant. This information appears to be factual in nature and I am not persuaded that it would qualify as information described in subsections 17(1)(a) or 17(1)(b)(i) of FOIP.

- **Record 29:** These handwritten notes appear to be factual in nature. It appears to be information about the Applicant's correction request and an opinion about the nature of the Applicant's request. There also appears to be notes of a discussion with another Justice employee that are factual in nature regarding why the Applicant was referred to the specified Justice Branch and do not appear to contain any information that would qualify for exemption under either subsection 17(1)(a) or 17(1)(b)(i) of FOIP.

[153] I find that subsection 17(1)(a) of FOIP was appropriately applied to some portions of the records, but not others. See Appendix A for details.

[154] I find that subsection 17(1)(b)(i) of FOIP applies to some portions of the records, but not others. See Appendix A for details.

12. Did Justice appropriately apply subsection 15(1)(c) of FOIP to the redacted portions of the records?

[155] Subsection 15(1)(c) of FOIP states:

15(1) A head may refuse to give access to a record, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[156] Justice applied subsection 15(1)(c) of FOIP to a single page email communication to withhold the record in full.

[157] Chapter 4 of the Guide to FOIP provides as follows:

Subsection 15(1)(c) is a discretionary class-based and harm-based exemption. Meaning it contains both a class and harm based component. It permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation.

The following two-part test can be applied:

1. Does the government institution's activity qualify as a "lawful investigation"?

A *lawful investigation* that is authorized or required and permitted by law.

2. Does one of the following exist?

- a) Could release of the information interfere with a lawful investigation?
- b) Could release disclose information with respect to a lawful investigation?

[158] Justice's submission indicates that this record could reveal details of its lawful investigation under FOIP. Justice's submission does not provide a specific provision under FOIP to support its position that its activities qualify as a lawful investigation under FOIP.

[159] Our office does not have knowledge of a government institutions record holding, what personal information they collect, use or disclose or what safeguards they have in place for the different elements of information. The government institution is the body responsible for the actions taken with respect to personal information in its possession or under its control and are best equipped to address an individual's concerns. If after requesting a government institution address concerns related to actions taken with their personal information or the safeguarding of that information, an individual continues to have concerns, they can then request the Commissioner undertake an investigation. If the Commissioner receives the information necessary to initiate an investigation, my office will request the government institution provide details to allow my office to complete its investigation.

[160] Subsection 33(d) of FOIP provides the following regarding the privacy powers of the Commissioner to undertake an investigation:

33 The commissioner may:

...

(d) from time to time, carry out investigations with respect to personal information in the possession or under the control of government institutions to ensure compliance with this Part.

[161] As Justice is not the body with authority to undertake a lawful investigation pursuant to FOIP, in this particular case, subsection 15(1)(c) of FOIP cannot apply to this record.

[162] I find that Justice has not appropriately applied subsection 15(1)(c) of FOIP to the responsive record. See Appendix A for details.

13. Did Justice appropriately apply subsection 15(1)(m) of FOIP to the redacted portions of the records?

[163] Subsection 15(1)(m) of FOIP provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems

[164] Chapter 4 of the Guide to FOIP provides the following guidance on the application of this exemption:

Subsection 15(1)(m) is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems or methods employed to protect those vehicles, buildings, structures or systems.

The following two-part test can be applied. However, only one of the questions needs to be answered in the affirmative for the exemption to apply. There may be circumstances where both questions apply and can be answered in the affirmative:

1. Could release reveal security arrangements (of particular vehicles, buildings, other structures or systems)?
2. Could release reveal security methods employed to protect the particular vehicles, buildings, other structures or systems?

[165] I am not persuaded that the information in this portion of the record related to how the records are stored and what considerations are in place for safeguarding of the records would reveal specific arrangements or methods.

[166] I find that Justice has not appropriately applied subsection 15(1)(m) of FOIP to the responsive record. See Appendix A for details.

IV FINDINGS

[167] I find that Justice did not adhere to the data minimization principle when using the Applicant's personal information for the processing of their request.

[168] I find that Justice had authority for the collection, use and disclosure of personal information, though it could have done more to confirm directly with the Applicant what specific services or programs the Applicant was requesting to ensure all parties have the same understanding of the purpose.

[169] I find Justice responded appropriately to the correction of personal information request.

[170] I find that a portion of one of the records are non-responsive to the Applicant's access to information request, as described in Appendix A.

[171] I find that Justice has made a *prima facie* case that subsection 22(a) of FOIP applies to the records to which it has claimed solicitor-client privilege.

[172] I find that subsection 17(1)(a) of FOIP applies to some portions of the records, as described in Appendix A.

[173] I find that subsection 17(1)(b)(i) of FOIP applies to some portions of the records, as described in Appendix A.

[174] I find that subsections 14(a), 15(1)(c), 15(1)(m), 17(1)(a), 17(1)(b)(i), 21 and 29(1) of FOIP do not apply to portions of records, as described in Appendix A.

V RECOMMENDATIONS

[175] I recommend Justice develop and implement a policy or procedure to ensure the data minimization principle is adhered to when processing access to information requests to ensure it is consistent in what it collects, uses and discloses and the purpose for those actions (i.e. identity verification purposes).

[176] I recommend Justice develop and implement policies and procedures that outline what personal information is required to be collected to initiate enrollment in any program administered by the specified Justice Branch.

[177] Although I did not find that a privacy breach occurred in this case, I recommend Justice develop and implement an intake form to ensure an understanding between Justice and individuals about what programs or services an Applicant is requesting.

[178] I recommend Justice develop and implement a policy or procedure for correction of personal information requests to ensure it is taking appropriate steps to gain sufficient details about the correction of personal information being requested.

[179] I recommend Justice conduct an additional search for records responsive to IPC File: 197-2018 to ensure all paper and electronic records were located.

[180] I recommend Justice develop an electronic communication management policy or procedure to ensure these text messages and emails are managed in the same manner as all other records.

[181] I recommend that Justice continue to withhold the records to which it has claimed solicitor-client privilege.

[182] I recommend Justice continue to withhold records, as described in Appendix A of this Report.

[183] I recommend Justice release records, as described in Appendix A of this Report.

Dated at Regina, in the Province of Saskatchewan, this 16th day of April, 2020.

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

Appendix A

IPC File: 147-2018

Page number	Redaction number	Exemptions applied	Does the Exemption Apply?	Release or Withhold?
1	1, 15	14(a)	No	Release
		21	No	
		29(1)	No	
1	2, 3, 4, 8, 9, 10, 12, 14	14(a)	No	Release
1	5	21	No	Release
		29(1)	No	
1	6, 7, 11, 13, 16, 17, 18, 19	14(a)	No	Release
		21	No	
2	1, 17, 18	14(a)	No	Release
		21	No	
2	2, 5, 6, 7, 9, 12, 13, 14, 19	14(a)	No	Release
2	3, 4, 8, 10, 11, 15, 16, 20	14(a)	No	Release
		21	No	
		29(1)	No	
3	1, 2, 3, 4, 5	14(a)	No	Release
		21	No	
		29(1)	No	
3	6, 8	14(a)	No	Release
3	7, 9, 10	14(a)	No	Release
		21	No	
4	1, 3, 4, 13	14(a)	No	Release
4	2, 10	14(a)	No	Release
		21	No	
4	5, 6, 7, 8, 9, 11, 12, 14, 15	14(a)	No	Release
		21	No	
		29(1)	No	

IPC File: 197-2018

Record Number	Exemptions applied	Does the Exemption Apply?	Release or Withhold?
8	14(a)	No	Release
	15(1)(m)	No	
10	Non-Responsive	Yes – not related to the Applicant’s request.	Withhold
22	15(1)(c)	No	Release
	17(1)(b)(i)	No	
31	17(1)(a)	Yes – applies to first paragraph	Withhold first paragraph of email. Release second paragraph of email.
	17(1)(b)(i)	No	

IPC File: 073-2019

Record Number	Exemptions applied	Does the Exemption Apply?	Release or Withhold?
6	17(1)(a)	No	Withhold page 3 of the record, with the exception of the last redaction on this page. Release remaining redacted portions of the record.
	17(1)(b)(i)	Yes – applies to page 3 with the exception of the last redaction on this page.	
7	17(1)(a)	No	Withhold page 2 of the record, with the exception of the last redaction on this page. Release remaining redacted portions of the record.
	17(1)(b)(i)	Yes – applies to page 2 with the exception of the last redaction on this page.	
12	17(1)(a)	No	Withhold, with the exception of the last sentence of the redacted portion.
	17(1)(b)(i)	Yes – with the exception of the last sentence in the redaction.	
13	17(1)(a)	No	Release
	17(1)(b)(i)	No	

15	17(1)(a)	No	Withhold
	17(1)(b)(i)	Yes	
16	17(1)(a)	No	Release the second and fourth redactions on page 2 and withhold the remaining redactions.
	17(1)(b)(i)	Yes – applies to the record with the exception of the second and fourth redaction on page 2 of the record.	
23	17(1)(a)	No	Release
	17(1)(b)(i)	No	
24	17(1)(a)	No	Release
	17(1)(b)(i)	No	
27	17(1)(a)	No	Release
	17(1)(b)(i)	No	
29	17(1)(a)	No	Release
	17(1)(b)(i)	No	