



REVIEW REPORT 166-2018

Saskatchewan Legal Aid Commission

November 4, 2019

Summary: The Saskatchewan Legal Aid Commission (SLAC) received an access to information request for records pertaining to the closure of the Saskatoon Legal Aid Office. SLAC initially withheld records pursuant to subsections 15(1)(d), 17(1)(a), 17(1)(b), 17(1)(c), 17(1)(d), 17(1)(f)(i) and (ii), 22(a), 22(b) and 22(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP), but later dropped its reliance on subsections 22(a), 22(b) and 22(c) of FOIP and released the redacted records under the remaining provisions. The Commissioner found that subsections 17(1)(a) and 17(1)(f) of FOIP applied to most of the responsive records, but recommended release of a few pages of the responsive records under subsections 17(1)(b) and 17(1)(c) of FOIP.

I BACKGROUND

[1] On July 14, 2018, the Saskatchewan Legal Aid Commission (SLAC) received an access request for “any proposals and correspondence related to proposals prepared by Legal Aid Saskatchewan that called for the closure of the Saskatoon Legal Aid Office”.

[2] On August 15, 2018, SLAC responded to the Applicant indicating that it was denying access to the responsive record under subsections 15(1)(d), 17(1)(a), 17(1)(b), 17(1)(c), 17(1)(d), 17(1)(f)(i) and (ii), 22(a), 22(b) and 22(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On August 27, 2018, the Applicant asked my office to undertake a review to determine if SLAC was “applying these exemptions in an overbroad manner”.

- [4] On August 29, 2018, my office provided notification to SLAC of our intention to undertake the review.
- [5] On October 22, 2018, my office received a submission and a copy of the record from SLAC.
- [6] On August 19, 2019, SLAC confirmed to my office that they had not provided a redacted copy of the responsive record to the Applicant. They further responded that they would provide a copy of the record to the Applicant on the same date. At the same time, they confirmed they did not wish to reconsider any of their previously applied exemptions.
- [7] On September 9, 2019, the Applicant confirmed with my office that they received the redacted copy of the record and still wished to proceed with a review of the exemptions applied by SLAC.

II RECORDS AT ISSUE

- [8] With respect to the Applicant’s request, SLAC’s search yielded 843 pages of responsive records.
- [9] SLAC has grouped their exemptions in the following submitted index of records:

Group	Exemption(s)	Application of Note	Page(s)
1	17(1)(d), (a),(c), 15(1)(d)	Repeated copies of draft proposed plans (or portions thereof) for the management of SLAC’s personnel and the general administration of SLAC.	1-4, 8-13, 20-38, 44-52, 54-80, 85-117, 120-155, 157-159, 161-186, 189-267, 269-278, 280-353, 361-373, 375-591, 593, 596-721, 723-773, 775-811, 813-840, 842-843
2	17(1)(d), (b), 15(1)(d)	Consultations and discussions relating to the draft proposed plans redacted in Note 1.	40-41, 141-155, 157-159, 161-186, 191-218, 267, 301-308, 330-339, 378- 404, 422-451, 474-501, 594-595, 758, 790, 827, 830-833, 837, 841, 843
3	17(1)(d),	Email discussions that reveal	40-41, 81-84, 118-119, 187-188, 191-192, 354, 357-359, 594-

	17(1)(c), 15(1)(d)	draft proposed plans redacted in Note 1 and considerations relating to collective bargaining negotiations regarding such plans.	595, 841
4	17(1)(d), 17(1)(f), 15(1)(d)	Email discussions that reveal draft proposed plans redacted in Note 1 and substance of confidential, <i>in camera</i> SLAC meetings.	39-43
5	29(1)	Personal information within otherwise unredacted portions of the records.	5, 18-19, 37-38, 42-43, 355, 361

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] SLAC is a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP. I have jurisdiction to conduct this review.

2. Did the SLAC properly apply subsection 17(1)(d) of FOIP?

[11] SLAC has applied subsection 17(1)(d) of FOIP to Groups 1, 2, 3 and 4 of the record as noted in the index of records. I note that they have not indicated to which parts of these four Groups they have specifically applied this exemption, and that they have applied other exemptions to these Groups as well.

[12] Subsection 17(1)(d) 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:

...

(d) plans that relate to the management of personnel or the administration of a government institution and that have not yet been implemented;

[13] In order for subsection 17(1)(d) of FOIP to be found to apply, all three parts of the following test must be met:

1. Does the record contain a plan?
2. Does the plan relate to: i) the management of personnel; or ii) the administration of the government institution; and
3. Has the plan(s) been implemented by the government institution?

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

1. Does the record contain a plan?

[15] In their submission, SLAC stated that the record contains:

...draft proposed plans that include detailed considerations relating to the Previous Proposal. This includes details relating to the proposed structure and implementation of the Previous Proposal and various key considerations relating to the Previous Proposal, including, for example...

...

The Records also contain related correspondence [that] contain discussions of the various portions of the Previous Proposal including financial, human resource and logistical considerations for how the Previous Proposal would be implemented.

[16] In terms of how the record has been organized, Groups 1 to 4 contain the largest volume of pages as follows:

- 26 copies of a draft proposed plan. Throughout, the copies contain edits and tweaks to language.
- Seven copies of a briefing note outlining the draft proposed plan. As with the proposed plan, the briefing notes contain some edits and tweaks to language.
- 18 copies of a communication plan and speaking notes to be used if the draft proposed plan had been implemented; these are part of the draft proposed plan. These as well contain some edits.
- 20 pages of email exchanges that include discussion and feedback on the proposed plan, as well as supplementary information for the proposed plan such as additional considerations or figures.

[17] A plan is a formulated and especially detailed method by which a thing is to be done; a design or scheme. It is a detailed proposal for doing or achieving something; an intention or decision about what one is going to do. Subsection 17(1)(d) of FOIP includes the requirement that access can be refused if it could reasonably be expected to disclose the protected information listed in the exemption.

[18] The proposed plan goes into great detail about what the plan is, including who is involved and affected, what will happen, how it will happen, when it will happen and supporting rationale. The briefing notes reiterate and copy these details, while the communication documents are part of the proposed plan, providing details regarding the implementation of the proposed plan and how it will be communicated, by whom it will be communicated, when and to whom. The briefing notes and communication documents contain sufficient detail that, if released, would reveal the proposed plan itself.

[19] I find, that the documents contained in the record as a whole are part of the proposed plan and that the first part of the test has been met.

[20] I will now assess the second part of the test.

2. Does the plan relate to: i) the management of personnel; or ii) the administration of the government institution.

[21] Management of personnel refers to all aspects of the management of human resources of a public body that relate to the duties and responsibilities of its employees. This includes staffing requirements, job classification, recruitment and selection, employee salary and benefits, hours and conditions of work, leave management, performance review, training, separation and layoff.

[22] The administration of a government institution comprises all aspects of its internal management, other than personnel, that are necessary to support the delivery of programs and services. Administration includes business planning, financial operations and contract, property, information, and risk management.

- [23] To relate to the plan, there must be some connection between the information and the management of personnel or the administration of a government institution.
- [24] According to SLAC's submission, the proposal was "a proposed plan for the restructuring of SLAC's operations to more effectively deliver legal services pursuant to the Legal Aid Act".
- [25] Upon review of SLAC's submission, I find that the record relates to the management of personnel or the administration of the government institution and that the second part of the test has been met.
- [26] I will now assess the third part of the test.

3. Has the plan(s) been implemented by the government institution?

- [27] Implementation means the point when the implementation of a decision begins. For example, if a government institution decides to go forward with an internal budget cut or restructuring of departments, implementation commences when this plan of action is communicated to its organizational units. The plan(s) cannot yet have been implemented; however, it is not necessary for the implementation activities to be completed.
- [28] In its submission, SLAC stated, "For various reasons including cost considerations, the Previous Proposal was not implemented by SLAC". They added that, "The Previous Proposal has not been implemented and was replaced by the Current Plan which is presently being implemented".
- [29] The term "yet", according to the *Oxford Dictionary (6th Ed.)*, means "at some time in the future, in the remaining time available, before all is over".
- [30] Subsection 24(1)(d) of Alberta's *Freedom of Information and Protection of Privacy Act* is substantially similar to subsection 17(1)(d) of FOIP. The Alberta Information and Privacy

Commissioner applies the same test for this subsection as does my office. In its Order F2008-008 at paragraph [54], Alberta's Commissioner found:

Moreover, section 24(1)(d) applies to plans *that have not yet been implemented*. The implication is that the provision protects the *premature* release of plans that have *already* been decided by a public body. The provision recognizes that a public body's ability to manage personnel and administration might be compromised if information about its plans was released prior to implementation...

[31] SLAC stated this plan has been set aside and replaced with a different plan (the "Current Plan"), meaning that SLAC decided against implementing this plan. Subsection 17(1)(d) of FOIP is intended to protect information on decisions that have been made by a public body, the details of which the public body has not made publicly known through implementation. SLAC has not stated whether or not it intends to implement this plan in the future, so the third part of the test has not been met.

[32] I find that subsection 17(1)(d) of FOIP has not been properly applied to Groups 1, 2, 3 and 4 as noted on the index of records.

3. Did SLAC properly apply subsection 15(1)(d) of FOIP?

[33] SLAC has also applied subsection 15(1)(d) of FOIP to the documents in Groups 1, 2, 3 and 4 of the record as noted in the index of records. I note that they have not indicated to which parts of these four Groups they have specifically applied this exemption, and that they have applied other exemptions to these Groups as well.

[34] Subsection 15(1)(d) of FOIP is a discretionary exemption and provides:

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

...

(d) be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal proceedings;

[35] In order for subsection 15(1)(d) of FOIP to be found to apply, both parts of the following test must be met:

1. The proceedings must qualify as existing or anticipated legal proceedings; and
2. The disclosure of the records could be injurious to the public body in the conduct of legal proceedings.

[36] I will now assess each part of the test:

1. Do the proceedings qualify as existing or anticipated legal proceedings?

[37] Legal proceedings are proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgement of a court or a ruling by a tribunal. To qualify for this exemption, the legal proceeding must be existing or anticipated.

[38] In its initial submission, SLAC stated there was a Labour Relations Board hearing pending and that they also anticipated additional, future hearings. On August 19, 2019, SLAC informed my office that the Labour Relations Board matter had been resolved by mediation in November, 2019, but that they were still applying subsection 15(1)(d) of FOIP, because of new grievances undertaken by the union that are all headed towards arbitration. SLAC provided my office with a copy of a grievance dated June 13, 2019 in support of its argument. I find that the first part of the test has been met; I will now analyze the second part of the test.

2. The disclosure of the records could be injurious to the public body in the conduct of legal proceedings.

[39] The grievance dated June 13, 2019, that SLAC provided to my office concerns a matter related to the current plan that was, at the time it was submitted, in the arbitration stage. SLAC did not state to my office how release of information pursuant to subsection 15(1)(d) of FOIP would be injurious to SLAC in the conduct of this grievance.

[40] I find that the second part of the test has not been met, and that subsection 15(1)(d) of FOIP has not been properly applied to Groups 1, 2, 3 and 4 as noted on the index of records.

4. Did the SLAC properly apply subsection 17(1)(a) of FOIP?

[41] SLAC has applied subsection 17(1)(a) of FOIP to the documents contained in Group 1 of the index of records. I note that they have not stated to which part(s) of Group 1 that they are specifically applying subsection 17(1)(a) of FOIP.

[42] Subsection 17(1)(a) 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;

[43] In order for subsection 17(1)(a) of FOIP to be found to apply, both parts of the following test must be met:

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

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

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

[45] In its submission, the SLAC stated:

The Records include multiple draft documents and commentary on those drafts relating to the Previous Proposal. These drafts and commentary include the seeking and giving of advice, proposals, recommendations, and analyses relating to various aspects of the Previous Proposal, including implementation of and options relating to the Previous Proposal, the pros and cons of the Previous Proposal, alternatives and possible variations, as well as various drafts of the recommendations from the Management team, Commission, and others within the Government of Saskatchewan who are in an advisory role to SLAC.

- [46] Advice is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The “pros and cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a public body must make a decision for future action.
- [47] A recommendation is a specific piece of advice about what to do, especially when given officially; a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.
- [48] A proposal is something offered for consideration or acceptance.
- [49] Analysis is a detailed examination of the elements or structure of something; the process of separating something into its constituent elements.
- [50] As I stated at paragraph [7], there are repeated copies of a proposed plan, a briefing note, related communication plans/speaking notes and emails amongst management and other officials of SLAC that discuss and add information to the proposed plan.
- [51] Although SLAC did not specify to which parts of Group 1 it was applying subsection 17(1)(a) of FOIP, there exists evidence that the proposed plan documents include discussion on the options, the rationale for the options, the pros and cons, recommendations on a course of action and how the course of action will be communicated and carried out.

The briefing notes highlight the information that is contained within the draft proposals/plans, while the communication documents link to the draft proposals/plans and include information on the plan as it would have occurred. I find that these documents contain advice, proposals, recommendations and analysis and that the first part of the test has been met.

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

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?

[53] For information to be developed by or for a government institution, the person developing the information should be an official, officer or employee of the government institution, be contracted to perform services, be specifically engaged in an advisory role (even if not paid), or otherwise have a sufficient connection to the government institution.

[54] To put it another way, in order to be engaged in an advisory role or have a sufficient connection to the government institution, the advice, proposals, recommendations, analyses and/or policy options should:

- i) be either sought, be expected, or be part of the responsibility of the person who prepared the record;
- ii) be prepared for the purpose of doing something, for example, taking an action or making a decision; and
- iii) involve or be intended for someone who can take or implement the action.

[55] In its submission, SLAC noted, “the Records were developed for SLAC in considering how to provide and improve its services. The Records specifically relate to SLAC and its operations and were developed by, for, and involved the Commission, Management team and others within the Government of Saskatchewan who are in an advisory role to SLAC...”

[56] For information to be developed by or for a public body, the person developing the information should have one of the following relationships with the public body:

- be an official, officer or employee;
- be contracted to perform services;
- be specifically engaged in an advisory role, even if not paid, or
- have a specific connection.

[57] SLAC provided a separate affidavit as part of its submission that was prepared by a member of SLAC's management team. The purpose of the affidavit was for that member to describe their role in relation to SLAC and to identify themselves as the primary drafter "of a number of the Records, including various draft documents which set out the detailed considerations relating to the Previous Proposal... In particular, I prepared and developed a number of drafts of the Previous Proposal..."

[58] The advice, proposals and analysis, which included advice or analysis sought by SLAC from the Public Service Commission (PSC), were part of a plan developed by employees of SLAC for SLAC's governance board in order to help them make a decision on SLAC's future services. According to subsection 11(2)(d) of *The Public Service Act, 1998*, the PSC has responsibility for "carrying out research on compensation and working conditions within the public service". As contributor to the proposed plan, the PSC provided additional guidance or advice to SLAC with respect to human services. As SLAC is part of the public service, PSC has a legal mandate to provide SLAC with such information and guidance.

[59] Accordingly, I find that the second part of the test has been met as PSC is acting in an advisory role.

[60] I find that subsection 17(1)(a) of FOIP has been properly applied to the documents contained within Group 1 of the record.

5. Did SLAC properly apply subsection 17(1)(b) of FOIP?

[61] SLAC has applied subsection 17(1)(b) to Group 2 of the record as described in the index of records. As I found that pages 141-155, 157-159, 161-186, 191-218, 267, 301-308, 330-339, 378-404, 422-451, 474-501, 758, 190, 827, 830-833, 837 and 843 of Group 2 fit under subsection 17(1)(a) of FOIP (i.e. there is overlap in the pages), I only need to consider the following pages under subsection 17(1)(b) of FOIP: 40, 41, 594, 595 and 841.

[62] Subsection 17(1)(b) 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:

...

(b) consultations or deliberations involving:

- (i) officers or employees of a government institution;
- (ii) a member of the Executive Council; or
- (iii) the staff of a member of the Executive Council;

[63] Subsection 17(1)(b) of FOIP is a discretionary exemption that permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a government institution, a member of Executive Council or the staff of a member of the Executive Council. The provision is intended to allow persons having the responsibility to make decisions freely to discuss the issues before them in order to arrive at well-reasoned decisions; to allow such persons to address issues without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were made to be public.

[64] In order for subsection 17(1)(b) to be found to apply, the following two-part test must be met:

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

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

1. Does the record contain consultations or deliberations?

[66] A consultation is the action of consulting or taking counsel together, or a conference in which the parties consult and deliberate. A consultation can occur when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action.

[67] A deliberation is to deliberate, or to weigh in mind, consider carefully with a view to a decision or to think over. It is also the consideration and discussions of the reasons for and against a measure. A deliberation can occur when there is a discussion or consideration of the reasons for or against an action, and it can refer to discussions conducted with a view towards making a decision.

[68] Pages 40 and 41 of the record are emails sent amongst SLAC's management team and a member of the governance board regarding implementation considerations. Pages 594 and 595 are emails sent amongst SLAC's management team regarding staffing as it relates to the new plan. These discussions are part of their making a decision about the plan.

[69] I find that the first part of the test has been met.

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

[70] The information regarding who was involved in the discussions or deliberations is shown in the email headers on these four pages and was released to the Applicant. These involve individuals who are employees of SLAC and a member of SLAC's governance board. Subsection 3(3) of *The Legal Aid Act*, establishes the membership of the governance board (the "commission"), while section 7 of the Act outlines their powers with respect to

establishing and managing legal aid services in Saskatchewan, including employing persons to administer the Act. I find that the consultations or deliberations involve officers or employees of a government institution, and that the second part of the test has been met.

[71] I find that subsection 17(1)(b) of FOIP has been appropriately applied to pages 40, 41, 594 and 595 of Group 2 of the record.

6. Did the SLAC properly apply subsection 17(1)(c) of FOIP?

[72] SLAC has applied subsection 17(1)(c) of FOIP to Group 3 of the record. As I previously found that pages 40, 41, 594 and 595 fit under subsection 17(1)(b) of FOIP, I only need to consider the following pages under subsection 17(1)(c) of FOIP: 81-84, 118, 119, 187, 188, 191, 92, 354, 357-359, and 841.

[73] Subsection 17(1)(c) 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:

...

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

[74] Subsection 17(1)(c) of FOIP is a discretionary exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose positions, plans, procedures, criteria or instructions for the purpose of contractual or other negotiations by or on behalf of the government institution. It also covers considerations related to the negotiations. Examples include positions developed by a government institution's negotiator in relation to labour, financial and commercial contracts.

[75] In order for subsection 17(1)(c) of FOIP to be found to apply, the following two-part test must be met:

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

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

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

[77] In applying subsection 17(1)(c) of FOIP to Group 3 of the record, SLAC stated that the records include considerations relating to the negotiations that would be required as part of the proposed plan.

[78] While subsection 17(1)(c) of FOIP applies to positions, plans, procedures, criteria, instructions or considerations, it extends beyond to “considerations that relate to those negotiations”. To qualify, this information must constitute considerations and they must relate to the negotiations.

[79] A negotiation is a consensual bargaining process in which the parties attempt to reach an agreement on a disputed or potentially disputed matter. The contractual or other negotiations can be concluded, ongoing or future negotiation.

[80] The documents contained within this section consist of email exchanges amongst SLAC’s management team and the PSC. This is evident by the employee name and email address information contained in the header information, which was released to the Applicant.

[81] The email exchange includes considerations relating to future labour negotiations that are necessary or that may occur as part of the release of the plan.

[82] I find that the first part of the test is met, with the following exceptions:

- On page 354, the name of the individual in the email header and signature line should be released. Release of this information in and of itself does not reveal the nature of the negotiation. I note that the subject “Org Charts” was released.
- On pages 357 and 358, the email subject lines should be released. SLAC has not shown how the information in the subject line would reveal the negotiations.

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

[83] “Developed” means to start to exist, experience or possess, while “for the purposes of” means intention or the immediate or initial purpose of something.

[84] In its submission, SLAC stated that, “the Records were developed by and for the Commission, Management team, and others in an advisory role to SLAC...”

[85] As noted by the header information released to the Applicant in this group of documents, it is evident that it involved discussion amongst SLAC’s management team and the PSC. At paragraph [58], I establish the relationship between SLAC’s management team and the PSC and the advisory role that PSC has to the public service, of which SLAC is a part. Upon review, I note the discussion relates to future negotiations that could have occurred as part of the proposed plan.

[86] I find the second part of the test has been met.

[87] I find that subsection 17(1)(c) of FOIP has been properly applied to Group 3 of the record except for the exceptions on the parts of pages 354, 357 and 358 noted at paragraph [61].

7. Did SLAC properly apply subsection 17(1)(f) of FOIP?

[88] SLAC has applied subsection 17(1)(f) of FOIP to Group 4 of the record as described on the index of records, which includes pages 39-43 of the record.

[89] As I previously found that pages 40 and 41 fit under subsection 17(1)(b) of FOIP, I only need to consider the following pages under subsection 17(1)(f) of FOIP: 39, 42 and 43.

[90] Subsection 17(1)(f) 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:

...

(f) agendas or minutes of:

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

(ii) a prescribed committee of a government institution mentioned in subclause (i); or

[91] Subsection 17(1)(f) of FOIP is a discretionary exemption that permits refusal of access in situations where release of a record could reasonably be expected to disclose agendas or minutes of a board, commission, Crown corporation or other body that is a government institution or a prescribed committee of a government institution.

[92] In order for subsection 17(1)(f) to be found to apply, the following two-part test must be met:

1. Is the record an agenda of a meeting or minutes of a meeting?
2. Are the agendas or minutes of:
 - i. a board, commission, Crown corporation or other body that is a government institution **or**
 - ii. a prescribed committee of a board, commission, Crown corporation or other body that is a government institution?

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

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

[94] In its submission, SLAC stated that these pages of the records contained information regarding what was said during the meetings of the governance board of SLAC including references to discussion that took place during *in camera* sessions. SLAC further described that the information contained on these pages were part of the recorded minutes.

[95] The minutes of a meeting are the notes of a transaction, proceeding or meeting. The minutes of meetings can be revealed if the information itself contains agendas or meeting minutes, or if the information, if disclosed, would permit the drawing of accurate inferences as to the content of the actual agenda or meeting minutes.

[96] In Review Report 295-2016 at paragraph [38], I found the following:

Therefore, I must consider if the summary of the GTH Board Minutes that are found in the *Activity* column would qualify under this exemption. The responsive record for this is a summary of the documents provided to the Provincial Auditor to conduct the audit. Although these activity summaries are not the minutes themselves they summarize the actions that occurred in these meetings.

[97] Pages 39, 42 and 43 are not actual board minutes of SLAC's governance body.

[98] Page 39 is an email by a member of SLAC's management team to other team members and a member of the governance board. The email reveals the discussion of the governance board regarding the proposed plan. I find that page 39 meets the first part of the test and I will consider it under the second part of the test.

[99] Pages 42 and 43 are email exchanges that include follow up conversations regarding the meeting of the governance board of SLAC. I do not find that SLAC has shown how this information would draw inferences as to the content of the actual agenda or meeting minutes. I find that these pages do not meet the first part of the test and I do not need to consider them under the second part.

2. *Are the agendas or minutes of:*

- i. a board, commission, Crown corporation or other body that is a government institution? or***

ii. a prescribed committee of a board, commission, Crown corporation or other body that is a government institution?

[100] This part of the test needs to be considered only for page 39. As I previously stated, page 39 reveals discussion had by the governance board of SLAC in regards to the plan. SLAC is a board, commission, Crown corporation or other body prescribed as a government institution pursuant to *The Freedom of Information and Protection of Privacy Regulations* (FOIP), Part I of the Appendix. I find that the second part of the test has been met for page 39.

[101] I find that subsection 17(1)(f) of FOIP has been properly applied to page 39, but not to pages 42 and 43. SLAC has also submitted pages 42 and 43 under subsection 29(1) of FOIP, which I will consider in the next section.

8. Did SLAC properly apply subsection 29(1) of FOIP?

[102] SLAC has applied subsection 29(1) of FOIP to Group 5 of the record, which includes pages 5, 18, 19, 37, 38, 42, 43, 355 and 361.

[103] As I previously found that pages 37, 38 and 361 fit under subsection 17(1)(d) of FOIP, I only need to consider pages 5, 18, 19, 42, 43 and 355 of the index of records as part of my analysis of subsection 29(1) of FOIP.

[104] Subsection 29(1) of FOIP provides:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[105] Subsection 29(1) of FOIP is a mandatory exemption that protects the privacy of individuals whose personal information may be contained within the records responsive to an access to information request made by someone else.

[106] Subsection 29(1) of FOIP requires a government institution to have consent of the individual prior to disclosing that person's personal information. There may be circumstances where getting consent is not possible, or in some circumstances, it may not be reasonable, necessary or appropriate to do so.

[107] When dealing with information in a record that appears to be personal information, the first step is to confirm the information qualifies as personal information pursuant to subsection 24(1) of FOIP.

[108] In its submission, SLAC stated it applied subsection 29(1) of FOIP to portions where the disclosure of names would disclose the employment history of those individuals, or where client names would be disclosed, thereby disclosing their criminal history. As noted by SLAC, this type of information is included as "personal information" in subsection 24(1)(b) of FOIP.

[109] The redacted parts of pages 5, 18 and 19 contain names of private bar lawyers. The header title on page 19, which was released to the Applicant, describes them as "Saskatoon-based Lawyers with Private Bar Farmouts – 2016 2017". SLAC has applied subsection 29(1) of FOIP based on disclosure of their names disclosing their employment history. The question is whether or not private bar lawyers act as employees of SLAC in providing services, and should this exemption apply.

[110] Section 29 of *The Legal Aid Act* provides:

The chief executive officer or any person designated by the chief executive officer may appoint a solicitor who is a member of the panel to provide legal services to a person who is eligible to receive the services of a solicitor pursuant to this Act.

[111] According to information on SLAC's website, solicitors provide services to individuals who qualify for services because they are on financial assistance, they are not on assistance but their financial resources are at social assistance levels, or obtaining legal services outside the Act would reduce the individual's financial resources to assistance levels. The

website information further adds that an applicant's fees for legal services are assessed by SLAC on the basis of the applicant's financial circumstances.

[112] Section 30 of *The Legal Aid Act* provides:

Where a solicitor, who is appointed pursuant to section 29, is not an employee of the commission, the solicitor is deemed to be retained by the commission and shall receive remuneration in accordance with the tariff of fees established pursuant to clause 6(1)(d).

[113] According to subsection 2(1)(b.1) of FOIP, government employees include "individuals retained under a contract to perform services for the government institution". To retain means to "hire; to engage for the provision of services..." (*Black's Law Dictionary, 11th Ed.*). Based on this, I am satisfied that for the purposes of subsection 2(1)(b.1) of FOIP, private bar lawyers retained by the commission are employees of SLAC.

[114] In Review Report 302-2016, I noted that it is the position of my office that business card information including names, titles, companies, phone numbers, addresses and email addresses does not qualify as personal information. I find that the names of the private bar lawyers found on pages 5, 18 and 19 are not personal information pursuant to subsection 29(1) of FOIP, and that subsection 29(1) of FOIP does not apply to these pages.

[115] SLAC did not specify to which part of pages 42 and 43 it applied subsection 29(1) of FOIP, but my office assumes it was to the name of a member of the governance board of SLAC that is identified in the redacted parts of these pages. The name of the member of a governance board of a government institution would not normally be considered personal information. Without more information, I cannot find that subsection 29(1) of FOIP applies to these pages.

[116] Further, on page 355, SLAC applied subsection 29(1) of FOIP to a column of letters and numbers. SLAC has not made it clear in its submission what these figures are, but my office assumes they are client numbers as SLAC's submission indicated that client information is contained within this Group of the index of records. As the client numbers

are a unique identifier, this information qualifies as personal information under subsection 24(1)(b) of FOIP. I find that subsection 29(1) of FOIP applies to this page.

[117] It is important to note that throughout the record, information which would be considered personal information was not withheld under subsection 29(1) of FOIP. This information was combined with information which was withheld under another exemption. The issue with this is that if the other exemption did not meet the test or it was contested in court, it would be recommended that the information be released. As subsection 29(1) of FOIP is a mandatory exemption, any information which would constitute personal information should be withheld under subsection 29(1) of FOIP.

IV FINDINGS

[118] I find subsection 17(1)(d) of FOIP does not apply to Groups 1, 2, 3 and 4 of the record.

[119] I find that subsection 15(1)(d) of FOIP does not apply to Groups 1, 2, 3 and 4 of the record.

[120] I find that subsection 17(1)(a) of FOIP applies to Group 1 of the record in its entirety.

[121] I find that subsection 17(1)(b) of FOIP applies to pages 40, 41, 594 and 595 of the record.

[122] I find that subsection 17(1)(c) of FOIP applies to Group 3 of the record, except on some parts of pages 354, 357 and 358 of the record as discussed at paragraph [82].

[123] I find that subsection 17(1)(f) of FOIP applies to pages 39, 42, 43 and 355 of the record.

[124] I find that subsection 29(1) of FOIP does not apply to pages 5, 18 and 19 of the record, but that it did apply to some personal information that SLAC did not apply it to.

V RECOMMENDATIONS

[125] I recommend that SLAC release to the Applicant information on parts of pages 354, 357 and 358 of the record as discussed at paragraph [82].

[126] I recommend that SLAC release pages 5, 18 and 19 of the record to the Applicant.

[127] I recommend that SLAC continue to withhold the remainder of the record.

Dated at Regina, in the Province of Saskatchewan, this 4th day of November, 2019.

Ronald J. Kruzeniski, QC
Saskatchewan Information and Privacy
Commissioner