



REVIEW REPORT 172-2019

Ministry of Education

June 23, 2020

Summary:

The Ministry of Education (the Ministry) received an access request for information related to the Cornwall Alternative School. The Ministry withheld portions of the records pursuant to subsections 17(1)(a), 17(1)(b)(i), 17(1)(c), 17(1)(d), 17(1)(g), 18(1)(b)(i)(ii), 18(1)(e), 19(1)(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that the Ministry properly applied subsections 17(1)(a), 17(1)(c) and 18(1)(e) of FOIP to the records, but that the Ministry did not properly apply subsections 29(1) and 19(1)(b) to other portions of the records. The Commissioner recommended the Ministry continue to withhold or release records accordingly. The Commissioner also found that the Ministry met its obligation pursuant to section 8 of FOIP.

I BACKGROUND

[1] On March 28, 2019, the Ministry of Education (the Ministry) received the following access request from the Applicant:

I request all ministerial briefing notes, for the minister and the deputy minister, pertaining to Cornwall Alternative School.

[2] The requested time period for the records was between March 1, 2018 and March 28, 2019.

[3] On April 20, 2019, the Ministry provided its section 7 response to the Applicant, citing it was withholding portions of the records pursuant to sections 17, 18, 19 and 29 of *The Freedom of Information and Protection of Privacy Act* (FOIP).

- [4] On June 6, 2019, my office received a request for review from the Applicant.
- [5] On June 10, 2019, the Ministry clarified to the Applicant, in writing, it was withholding portions of the records pursuant to subsections 17(1)(a), 17(1)(b)(i), 17(1)(c), 17(1)(d), 17(1)(g), 18(1)(b)(i)(ii), 18(1)(e), 19(1)(b), 19(1)(f) and 29(1) of FOIP.
- [6] On June 13, 2019, my office provided notification to the Ministry of my office's intent to undertake a review. On the same date, my office also provided notification to the Third Party and to the Applicant.
- [7] In correspondence dated June 16, 2020, the Ministry advised the Applicant and my office that it was dropping its reliance on subsection 19(1)(f) of FOIP and released that portion of the records to the Applicant accordingly. The Ministry further advised it was dropping its reliance on subsections 19(1)(b) and 29(1) of FOIP to some parts of the records and released those parts to the Applicant as well.

II RECORDS AT ISSUE

- [8] The records include copies of four briefing notes totaling 13 pages to which the Ministry has applied exemptions. See the Appendix for a modified index/summary of findings.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [9] The Ministry of Education is a government institution pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Also, there is a third party, Cornwall Alternative School (Cornwall) as defined by subsection 2(1)(j) of FOIP. I, therefore, have jurisdiction to conduct this review.

2. Did the Ministry properly apply subsection 29(1) of FOIP to the records?

[10] Subsection 29(1) of FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an information request made by someone else. Pursuant to subsection 29(1) of FOIP, the government institution is required to have consent of the individual whose personal information is contained in the record. 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.

[11] To rely on subsection 29(1) of FOIP, the first step is to confirm that the information in question qualifies as third party personal information pursuant to section 24 of FOIP. The list of examples of personal information provided at subsection 24(1) of FOIP are not meant to be exhaustive. This involves addressing if the information has both of the following:

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

[12] *Identifiable* means it must be reasonable that a person may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies them or enables an accurate inference to be made about their identities when combined with other available sources of information or because of the context of the information in the record. *Personal in nature* means that the information reveals something personal about the individual.

[13] The Ministry has applied subsection 29(1) of FOIP to portions of the records as follows (see the Appendix for the portions of each page where the Ministry has applied the exemption):

- Briefing note two – page 3; and
- Briefing note three – pages 3 and 5.

[14] I note the Ministry has also applied subsection 19(1)(b) of FOIP to the same information. If I find that subsection 29(1) of FOIP was not properly applied to this information, I will consider it, pursuant to subsection 19(1)(b) of FOIP in the next section of this Report.

[15] In support of its exemptions and severance in these parts of the records, the Ministry stated the following:

The pages indicated contain [XXXXXX]... As a result of the small cell sizes of this information, release of this information could potentially result in disclosure of personal information including [XXXXXX].

[16] In support of its application of subsection 29(1) of FOIP, the Ministry stated the following:

[The Ministry] submits that pursuant to subsection 24(1)(b) an individual's education history is personal information and a portion of a record is withheld on this basis.

...

[T]he information in the record includes small class sizes, broken down by year and number of graduates which combined could reasonably disclose the identity of these students.

...

Additionally, in the table withheld in briefing note three page five is withheld as the combination of student's previous school division and small cell sizes could reasonably identify students.

[17] Subsection 24(1)(b) 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:

...

(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;

[18] For information to be personal information pursuant to subsection 24(1)(b) of FOIP, it needs to reveal the education history of an identifiable individual. In Investigation Report LA-2013-003 at paragraph [25], the former Commissioner adopted the definition of "education history" from Alberta's *FOIP Guidelines and Practices* (2009), which I agree with. The definition provides:

Educational history refers to any information regarding an individual’s schooling and formal training, including names of schools, colleges or universities attended, courses taken and results achieved.

[19] In the matter before me, the Ministry has withheld the following information pursuant to subsection 29(1) of FOIP:

- Briefing note two, page 3 and briefing note three, page 3: columns titled “Cohort Size” and “#Graduates” from tables describing graduation rates; and
- Briefing note three, page 5 – entire table that describes, “Cornwall’s enrolment and student’s previous school division as of March 13, 2019”. I note that the Ministry released to the Applicant what information the table contains, but not the contents of the table itself.

[20] Upon review of the redacted information, it does not appear to contain data elements, even when combined with other education-type information, that could reasonably lead to the identification of an individual, nor has the Ministry explained how that would occur. Thus, I find that the Ministry has not properly applied subsection 29(1) of FOIP to the portions of information on page 3 of briefing note two, and to the portions of information on pages 3 and 5 of briefing note three, (see the Appendix). I will, however, consider the same portions of information in the next section pursuant to subsection 19(1)(b) of FOIP.

3. Did the Ministry properly apply subsection 19(1)(b) of FOIP to the records?

[21] Subsection 19(1)(b) of FOIP is a mandatory, class-based exemption that permits refusal of access in situations where a record contains financial, commercial, scientific, technical or labour relations information that was supplied in confidence to a government institution by a third party. Subsection 19(1)(b) of FOIP provides:

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

...

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

[22] To determine if subsection 19(1)(b) of FOIP applies, my office suggests the following three-part test from my office's *Guide to FOIP*, Chapter 4 (updated February 4, 2020) (*Guide to FOIP*) at page 191:

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

[23] With respect to its application of subsection 19(1)(b) of FOIP, the Ministry stated, “[t]he record in question deals with financial information that was supplied in confidence implicitly by a third party, specifically Cornwall Alternative School and school divisions”.

[24] The Ministry has applied subsection 19(1)(b) of FOIP to portions of information in the records as follows (see the Appendix for the portions of each page where the Ministry has applied the exemption):

- Briefing note one – page 2;
- Briefing note two – pages 2 and 3; and
- Briefing note three – pages 1, 3 and 5.

[25] The Ministry applied subsection 19(1)(b) of FOIP to the same information in the portions of the records that I outlined at paragraphs [13] and [14]. I describe this information as rates of graduation at Cornwall. With respect to the application of subsection 19(1)(b) of FOIP to this information, the Ministry has not provided a direct argument for how the statistical information would constitute financial, commercial, scientific, technical or labour relations information, or how it would reveal any of these specific types of information. On the face of the records, it is not apparent to me how this is the case, either. Thus, the first part of the test for determining if subsection 19(1)(b) of FOIP applies has not been met. I find, therefore, that the Ministry has not properly applied subsection 19(1)(b) of FOIP to page 3 of briefing note two, and to pages 3 and 5 of briefing note three. I recommend the Ministry release this information to the Applicant (see the Appendix).

[26] This leaves me to consider the Ministry's application of subsection 19(1)(b) of FOIP on the following (see the Appendix for portions of each page where the Ministry has applied the exemption):

- Briefing note one – page 2;
- Briefing note two – page 2; and
- Briefing note three – page 1.

[27] In its submission, the Ministry stated the following in support of its reliance on this exemption for these portions of the records:

[t]he record in question deals with financial information that was supplied in confidence implicitly by a third party, specifically Cornwall Alternative School and school divisions.

[28] As the information in question is about a funding source of a third party as it relates to budget, it is financial in nature, and thus meets the first part of the test.

[29] With respect to the second part of the test – was the information provided by a third party – I must first consider the question of “compulsory supply” as it applies to this matter and the requirement that records are to be filed with the Minister under legislation.

[30] In my office's Guide to FOIP at page 197, “compulsory supply” is discussed and reference is made to Review Report 043-2015, in which my office considered whether information from the third party was required to be supplied to the Ministry of Environment. In that report, I stated that compulsory supply of information will not ordinarily qualify as third party information if legislation establishes the compulsory supply of that information. The information at question involves sources of funding received by Cornwall.

[31] According to the Government of Saskatchewan website, Cornwall is a registered independent school. Pursuant to subsection 2(b) of *The Education Act, 1995* (EA), a registered independent school is one that is registered pursuant to the EA and regulations. As per Schedule G, Order in Council 280/219, the Minister of Education has oversight for

the EA. Pursuant to subsection 9(1)(d) of the EA, registered independent schools must agree to be supervised by the Minister or an approved person. It appears, then, that Cornwall falls within the purview of both the EA and the Minister of Education.

[32] The relevant reporting requirements by registered independent schools can be found at subsections 10(1)(f) and (h) of *The Registered Independent Schools Regulations*, which provide:

10(1) A registered independent school may apply to the minister for a certificate of qualification as a qualified independent school if the registered independent school:

...

(f) agrees to submit annual financial statements to the minister, in the form and within the period required by the minister;

...

(h) prepares or causes to be prepared any reports and returns concerning statistical data, budgetary information and the operation of the registered independent school that may be required from time to time by the minister;

[33] Based on the aforementioned, it appears that registered independent schools, such as Cornwall, are required to report sources of funding to the Minister, which I would view as being compulsory supply.

[34] The Ministry, however, has argued the following:

Neufeld v Rifle Shot Oil Corp, 2019 SKCA 133 is a case that involved the Surface Rights Arbitration Board, which is a government institution. Section 30 of *The Surface Rights Acquisition and Compensation Act* (SRACA) requires that, where operators and owners/occupants enter into compensation agreements for certain surface rights, the agreements must be filed with the Board within 30 days of execution. In this case, the appellants sought access to such agreements, but the Board declined to grant access on the basis that FOIP applied and the records were exempt as third party information.

On appeal, one of the issues was whether these agreements that were required to be filed under section 30 were “a matter of public record” such that FOIP would not apply. ... The Court said that section 30 agreements do not become “matter[s] of public record” just because the Act requires that they be filed with the Board.

Although we are not dealing with records that are “a matter of public record” within the meaning of clause 3(1)(b) of FOIP, which would take them outside of FOIP. However, by analogy, we could argue that just because records are required to be filed

under legislation, that doesn't mean there is unregulated public access to them. It is important to note that there is nothing in *The Education Act, 1995* or *The Registered Independent Schools Regulations* that states that the financial information provided by the registered independent schools are public documents.

[35] I do not have to decide here whether the documents are public records. I do have to decide whether the documents are covered by an exemption under FOIP; in this case, whether subsection 19(1)(b) of FOIP applies. I have concluded the documents were compulsory supplied, so the only question left is whether they were supplied in confidence. Thus, is there evidence that the records were provided in confidence either implicitly or explicitly? I find there is not. As the second part of the test has not been met, I find that the Ministry has not properly applied subsection 19(1)(b) of FOIP to the funding information on page 2 of briefing note one, to page 2 of briefing note two, and to page 1 of briefing note three (see the Appendix). I recommend the Ministry release this information to the Applicant.

[36] I wish to add that, with respect to the Ministry's assertion that neither the EA nor *The Registered Independent Schools Regulations* state that financial information provided by registered independent schools is public information, while I agree that neither do state this, I am mindful that public accounts and other such information are public information, and are thus classified as such. This means that this type of information is available to the public, which is supported by the right of access pursuant to section 5 of FOIP.

4. Did the Ministry properly apply subsection 17(1)(c) of FOIP to the records?

[37] Subsection 17(1)(c) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government institution. It covers considerations related to the negotiations. 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.

[38] To determine if this exemption applies, my office suggests the following two-part test from my office's Guide to FOIP at page 132:

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?

[39] The Ministry applied subsection 17(1)(c) of FOIP to portions of information in the records as follows (see the Appendix for portions of each page where the Ministry has applied the exemption):

- Briefing note one – pages 1 and 2;
- Briefing note two – pages 1, 2 and 4;
- Briefing note three – pages 1, 2 and 4; and
- Briefing note four – all information on pages 1 and 2.

[40] In support of its application of subsection 17(1)(c) of FOIP to the information in these parts of the records, the Ministry stated the following in its submission:

The Ministry submits that the records where clause 17(1)(c) is relied on involve a plan, positions, procedures and considerations with respect to negotiations between the Ministry and Cornwall Alternative School. In the portions of the records indicated, there is a specific approach mentioned and the procedure and considerations and positions with respect to that approach are discussed, including the parties' involved perceived response to the approach. These negotiations involve the Government of Saskatchewan and another institution.

[41] A *position* is a point of view or attitude. It includes an opinion or way of regarding a situation or topic, or an opinion that is held in opposition to another in an argument or dispute.

[42] A *plan* is a formulated and especially detailed method by which a thing is to be done, or a detailed proposal for doing or achieving something. It is an intention or decision about what one is going to do.

[43] A *procedure* is an established or official way of doing something, or a series of actions conducted in a certain order or manner.

[44] A *consideration* is a careful thought or fact taken into account when making a decision.

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

[45] With respect to the information in briefing notes one, two and three to which the Ministry applied subsection 17(1)(c) of FOIP, it appears to me that it relates to a *plan* regarding Cornwall, how it will be undertaken and *considerations*. I would add it appears that the information in these portions also contains *positions* taken by various players. The first part of the test is met where the Ministry has applied subsection 17(1)(c) of FOIP to these portions of the records (see the Appendix).

[46] With respect to the information in briefing note four, the non-redacted *Issues* statement indicated that the briefing note comprised of “options for informing affected parties”. With this in mind, and upon review of the content, I do not consider this to be information that is plans, positions, procedures or considerations for the purposes of subsection 17(1)(c) of FOIP. As the first part of the test has not been met for this portion of the records (see the Appendix), I will consider the Ministry’s application of subsection 17(1)(a) of FOIP to this information in briefing note four in the next section of this Report.

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?

[47] A *negotiation* is a consensual bargaining process in which the parties attempt to reach an agreement on a disputed or potentially disputed matter. It can also be defined as dealings

between two or more parties for the purpose of reaching an understanding. It signifies a measure of bargaining power and a process of back and forth or give and take. *Developed* means to start to exist, experience or possess, while *for the purposes of* means intention or the immediate or initial purpose of something.

[48] Because it was not clear from the Ministry's submission, my office asked the Ministry to clarify what the negotiations entailed. The Ministry stated that as a result of the decision that had been made to cease funding, negotiations needed to occur or would need to occur between the Ministry and Cornwall with respect to the building. Negotiations also had to occur between the Ministry and the boards with respect to where Cornwall students would attend and what funding would be provided because of the alternative funding provided to Cornwall.

[49] Upon review of the non-severed portions of briefing notes one, two and three that were released to the Applicant, it is clear that they included information on Government's objective of "ceasing funding to Cornwall Alternative School", and that there is consideration for a "transition plan". The non-severed portions also indicated that discussions were occurring between the Ministry and the boards, and that, "[t]he educational services provided by Cornwall Alternative School to students can be provided by the local school divisions" and that "[t]he majority of students are referred to Cornwall Alternative Schools by Regina Public and Regina Catholic school divisions...". These parts also disclose the annual funding that the Ministry provided to Cornwall as part of its agreement.

[50] The preceding appears to support the notion that, as a result of ceasing its funding to Cornwall, negotiations occurred between the Ministry and Cornwall, as well as between the Ministry and the boards. In Review Report 056-2017, my office stated that for the purposes of this part of the test that the contractual or other negotiations can be concluded, ongoing or future negotiations. In this case, the negotiations would have been concluded as the decision to cease funding had already been made and later announced publicly. These negotiations would have also occurred on behalf of the Government of Saskatchewan. I am satisfied that the second part of the test has been met.

[51] I find, therefore, that the Ministry properly applied subsection 17(1)(c) of FOIP to the portions of information on pages 1 and 2 of briefing note one, pages 1, 2 and 4 of briefing note two and to pages 1, 2 and 4 of briefing note three (see the Appendix). I do not need to consider the other exemptions the Ministry has applied to the information on these portions of these pages in the records, and recommend the Ministry continue to withhold this information accordingly.

5. Did the Ministry properly apply subsection 17(1)(a) of FOIP to the records?

[52] Subsection 17(1)(a) of FOIP is a discretionary, class-based exemption that permits refusal of access where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council. Subsection 17(1)(a) 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;

[53] To determine if this exemption applies, my office suggests the following two-part test from the Guide to FOIP at page 120:

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?

[54] For this part of my analysis, I only need to consider if the Ministry properly applied subsection 17(1)(a) of FOIP to portions of information on pages 1 and 2 of briefing note four (see the Appendix for portions of each page where the Ministry has applied the exemption).

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

[55] In its submission, the Ministry applied the following rationale to the information in the portions of the records where it applied subsection 17(1)(a) of FOIP:

The records in question contains advice and recommendations about a particular institution funded by the Ministry. Specifically, the record contains an outline and analysis of options, stakeholder opinions, outcome a review of the particular program and plans as a result...

[56] As I noted at paragraph [46], the information in question involves options. In this context, *policy options* list alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They include matters such as the public servant's identification and consideration or evaluation of alternative decisions. Policy options can include a full range of options for a given decision, or a subset of alternatives that are, in the public servant's opinion, the most worthy of consideration. They can also include the advantages and disadvantages of a given option. Upon review of the information in briefing note four, I am satisfied that the information qualifies as policy options and that the first part of the test has been met.

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?

[57] To be *developed by or for* means that the policy options must be created either: 1) within the government institution; or 2) outside the government institution, but for the government institution. The person developing the information should be an official, officer or employee of the government institution, be contracted to provide services, or engaged in an advisory role.

[58] The information should also be: 1) either sought or expected, or be part of the responsibility of the person who prepared the record; 2) be prepared for the purposes of doing something; and 3) involve or be intended for someone who can take or implement the action. To satisfy this part, all three conditions are required to be met.

[59] Upon review of briefing note four, it is clear that it was prepared for the Minister, who can take and implement the action, by an individual employed by the Ministry. As the second part of the test has been met, I find that the Ministry properly applied subsection 17(1)(a) of FOIP to the information in briefing note four. I recommend the Ministry continue to withhold this information (see the Appendix). I do not need to consider any of the other exemptions the Ministry has applied to briefing note four.

6. Did the Ministry properly apply subsection 18(1)(e) of FOIP to the records?

[60] Subsection 18(1)(e) of FOIP is a discretionary, class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of a government institution. It also covers considerations related to the negotiations. Examples of information that could be covered by this exemption include positions developed by a government institution's negotiators in relation to labour, financial and commercial contracts. Subsection 18(1)(e) of FOIP provides:

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

...

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

[61] To determine if this exemption applies, my office suggests the following two-part test from my office's Guide to FOIP at page 173:

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?

[62] In the matter before me, the Ministry has applied subsection 18(1)(e) of FOIP to portions of information in the records as follows (see Appendix for portions of each page where the Ministry has applied the exemption):

- Briefing note two – pages 1 and 2; and
- Briefing note three – pages 1, 2 and 3

[63] In support of its application of subsection 18(1)(e) of FOIP to these parts of the records, the Ministry stated the following in its submission:

The record in question deals with an issue that involves current or expected contractual or other negotiations and its release could reasonably be expected to interfere with these contractual or other negotiations. The portions of the records in question contain positions, plans, criteria, instructions and considerations that were developed for the purpose of negotiations and they were developed by the Government of Saskatchewan in order to further their objectives in the negotiations.

Specifically, the record contains discussions between the Ministry and ... about future programming and funding, funding discussions between the Ministry and ... current and future financial statements...

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

[64] A *position* is a point of view or attitude, or an opinion or stand; a way of regarding situations or topics, or an opinion that is held in opposition to another in an argument or dispute.

[65] A *plan* is a formulated and especially a detailed method by which a thing is to be done. It is a detailed proposal for doing or achieving something, or an intention or decision about what one is going to do.

[66] *Criteria* are standards, rules, or tests on which a judgment or decision can be based or compared; a reference point against which other things can be evaluated.

[67] *Instructions* are decisions or orders.

[68] A *consideration* is a careful thought; a fact taken into account when making a decision.

[69] On the face of the record, it appears to me that the information the Ministry has withheld pursuant to subsection 18(1)(e) of FOIP in these portions of the records would normally be thought of as *plans* and *considerations* that relate to the negotiations, which meets the first part of the test.

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?*

[70] A *negotiation* is a consensual bargaining process in which parties attempt to reach agreement on a disputed or a potentially disputed matter. It can also be defined as dealings between two or more parties for the purpose of reaching an understanding. It signifies a measure of bargaining power and a process of back and forth, give and take discussion. *Relate to* means that there is some connection between the information and the negotiations. The negotiations can be concluded, ongoing or future discussions.

[71] *For the purpose of* means for the immediate or initial purpose of something. *On behalf of* means that a person does something on behalf of another person.

[72] As I mentioned at paragraph [50] of this Report, the Ministry stated that negotiations with respect to funding and locating students were undertaken as a result of the decision to cease funding to Cornwall. Similarly, the considerations in this part of the records appears to be tied to the same negotiation that had occurred. Thus, the second part of the test has been met; I find that the Ministry has properly applied subsection 18(1)(e) of FOIP to the portions of information on pages 1 and 2 of briefing note two, and to pages 1, 2 and 3 of briefing note three. I recommend the Ministry continue to withhold this information (see the Appendix). I do not need to consider the other exemptions of FOIP that the Ministry has applied to these portions of the records.

7. Did the Ministry meet its obligation pursuant to section 8 of FOIP?

[73] Section 8 of FOIP provides:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[74] When a government institution receives an access request, it must complete a line-by-line analysis of the responsive records to comply with section 8 of FOIP. Through this, the government institution must determine where mandatory or discretionary exemptions apply and sever those portions accordingly. Once it does this, it has to release the remainder to the Applicant.

[75] In the matter before me, it is apparent that the Ministry undertook a line-by-line review, having released to the Applicant the portions to which it did not apply its exemptions. I note that the Ministry has not provided severance to the issues statement, key messages and header/footer information of each briefing note and released those portions in full to the Applicant, for which I commend them.

[76] I am satisfied that the Ministry has undertaken a line-by-line review of the records, and find that it met its obligation pursuant to section 8 of FOIP.

IV FINDINGS

[77] I find that the Ministry has not properly applied subsection 29(1) of FOIP to the portions of information on page 3 of briefing note two, and to pages 3 and 5 of briefing note three (see Appendix).

[78] I find that the Ministry has not properly applied subsection 19(1)(b) of FOIP to the portions of information on page 2 of briefing note one, to page 2 of briefing note two, to pages 1, 3 and 5 of briefing note three (see Appendix).

[79] I find that the Ministry has properly applied subsection 17(1)(c) of FOIP to the portions of information on pages 1 and 2 of briefing note one, to pages 1, 2 and 4 of briefing note two, and to pages 1, 2 and 4 of briefing note three (see Appendix).

[80] I find that the Ministry has properly applied subsection 17(1)(a) of FOIP to the information in briefing note four (see Appendix).

[81] I find that the Ministry has properly applied subsection 18(1)(e) of FOIP to the portions of information on pages 1 and 2 of briefing note two, and to pages 1, 2 and 3 of briefing note three (see Appendix).

[82] I find that the Ministry met its obligation pursuant to section 8 of FOIP.

V RECOMMENDATION

[83] I recommend the Ministry continue to withhold or release information as I have identified in the Appendix.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of June, 2020.

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

Appendix

	Page Number	Portion on Page	Exemptions Applied by Ministry	Exemption found to Apply	Recommendation
Briefing Note One	1	A	17(1)(c) 17(1)(d) 17(1)(g)	17(1)(c)	Withhold
	2	A	19(1)(b)	None	Release
		B	17(1)(c) 17(1)(d) 17(1)(g)	17(1)(c)	Withhold
Briefing Note Two	1	A	17(1)(a) 17(1)(b) 17(1)(c) 17(1)(d) 17(1)(g) 18(1)(b) 18(1)(e)	17(1)(c)	Withhold
		B	18(1)(b) 18(1)(e)	18(1)(e)	Withhold
		C	17(1)(a) 17(1)(b) 17(1)(c) 17(1)(d) 17(1)(g)	17(1)(c)	Withhold
	2	A	19(1)(b)	None	Release
		B	18(1)(b) 18(1)(e)	18(1)(e)	Withhold
		C	17(1)(a) 17(1)(b) 17(1)(c) 17(1)(d) 17(1)(g)	17(1)(c)	Withhold
	3	A	19(1)(b) 29(1)	None	Release
	4	A	17(1)(a) 17(1)(b)	17(1)(c)	Withhold

			17(1)(c) 17(1)(d) 17(1)(g)		
Briefing Note Three	1	A	17(1)(a) 17(1)(b)(i) 17(1)(c) 17(1)(d) 17(1)(g)	17(1)(c)	Withhold
		B	19(1)(b)	None	Release
		C	18(1)(b) 18(1)(e)	18(1)(e)	Withhold
		D	17(1)(a) 17(1)(b) 17(1)(c) 17(1)(d) 17(1)(g)	17(1)(c)	Withhold
	2	A, B, C	17(1)(a) 17(1)(b) 17(1)(c) 17(1)(d) 17(1)(g)	17(1)(c)	Withhold
		D	18(1)(b) 18(1)(e)	18(1)(e)	Withhold
	3	A	19(1)(b) 29(1)	None	Release
		B	18(1)(b) 18(1)(e)	18(1)(e)	Withhold
	4	A	17(1)(a) 17(1)(b) 17(1)(c) 17(1)(d) 17(1)(g)	17(1)(c)	Withhold
	5	A	19(1)(b) 29(1)	None	Release
Briefing Note Four	1	A (Entire)	17(1)(a) 17(1)(b)	17(1)(a)	Withhold

			17(1)(c) 17(1)(d) 17(1)(g)		
	2	A (Entire)	17(1)(a) 17(1)(b) 17(1)(c) 17(1)(d) 17(1)(g)	17(1)(a)	Withhold