



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 187-2019

Ministry of Central Services

April 30, 2020

Summary:

The Ministry of Central Services (the Ministry) responded to an access to information request by providing some records to the Applicant and applying subsections 16(1)(d)(i), 17(1)(a), 17(1)(b)(i), 17(1)(b)(iii) and 17(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to other portions of the record. The Commissioner found that only subsections 16(1)(a), 17(1)(b)(i) and (iii) of FOIP applied to portions of the record. He also found that the Ministry did not comply with section 8 of FOIP. The Commissioner recommended that the Ministry develop a procedure to ensure that it is meeting its obligation under section 8 of FOIP for every access to information request it processes. He also recommended that the Ministry withhold and release certain records.

I BACKGROUND

- [1] The Commissioner has identified a potential conflict with the subject material of the records in this review. The Commissioner has taken no part in this review and has delegated the Director of Compliance to make all decisions related to this review. The only thing that has occurred is that the final Report has been issued under the Commissioner's name after being reviewed and approved by the Director of Compliance.
- [2] On February 22, 2019, the Ministry of Central Services (the Ministry) received an access to information request for, "all correspondence between [the Deputy Minister of Central Services (DM) and Chairman of the Provincial Capital Commission (PCC)] and the

Minister of Central Services or the Minister's Chief of Staff (including CCs) related to Brandt and/or [Canadian National Institute for the Blind (CNIB)] and/or Brandt's Wascana building project and/or [names of two specific individuals related to Brandt]." The timeframe of the request was from August 22, 2018 to present.

[3] On April 23, 2019, the Ministry responded to the Applicant. It provided some responsive records to the Applicant, but withheld seven documents in their entirety pursuant to subsections 16(1)(d)(i), 17(1)(a), 17(1)(b)(i), 17(1)(b)(iii) and 17(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[4] On May 28, 2019, the Applicant requested a review by my office of the exemptions applied by the Ministry. On June 19, 2019, my office notified the Applicant and the Ministry that the office would be undertaking a review.

II RECORDS AT ISSUE

[5] The Ministry identified 26 pages of records which it withheld in full pursuant to subsections 16(1)(d)(i), 17(1)(a), 17(1)(b)(i), 17(1)(b)(iii) and 17(1)(c) of FOIP. See Appendix A for more details.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction in this matter?

[6] The Ministry qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction in this matter.

2. Do subsections 16(1)(a) or (d) of FOIP apply to the record?

[7] Relevant portions of subsection 16(1) of FOIP provides:

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

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

...

(d) records that contain briefings to members of the Executive Council in relation to matters that:

(i) are before, or are proposed to be brought before, the Executive Council or any of its committees; or...

[8] The Ministry applied subsection 16(1)(d)(i) of FOIP to an email chain totaling three pages. There are seven emails in the chain that are between the DM and the Chief of Staff for the Minister of Central Services (the Minister). The Ministry withheld the three pages in their entirety.

[9] The following two-part test can be applied when reviewing the application of subsection 16(1)(d)(i) of FOIP:

1. Does the record contain briefings to members of Cabinet in relation to matters that are before, or are proposed to be brought before, Cabinet or any of its committees?
2. Does the record contain briefings to members of Cabinet on matters that relate to the making of government decisions or the formulation of government policy?

[10] My office's *Guide to FOIP, Chapter 4* (updated February 4, 2020), at page 111 defined "briefing" as a written summary of short duration; concise; using few words; a summary of facts or a meeting for giving information or instructions. An example would be a briefing note.

[11] Proposed means something offered for consideration or acceptance, a suggestion.

[12] Executive Council means the Executive Council appointed pursuant to *The Executive Government Administration Act*. It consists of the Premier and Cabinet Ministers. Executive Council is also referred to as "Cabinet".

- [13] In its submission, the Ministry indicated that Chief of Staff to the Minister had requested that the DM provide a response on a certain issue. The Ministry noted that it is clearly articulated in the request from the Minister's Office that the response would be shared with Cabinet members.
- [14] Upon review of the record, there are two emails in the string that might qualify as a briefing (emails 4 and 5 of the chain) as they contain summaries of facts. However, I disagree with the Ministry's assertion that these emails in particular emails were explicitly intended for Executive Council. The other emails do not qualify as briefings and there is no indication that the rest of the emails are proposed to be brought before Executive Council.
- [15] Further, in Review Report 021-2015, I considered an Order PO-2677 from the Ontario Information and Privacy Commissioner's Office that noted the phrase "are before, or are proposed to be brought before," suggests present or future tense. This record would likely not apply to record already presented to and dealt with by the Executive Council or its committees. The Ministry's submission did not address this in its submission. Therefore, I am not persuaded that subsection 16(1)(d)(i) of FOIP applies to the record.
- [16] However, subsection 16(1) of FOIP is a mandatory exemption. In other words, if the information in question is covered by the exemption and the conditions for the exercise of discretion do not exist, then the information must not be disclosed. I will consider the application of subsection 16(1)(a) of FOIP to the same records to which the Ministry has applied subsection 16(1)(d) of FOIP.
- [17] When reviewing subsection 16(1)(a) of FOIP, the following two part test can be applied:
1. Does the record contain advice, proposals, recommendations, analyses or policy options?
 2. Was the record created to present to Cabinet or any of its committees?
- [18] My office has defined "advice" as 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.

[19] Advice includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.

[20] Advice has a broader meaning than recommendations. The legislative intention was for advice to have a distinct meaning from recommendations. Otherwise, it would be redundant. While “recommendation” is an express suggestion, “advice” is simply an implied recommendation.

[21] Upon review of the record, the second email in the string (that appears at the top of page 26) of the record qualifies as advice because it includes the views or opinions of a public servant as to the range of policy options which could be considered by the decision maker, even though it does not include a specific recommendation on which option to take. This email meets the first part of the test. However, the remainder of the email chain does not qualify because they involve discussions of factual events or instructions.

[22] My office’s *Guide to FOIP, Chapter 4* (updated February 4, 2020), at page 97 states that records that contain advice developed from sources outside of the Executive Council for presentation to the Executive Council are intended to be covered by the provision. Further, a draft memorandum that was created for the purpose of presenting proposals and recommendations to Cabinet but that was never actually presented to Cabinet remains a confidence. Equally, a memorandum in final form is a confidence even if it has not been presented to Cabinet.

[23] The first email on page 26, which precedes the email in question, indicates that the information was sought for the Minister to share with Executive Council. Therefore, I am satisfied that the second part of the test is met.

[24] I find that subsection 16(1)(a) of FOIP applies to the first email on page 26 of the record.

3. Does subsection 17(1)(b) of FOIP apply to the record?

[25] 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;

...

(iii) the staff of a member of the Executive Council;

[26] The Ministry has applied either subsection 17(1)(b)(i) or (iii) of FOIP to 24 pages of the record in their entirety (see Appendix A for details).

[27] When reviewing subsection 17(1)(b) of FOIP, the following two part test can be applied:

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

[28] I also note that subsection 17(1)(b) of FOIP does not generally apply to records or parts of records that in themselves reveal only that:

- a consultation or deliberation took place at a particular time;
- particular persons were involved; or
- a particular topic was involved.

[29] If releasing this type information reveals the substance of the consultations or deliberations, the government institution can withhold this information. However, in a review by my office, the government institution should demonstrate how and why release of this type of information would reveal the substance of the consultations and/or deliberations. Consultations and deliberations can be revealed in two ways:

1. the information itself consists of consultations or deliberations; or
2. the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual consultations or deliberations.

1. Does the record contain consultations or deliberations?

[30] In its submission, the Ministry indicated that the information in question qualifies as both consultations and deliberations.

[31] My office has said that a “consultation” means the action of consulting or taking counsel together: deliberation, conference; or a conference in which the parties consult and deliberate.

[32] 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. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation.

[33] A “deliberation” means the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision; the consideration and discussions of the reasons for and against a measure by a number of councillors. A deliberation can occur when there is a discussion

or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

Second email string (pages 3 to 7)

- [34] The second email string is five pages and contains seven emails. These emails involve the Executive Director of Communications for the Ministry and various employees of the Ministry, as well as an employee of Executive Council.
- [35] The first, fifth and sixth emails in the string are written by the Executive Director of Communications. The first email outlines inquiries from the public, including the Applicant, and suggests responses. The fifth email provides another inquiry by a member of the public. The Executive Director of Communications provides a suggested response in the sixth email. The other emails are short and either acknowledge the responses or imply a decision or direction in relation to the proposed responses.
- [36] The Ministry's submission indicated that this email string contained candor that was part of the Ministry's deliberations and consultations to reach a collective decision regarding the responses to be given to questions from the public.
- [37] The email headers and signature lines of each email in this email string do not qualify as consultations or deliberations. As noted, subsection 17(1)(b) of FOIP does not apply to information that reveals that a consultation took place, the individuals involved or the topics discussed. Further, the short email that acknowledge responses or implies a decision or direction does not qualify as consultations or deliberations. The first part of the test is not met for to these portions of the record. This applies to all of the emails at issue in this review, even apart from this particular email string.
- [38] With respect to the portions of the emails that provide the requests from the public, it is factual that the Ministry received these inquiries. Therefore, they do not qualify as consultations or deliberations.

- [39] Further, the Applicant was one of the individual's that made one of the inquiries. In Review Report 027-2016 and Review Report 059-2017, my office indicated that it would be an absurd result to withhold information from the Applicant that they had either supplied or already has knowledge of what was discussed. It follows that withholding the parts of the record that constitute the inquiries written by the Applicant is an absurd result. The first part of the test is not met for to these portions of the record.
- [40] Finally, the responses drafted for approval contain factual information. In Review Report 086-2019, my office indicated that background and factual information captured in meeting minutes or draft documents, that do not explain the pros or cons of adopting the draft, are all examples of information that do not qualify as consultations or deliberations under subsection 17(1)(b)(i) of FOIP. In this case, the responses proposed in the first and sixth email simply propose responses and do not explain the pros and cons of sending these responses. The first part of the test is not met.
- [41] I find that subsections 17(1)(b)(i) and (iii) of FOIP do not apply to pages 3 to 7 of the record.

Third email string (pages 8-14) and Fourth email string (pages 15 to 17)

- [42] The third email string in the record is seven pages long and contains 21 emails. The fourth email string is three pages and contains four emails. These emails are similar to those in the second email string and discuss the inquiries of the Applicant and potential responses to those inquires.
- [43] Again, the Ministry's submission indicated that this email string contained candor that was part of the Ministry's deliberations and consultations to reach a collective decision regarding the responses to be given to questions from the public.
- [44] The first four emails of the third string are emails either written by or directly to the Applicant. There are other portions of the email string that also contain questions written

by the Applicant. The first email of the fourth string also contains questions written by the Applicant. It would be an absurd result to withhold these portions of the record.

[45] Also, with respect to the last three emails of the fourth email string, I reiterate that subsection 17(1)(b) of FOIP does not apply to information that reveals that a consultation took place, the individuals involved or the topics discussed. As such, these emails do not qualify as consultations or deliberations and the first part of the test is not met.

[46] Emails 11, 12, 14 and 15 of the third email string (found on pages 10 and 11 of the record) contain some discussion about the how best to respond to the Applicant. Upon review of the record, the emails include consultations about prospective future actions and outcomes in response to a developing situation. I am persuaded that they constitute consultations. The first part of the test is met for portions of the text in emails 11, 12, 14 and 15 of the third email string.

Fifth email string (pages 18 to 20)

[47] This email string consists of two emails. In the first email, the Executive Director of PCC conveys factual information to the DM. The DM then forwards the information on and makes a comment about the factual information.

[48] In its submission, the Ministry indicated that these emails constituted consultations and deliberations and were all specifically created to augment and support the decision making.

[49] The first email appears to be factual in nature and does not qualify meet the test as a consultation or a deliberation. The second email passes the factual information along and makes an observation about the factual information. However, the comment does not reveal the DM's thoughts on any potential action or decision to be made. As such, the second email does not qualify as consultations or deliberations. The first test is not met and subsection 17(1)(b) of FOIP does not apply to the fifth email string.

Sixth email string and attachment (pages 21 to 23)

- [50] The sixth email string is two pages with two emails. The first is between the Executive Director of PCC and the DM. The DM then forwards the information on to the Minister's office. There is also a one page attachment which is a signed letter from PCC to the CNIB.
- [51] The Ministry applied subsections 17(1)(b)(i) and (iii) of FOIP to these pages in their entirety. In its submission, it indicated that the DM was "providing evidence" to the Minister's office about information that had been communicated to outside organizations. It did not explain how this information qualified as consultations or deliberations.
- [52] The first email in the chain contains factual information about information given to outside organizations by the PCC and others. In its submission, the Ministry described this information as evidence; I agree. As such, it does not qualify as consultations or deliberations. Further, the second short email simply describes what information is in the first email and forwards it on. It is also factual information. The first part of the test is not met.
- [53] The letter that is attached is communicates a decision and next steps to CNIB. This does not qualify as consultations or deliberations. The first part of the test is not met.

Seventh email string (pages 24 to 26)

- [54] The seventh email string is three pages long and consists of seven emails. The Ministry has applied subsections 17(1)(b)(i) and (ii) of FOIP to the entire seven pages. In its submission, the Ministry describes the records as the DM responding to the Minister's request. In response, the DM provides options that were to be presented to Cabinet. I agree that the Ministry's description fits the first two emails in the string. I have already found that subsection 16(1)(a) of FOIP applies to the text of the second email; therefore, I will not consider whether subsections 17(1)(b)(i) and (iii) of FOIP also apply.

[55] The first email was a request of the Ministers office of the DM. The second email provides a response. The next two emails in the string continues the discussion of options and steps to take. I am satisfied that the first, third and fourth emails in the string qualify as consultations because they include a discussion about prospective future actions and outcomes in response to a developing situation.

[56] The last three emails in the chain either provide factual information, provide direction or confirm that the direction will be followed. They do not qualify as consultations or deliberations.

[57] The first test is met for the text of the first, third and fourth emails in the seventh email string. I find that subsection 17(1)(b) of FOIP does not apply to the remainder of the email string.

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?

[58] I have found that the first part of the test has been met for emails 11, 12, 14 and 15 of the third email string and for emails 1, 3 and 4 of the seventh email string. In order to find that subsections 17(1)(b)(i) and (iii) of FOIP apply to these portions of the record, I must also find that they meet the second part of the test.

[59] “Employee of a government institution”, as defined by subsection 2(1)(b.1) of FOIP, means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution.

[60] The phrase “the staff of a member of the Executive Council” includes the staff in a Minister’s office, such as chief of staff, administrative assistants and ministerial assistants.

[61] There is nothing in the exemption that limits the exemption to participation only of officers or employees of a government institution, a member of the Executive Council, or the staff

of a member of the Executive Council. Collaboration with others is consistent with the concept of consultation.

[62] With respect to the emails in the third email chain, the Ministry's submission indicated that the emails were between government officials and the Minister's Office. Upon review of the record, it is clear that the consultations involved both employees of the Ministry as well as the staff of a member of the Executive Council. It also includes employees of Executive Council and PCC. The second test is met with respect emails 11, 12, 14 and 15 of the third email chain.

[63] Emails 1, 3 and 4 of the seventh email chain were between the DM and the Chief of Staff for the Minister. Therefore, the consultations involve both an employee of the Ministry and staff of a member of Executive Council. The second test is met for these parts of the record.

[64] I find subsections 17(1)(b)(i) or (iii) apply to the text of emails 11, 12, 14 and 15 of the third email string and the 1, 3, and 4 emails of the seventh email string.

4. Does subsection 17(1)(a) of FOIP apply to the record?

[65] 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;

[66] The Ministry has applied subsection 17(1)(a) of FOIP to 20 pages of the record in its entirety.

[67] In reviewing subsection 17(1)(a) of FOIP, the following test can be applied:

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

[68] In its submission, the Ministry indicated that the information in question qualifies as advice, recommendations or proposals.

[69] I have provided my office's definition of advice above. My office's *Guide to FOIP, Chapter 4* (updated February 4, 2020), at page 121 also defines a "recommendation" as a specific piece of advice about what to do, especially when given officially; it is 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.

[70] A proposal is something offered for consideration or acceptance.

[71] I also note that 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.

[72] 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) of FOIP 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.

First email and attachment (pages 1-2)

[73] In its submission, the Ministry addressed the first email and attachment. The email was from the DM to the Chief of Staff of the Minister. The attachment is a draft letter to an external organization for the DM's signature. The Ministry submitted that the DM was providing a proposed or recommended draft version of a letter for review by the Minister responsible for Central Services.

[74] The first email had no text. The email header information does not qualify as proposals or recommendations. The first test is not met.

[75] With respect to the attachment, it is a draft letter that clarifies factual information for an external organization. It does not contain advice, recommendations or proposals. It contains factual information. As such, the first part of the test is not met. This is consistent with other findings involving draft letters such as my office's Review Report 017-2018 and Review Report 077-2018, where factual information in a draft letter does not qualify as advice or recommendations. The first test is not met.

[76] Subsection 17(1)(a) of FOIP does not apply to pages 1 and 2 of the record.

Second, third, fourth and fifth email strings (pages 3 to 20)

[77] The Ministry has applied subsection 17(1)(a) of FOIP to these emails in their entirety. I have found that subsections 17(1)(b)(i) and (iii) apply to portions of these records, so I must consider if subsection 17(1)(a) of FOIP applies to the remainder of these records. I have previously described these records in detail in this Report.

[78] The email headers and signature lines of each email do not qualify as advice, proposals or recommendations. Further, the short email that acknowledge responses or implies a decision or direction does not qualify as advice, proposals or recommendations.

[79] Emails that contain inquiries from the public, including the Applicant, are factual and do not qualify as advice, recommendations or proposals. Further, withholding any portion of the record written by or directly to the Applicant would produce an absurd result.

[80] The portions of these emails that contain responses drafted for approval contain factual information. Similar to the principle of the draft letter discussed earlier in this report, the text of this information does not contain advice, proposals or recommendations. Further, it appears that a portion of these responses have already been provided to the Applicant. The first part of the test is not met.

[81] These emails that convey factual information or provide an observation about the factual information but not a comment on the author's thoughts on any potential action or decision to be made do not count as advice, recommendations or proposals. Only emails that communicate a decision or next steps to an external organization does not qualify as advice, recommendations or proposals.

[82] I am not persuaded that any of the remaining portions of the record qualify as advice, recommendations or proposals. As such, the first part of the test is not met.

[83] I find that subsection 17(1)(a) of FOIP does not apply to the record.

5. Does subsection 17(1)(c) of FOIP apply to the record?

[84] 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;

[85] The following two-part test can be applied:

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?

[86] The Ministry applied this exemption to two pages of the record in their entirety. Its submission indicates that the information qualifies as considerations and positions. It also indicated that it is negotiating a project jointly with PCC.

[87] My office has said that a position is a point of view or attitude. It is an opinion; stand; a way of regarding situations or topics; an opinion that is held in opposition to another in an argument or dispute. A consideration is a careful thought; a fact taken into account when making a decision. Thus, a record identifying the facts and circumstances connected to positions, plans, procedures, criteria or instructions could also fall within the scope of this provision.

[88] The first page to which the Ministry has applied subsection 17(1)(c) of FOIP is a blank email which contains only the email header. It does not qualify as positions or considerations.

[89] The attachment to this email is a draft letter to an external organization, other than PCC, to be signed by the DM. Earlier in this Report, I described this letter as clarifying factual information for an external organization. In other words, the letter provides clarity about the interpretation of the authority for decisions being made in relation to a project and steps that must be taken.

[90] In my office's Review Report 135-2019, I indicated that subsection 17(1)(c) of FOIP was meant to protect positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations and are strategies and pre-determined courses of action that would be discussed internally to a public body, and not shared with third parties. In this case, the Ministry confirmed that the draft letter was sent to an external organization that has a stake in these negotiations surrounding the development of the CNIB building project. As such, I am not persuaded that the information is internal positions and considerations requiring protection during negotiations pursuant to subsection 17(1)(c) of FOIP; but rather, factual information communicated to an external organization. This information does not meet the first part of the test because the factual information does not qualify as considerations or positions.

[91] I find that subsection 17(1)(c) of FOIP does not apply to the record.

6. Did the Ministry meet its obligations under section 8 of FOIP?

[92] 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.

[93] When a government institution receives an access to information request, it must complete a line-by-line analysis of the responsive records to comply with section 8 of FOIP. Through this analysis, the government institution is required to determine where a mandatory or discretionary exemption applies and sever those specific portions of the records. Then, it is to release the remainder of the record to the Applicant.

[94] The Ministry withheld 26 pages of records in their entirety. In its submission, the Ministry did not address how the Ministry met its obligations under section 8 of FOIP.

[95] It looks to me that the Ministry took a blanket approach to withholding the records at issue. In other words, instead of conducting a line-by-line review of each record to apply

exemptions to only portions of the records, the Ministry withheld records in full. This approach does not comply with section 8 of FOIP.

[96] The rule is exceptions to the right of access should be limited and specific. This is supported by a number of Supreme Court of Canada and Federal Court of Appeal decisions. In addition, the Saskatchewan Court of Appeal also took a similar approach in *General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance* (1993), which provides at paragraph [11]:

The Act's basic purpose reflects a general philosophy of full disclosure unless information is exempted under clearly delineated statutory language. There are specific exemptions from disclosure set forth in the Act, but these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act. That is not to say that statutory exemptions are of little or no significance. We recognize that they are intended to have a meaningful reach and application. The Act provides for specific exemptions to take care of potential abuses. There are legitimate privacy interests that could be harmed by release of certain types of information. Accordingly, specific exemptions have been delineated to achieve a workable balance between the competing interests. The Act's broad provisions for disclosure, coupled with specific exemptions, prescribe the "balance" struck between an individual's right to privacy and the basic policy of opening agency records and action to public scrutiny.

[97] I find that the Ministry has not met its obligations under section 8 of FOIP. I recommend that the Ministry develop a procedure to ensure that it is meeting its obligation under section 8 of FOIP for every access to information request it processes.

IV FINDINGS

[98] I find that subsections 16(1)(a), 17(1)(b)(i) and (iii) of FOIP apply to portions of the record and not to others.

[99] I find that subsections 16(1)(d)(i), 17(1)(a) and (c) of FOIP do not apply to the record.

[100] I find that the Ministry did not meet its obligations under section 8 of FOIP.

V RECOMMENDATIONS

[101] I recommend that the Ministry develop a procedure to ensure that it is meeting its obligation under section 8 of FOIP for every access to information request it processes.

[102] I recommend that the Ministry release and withhold records as described in Appendix A of this Report.

Dated at Regina, in the Province of Saskatchewan, this 30th day of April, 2020.

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

APPENDIX A

RECORD	PAGE OF THE RECORD	SUBSECTION(S) APPLIED BY THE MINISTRY	DOES IT APPLY?	RELEASE OR WITHHOLD
Email 1 (one page)	1	17(1)(a)	No	Release
		17(1)(c)	No	
Attachment to email 1 (one page)	2	17(1)(a)	No	Release
		17(1)(c)	No	
Email string 2 (five pages)	3	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
	4	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
	5	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
	6	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
	7	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
Email string 3 (seven pages)	8	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
	9	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
	10	17(1)(a)	No	Withhold text of email 12, 14 and 15 in the string only. Release remainder.
		17(1)(b)(i), (iii)	Yes – Text of emails 12, 14 and 15 in the string	
	11	17(1)(a)	No	Withhold text of email 11 in the string only. Release remainder.
		17(1)(b)(i), (iii)	Yes – Text of email 11 in the string	
	12	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
	13	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	
	14	17(1)(a)	No	Release
		17(1)(b)(i), (iii)	No	

RECORD	PAGE OF THE RECORD	SUBSECTION(S) APPLIED BY THE MINISTRY	DOES IT APPLY?	RELEASE OR WITHHOLD	
Email string 4 (three pages)	15	17(1)(a)	No	Release	
		17(1)(b)(i), (iii)	No		
	16	17(1)(a)	No	Release	
		17(1)(b)(i), (iii)	No		
	17	17(1)(a)	No	Release	
		17(1)(b)(i), (iii)	No		
Email string 5 (three pages)	18	17(1)(a)	No	Release	
		17(1)(b)(i), (iii)	No		
	19	17(1)(a)	No	Release	
		17(1)(b)(i), (iii)	No		
	20	17(1)(a)	No	Release	
		17(1)(b)(i), (iii)	No		
Email string 6 (two pages)	21	17(1)(b)(i), (iii)	No	Release	
	22	17(1)(b)(i), (iii)	No	Release	
Attachment to email string 6 (one page)	23	17(1)(b)(i), (iii)	No	Release	
Email string 7 (two pages)	24	16(1)(d)(i)	No	Release	
		17(1)(b)(i), (iii)	No		
	25	16(1)(d)(i)	No	Yes – Text of third and fourth email in the chain	Withhold text of third and fourth email in the chain only. Release remainder.
		17(1)(b)(i), (iii)			
	26	16(1)(d)(i)	Subsection 16(1)(a) applies to text only of second email in this chain		Withhold text of first and second email in this string only. Release remainder.
		17(1)(b)(i), (iii)	Yes – Text of first email in the chain		