



## **REVIEW REPORT 201-2020**

### **Ministry of Education**

**March 14, 2022**

#### **Summary:**

The Applicant submitted an access to information request to the Ministry of Education (Education) regarding access to documents related to funding for Kids Help Phone in 2019 and 2020. Education responded to the Applicant advising it was withholding information pursuant to sections 18(1)(b), (c), (d), 29(1), 17(1)(a), (b), (c), (g), 19(1)(b) and (c)(iii) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested the Commissioner review Education's decision to redact information from the record. The Commissioner found that section 19(2) of FOIP applies where the third party consents to the release of the pages and where Education did not apply other exemptions (pages 38, 39, 40 and 42). The Commissioner recommended that Education release the information on pages 38, 39, 40 and 42 of the record that were severed pursuant to section 19(1) of FOIP. The Commissioner also found that Education properly applied sections 17(1)(a) of FOIP to pages 2 and 3, 17(1)(b)(i) of FOIP to pages 3 and 4, 17(1)(c) of FOIP to pages 55 and 56, and 29(1) of FOIP to page 3. The Commissioner recommended that Education continue to withhold the information pursuant to those sections. In addition, the Commissioner found that Education did not properly apply sections 17(1)(a) of FOIP to pages 4 and 56, 18(1)(b) and 18(1)(d) of FOIP to pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56. The Commissioner recommended that Education release the withheld information under those sections to the Applicant.

#### **I BACKGROUND**

[1] On June 12, 2020, the Ministry of Education (Education) received the following access to information request from the Applicant:

According to public documents, the Government of SK, provided funding to the charity Kids Help Phone in 2019 or 2020. We are unsure of what department the funds came

from. This request for information, is for the following: A copy of documents related to the ask for funding:- The request received from KHP, the internal documents (if any) between Government discussing the request, and any documents sent to KHP from the Government, along with any documents related to agreements on what the Government funding must be used for.

- [2] On August 18, 2020, Education responded to the Applicant's access to information request indicating it was withholding records in part pursuant to sections 17(1)(a), (b), (c), (g), 18(1)(b)(ii), (c), (d), 19(1)(b), (c)(i), (ii), (iii) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP)
- [3] On August 21, 2020, the Applicant made a request for review to my office.
- [4] On August 25, 2020, my office provided notification to the Applicant and Education of my office's intent to undertake a review of Education's application of sections 17(1)(a), (b), (c), (g), 18(1)(b)(ii), (c), (d), 19(1)(b), (c)(i), (ii), (iii) and 29(1) of FOIP.
- [5] On September 4, 2020, Kids Help Phone indicated to my office that it did not object to the release of the third-party information related to it and was withheld by Education pursuant to sections 19(1)(b) and/or (c) of FOIP.

## **II RECORDS AT ISSUE**

- [6] The record at issue totals 20 pages. Education withheld portions of information on these pages pursuant to sections 17(1)(a), (b)(i), (c), (g), 18(1)(b), (c), (d), 19(1)(b), (c) and 29(1) of FOIP.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

- [7] Education is a "government institution" pursuant to section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

**2. Did Education properly apply sections 19(1)(b) and 19(1)(c) of FOIP to the records?**

[8] Education applied section 19(1)(b) and/or (c) of FOIP to pages 2, 3, 4, 11, 21, 22, 26, 36, 37, 38, 39, 40, 42, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56.

[9] Sections 19(1)(b) and (c) of FOIP provide:

**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;

(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with contractual or other negotiations of;

a third party;

**(2) A head may give access to a record that contains information described in section (1) with the written consent of the third party to whom the information relates.**

[Emphasis added]

[10] The third party identified by Education in this review is Kids Help Phone. As it appears that the third party advised Education via email on July 3, 2020 that it did not object to the release of the information in question, my office contacted the third party to confirm this understanding. On September 4, 2020, the third party advised, “we do not object.”

[11] On pages 38, 39, 40 and 42, Education withheld information pursuant to section 19(1)(b) and/or (c) of FOIP only. I will not consider the application of section 19(1) of FOIP to the

information severed on these pages as the third party has provided consent to release. Pursuant to section 19(2) of FOIP, I recommend Education release the information to the Applicant. However, Education also applied either section 17(1) or 18(1) of FOIP to the following pages it applied section 19(1) of FOIP: 2, 3, 4, 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, so further consideration of those pages is required.

### 3. Did Education properly apply section 17(1)(a) of FOIP to the records?

[12] Section 17(1)(a) of FOIP provides:

**17(1)** Subject to section (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

[13] Section 17(1)(a) 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 advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council (*Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated: April 30, 2021, at p. 123 (*Guide to FOIP*, Ch. 4)).

[14] My office uses the following two-part test to determine if section 17(1)(a) of FOIP applies:

1. Does the record 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

(*Guide to FOIP*, Ch. 4, pp. 124-126)

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

- [15] In its submission to my office, Education asserted that part of the information withheld on pages 2, 3, and 4 qualify as “advice”, and/or “analyses”. Education also asserted that part of the information withheld on page 56 qualifies as “policy options”.
- [16] “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” 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. “Analyses” is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements. “Policy options” are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant’s identification and consideration of alternative decisions that could be made (*Guide to FOIP*, Ch. 4, pp. 124-125).
- [17] From a review of pages 2 and 3, it appears the information withheld is a set of email messages that can be described as suggested courses of action, an assessment of budget considerations and/or preferred alternatives for budget allocation. The set of email messages qualify as advice and analyses. As such, the first part of the test is met for pages 2 and 3. From a review of page 4, the information appears to be preferred word choices in a service agreement, and third-party service descriptions. The withheld information does not qualify as advice or analyses. The first part of the test is not met for page 4 so I will not consider the second part of the test. From a review of page 56, the information withheld appears to be descriptions of different categories of data. Although data collected within the parameters of these categories could potentially inform alternative decisions, the information itself does not qualify as alternative decisions that could be made. Hence the information does not qualify as policy options. As such, the first part of the test is not met for page 56. I find that Education did not properly apply section 17(1)(a) of FOIP to the information withheld on page 56. I will conduct the second part of the test for pages 2 and 3 only.

**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?**

[18] “Developed by or for” means the advice and/or analyses must have been created either: 1) within the government institution, or 2) outside the government institution but for the government institution and at its request. 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, or otherwise have sufficient connection to the government institution (*Guide to FOIP*, Ch. 4, pp. 126-127).

[19] In its submission to my office, Education describes the information withheld on pages 2 and 3 as follows:

The information also includes advice, analysis and a proposed response developed by one Ministry employee for other Ministry employees as they are discussing the terms of a proposed agreement.

On pages 2-3 there are proposals on the amount to be paid for the contract as well as analysis between ministry employees on the budget for that contract...

The ministry employee provides advice on how the services should be tailored and distributed by the third party...

[20] From a review of pages 2 and 3, and the submission from Education, the advice and analyses originated from an Education employee. The information was also sent from an Education employee’s official government email address. As such, the second part of the test is met. I find that Education properly applied section 17(1)(a) of FOIP to the information withheld on pages 2 and 3. I recommend that Education continue to withhold information on those pages.

**4. Did Education properly apply section 17(1)(b)(i) of FOIP to the record?**

[21] Section 17(1)(b)(i) of FOIP provides:

17(1) Subject to section (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;

[22] Education partially withheld pages 3 and 4 of the record pursuant to section 17(1)(b)(i) of FOIP.

[23] Section 17(1)(b) 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 consultations or deliberations involving officers or employees of a government institution, a member of the 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 to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public (*Guide to FOIP*, Ch. 4, p. 131).

[24] My office uses the following two-part test to determine if section 17(1)(b)(i) of FOIP applies:

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?

(*Guide to FOIP*, Ch. 4, pp. 132-133)

[25] Below, I will determine if section 17(1)(b)(i) of FOIP applies to page 4 of the record.

***1. Does the information contain consultations or deliberations?***

[26] In its submission to my office, Education asserted that the information withheld on pages 3 and 4 contains a consultation between a third-party and an Education employee on terms of an agreement and proposed amendments to the agreement.

[27] “Consultation” means:

- The action of consulting or taking counsel together: deliberation, conference;
- A conference in which the parties consult and deliberate.

*(Guide to FOIP, Ch. 4, p. 132)*

[28] 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 *(Guide to FOIP, Ch. 4, p. 132)*.

[29] From a review of pages 3 and 4, it appears the information withheld includes dates and service elements that are being communicated by a third-party to an Education employee with the goal of getting feedback in order to arrive at a mutual conclusion. The information contains a consultation. As such, the first part of the test is met.

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

[30] In its submission to my office, Education asserted that the information withheld on pages 3 and 4 involved employees of Education.

[31] “Involving” means including. “Employee of a government institution” means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution *(Guide to FOIP, Ch. 4, p. 133)*.



[32] From a review of pages 3 and 4, the consultation includes an Education employee. The consultation is through email correspondence between a third-party and an Education employee. Hence, the consultation involves an employee of a government institution. As such, the second part of the test is met. Since both parts of the test are met, I find that Education properly withheld information on pages 3 and 4 pursuant to section 17(1)(b)(i) of FOIP. I recommend that Education continue to withhold the information.

**5. Did Education properly apply section 17(1)(c) of FOIP to the record?**

[33] Education partially withheld information on pages 55 and 56 pursuant to section 17(1)(c) of FOIP.

[34] Section 17(1)(c) of FOIP provides as follows:

**17(1)** Subject to section (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;

[35] Section 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 other instructions developed for the purpose of contractual or other negotiations by or on behalf of a government institution. It also covers considerations related to negotiations. Examples of the type of information that can be covered by this exemption are the various positions developed by a government institution's negotiators in relation to labour, financial and commercial contracts (*Guide to FOIP*, Ch. 4, pp. 136-137).

[36] My office uses the following two-part test to determine if section 17(1)(c) of FOIP applies;

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

(Guide to FOIP, Ch. 4, pp. 137-138).

[37] Below, I will determine if section 17(1)(c) of FOIP applies to pages 55 and 56.

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

[38] In its submission to my office, Education severed information from pages 55 and 56 of the record. Education indicated the following:

...the Ministry submits that the information that is being withheld represents the position of the Ministry with respect to the terms of the contract it was negotiating, including what it was prepared to pay for the services...

...Additionally, the statistics of the third party provided on pages 55-56 are part of the criteria, and the other redacted information represents plans, procedure and a proposed position. Although s. 17(1)(c) was not claimed as an exemption for all of the redactions on pages 55-56, the Ministry is claiming it now.

[39] “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. “Relate to” requires some connection between the information and the negotiations (*Guide to FOIP*, Ch. 4, p. 137).

[40] From a review of pages 55 and 56, it appears the redacted information includes factual demographic information, elements of service delivery and dollar amounts that were considered in the process of negotiations between Education and Kids Help Phone. The redacted information qualifies as considerations that relate to negotiations. As such, the first part of the test is met.

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

[41] In its submission to my office, Education indicated that information was redacted on pages 55 and 56 due to the following:

...The positions, plans, procedures, criteria, and instructions referred to in the paragraph above were developed by employees of the Ministry for the purpose of contractual or other negotiations that the Ministry entered into with [third party]

[42] “Developed” means to start to exist. Use of the word “developed” suggests the Legislature’s intention was for the provision to include information generated in the process leading up to the contractual or other negotiations (for example, draft versions). “For the purpose of” means intention; the intermediate or initial purpose of something. The negotiations can be conducted by the government or on behalf of the government. “On behalf of” means “for the benefit of”. A person does something “on behalf of” another when he or she does the thing in the interest of, or as a representative of, the other person (*Guide to FOIP*, Ch. 4, pp. 138-139).

[43] From a review of pages 55 and 56, and the submission from Education, it appears the information severed was generated by Education employees to be used as part of negotiation discussions with Kids Help Phone. Thus, the considerations were developed for the purpose of the contractual negotiations with Kids Help Phone by the Government of Saskatchewan. As such, the second part of the test is met. I find that Education properly applied section 17(1)(c) of FOIP to the information withheld on pages 55 and 56. I recommend that Education continue to withhold this information.

**6. Did Education properly apply section 18(1)(b) of FOIP to the record?**

[44] Education partially withheld 17 pages of the record pursuant to section 18(1)(b) of FOIP. These include pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56. Education did not provide an argument regarding the information withheld on page 45 pursuant to section 18(1)(b) of FOIP.

[45] Section 18(1)(b) of FOIP provides:

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

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use; and

(ii) that has monetary value or is reasonably likely to have monetary value;

[46] Section 18(1)(b) of FOIP is a discretionary class-based exemption. It permits refusal of access in situation where release of a record could reasonably be expected to disclose financial, commercial, scientific, technical or other information which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use and which has monetary value or is reasonably likely to have monetary value.

[47] My office uses the following three-part test to determine if section 18(1)(b) of FOIP applies:

1. Does the information contain financial, commercial, scientific, technical or other information?

2. Does the government institution have a proprietary interest or a right to use it?

3. Does the information have monetary value for the government institution or is it reasonably likely to?

*(Guide to FOIP, Ch. 4, pp. 164-166)*

[48] Below, I will determine if section 18(1)(b) of FOIP applies to pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56.

***1. Does the information contain financial, commercial, scientific, technical or other information?***

- [49] In its submission to my office, Education asserted that the redacted information on pages 11, 21, 22, 26, 36, 37, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 contain financial, commercial and other information. In its assertion, Education explained that the redacted information contains dollar amounts to be paid to a third party for services, and a description of those services.
- [50] “Financial information” is information regarding monetary resources, such as financial capabilities, assets, liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a particular party. “Commercial information” means information relating to the buying, selling or exchange of merchandise or services. This includes third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records (*Guide to FOIP*, Ch. 4, p. 164).
- [51] From a review of the pages listed in paragraph [44] of this Report, parts of the redacted information are dollar amounts and/or financial information related to the provision of services. It is also clear that parts of the redacted information are contractual discussions about service delivery such as client services, communication processes, and data reporting services provided by the third party to Education. This information is commercial information. Since the information withheld on the pages in paragraph [44] of this Report are financial or commercial information, the first part of the test is met. The information withheld on page 45 is instructions to open a particular pdf file. This information does not qualify as financial or commercial information. The information on page 45 does not meet the first part of the test. I find that Education did not properly apply section 18(1)(b) of FOIP to page 45 of the record.

***2. Does the government institution have proprietary interest or a right to use it?***

- [52] In its submission to my office, Education asserted that they have proprietary interest or right of use to parts of the redacted information on the pages listed in paragraph [44] of this Report. Education further explained that the redacted information is unique reporting and data that Education uses to make targeted programming decisions. Education indicated that

there is monetary value to Education as Education would require its own resources or another organization to complete the work. According to Education, the data itself has monetary value to Education as it uses this data to make programming decisions and potential implementation of programs. Finally, Education indicated that the Government of Saskatchewan and Education have a shared goal to address one of the main issues to which Education sought services from and negotiated payments with the third party.

[53] “Proprietary” means, relating to, or holding as property. “Proprietary interest” is the interest held by a property owner with all appurtenant rights, such as stockholder’s right to vote the shares. It signifies simply “interest as an owner” or “legal right or title”. “Owner” means someone who has the right to possess, use and convey something; a person in whom one or more interests are vested. “Right of use” means a legal, equitable, or moral title or claim to the use of property, or authority to use (*Guide to FOIP*, Ch. 4, pp. 165-166).

[54] Ontario’s *Freedom of Information and Protection of Privacy Act* section 18(1)(a) is similar to Saskatchewan’s, but instead of proprietary interest or right of use, it uses the phrase “that belongs to the Government of Ontario or an institution.” In Ontario [Order MO-1746](#), the phrase “belongs to” was found to mean “ownership” which makes it relevant for Saskatchewan’s section 18(1)(b) of FOIP. In Order MO-1746, the Adjudicator stated the following:

...For information to “belong to” an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense – such as copyright, trademark, patent or industrial design – or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business to business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop that information. (*Guide to FOIP*, Ch 4, pp. 165-166)

[55] From a review of Education’s submission and the pages listed in paragraph [44] of this Report, there are no trademarks, patent or industrial design on the dollar amounts and service descriptions communicated between Education and the third party. It appears there

is no confidential business information and inherent monetary value in the information to Education. Also, the third party did not object to the release of information as described in paragraph [5] of this Report. As such, the second part of the test is not met. As all three parts of the test must be met, I will not consider the third part of the test. I find that Education did not properly apply section 18(1)(b) of FOIP to the information withheld on the pages in paragraph [44] of this Report. Education also withheld the information pursuant to section 18(1)(d) of FOIP.

**7. Did Education properly apply section 18(1)(d) of FOIP to the records?**

[56] Education severed information from pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56.

[57] Section 18(1)(d) of FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution (*Guide to FOIP*, Ch. 4, p. 173).

[58] My office uses a two-part test to determine if section 18(1)(d) of FOIP applies:

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

(*Guide to FOIP*, Ch. 4, pp. 174-175).

***1. Are there contractual or other negotiations occurring involving the Government of Saskatchewan or a government institution?***

[59] In its submission to my office, Education asserted the following regarding the information withheld on pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56:

The contracts contained on pages 8-37 of the record were short-term contracts...and it is likely that the Ministry would contract with either Kids Help Phone or another service provider for similar services in future years. Therefore, the Ministry claims this exemption for future negotiations that are foreseeable.

[60] A “negotiation” is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted 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. Prospective or future negotiations could be included within this exemption, as long as they are foreseeable. It may be applied even though negotiations have not yet started at the time of the access to information request, including when there has not been any direct contact with the other party or their agent. However, a vague possibility of future negotiations is not sufficient. There must be a reasonable fact-based exception that the future negotiations will take place (*Guide to FOIP*, Ch 4, p. 174).

[61] From a review of the submission from Education and the pages listed in paragraph [55] of this Report, the negotiations between Education and Kids Help Phone has ended. Education did not articulate satisfactorily the likelihood of prospective or future negotiations other than the bare assertion that future negotiations were foreseeable. As such, the first part of the test is not met. Also, Education did not provide any argument to support the information being withheld on page 45 of the record pursuant to section 18(1)(d) of FOIP. The information on page 45 of the record is instructions to open a particular pdf file. This information does not qualify as a component of a “negotiation”. As such, the first part of the test is not met for the information withheld on page 45. As the first part of the test is not met for pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56, I will not conduct the second part of the test. I find that Education did not properly apply section 18(1)(d) of FOIP to the information withheld on the pages listed in this paragraph. As there are no other exemptions to consider, I recommend that Education release the information withheld on those pages.

**8. Did Education properly apply section 29(1) of FOIP to the records?**



[62] Section 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.

[63] Education severed information from page 3 of the record. Education indicated that parts of the information include an Education employee's personal telephone number and their personal activities. Education applied section 29(1) of FOIP to the withheld information.

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

[65] Relevant portions of section 24(1) of FOIP are as follows:

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

...

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

...

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

[66] From a review of page 3, Education's submission and an internet search for the employee's work number which did not match the telephone number on page 3, it is clear that part of the redacted information is an Education employee's personal telephone number which is personal information pursuant to section 24(1)(e) of FOIP. It is also clear from a review of page 3 that part of the redacted information describes an Education employee's private activity that does not relate to their job duties at Education. This would constitute personal information pursuant to section 24(1)(g) of FOIP. As such, I find that Education properly

applied section 29(1) of FOIP to the information withheld on page 3. I recommend Education continue to withhold this information pursuant to section 29(1) of FOIP.

[67] I did not consider information that was withheld pursuant to section 17(1)(g) of FOIP since I found that other sections of 17(1) of FOIP were properly applied to the same information.

#### **IV FINDINGS**

[68] I find that section 19(2) of FOIP applies where the third party consents to the release of the pages and where Education did not apply other exemptions (pages 38, 39, 40 and 42).

[69] I find that Education did not properly apply section 17(1)(a) of FOIP to the information withheld on pages 4 and 56 of the record.

[70] I find that Education properly applied section 17(1)(a) of FOIP to the information withheld on pages 2 and 3 of the record.

[71] I find that Education properly applied section 17(1)(b)(i) of FOIP to the information withheld on pages 3 and 4 of the record.

[72] I find that Education properly applied section 17(1)(c) of FOIP to the information withheld on pages 55 and 56 of the record.

[73] I find that Education did not properly apply section 18(1)(b) of FOIP to the information withheld on pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 of the record.

[74] I find that Education did not properly apply section 18(1)(d) of FOIP to the information withheld on pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 of the record.

[75] I find that Education properly applied section 29(1) of FOIP to the information withheld on page 3 of the record.

## **V RECOMMENDATIONS**

[76] I recommend that Education release the information on pages 38, 39, 40 and 42 of the record that were severed pursuant to section 19(1) of FOIP.

[77] I recommend that Education continue to withhold the information on pages 2, 3, 4, 55 and 56 of the record that were severed pursuant to sections 17(1)(a), (b)(i), (c), and 29(1) of FOIP.

[78] I recommend that Education release the information on pages 11, 21, 22, 26, 36, 37, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 of the record that were severed pursuant to sections 18(1)(b) and 18(1)(d) of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 14<sup>th</sup> day of March, 2022.

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