Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 244-2018

Ministry of Health

October 10, 2019

Summary: The Ministry of Health (the Ministry) received an access to information request for records relating to the pan-Canadian Pharmaceutical Alliance (pCPA) and the negotiation of pharmaceuticals for Gaucher Disease. The Ministry applied subsections 13(1)(b), 14(a), 17(1)(a), (b), (c), 18(1)(d), (e), 19(1)(a), (b), (c)(i), (ii), (iii), 22(a), (b) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to portions of the record. The Commissioner found that subsections 17(1)(b)(i), 18(1)(e) and 22(a) of FOIP applied to portions of the record and recommended release of the rest.

I BACKGROUND

[1] On June 26, 2018, the Ministry of Health (the Ministry) received an access to information request for the following:

> pCPA Competitive Value Process for Drugs for Gaucher Disease… copies of the following for the period November 1, 2017 to the present:
>
> All correspondence, internal memoranda, notes, reports, calendars, briefing notes and the like by or from the Ministry of Health concerning Saskatchewan's participation in the pan-Canadian Pharmaceutical Alliance (pCPA) deliberations relating to the pCPA Competitive Value Process for Drugs for Gaucher Disease and its outcome, including, without limitation, the following:
>
> a. any letters of intent sent to manufacturers concerning products under consideration in this process; and
>
> b. any product listing agreements signed by Saskatchewan with manufacturers whose products were selected; pursuant to this process.

> Please note that such materials are not to include any 'third-party' information concerning such manufacturers or any other third party--any such materials or references to such third parties in documents in the Ministry's possession should be redacted.

[2] On October 9, 2018, the Ministry responded to the Applicant. It provided the Applicant with 114 pages of responsive records. It also indicated that portions of the record were severed pursuant to subsections 13(1)(b), 14(a), 17(1)(a), (b), (c), 19(1)(a), (b), (c)(i), (ii), (iii), 22(a), (b) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On October 24, 2018, the Applicant requested a review of the exemptions applied by my office.

[4] On November 15, 2018, my office notified the Applicant, the Ministry and four third parties of my intention to undertake a review.

II RECORDS AT ISSUE

[5] The Ministry identified 114 pages of responsive records. It severed information from 111 pages pursuant to subsections 13(1)(b), 14(a), 17(1)(a), (b), (c), 19(1)(a), (b), (c)(i), (ii), (iii), 22(a), (b) and (c) of FOIP. Later in the review, the Ministry also indicated that subsections 18(1)(d) and (e) of FOIP also applied to portions of the record. See Appendix A of this Report for details.

III DISCUSSION OF THE ISSUES

1. Does my office have jurisdiction in this matter?

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

2. Does subsection 13(1)(b) of FOIP apply to the record?

[7] Subsection 13(1)(b) of FOIP provides:

> **13**(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:
> …
> (b) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;
> …
> unless the government or institution from which the information was obtained consents to the disclosure or makes the information public.

[8] My office has established the following test to determine if subsection 13(1)(b) of FOIP applies:

1. Was the information obtained from the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions?
2. Was the information obtained implicitly or explicitly in confidence?

[9] The Ministry has applied subsection 13(1)(b) of FOIP to 97 full pages of the record and portions of four other pages of the record.

[10] The Ministry's submission indicates that the information in question was provided by other provincial and territorial governments. Upon review of the record, it appears that most of the information to which subsection 13(1)(b) of FOIP has been applied was provided by the pan-Canadian Pharmaceutical Alliance (pCPA). Other information was provided by the Government of Manitoba on behalf of the pCPA. I must determine if the pCPA qualifies as a government of another province or territory of Canada, or its agencies, Crown corporations or other institutions.

[11] The website of the Council of the Federation (the council for the Premiers of Canada) describes pCPA as follows:

> Established in August 2010, the pan-Canadian Pharmaceutical Alliance (pCPA) conducts joint provincial/territorial/federal negotiations for brand name and generic drugs in Canada to achieve greater value for publicly funded drug programs and patients through the use of the combined negotiating power of participating jurisdictions.

[12] The Ministry's submission also indicated that the pCPA's office is hosted by the government of Ontario, but is financially supported by all participating jurisdictions.

[13] For the purposes of this review, I met by teleconference with officials from the Ministry and the pCPA office so that I could learn more about pCPA. The Ministry also provided me with a submission and a copy of the memorandum of understanding (MOU) that created the pCPA.

[14] The pCPA provided my office with the governance structure of the pCPA. The pCPA is governed by four groups. First, the "Conference of P/T Deputy Ministers" (CDM) is made up of the deputy ministers of health for the provinces and territories and sometimes the federal deputy minister. The CDM is responsible for oversight and assigning strategic initiatives. Next, the Governing Council is responsible for strategic direction, financial resources and dispute resolution. The Governing Council is made up of one official from each of the provincial, territorial and federal jurisdictions. Five members of the Governing Council then make up the Management Committee. The Management Committee is responsible for operational direction, managerial oversight, issue management and dispute resolution. Finally, the execution of individual negotiations are the responsibilities of the Drug Plan Leads, a group made up of operational leaders from the federal, provincial and territorial drug plans.

[15] The pCPA also indicated that the pCPA office is hosted by the Government of Ontario, but its role is solely to support the work of the CDM, Governing Council, Management Committee and Drug Plan Lead groups. Its employees are part of the Ontario public service. However, the direction of the pCPA is set by all provinces through the CDM,

Governing Council and Management Committee. I also note that the Ministry has been particularly active in the pCPA, and one of the Ministry's officials will be taking over as chair of the Governing Council and Management Committee.

[16] This governance structure is reflected in the *pan-Canadian Pharmaceutical Alliance Memorandum of Understanding* (2016) and the *pan-Canadian Pharmaceutical Alliance Memorandum of Understanding Amending Agreement No.1* (2018) (the amending agreement) between the pCPA members provided by the Ministry. The pCPA also confirmed that the decision was made not to make the pCPA into a separate legal entity.

[17] Another factor I have considered is who has possession of the documents. The pCPA office indicated that possession or control of the records of the pCPA is shared among all the jurisdictions. It noted that the pCPA office is subject to Ontario's *Freedom of Information and Protection of Privacy Act.* However, I was advised that pCPA's practice is to consult with all jurisdictions when it receives an access request for pCPA documents. Similarly, provincial and territorial jurisdictions consult one another when access requests are received in their respective jurisdictions.

[18] It is clear that the direction of the pCPA is not set solely by one jurisdiction, but governance is shared between all provinces and territories with input from the federal government. It is also clear that, although the pCPA office is hosted by the Government of Ontario, it takes its direction from all of the provinces through the groups described above. I describe this organization as a collective.

[19] The Ministry also pointed out a Report of Findings from the Office of the Integrity Commissioner of New Brunswick in the matter 2018-4823-AP-2618. New Brunswick's Department of Health received an access request for different records related to the pCPA. The Department of Health applied subsection 18(1)(e) of New Brunswick's *Right to Information and Protection of Privacy Act* and withheld responsive records. This New Brunswick provision is similar to subsection 13(1)(b) of FOIP. However, the New Brunswick provision contains a clause specifically addressing information provided by "an organization representing one or more governments". FOIP does not have such a clause.

[20] With all this in mind, I cannot conclude that the information contained in the records in question were obtained from the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions. The Ministry has either had an equal part in generating the information or has equal ownership of the records as would any other provincial or territorial government in Canada.

[21] Subsection 13(1)(b) of FOIP does not apply to the record. See Appendix A for details.

3. Does subsection 14(a) of FOIP apply to the record?

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

> **14** A head may refuse to give access to a record, the release of which could reasonably be expected to prejudice, interfere with or adversely affect:
>
> (a) relations between the Government of Saskatchewan and another government;

[23] Section 14 of FOIP is a harm-based exemption. The Government of Alberta's *FOIP Guidelines and Practices 2003* comments on a similar provision in the Alberta *Freedom of Information and Protection of Privacy Act*:

> Although information exchanged between provincial and federal ministers may be sensitive, in order to apply section 21(1)(a), a government body must be able to provide evidence or an argument that disclosure would harm relations between the Government of Alberta and the Government of Canada.

[24] The Supreme Court of Canada in *Ontario (Community Safety and Correctional Service) v. Ontario (Information and Privacy Commissioner)*, (2014) sets out the standard of proof for harms-based provisions as follows:

> This Court in Merck Frosst adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in Merck Frosst emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately

> depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences"…

[25] The parties do not have to prove that a harm is probable, but need to show that there is a "reasonable expectation of harm" if any of the information were to be released. In *British Columbia (Minister of Citizens' Service) v. British Columbia (Information and Privacy Commissioner)*, (2012), Bracken J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm. Public bodies should not assume that the harms are self-evident. Particularity in describing the harm is needed to support the application of the provision.

[26] The Ministry has applied subsection 14(a) of FOIP to 97 full pages of the record and portions of four other pages of the record.

[27] In support of subsection 14(a), the Ministry indicated that the mandate of pCPA is to achieve greater value for publicly funded drug programs and patients through the use of the combined negotiating power of participating jurisdictions. The Ministry noted that successful negotiation requires the cooperation of its members. It submitted that for one member to provide access to confidential materials with express direction to not share would certainly adversely affect the Ministry's relationship with other members of the alliance.

[28] The Ministry did not specifically indicate what harm would result if the Ministry's relationship with other members of the alliance was adversely affected.

[29] The Ministry and the pCPA informed me that the pCPA office and the other jurisdictions consult each other when an access to information request is received. They indicated that there is general agreement on the type of information that should be withheld, but not necessarily on what provisions of the respective access to information legislation should be applied. To me, it appears that the Ministry is cooperating with the other jurisdictions by consulting when an access to information request is received.

[30] However, each jurisdiction is subject to its respective access to information legislation, and in turn, an oversight body such as my office. The jurisdictions can agree on what information should be withheld, but it falls on each jurisdiction to demonstrate that withholding the information complies with the respective legislation.

[31] I also acknowledge confidentiality statements in the MOU and the Amending Agreements. However, government institutions cannot be relieved of their responsibilities under FOIP merely by agreeing via a confidentiality clause in a contract/agreement to keep matters confidential. A government institution cannot guarantee confidentiality if FOIP mandates disclosure.

[32] I am not persuaded that subsection 14(a) of FOIP can be used as a mechanism to withhold information simply because all of the jurisdictions have agreed to do so.

[33] I am not persuaded that the integrity, relationship, and trust between the Ministry and other provincial and territorial governments would be harmed if the Ministry released responsive records if required by FOIP because the Ministry has not described the harm that could result. As such, the Ministry has not demonstrated that subsection 14(a) of FOIP applies to the record.

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

[34] 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;

[35] In consideration of two recent court decisions, *Britto v University of Saskatchewan*, 2018 SKQB 92 and *Hande v University of Saskatchewan*, QBG 1222 of 2018 May 21, 2019, my office has modified both the test and definitions for subsection 17(1)(a) of FOIP. In particular, Justice J. Danyliuk's decision in *Britto v University of Saskatchewan* referred to

Supreme Court decision *John Doe v Ontario (Finance)*, 2014 SCC 36 which expressed the following:

> [22] The Court of Appeal also found that "'[a]dvice' may be construed more broadly than 'recommendation'" (para. 29). However, it distinguished these terms by finding that "'recommendation' may be understood to 'relate to a suggested course of action' more explicitly and pointedly than 'advice'", while "'[a]dvice' . . . encompass[es] material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation" (ibid.). In oral argument in this Court, the Information and Privacy Commissioner of British Columbia and the Canadian Civil Liberties Association made a similar distinction: that while "recommendation" is an express suggestion, "advice" is simply an implied recommendation (transcript, at pp. 52 and 57).
>
> [23] In this case, the IPC Adjudicator applied MOT. She found that to qualify as "advice" and "recommendations" under s. 13(1), "the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised" (p. 4). I accept that material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised falls into the category of "recommendations" in s. 13(1).
>
> [24] However, it appears to me that the approach taken in MOT and by the Adjudicator left no room for "advice" to have a distinct meaning from "recommendation". A recommendation, whether express or inferable, is still a recommendation. "[A]dvice" must have a distinct meaning. I agree with Evans J.A. in 3430901 Canada Inc. v. Canada (Minister of Industry), 2001 FCA 254 (CanLII), [2002] 1 F.C. 421 ("Telezone"), that in exempting "advice or recommendations" from disclosure, the legislative intention must be that the term "advice" has a broader meaning than the term "recommendations" (para. 50 (emphasis deleted)). Otherwise, it would be redundant. By leaving no room for "advice" to have a distinct meaning from "recommendation", the Adjudicator's decision was unreasonable.

[36] My office has adopted the following two-part test which can be applied for subsection 17(1)(a) of FOIP:

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?

[37] The Ministry applied subsection 17(1)(a) of FOIP to three full pages of the record and portions of nine other pages.

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

[38] In its submission, the Ministry indicated that the information in question qualified as advice.

[39] Advice is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The "pros and cons" of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a government institution must make a decision for future action.

[40] Further, Review Report 18-02 from the Office of the Information and Privacy Commissioner for Nova Scotia commented on whether 'process notes' qualified as advice or recommendations. It stated that, "brief descriptions of next steps that resulted from a decision, or directions regarding who should attend meetings or review documents contain no advice or recommendations. The processes are established and simply being followed. This type of information does not qualify as advice or recommendations..." I will keep this in mind as I review the relevant records.

[41] Page 14 is an employee asking for feedback and stating a deadline. These are process notes and do not qualify as advice.

[42] Pages 20 to 23 contain an email string among many Ministry employees discussing responses to third parties. The redaction on page 23 is a clear direction to another

employee. The two redactions on page 22 are Ministry employees asking questions about what steps should be taken. The third redaction on page 21 responds to the questions about process. The other two redactions on page 21 confirm what steps are going to be taken next. Finally, the redaction on page 20 provides factual information and then re-asks a question that was posed on page 22. Again, these would fall in the category of process notes and do not qualify as advice.

[43] There are two redactions on page 28, which is an email chain. The redaction on the bottom of the page is an email written from an employee of another provincial government and asks the Ministry to take an action and indicates what steps will be taken after the action. It does not qualify as advice. The redaction on the top of the page is authored by a Ministry employee. The redaction provides the employee's opinion and views. It does qualify as advice.

[44] Page 32 of the record is also an email chain. In the first redaction on the bottom of the page, an employee of pCPA provides factual information about its plans and asks if any of the jurisdictions have any concerns. The second redaction is the next email between Ministry employees asking a question related to the process. Again, these redactions fall in the category of process notes and do not qualify as advice.

[45] Pages 39 and 40 of the record is also an email chain with three redactions. The first redaction on page 40 is an email written from an employee of another provincial government that indicates a course of action that appears to have been agreed upon. It asks for approval of a document from the province to carry out that action. It does not qualify as advice because again they are process notes. The second redaction is in the next email between Ministry employees. The author directs the recipients to check some facts and to provide feedback. It also asks if certain steps need to be taken. Finally, the last email, which is also among Ministry employees, also asks for feedback. These process notes do not qualify as advice.

[46] Pages 41 to 43 is a table with information about correspondence. It appears to be factual information and does not qualify as advice.

[47] To summarize, as noted above, the first redaction on page 28 qualifies as advice and is the only part of the record to meet this part of the test.

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

[48] I now must apply the second part of the test to the redaction that qualifies as advice.

[49] "Developed by or for" means the advice, proposals, recommendations, analyses and/or policy options must have been created either 1) within the government institution, or 2) outside the government institution but for the government institution (for example, by a service provider or stakeholder).

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

[51] To put it another way, in order to be "developed by or for" the government institution, the advice, proposals, recommendations, analyses and/or policy options should:

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

[52] In its submission, the Ministry stated that all of the information to which it applied subsection 17(1)(a) of FOIP were exchanges among Ministry employees. It also noted that the employees were expected as part of their job responsibilities to provide recommendations and analysis when applicable. It provided my office with organization charts that showed the reporting structures of employees at the Ministry involved in the emails.

[53] I am satisfied that the advice in the email on the top of page 28 was sought from the person who prepared the record and that it was prepared for the purpose of making a decision and it was intended for someone who could make the decision.

[54] I find that subsection 17(1)(a) of FOIP applies to page 28 of the record.

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

[55] Subsection 17(1)(b)(i) of FOIP provides:

> **17**(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:
>
> …
>
> (b) consultations or deliberations involving:
>
> (i) officers or employees of a government institution;

[56] A consultation occurs when the views of one or more officers or employees of a public body are sought as to the appropriateness of a particular proposal or suggested action. A deliberation is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. It refers to discussions conducted with a view towards making a decision.

[57] In order to qualify, the opinions solicited during a consultation or deliberation must:

i) be either sought, expected, or be part of the responsibility of the person who prepared the record; and

ii) be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[58] The Ministry applied subsection 17(1)(b)(i) of FOIP to the majority of information to which it had also applied subsection 17(1)(a) of FOIP. They are all portions of email chains. I have described these records in greater detail earlier in this Report.

[59] The information redacted on page 14 draws attention to another email in the chain. The redaction itself does not reveal any particular proposal or suggested action or views about an action or a decision. As such, it does not qualify as a consultation or a deliberation. The rest of the redaction provides factual information about a timeline.

[60] The email chain found on pages 20 to 23 discuss several courses of action. The first redaction on page 23 is a clear direction and does not qualify as a consultation and deliberation. The other redactions on this email string all either seek the appropriateness of the proposed course of action or provide views about the proposed courses of action. These qualify as consultations and deliberations.

[61] There are two redactions on page 28, which is an email chain. The redaction on the bottom of the page is an email written from an employee of another provincial government and puts forward a course of action without any opinions or views. It does not qualify as a consultation or deliberation.

[62] In the first redaction on the bottom of page 32, an employee of pCPA provides factual information about its plans and asks if any of the jurisdictions have any concerns with the details of fulfilling those plans. The second redaction is the next email between Ministry employees asking a question about the plans. This qualifies as a consultation or deliberation.

[63] Pages 39 and 40 of the record are also an email chain with three redactions. The first redaction on page 40 is an email written from an employee of another provincial government that indicates a course of action that appears to have been agreed upon. It asks for approval of a document from the province to carry out that action. The second redaction is in the next email between Ministry employees. The author directs the recipients to check some facts and to provide feedback. It also asks about other steps that need to be taken. Finally, the last email, which is also among Ministry employees, also asks for feedback. As these emails are seeking the appropriateness of proposed courses of action, it would qualify as a consultation.

[64] The Ministry must also demonstrate that the consultations and deliberations were either sought, expected, or to be part of the responsibility of the person who prepared the record and were prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[65] In its submission, the Ministry stated that the information was sought and expected from the employees of the Ministry as part of their job responsibilities and was prepared in order to make decisions and choices. It provided my office with organization charts that showed the reporting structures of employees at the Ministry involved in the emails. Further, the information severed on pages 32, 39 and 40 of the record, involved employees of the Ministry and the pCPA. The Ministry explained the reporting structure between the pCPA office and the Ministry as discussed earlier in this Report. I am satisfied that these records were prepared for the purpose of doing something, such as taking an action, making a decision or a choice. On the face of the record, it is evident that the records were prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[66] Subsection 17(1)(b)(i) of FOIP applies to pages 20 to 23, 32 and 39 to 40 of the record. See Appendix A for further details.

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

[67] 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;

[68] The provision covers positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the public body. It also covers considerations related to the negotiations. Examples of the type of information that

could be covered by this exemption are the various positions developed by public body negotiators in relation to labour, financial and commercial contracts. All three parts of the following test must be met:

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the contractual or other negotiations?
2. Were they developed for the purpose of contractual or other negotiations?
3. Were the contractual or other negotiations being conducted by or on behalf of a public body?

[69] The Ministry applied subsection 17(1)(c) of FOIP to page 14 of the record. In support of this exemption, the Ministry submitted that the information in question is employee discussions regarding the procedures, instructions, and criteria related to the pCPA's contractual and negotiations for Competitive Value Process for Drugs for Gaucher Disease.

[70] My office's resource *IPC Guide to Exemptions*, indicates that for the purposes of this exemption procedures, criteria, instructions and considerations are broad in scope. These terms cover information relating to the factors involved in developing a particular negotiating position or plan.

[71] I have described the relevant redaction earlier in this Report as a message that draws attention to another email in the chain. Further, the rest of the redaction provides factual information about a timeline. I am not persuaded that the information relates to "the factors involved in developing a particular negotiating position or plan". The redaction simply provides a task to an employee.

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

7. Does subsection 18(1)(e) of FOIP apply to the record?

[73] 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;

[74] The Ministry has applied subsection 18(1)(e) of FOIP to 138 pages in their entirety and portions of two additional pages. See Appendix A for details.

[75] To find this exemption applies, all three parts of the following test must be met:

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations?
2. Were they developed for the purpose of contractual or other negotiations?
3. Were they developed by or on behalf of the public body?

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

[76] Positions and plans refer to information that may be used in the course of negotiations. Procedures, criteria, instructions and considerations are much broader in scope, covering information relating to the factors involved in developing a particular negotiating position or plan.

[77] The information withheld on page 1 of the record is the names of two PDF documents that are attached to the record. It does not qualify as positions, plans, procedures, criteria, instructions or considerations in the context of subsection 18(1)(e) of FOIP.

[78] Pages 2 to 7 is a guidance letter sent from the pCPA to three third party manufacturers. In other words, the letter has been shared with third parties.

[79] Interim Order PO-3649-I issued by the Information and Privacy Commissioner of Ontario (ON IPC) discusses the exemption subsection 18(1)(e) in the Ontario's *Freedom of Information and Protection of Privacy Act* equivalent to subsection 18(1)(e) of FOIP. The ON IPC Order states:

> Generally speaking, section 18 is designed to protect certain economic interests of institutions covered by the *Act*. Sections 18(c), (d) and (g) all take into consideration the *consequences* which would result to an institution if a record was released. In contrast, sections 18(a) and (e) are concerned with the *type* of the record, rather than the consequences of its disclosure.

[80] Subsection 18(1)(e) of Saskatchewan's FOIP is also concerned with the type of record rather than the consequence of its disclosure. The ON IPC Order also discusses the reasoning behind the creation of the exemption. The Order concluded the following:

> …the first two parts of the test in section 18(1)(e) are met when the record discloses the ministry's bargaining strategy or the instructions given to the officials who carried out the negotiations. In my view, these strategies and pre-determined courses of action would be discussed internally at the ministry, and not shared with third parties.

[81] The Order concluded that email communications, correspondence and notes of meetings between the public body in that case and a third party which set out each of the parties' positions as well as draft and final agreements did not qualify as positions, plans, procedures, criteria, instructions or considerations in the context of that exemption.

[82] I adopt this reasoning for the purposes of subsection 18(1)(e) of FOIP. Therefore, because pages 2 to 7 of the record have been shared with parties involved in the negotiations, it does not qualify as positions, plans, procedures, criteria, instructions or considerations for the purpose of this exemption.

[83] The information discussed on page 14 refers to a deadline in a specific negotiation. Interim Order PO-3649-I from the ON IPC also stated:

> Previous orders have defined plan as… a formulated and especially detailed method by which a thing is to be done; a design or scheme. This section does not apply if the information at issue does not relate to a strategy or approach to the negotiations themselves but rather simply reflects mandatory steps to follow.

[84] It is with this in mind that I find that the information found on page 14 does not qualify as positions, plans, procedures, criteria, instructions or considerations for the purpose of subsection 18(1)(e) of FOIP.

[85] Finally, pages 44 to 73 and 77 to 112 are minutes of meetings of what appears to involve members of the pCPA. They appear to refer to all of the negotiations contemplated or undertaken by the pCPA. Upon the face of the record, they provide various information about these negotiations. Only a small portion of these records involve information related to Gaucher Disease as per the request. I find that the information in this record qualifies as positions, plans, procedures, criteria, instructions or considerations in the context of subsection 18(1)(e) of FOIP.

2. Were they developed for the purpose of contractual or other negotiations?

[86] In its submission, the Ministry indicated that the pCPA has conducted hundreds of drug negotiations since 2010. It noted that each negotiation is inter-jurisdictional by virtue of being conducted as collaboration across provinces/territories and involves drug pricing discussions and evaluation. It appears that the minutes relate to these negotiations and contain plans and considerations for the purpose of the negotiations. Therefore, I am satisfied that they were developed for the purpose of negotiations.

3. Were they developed by or on behalf of the public body?

[87] It appears that these are meeting minutes of the pCPA. As noted, the Ministry is a member of the pCPA and the pCPA conducts negotiations on behalf of the Ministry. As such, I am

satisfied that the minutes found on pages 44 to 73 and 77 to 112 of the record were created on behalf of the Ministry.

[88] I find that subsection 18(1)(e) of FOIP applies to pages 44 to 73 and 77 to 112 of the record. See Appendix A for details.

8. Does subsection 19(1)(b) of FOIP apply to the record?

[89] 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;

[90] In order for the Ministry to demonstrate that subsection 19(1)(b) of FOIP applies to the record, all three parts of the following test must be met:

> 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 public body?
> 3. Was the information supplied in confidence implicitly or explicitly?

[91] The Ministry applied this exemption to information on 29 remaining pages of the record. See Appendix A for details. This information includes the names of attachments to emails, letters written by pCPA, draft letters written by pCPA and letters to pCPA.

[92] The Ministry identified four third parties, but only one, the pCPA, provided a submission to my office. The other three third parties include a drug manufacturer, and two not-for-profit organizations.

[93] Third party is defined by subsection 2(1)(j) of FOIP as follows:

> **2**(1) In this Act:
> …
>
> (j) "third party" means a person, including an unincorporated entity, other than an applicant or a government institution.

[94] As discussed above, the Ministry is part of the pCPA and shares the governance equally with other provinces and territories in Canada. The Ministry is a government institution; therefore, it cannot be a third party pursuant to subsection 2(1)(j) of FOIP. This begs the question whether the pCPA can qualify as a third party. I will continue this discussion later in my analysis.

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?

[95] In its submission, the Ministry indicated that the information being withheld qualifies as financial, commercial and technical information. However, it did not specifically indicate into which category the information on each page falls or explain how the information meets the definitions. pCPA's submission did not specifically indicate what category the information in question fell under.

[96] My office has established the following definitions:

> Financial information is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial forecasts, investments strategies, budgets, and profit and loss statements. The financial information must be specific to a third party that must demonstrate a proprietary interest or right of use of the financial information.
>
> Commercial information is information relating to the buying, selling or exchange of merchandise or services. Types of information included in the definition of commercial information:
> - offers of products and services a third-party business proposes to supply or perform;
> - a third-party business' experiences in commercial activities where this information has commercial value;
> - terms and conditions for providing services and products by a third party;

- lists of customers, suppliers or sub-contractors compiled by a third-party business for its use in its commercial activities or enterprises - such lists may take time and effort to compile, if not skill;
- methods a third-party business proposes to use to supply goods and services; and
- number of hours a third-party business proposes to take to complete contracted work or tasks.

> Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.

[97] My office has also said in the past that third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records also qualify as commercial information.

[98] On the first page of the record, the Ministry applied subsection 19(1)(b) of FOIP to names of the attachments in an email. Upon review, the information does not qualify as financial, commercial or technical information.

[99] Pages 2 to 7 of the record is a Manufacturer Guidance Letter. The majority of the record describes a process that the publicly funded pCPA is asking stakeholders to follow and confidentiality provisions. I am not persuaded that this qualifies as financial, commercial or technical information. On September 4, 2019, my office asked the Ministry exactly where information from third parties was found in the record. It indicated that drug manufacturers' names, drug names, pricing and marketing intelligence are found in the Guidance Letter. It was not more specific.

[100] Manufacturers' names and drug names would not be considered financial, commercial or technical information. Further, this information can be found on the website of the National Gaucher Foundation. Upon review of the record, the information in the comparison table on page 7 of the record describes the certain prices in various countries. This is factual information. I am unsure of what information the Ministry considers as "marketing intelligence" as it did not specifically identify the information when asked. I

am not persuaded that there is financial, commercial or technical information of a third party on pages 2 to 7 of the record.

[101] The next document, found on pages 8 to 13, is a letter to pCPA from a drug manufacturer who did not provide a submission to my office. The letter provides some criticisms of pCPA's processes. I am not persuaded that this qualifies as financial, commercial or technical information. The information found on pages 34 to 38 is a letter and key messages that respond to the drug manufacturer's concerns. I am not persuaded that the information in the letter qualifies as financial, commercial or technical information.

[102] Pages 26 to 27 is a copy of a letter from pCPA to a third party. Draft copies of this letter are found on pages 24 to 25 and 74 to 75. Pages 113 to 114 is a similar draft letter to a fourth third party. Both letters respond to criticisms of pCPA's processes. So do similar paragraphs in the other drafts. Further, the Ministry has indicated that the third parties involved here are not-for-profit organizations and the pCPA. It is unlikely that a not-for-profit would supply commercial or technical information. I am not persuaded that the information in these letters qualify as financial, commercial or technical information.

2. Was the information supplied by the third party to a public body?
3. Was the information supplied in confidence implicitly or explicitly?

[103] Although I am not persuaded that the record contains financial, commercial or technical information, I will also continue with my analysis of whether pCPA can qualify as a third party in these circumstances.

[104] The Ministry indicated that pages 1 to 7, 24 to 25, 30 to 31, 34 to 38, and 74 to 76 of the record was supplied by the pCPA. It later indicated that portions of pages 1 to 7 came from drug manufacturers, but did not specifically identify which information or which drug manufacturer.

[105] I note the Ministry must also demonstrate that the information was supplied to the public body. This reflects that the purpose of subsection 19(1)(b) of FOIP is to protect the

informational assets of third parties. Information may qualify as "supplied" if it was directly supplied to a public body by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party. The Ministry also must demonstrate that it was supplied implicitly or explicitly in confidence.

[106] In Review Report 082-2015, I considered information provided to a regional health authority (RHA) by an organization negotiating with a third party on the RHA's behalf. The organization was also negotiating with the third party on behalf of other RHAs. As the organization was working on behalf of the RHA, I found that information in a contract that was mutually generated between the organization and the third party was not supplied by the third party to the RHA. The information in the contract was mutually generated between the third party and the organization acting on the RHA's behalf. Therefore, the information was not supplied to the RHA because the organization had a role in generating the information on the RHA's behalf.

[107] There are parallels between this situation and Review Report 082-2015. The only difference is that the Ministry claims that the information provided by the organization negotiating on its behalf was supplied by a third party. However, not only is pCPA negotiating on the Ministry's behalf, the Ministry has some control over the governance of pCPA. As such, I disagree with the Ministry's assessment. The information in question cannot be supplied for the purpose of subsection 19(1)(b) of FOIP by an organization or individual acting on a government institution's behalf or by an organization that the government institution has a measure of control over.

[108] In these circumstances, the pCPA is not a third party for the purposes of subsection 19(1)(b) of FOIP.

[109] Subsection 19(1)(b) of FOIP does not apply to the records.

9. Does subsection 18(1)(d) of FOIP apply to the record?

[110] Subsection 18(1)(d) of FOIP provides:

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

[111] The Ministry applied subsection 18(1)(d) of FOIP to eight remaining pages of the record including the names of attachments, the Manufacturer Guidance Letter and a paragraph that refers to a deadline in the negotiations.

[112] In order for subsection 18(1)(d) of FOIP to apply, both parts of the following test must be met:

> 1. Are there contractual or other negotiations occurring?
>
> 2. Could release of the record reasonably be expected to interfere with the contractual or other negotiation(s)?

[113] To interfere with contractual or other negotiations means to obstruct or make much more difficult the negotiation of a contract or other sort of agreement involving the public body.

[114] The *Supreme Court of Canada in Ontario (Community Safety and Correctional Service) v. Ontario (Information and Privacy Commissioner),* (2014) set out the standard of proof for harms-based provisions as described earlier in this Report.

[115] Public bodies should not assume that the interference is self-evident. Particularity in describing the interference is needed to support the application of the provision. Prospective or future negotiations could be included within this exemption, as long as they are foreseeable. Once a contract is executed and negotiation is concluded, the exemption would generally not apply.

1. Are there contractual or other negotiations occurring?

[116] In its submission, the Ministry indicated that the pCPA was in active negotiations for drugs to treat Gaucher Disease. However, it also noted that the negotiations were active at the time that the Ministry replied to the request, but were no longer active as I was preparing this Report. No agreements were reached.

[117] As noted, my office found that prospective or future negotiations could be included within this exemption, as long as they are foreseeable. On September 4, 2019, my office asked the Ministry to make clear which specific negotiations it is referring to when applying subsection 18(1)(d) of FOIP. My office asked the Ministry to identify who the pCPA would be negotiating with and when. In response, the Ministry indicated that pCPA has been conducting drug negotiations since 2010. The Ministry noted that it will continue to negotiate and re-negotiate as required when agreements or when new drugs are developed. It noted that this would also include drugs related to Gaucher Disease. The Ministry indicated that the negotiations are an ongoing process. I am not persuaded that there are negotiations occurring.

2. Could release of the record reasonably be expected to interfere with the contractual or other negotiation(s)?

[118] With respect to the names of the attachments on page 1 of the record, the Ministry indicated that they contain information regarding a manufacturer's concern about the pCPA's processes. I note that the names of the attachments do not reference any concerns. The Ministry also indicated that manufacturing information and pricing of drugs is strictly confidential in the pharmaceutical field, both nationally and globally and the pharmaceutical manufacturers keep their information strictly confidential. It noted that even providing a name of a drug manufacturer that the pCPA is negotiating with could cause interference with negotiations.

[119] The Ministry indicated that the Manufacturer Guidance Letter found on pages 2 to 7 of the record contains information regarding the request to a manufacture to submit a competitive value proposal. It noted that the proposal was only provided to three manufactures. Again,

the Ministry indicated that manufacturing information and pricing of drugs is strictly confidential in the pharmaceutical field both nationally and globally and even providing a name could cause interference with negotiations. My office asked if this letter equates to a 'request for proposal' (RFP). The Ministry responded that, although it would be a request for proposal, even providing the information on which drug manufacturer pCPA approached for proposal is strictly confidential and would cause mistrust with government and the pharmaceutical manufacturers.

[120] I question the Ministry's assertion that manufacturing information and pricing of drugs is strictly confidential in the pharmaceutical field and how it applies to these particular records. The guidance letter found on pages 2 to 7 of the record was sent to one drug manufacturer. The guidance letter contains pricing information of that manufacturer's drugs. However, it also contains the drug pricing information of the drugs of the manufacturer's two competitors. It is my understanding, as well, that a similar letter was sent to the two competitors by other members of the pCPA. Further, the Ministry specifically pointed to a confidentiality statement found in this document. However, the wording of the document appears to impose restrictions on the manufacturer but does not speak to any confidentiality requirements on the part of the Ministry and pCPA. As such, I am not persuaded that the pricing information found in the guidance letter has been kept strictly confidential. I also note that similar information is found through an Internet search.

[121] I am also not persuaded with the Ministry's assertion that even providing a name of a drug manufacturer with whom the pCPA is negotiating could cause interference with negotiations. The records do not demonstrate that negotiations took place. It only indicates that the pCPA reached out to the manufacturer to commence negotiations. Often, government institutions will issue an RFP that is made public on the government's website when it seeks to negotiate with manufacturers from various industries. The Ministry has not persuaded me that there should be less transparency when government deals with the pharmaceutical industry and that releasing this information would interfere with negotiations.

[122] Finally, with respect to the two sentences about the time line on page 14, the Ministry only addressed subsection 18(1)(e) of FOIP. Therefore, I am not persuaded that subsection 18(1)(d) of FOIP applies to page 14 of the record.

[123] The Ministry has not demonstrated that subsection 18(1)(d) of FOIP applies to the record.

10. Does subsection 19(1)(c) of FOIP apply to the record?

[124] Subsection 19(1)(c) of FOIP provides:

> **19**(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:
>
> …
>
> (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 the contractual or other negotiations of;
>
> a third party;

[125] The Ministry has applied subsections 19(1)(c)(i), (ii) and (iii) of FOIP to the same information to which it applied subsection 19(1)(b) of FOIP.

[126] These provisions are harms-based provisions. For them to apply there must be objective grounds for believing that disclosing the information could result in the harm alleged.

[127] The *Supreme Court of Canada in Ontario (Community Safety and Correctional Service) v. Ontario (Information and Privacy Commissioner)*, (2014) sets out the standard of proof for harms-based provisions as described earlier in this report.

[128] In its submission, the Ministry indicated that it applied this exemption as release of the records would interfere with ongoing contractual and other negotiations between the commercial pharmaceutical manufactures, pCPA, and provincial and territorial

governments, which could cause prejudice to the competitive position of that third party leading to the possibility for potential financial loss. Further, pCPA indicated in its submission that the records contain private commercial information inclusive of information from pharmaceutical manufacturers, the release of which would be expected to cause harm under subsection 19(1)(c) of FOIP.

[129] As described earlier in this Report, I am not persuaded that the records contain private commercial information inclusive of information from pharmaceutical manufacturers. The Ministry has not sufficiently described the alleged harm that would occur from the release of the records in question. Further, it has not described how the release of the records could reasonably be expected to cause the alleged harm.

[130] The Ministry has not demonstrated that subsections 19(1)(c)(i), (ii) or (iii) of FOIP apply to the record.

11. Does subsection 22(a) of FOIP apply to the record?

[131] Subsection 22(a) of FOIP provides:

> **22** A head may refuse to give access to a record that:
>
> (a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

[132] The Ministry withheld portions of five pages of the record pursuant to subsection 22(a) of FOIP. It did not provide these documents to my office for review.

[133] On May 16, 2018, the Court of Appeal for Saskatchewan determined whether my office had authority to require local authorities to produce records that may be subject to solicitor-client privilege. *University of Saskatchewan v Saskatchewan (Information and Privacy Commissioner)*, 2018 SKCA 34 concluded that my office should follow the "absolutely necessary" principle. As a result, it suggested that my office follow a process to gather

information about records and consider whether a prima facie case for solicitor-client privilege has been made before requiring a record.

[134] My office has established a process to consider a claim of solicitor-client privilege. When considering claiming solicitor-client privilege, public bodies have three options when preparing records for review with the Information and Privacy Commissioner (IPC):

> 1. Provide the documents to the IPC with a cover letter stating the public body is not waiving the privilege;
>
> 2. Provide the documents to the IPC with the portions severed where solicitor-client privilege is claimed; or
>
> 3. Provide the IPC with an affidavit with a schedule of records (see sample in the IPC's *Rules of Procedure*).

[135] The Ministry provided my office with an affidavit that was signed on July 5, 2019.

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

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

[137] All of the records in question are emails between employees of the Ministry and crown counsel. I am satisfied that it meets the first test.

[138] The Ministry's affidavit indicates that each of the documents contain a request for legal opinions and advice or crown counsel returning legal opinions and advice. I am satisfied that the second part of the test is met. I am also satisfied that these were intended to be confidential and the third part of the test is met.

[139] Even though I have not reviewed the severed portions, I find that the Ministry has made a prima facie case that subsection 22(a) of FOIP applies to these portions of the record.

[140] There is no need to consider subsections 22(b) or (c) of FOIP.

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

[141] Section 8 of FOIP provides as follows:

> **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.

[142] 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.

[143] The Applicant alleged that the Ministry attempted to redact all or a substantial part of the information in the relevant documents.

[144] In its submission, the Ministry indicated that it complied with section 8 of FOIP by processing the responsive records to the access to information request by reviewing them line-by-line by each page and applying the mandatory exemptions and applying the discretionary exemptions where appropriate, through critical analysis of the information.

[145] Upon review of the record, it appears that the Ministry severed information from internal documents, which were emails. The Ministry, in general, disclosed email headers (including recipients, senders, dates, subject lines and attachments), signatory lines and some text from the body of the emails. It appears that the Ministry withheld all of the documents that were provided from outside the organization. These did not include emails.

[146] I am satisfied that the Ministry performed a line-by-line review of the records as evidenced by the severing of internal documents and therefore, met its obligations under section 8 of FOIP.

IV FINDINGS

[147] I find that subsections 13(1)(b), 14(a), 17(1)(a), 17(1)(b)(i), 17(1)(c), 18(1)(d), 19(1)(b) and 19(1)(c) of FOIP do not apply to the record.

[148] I find that subsections 17(1)(b)(i), 18(1)(e) and 22(a) of FOIP apply to portions of the record.

[149] I find that the Ministry met its obligations under section 8 of FOIP.

V RECOMMENDATION

[150] I recommend that the Ministry release and withhold responsive records as described in Appendix A.

Dated at Regina, in the Province of Saskatchewan, this 10th day of October, 2019.

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

APPENDIX A

PAGE OF THE RECORD	SECTION(S) APPLIED BY THE MINISTRY	DOES IT APPLY?	RELEASE OR WITHHOLD
1	13(1)(b)	No	Release
	14(a)	No	
	18(1)(d)	No	
	18(1)(e)	No	
	19(1)(b)	No	
	19(1)(c)	No	
1	22(a)	Yes	Withhold
2 to 7	13(1)(b)	No	Release
	14(a)	No	
	18(1)(d)	No	
	18(1)(e)	No	
	19(1)(b)	No	
	19(1)(c)	No	
8 to 13	13(1)(b)	No	Release
	14(a)	No	
	19(1)(b)	No	
	19(1)(c)	No	
14	17(1)(a)	No	Release
	17(1)(b)(i)	No	
	17(1)(c)	No	
	18(1)(d)	No	
	18(1)(e)	No	
14 to 15	22(a)	Yes	Withhold
17 to 19	22(a)	Yes	Withhold
20 to 23	17(1)(a)	No	Withhold
	17(1)(b)(i)	Yes	
24 to 25	13(1)(b)	No	Release
	14(a)	No	
	19(1)(b)	No	
	19(1)(c)	No	
26 to 27	13(1)(b)	No	Release
	14(a)	No	
	19(1)(b)	No	
	19(1)(c)	No	
28	17(1)(a)	Yes	Withhold
	17(1)(b)(i)	No need to review	
28	13(1)(b)	No	Release
	14(a)	No	
	17(1)(a)	No	
	17(1)(b)(i)	No	

PAGE OF THE RECORD	SECTION(S) APPLIED BY THE MINISTRY	DOES IT APPLY?	RELEASE OR WITHHOLD
30 to 31	13(1)(b)	No	Release
	14(a)	No	
	19(1)(b)	No	
	19(1)(c)	No	
32	17(1)(a)	No	Release
	17(1)(b)(i)	Yes	
32	13(1)(b)	No	Withhold
	14(a)	No	
	17(1)(a)	No	
	17(1)(b)(i)	Yes	
	18(1)(d)	No need to review	
	18(1)(e)	No need to review	
34 to 38	13(1)(b)	No	Release
	14(a)	No	
	19(1)(b)	No	
	19(1)(c)	No	
39	17(1)(a)	No	Withhold
	17(1)(b)(i)	Yes	
40	13(1)(b)	No	Withhold
	14(a)	No	
	17(1)(a)	No	
	17(1)(b)(i)	Yes	
41 to 43	13(1)(b)	No	Release
	14(a)	No	
	17(1)(a)	No	
44 to 73	13(1)(b)	No	Withhold
	14(a)	No	
	18(1)(d)	No need to review	
	18(1)(e)	Yes	
	19(1)(b)	No need to review	
	19(1)(c)	No need to review	
74 to 76	13(1)(b)	No	Release
	14(a)	No	
	19(1)(b)	No	
	19(1)(c)	No	
77 to 112	13(1)(b)	No	Withhold
	14(a)	No	
	18(1)(d)	No need to review	
	18(1)(e)	Yes	
	19(1)(b)	No need to review	
	19(1)(c)	No need to review	

PAGE OF THE RECORD	SECTION(S) APPLIED BY THE MINISTRY	DOES IT APPLY?	RELEASE OR WITHHOLD
113 to 114	13(1)(b)	No	Release
	14(a)	No	
	19(1)(b)	No	
	19(1)(c)	No	