



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 263-2016 to 268-2016

Ministry of Highways and Infrastructure

July 19, 2017

Summary:

The Applicant requested a review of six access to information requests in which the Ministry of Highways and Infrastructure (Highways) denied access to a portion of the records pursuant to subsections 18(1)(b), 22(a) and 24(1)(k) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Through the course of these reviews, the Commissioner's office learned that Highways had not properly retained a copy of the record and the record provided to the Applicant, and as a result, Highways had to conduct a new search for the records responsive to these requests. The Commissioner found that Highways did not manage its FOIP case files and did not retain a copy of the original responsive records and records provided to the Applicant as part of its FOIP processes. The Commissioner also found that Highways did not meet its burden of proof imposed under section 61 of FOIP to justify the claiming of exemptions. The Commissioner recommended a number of policy and procedural changes to Highways regarding its FOIP processes. The Commissioner also recommended that within 30 days of this report being issued, Highways undertake a line-by-line review of the 1143 page record and provide the Applicant with access to the record, subject only to mandatory exemptions and provide a copy of the covering letter to his office. The Commissioner recommended that Highways clearly mark the information it is withholding from the Applicant by making a clear notation of the exemption on the record and in the index of records. The Commissioner recommended that Highways not charge the Applicant further fees and refund any fees already paid by the Applicant for these requests. In addition, the Commissioner recommended that Highways follow his recommendation in Review Report 077-2016 and 092-2016 at paragraph [55] and if it has copies of the Appraisal without the written authorization, it destroys those copies or returns them to [the appraisal firm]. Finally, the Commissioner recommended that Highways explore open government and proactive disclosure initiatives to promote openness and transparency within the Ministry.

I BACKGROUND

- [1] The Applicant submitted 14 access to information requests pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) to the Ministry of Highways and Infrastructure (Highways) on March 8, 2016. Highways realized there was a duplicate request; therefore the total number of requests was 13.
- [2] On April 4, 2016, Highways provided the Applicant with a single estimate of costs in the amount of \$69,645.00 to process these requests. The Applicant requested reviews of the estimate of costs and my office issued [Review Report 064-2016 to 076-2016](#). This Review Report concluded that the \$66,160 portion of the estimate of costs was inappropriate as it was not calculated pursuant to subsection 6(2) of the FOIP Regulations. It recommended that Highways have written processes in place to properly address estimates of cost. It also recommended that Highways establish procedures that complement the *Guidelines for Government Communications During a General Election* to ensure access to information requests are handled in the routine manner during the Writ period.
- [3] Upon receipt of the 13 Requests for Review related to the \$69,645.00 estimate of costs, it was agreed that my office would work with Highways and the Applicant to narrow the scope of the 13 requests in an attempt to reduce the costs.
- [4] Although work continued with the Applicant, Highways and my office to narrow the scope of these requests, on May 20, 2016 Highways responded to the Applicant's requests indicating that "[y]our access request has been denied under s. 20" of FOIP and that "[u]pon release of the Provincial Auditor's report, it is our intention to continue the necessary work in order to respond to your requests." The Applicant requested a review and I issued [Review Report 123-2016 to 135-2016](#). It concluded that the letter denying access to the record pursuant to section 20 of FOIP was unnecessary, inappropriate and unauthorized under FOIP and for these reasons, section 20 of FOIP was not upheld.

- [5] On May 27, 2016, my office provided Highways with an email outlining the narrowed scope of each request as agreed to by the Applicant.
- [6] By letter dated June 22, 2016, Highways provided the Applicant with a revised estimate of costs based on the narrowed scope of the requests.
- [7] On June 30, 2016, the Provincial Auditor issued her *Special Report: Land Acquisition Processes* (Auditor’s Report).
- [8] There were additional communications with Highways and the Applicant and by letter dated July 15, 2016, Highways provided the Applicant with a second amended estimate of costs which totalled \$2071.25 to process the original 13 requests. On July 20, 2016, the Applicant provided Highways with a deposit in the amount of \$560.00 to proceed with six of the 13 requests. The total cost to process the six requests as estimated by Highways was \$1023.75.
- [9] The following are the six requests the Applicant paid the deposit to proceed with:

IPC File/ Highways File	Access to Information Request (Including Narrowed Scope as Agreed to by the Applicant)
263-2016 (HI288)	Please provide all correspondence, including attachments, between the Ministry and [name], [name] and/or their numbered company 101225232 Saskatchewan Ltd. from February 1, 2013 until June 30, 2014. <ul style="list-style-type: none"> • Include in the search the emails of those employees that have retired from public service and their ITO archived records. • Also include in the search: <ol style="list-style-type: none"> 1) Deputy Minister – all memos, letters and emails 2) Assistant Deputy Minister – Design & Innovation – all memos, letters and emails.
264-2016 (HI290)	Please provide all internal correspondence/documentation related to the Ministry’s potential interest or actual interest in purchasing Surface Parcel 165025414 (NW-20-17-20 W2 Ext 1) and/or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) from 101225232 Saskatchewan Ltd. between February 1, 2013 until April 30, 2014. <p>Narrowed the scope for this request to include searches of:</p> <ol style="list-style-type: none"> 1) The Engineering and Development Branch, and

IPC File/ Highways File	Access to Information Request (Including Narrowed Scope as Agreed to by the Applicant)
	2) The ADM responsible for the Branch
265-2016 (HI292)	Please provide all internal correspondence/documentation related to Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) from February 1, 2013 until April 30, 2014).
266-2016 (HI294)	<p>Please provide all records (emails, reports, briefing notes etc.) related to a land sale agreement between the Global Transportation Hub and the Ministry of Highways – related to Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) signed in March 2014 – including but not limited to drafts, emails, briefing notes, etc. from July 1, 2013 until June 30, 2014.</p> <ul style="list-style-type: none"> • The Applicant was already provided a copy of the land sales agreement as well as two land appraisals for the lands purchases by the ministry from the GTH, so that was excluded from the request. • Narrow the scope of the request to include searches of: <ol style="list-style-type: none"> 1) The ADM responsible for Engineering & Development Branch 2) Engineering & Development Branch 3) Deputy Minister 4) ADM, Planning and Policy
267-2016 (HI295)	<p>Please provide all correspondence with the Ministry of Economy and/or the Global Transportation Hub Authority related to Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and/or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) excluding any discussion of a land sale agreement between the entities involving this land from July 1, 2013 until June 30, 2014.</p> <ul style="list-style-type: none"> • Narrow the scope of the request to include searches of: <ol style="list-style-type: none"> 1) The DM 2) The ADM responsible for Engineering & Development Branch
268-2016 (HI297)	<p>Please provide all correspondence related to an appraisal of Surface Parcel 165025414 (NW 20-17-20 W2 Ext 1) and/or Surface Parcel 166005862 (SW 20-17-20 W2 Ext 1) provided to the Global Transportation Hub and/or Ministry of Economy by [name], [name] and/or their numbered company 101225232 Saskatchewan Ltd. from March 1, 2013 until March 31, 2014.</p> <ul style="list-style-type: none"> • Narrow the scope of the request to include searches of: <ol style="list-style-type: none"> 1) The DM 2) The ADM responsible for Engineering & Development Branch

[10] By letter dated August 23, 2016, Highways responded to its files HI290, HI292 and HI294 (Review Group 1). In its response letter, Highways advised the Applicant that they were responding to the requests that they considered to be a representative sample of

the records and suggested the Applicant review the records and advise Highways if he wished to proceed with the remaining three requests.

[11] The Applicant was not satisfied in that Highways did not respond to all six requests that he paid a deposit on and requested reviews by our office. By letter dated October 28, 2016, Highways responded to HI288, HI295 and HI297 (Review Group 2). My office issued [Review Report 231-2016 to 233-2016](#) to address this matter. It concluded that Highways was not in compliance with FOIP as it did not meet the legislated timelines. It recommended that Highways consider refunding the Applicant his deposit due to the excessive delays and that Highways review its processes to ensure they are meeting the legislative timelines and complying with the law.

[12] On November 16, 2016, the Applicant requested reviews of the six requests based upon the exemptions that Highways applied to deny access to a portion of the records.

[13] On November 17, 2016, my office advised Highways and the Applicant of the office's intention to undertake the reviews and invited both parties to provide submissions by December 1, 2016. In addition, my office requested that Highways include the complete record and an index of records.

[14] On June 22, 2017 almost seven months later, after many email and telephone requests, Highways provided my office with the record.

II RECORDS AT ISSUE

[15] The responsive records for these requests totals 1143 pages.

III DISCUSSION OF THE ISSUES

[16] Highways is a "government institution" as defined by subsection 2(1)(d)(i) of FOIP.

1. Is Highways properly managing its freedom of information case files?

[17] As noted above Highways was provided two notification emails for these reviews on November 17, 2016. Each notification addressed three review files which was consistent with the way in which Highways responded to the Applicant.

[18] The following provides the timeline of events for these six files from the time my office issued the notifications.

[19] On November 17, 2016, my office notified Highways that we were undertaking a review of these six files. My office sent two notification emails – one to address Review Group 1 and one to address Review Group 2. Review Group 1 addressed the Applicant’s letter from Highways dated August 23, 2016 and Review Group 2 addressed the Applicant’s letter from Highways dated October 28, 2016.

[20] For Review Group 1, the reason for the review was Highways denied access to a portion of the records pursuant to subsections 18(1)(b) and 22(a) of FOIP. In addition, my office asked Highways how a portion of the information withheld qualified as personal information pursuant to subsection 24(1)(k) of FOIP.

[21] For Review Group 2, the reason for the review was Highways denied access to a portion of the records pursuant to subsections 18(1)(b) and 22(a) of FOIP. In addition, my office asked Highways how a portion of the information withheld qualified as personal information pursuant to subsection 24(1)(k) of FOIP. Finally, this notification asked Highways to address an appraisal it referenced in the October 28, 2016 response letter to the Applicant that was subject to my office’s [Review Report 077-2016 and 092-2016](#).

[22] In both notification emails, my office requested that Highways provide its submission, the record and the index of records by December 1, 2016. Highways did not respond by that date to Review Group 1 or 2.

- [23] By email of December 30, 2016, Highways provided my office with a submission and an index of records for Review Group 2. It did not provide my office with the record for Review Group 2.
- [24] On January 17, 2017, my office followed up with Highways as my office had not received what was outlined in the November 17, 2016 notification for Review Group 1 or a copy of the record for Review Group 2. In that email, my office requested that Highways provide this by January 27, 2017. Highways did not respond by that date.
- [25] On February 28, 2017, my office met with Highways about these and other files which Highways was beyond the due dates. In this meeting, Highways' FOIP Coordinator advised that it had provided the responsive record to another area of Highways for a purpose not related to the freedom of information process and advised my office that it would take some time to pull together the record. At the conclusion of this meeting, Highways agreed to new due dates for these and other files staggered throughout the month of March, 2017. The due date for these six reviews was extended to March 6, 2017. Highways did not respond by that date.
- [26] Between May 24, 2017 and May 26, 2017, my office had further communications with Highways. By this time, six months had elapsed and my office had not received the information required to conduct these reviews.
- [27] At first, Highways advised my office that it would not be dealing with these old files, which in my opinion is a blatant disregard for the law.
- [28] Later, Highways did change its position and advised my office that it would not be able to pull the initial responsive record and decided that it would need to engage in a background Information Technology (IT) search and it would absorb the cost to conduct this search. Highways requested two weeks to do this and my office gave Highways until June 9, 2017 to provide my office with a copy of the submission, index of records and the record.

[29] On May 26, 2017, my office followed up in two emails to Highways to reiterate what my office needed by June 9, 2017 for Review Group 1 and 2. In part, both emails stated the following:

...As discussed, Highways may be conducting an IT search to recreate some of the records for these files. If you need to conduct a re-severing exercise as part of this, it would be appropriate for Highways to provide a copy of the redacted record with an explanation of what occurred to the applicant (with a copy to our office) so he can be in the loop. As I indicated to you, my concern is that new records would be located with an IT search, and in fairness to the applicant he should have a copy of and be aware of that.

[30] My office followed up with Highways on June 2, 2017, a week prior to the due date. Highways advised my office that they were waiting to hear back from the IT Department. On June 8, 2017, (a day before the due date), my office learned from Highways that it still had not heard back from the IT Department.

[31] My office spoke with Highways on June 9, 2017 about the status of the record and followed up with an email, which in part stated:

...As discussed, please advise when you will be receiving the record from ITD and when you will have what has been outlined below to my office....

[32] On June 12, 2017, my office learned from Highways that it had received an estimate of approximately \$26,000 from the IT Department to conduct a background search for these records. Further, Highways advised my office that it was not going to pay that amount for the background search and would now be conducting a manual search for the record and requested an extension to June 21, 2017. My office agreed to the additional week for Highways to provide our office with the record, however cautioned that I would issue a non-compliance report if Highways did not meet this deadline.

[33] Highways emailed my office with information for Review Group 2 on June 21, 2017. The USB for Review Group 2 was received by my office in the morning of June 22, 2017.

- [34] From the time my office sent the notifications dated November 17, 2016 to Highways, over seven months had elapsed. This is concerning because these requests originally were received by Highways on March 8, 2016.
- [35] Based on the seven month delay and the sequence of events above, I have no choice but to conclude that Highways is not able to manage its freedom of information process properly.
- [36] In this review, my office learned that after assembling the record, the FOIP Co-ordinator provided the assembled record (not a copy) to Highways' Corporate Services Branch. Corporate Services did not return the record to the FOIP Co-ordinator. This is a totally unacceptable practice. It is difficult to conceive why any Ministry would take such an action in the middle of a series of FOIP requests related to a controversial issue that was getting considerable publicity. For a FOIP Coordinator to lose control of the responsive record and then not be able to determine what was severed or not severed is a practice that should never be done again by Highways or any other ministry. I am recommending that Highways revamp its records management procedures related to a FOIP request.
- [37] On October 28, 2015, the Public Records Committee passed the *Administrative Records Management System (ARMS) 2014*. ARMS 2014 superseded the Saskatchewan Administrative Records System (SARS), ARMS and ARMS 2006. I would note that the three previous administrative records systems had similar requirements for government institutions to appropriately classify and dispose of its administrative records based upon set classification and retention periods. Further, SARS was approved by the Standing Committee on Communication of the Saskatchewan Legislative Assembly in 1993 – 24 years ago.
- [38] Section 1.2, Chapter 1 of ARMS 2014 lays out the general responsibilities of government institutions:

Government institutions are responsible for efficient and proper management of government information in compliance with the requirements of *The Archives and Public Records Management Act, 2015*, *The Freedom of Information and Protection*

of Privacy Act, The Health Information Protection Act and other relevant legislation. ARMS2014 is a tool which assists Government Institutions in fulfilling these responsibilities.

[39] ARMS 2014 includes classification number 1520 – *Records Management – Access and Privacy* and assigns a six year retention for these types of records. The description of this section includes:

Records documenting the management of access to information under *The Freedom of Information and Protection of Privacy Act* (FIPPA) [FOIP], *The Health Information Protection Act* (HIPA), etc.

Includes: **Access to Information Requests Case Files, Privacy Complaints and Issues, Privacy Commission** [Office of the Information and Privacy Commissioner] **Investigations**, Impact Assessments, etc. [emphasis added]

[40] When an individual submits an access to information request, the public body should go through a process of identifying and collecting the records that are responsive to that particular request. Those records are unique to the specific request. To manage each request, the public body should be setting up a case file classified under section 1520 of ARMS 2014. The following is a non-exhaustive list but outlines some of the elements that should be kept in the case file:

- The original access to information request that includes the date it was received by the public body;
- Informal communications with an applicant, including narrowing of scope and clarification emails.
- Formal correspondence sent to an applicant such as fee estimates, extensions of time, and response letters.
- Internal correspondence related to processing the request, such as why decisions were made and how programs were instructed to search for records.
- A copy of the full responsive record; and
- A copy of the record provided to the applicant.

[41] In addition, the six year retention of these case files has been established so that government institutions can meet any administrative, legal and fiscal requirements of those records. Under FOIP, there are legal requirements that are triggered when an access to information request response has been sent to an applicant.

- [42] Once an applicant receives its response from the government institution, under section 49 of FOIP, he or she has one year from the date of the response to request a review by my office. If a Review Report is issued, under section 56 of FOIP, the head of the government institution has 30 days to advise the Applicant, my office and third parties in writing of its decision. Finally, once that decision is received, the Applicant or a third party can appeal that decision to the Court.
- [43] Without the original records that were compiled to respond to the initial access to information request (because the records were inappropriately disbursed), these legal requirements to comply with FOIP are made very difficult or near impossible for the public body to comply.
- [44] Since the record for these requests is made up of 1143 pages, I doubt that Highways is dealing with the exact same set of records now that it had when it initially responded to the Applicant in August 23, 2016 and October 28, 2016. I expressed this doubt because Highways had to search again for records considered responsive to these requests. That concern was outlined to Highways by my office in the email of May 26, 2017 referenced in paragraph [29] of this Report. It is my understanding that Highways has not informed the Applicant of this, even though my office suggested it should. The Applicant has a right to know what has gone on and why it went wrong.
- [45] In order to meet its legal requirements under FOIP, the Highways FOIP Coordinator needs to maintain its original copy of the responsive records and a copy of the actual records provided to the Applicant.
- [46] If those records are requested by an office outside of FOIP for whatever purpose, Highways should only provide that program with a copy of the record, not the originals. This is the only way that Highways has the ability to maintain the integrity of the original responsive record.
- [47] Highways did not do this and I recommend Highways implement new procedures to manage its FOIP case files in accordance with ARMS 2014. Further, I recommend that

Highways adopt a policy that once the responsive record and a copy of the record provided to an applicant is created, the FOIP Co-ordinator always retain a copy of the responsive record and a copy of what was sent to the Applicant.

2. Has Highways provided what my office requires to conduct these reviews?

[48] When my office notifies a public body of a review, my office outlines what is required of the public body.

[49] For reviews that address exemptions, my office requests the record, an index of records and a submission in support of the exemptions claimed. In addition, my office refers to two resources that are available under the Resource section of the office's website (www.oipc.sk.ca):

- *What to Expect During a Review with the IPC: A Resource for Public Bodies and Trustees* (What to Expect During a Review); and
- *IPC Guide to Exemptions for FOIP and LA FOIP* (Guide to Exemptions).

[50] *What to Expect During a Review* summarizes the review process and gives the public body direction on how it should prepare the various required items it needs to provide to my office.

[51] It has a section that addresses Preparing the Record/Index of Record. This section, in part, states:

The IPC requires a copy of any responsive record to conduct the review.

The public body/trustee must provide the Commissioner's office with a copy of the entire package of withheld records responsive to the applicant's access request....

There is no need to send the IPC records that have already been released to the applicant.

If any information has been withheld from the applicant, the public body/trustee must provide a copy of the record to the IPC with:

- the withheld information outlined or highlighted, and
- the relevant section number(s) of the applicable Act clearly indicated beside or near the withheld information.

All the pages should be numbered in sequence.... A loose collection of documents should be numbered in sequence.

In facilitating the review, it is very helpful if the public body/trustee prepares an “index of record(s)” in the table form. That index usually includes the following:

1. The page number(s) on which the information has been withheld or disclosed. The index should account for every single page of the record.
2. A title or description of the record.
3. For each page upon which information has been withheld, identification of the section numbers of the applicable Act under which any information has been withheld is required.

[52] As noted above, Highways responded to Review Group 1 on August 23, 2016. Highways responded to Review Group 2 on October 28, 2016.

[53] The following table outlines what highways provided in terms of the record and index of records:

IPC File # (Highways File #)	Record	Index of Records
<i>Review Group 1</i>		
264-2016 (HI290)	<ul style="list-style-type: none"> • The record totalling 389 pages in one pdf document. Pages were numbered sequentially (1-389). • Did not provide a copy of the severed record that was provided to the Applicant, so there was no indication what information had been withheld. 	<ul style="list-style-type: none"> • An index of records that only includes the page numbers and a general description of the record. • No exemptions cited in the index of records.
265-2016 (HI292)	<ul style="list-style-type: none"> • The record totalling 335 pages in six pdf documents. • The record was not numbered. • Did not provide a copy of the severed record that was provided to the Applicant, so there is no indication 	<ul style="list-style-type: none"> • An index of records that only includes the page numbers and a general description. • No exemptions were cited in the index of records.

IPC File # (Highways File #)	Record	Index of Records
	what information has been withheld.	
266-2016 (HI294)	<ul style="list-style-type: none"> • The record totalling 401 pages in 11 pdf documents. • The record was not numbered. • Did not provide a copy of the severed record that was provided to the Applicant, so there is no indication what information has been withheld. 	<ul style="list-style-type: none"> • An index of records that only includes the page numbers and a general description. • The index of records outlines 382 pages, however Highways has provided me with 401 pages. • No exemptions were cited in the index of records.
<i>Review Group 2</i>		
263-2016 (HI288)	<ul style="list-style-type: none"> • No records provided. 	<ul style="list-style-type: none"> • An index of records document indicating that no records exist for this request.
267-2016 (HI295)	<ul style="list-style-type: none"> • No records provided. 	<ul style="list-style-type: none"> • An index of records document indicating that no records exist for this request.
268-2016 (HI297)	<ul style="list-style-type: none"> • The record totalling 18 pages in one pdf document. • The record was not numbered. • Did not provide copy of the severed record that was provided to the Applicant so there is no indication what has been withheld. 	<ul style="list-style-type: none"> • An index of records that only includes the page numbers and a general description. • No exemptions were cited in the index of records.

[54] In total, Highways provided my office with 1143 pages. A review of the records shows Highways did not make any notations of the exemptions that it was claiming. There was no way of determining which pages the Applicant had been provided full access to, partial access or if any of these pages have been withheld in full. Therefore, there is no way for this office to review the exemptions that Highways has applied to these records.

[55] *What to Expect During a Review* also includes a section on preparing the submission. In part, this section states:

The purpose of the submission is to inform the Commissioner about the main arguments of the case and to present supporting information.

Most exemptions found in FOIP and LA FOIP have established tests and criteria used by the IPC in analyses for reviews. The IPC has prepared the resource *IPC Guide to Exemptions* which lists the tests that have been used in the past. These tests can be used by public bodies/trustees as a guide in preparing submissions. Public bodies/trustees will also need to provide any supporting information to meet the relevant tests.

The Commissioner will use this information and material to base his decision. The amount or type of material required in order to convince the Commissioner will vary dependent on the particular facts, issues and circumstances. If a public body/trustee fails to convince the Commissioner, he will recommend the release of the record at issue....

[56] It is up to Highways to demonstrate to my office that a particular exemption applies. This obligation is outlined in section 61 of FOIP, which provides:

61 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[57] Highways provided my office with two submissions for these reviews. Aside from the fact that my office has no way to assess what exemptions have been applied to these records, the submissions did not provide my office with enough information to determine if in fact the exemptions do apply.

[58] In the form that the submissions, records and index of records has been provided to my office, my office would need to conduct a line-by-line review of the records and exemptions Highways might have wanted to apply to different parts of the record. My office is not prepared to play a guessing game. Section 61 requires Highways to tell my office which exemptions it is claiming on which parts of the record. Guessing is not the role of my office. Claiming and supporting exemptions is the role of Highways.

[59] Highways has not met its burden of proof obligations and it is important that I remind it of section 61 of FOIP and the obligation it imposes.

[60] As stated by Mr. Justice La Forest in *Dagg v. Canada (Minister of Finance)*, (1997):

The overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry.

[61] The Highways March 22, 2017 News Release ([*Highways Budget Tops \\$1 Billion for Second Year in a Row*](#)) stated that Highways had an approved budget of \$1.1 billion for the 2017-2018 fiscal year. Approximately half of its budget, or \$500 million, is to continue work on the Regina Bypass Project. These requests, in part, are related to that project.

[62] I will not accept that a Ministry controlling that amount of the public purse is not properly equipped to handle its legal obligations under FOIP. It is not acceptable and Highways must revamp its FOIP processes. In other words, it must get its house in order.

[63] I find that Highways has not met its burden of proof imposed under section 61 of FOIP to justify the claiming of exemptions. I recommend that within 30 days of this report being issued, Highways undertake a line-by-line review of the 1143 page record and provide the Applicant with access to the record, subject to only mandatory exemptions and provide a copy of the covering letter to my office. Where Highways is applying an exemption, I recommend Highways clearly mark the information it is withholding from the Applicant by making a clear notation of the exemption on the record and in the index of records. Highways should not raise new discretionary exemptions but must raise mandatory exemptions.

[64] Because of Highways conduct, I recommend that Highways not charge the Applicant further fees and refund any fees already paid by the Applicant for these requests.

3. What tests should Highways utilize when conducting the line-by-line review?

[65] When Highways responded to the Applicant's six access to information requests, Highways cited subsections 18(1)(b), 22(a) and 24(1)(k) of FOIP as its reasons to deny access to a portion of the records.

[66] The tests for each of these sections of FOIP are found in the *Guide to Exemptions for FOIP and LA FOIP*. In order to meet its obligations under section 61 of FOIP, Highways should demonstrate how each exemption applies using those tests.

[67] For example, in order for subsection 18(1)(b) of FOIP to apply to information, all parts of a three part test must be met:

1. The information must contain financial, commercial, scientific, technical or other information; and
2. The public body [Highways] must have a proprietary interest or right to use it. Meaning, it must be able to demonstrate rights to the information; and;
3. The information has or is likely to have a monetary value.

[68] If the above three part test is not met, this exemption will be found not to apply. The *Guide to Exemptions* goes into further detail surrounding the tests, definitions and considerations.

[69] Since Highways has cited subsection 24(1)(k) of FOIP, I would like specifically to address the issue of personal information. Subsection 29(1) of FOIP requires that government institutions not disclose personal information of an identifiable individual, except with the consent of that individual or without consent where provided by in FOIP or the FOIP Regulations.

[70] Subsection 24(1)(a) through (k) of FOIP provides examples of personal information, however the list is non exhaustive. There are two elements that must be present in order to qualify as personal information:

1. An identifiable individual; and
2. Information that is personal in nature.

[71] *Business card information* is the type of information found on a business card such as name, job title, work address, work telephone numbers, etc. This type of information is generally not considered personal in nature and therefore would not be considered personal information. An example of information that would typically qualify as business card information would be the name, work email, work telephone number, and work address of an employee of Highways.

[72] Highways should not be severing business card information when conducting its line-by-line review.

[73] Finally, I would like to address an Appraisal that Highways may be in possession of. In [Review Report 077-2016 and 092-2016](#) (Global Transportation Hub Authority (GTH)), my office reviewed a 42-page document entitled *Report on Appraisal of NW-20-7-20 W2 Regina, Saskatchewan as at February 12, 2013* (Appraisal) which was prepared by a third party for Royalty Developments Limited. In that Report, my office concluded that the GTH was inappropriately provided with a copy of the Appraisal and recommended that the GTH destroy all copies of the Appraisal or return the copies to the appraisal firm. Further, I recommended that all provincial government institutions with a copy of the Appraisal without written authorization destroy those copies or return them to the appraisal firm.

[74] Highways referenced this Appraisal in its October 28, 2016 response to the Applicant (Review Group 2). From what has been provided, I am unsure if at this time Highways has a copy of the Appraisal. I recommend Highways follow my recommendation in [Review Report 077-2016 and 092-2016](#) at paragraph [55] and if it has copies of the Appraisal without the written authorization, it destroys those copies or return them to [the appraisal firm].

4. What are the suggested next steps for Highways?

[75] Through conversations with Highways, I remain optimistic that it does want to properly manage its FOIP processes.

[76] Therefore, I would like to offer Highways the opportunity to reach out to my office. IPC staff includes those that have previously worked in FOIP offices in the provincial government and they can offer practical advice to Highways. This includes managing requests and reviews. Further, the Access and Privacy Branch (APB) of the Ministry of Justice can provide assistance and advice to Highways.

[77] In addition, there are several tools and resources available to Highways through the APB and IPC that can be of assistance. These offices can assist Highways in setting up an efficient and effective FOIP process.

[78] Based upon the scope of Highways mandate, I expect that it will continue to receive access to information requests that are asking for a variety of different records. As noted above, this fiscal year alone Highways is managing \$1.1 billion of the public purse and is responsible for or directly connected to very high profile and expensive projects. Because of this, the public wants assurance that Highways is behaving in a fiscally responsible way. As such, citizens will continue to exercise their right to access information under FOIP. It will be much easier for Highways to respond, if it has efficient and well-functioning FOIP processes.

[79] Finally, Highways should consider engaging in open government or proactive disclosure initiatives. By making information available on its website, Highways may find the FOIP requests will decline.

[80] The City of Regina has implemented this approach. On its website (www.regina.ca) you will find an *Open Government* page that includes what it refers to as three pillars: open data, open information and open engagement. The City of Regina is a leader in this

province in its open government initiatives and its site offers useful information for any public body looking to follow its lead.

[81] My office encourages openness, transparency and accountability within a public body. Such initiatives can decrease the number of daily inquiries a public body receives and the number of access to information requests might decline.

[82] Unfortunately, Highways did not respond to my office's draft report by the deadline, so I am unable to comment if it intends to comply with the Recommendations.

[83] Pursuant to section 56 of FOIP, Highways will have 30 days from the issuance of this Report for its Head to provide written notice to the Applicant and my office regarding his decision. Section 56 of FOIP provides:

56 Within 30 days after receiving a report of the commissioner pursuant to subsection 55(1), a head shall:

(a) make a decision to follow the recommendations of the commissioner or any other decision that the head considers appropriate; and

(b) give written notice of the decision to the commissioner and the persons mentioned in clause 55(1)(b).

[84] I remind Highways that responding under section 56 of FOIP is a requirement imposed by the law.

[85] Once the Applicant receives the head's decision, he will have 30 days to exercise his right to appeal to the Court, pursuant to section 57 of FOIP.

IV FINDINGS

[86] I find that Highways did not manage its FOIP case files and did not retain a copy of the original responsive records and records provided to the Applicant as part of its FOIP processes.

[87] I find Highways did not meet its burden of proof imposed under section 61 of FOIP to justify the claiming of exemptions.

V RECOMMENDATIONS

[88] I recommend Highways implement new procedures to manage its FOIP case files in accordance with ARMS 2014.

[89] I recommend that Highways adopt a policy that once the responsive record and a copy of the record provided to an applicant is created, the FOIP Co-ordinator always retains a copy of the responsive record and a copy of what was sent to the Applicant.

[90] I recommend Highways follow the *Guide to Exemptions* and *What to Expect During a Review with the IPC* resources when preparing the record, the index of records and the submission.

[91] I recommend that within 30 days of this report being issued, Highways undertake a line-by-line review of the 1143 page record and provide the Applicant with access to the record, subject only to mandatory exemptions and provide a copy of the covering letter to my office.

[92] I recommend Highways clearly mark the information it is withholding from the Applicant by making a clear notation of the exemption on the record and in the index of records.

[93] I recommend that Highways not charge the Applicant further fees and refund any fees already paid by the Applicant for these requests.

[94] I recommend Highways follow my recommendation in [Review Report 077-2016 and 092-2016](#) at paragraph [55] and if it has copies of the Appraisal without the written authorization, it destroys those copies or returns them to [the appraisal firm].

[95] I recommend Highways explore open government and proactive disclosure initiatives to promote openness and transparency within the Ministry.

Dated at Regina, in the Province of Saskatchewan, this 19th day of July, 2017.

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