



REVIEW REPORT 297-2019

Ministry of SaskBuilds and Procurement (formerly SaskBuilds Corporation)

March 30, 2021

Summary: An Applicant submitted an access to information request to the SaskBuilds Corporation (SaskBuilds). SaskBuilds provided third party notification to the Third Party advising it intended to release portions of information. The Third Party took the position that all of the information in the records should be withheld under subsection 19(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). SaskBuilds did not agree that the portions it was releasing contained information exempt under subsection 19(1) of FOIP and advised it would be releasing the information, unless the third party requested a review. The Third Party requested my office undertake a review of the decision to release these portions of the records. The Commissioner found that the portions of the records that SaskBuilds intended to release were not exempt under subsection 19(1) of FOIP. The Commissioner recommended SaskBuilds proceed with releasing these portions of the records. The Commissioner also recommended that SaskBuilds ensure it has a policy or procedure for processing requests involving third parties in compliance with FOIP.

I BACKGROUND

[1] As of the date of the issuance of this Report, SaskBuilds Corporation (SaskBuilds) is now a part of the Ministry of SaskBuilds and Procurement, however, as it was referred to as SaskBuilds at the time this access to information request was processed, I will refer to it as SaskBuilds in this Report. As provided on the Government of Saskatchewan website:

Effective November 9, 2020, the Ministry of SaskBuilds and Procurement was established from the merged responsibilities of the former Ministry of Central Services and SaskBuilds.

<https://www.saskatchewan.ca/government/government-structure/ministries/saskbuilds-and-procurement>

- [2] On May 27, 2019, SaskBuilds received an access to information request from an Applicant requesting “all communications, electronic or otherwise, regarding Saskatchewan Hospital North Battleford sent and received by [names of two SaskBuilds employees] from May 13, 2019 to May 27, 2019.” SaskBuilds contacted the Applicant on June 5, 2019 by telephone and clarified with the Applicant that their request related to construction and roof problems within the dates specified.
- [3] On June 20, 2019, third party notice was provided to Graham Construction.
- [4] On July 11, 2019, Graham Construction responded indicating it was opposed to release of records as it took the position that subsection 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP) applied. Based on these assertions, SaskBuilds again reviewed the responsive records and found that subsection 19(1)(b) of FOIP applied to some portions of the records, but not others. On July 25, 2019, SaskBuilds provided its revised decision to Graham Construction indicating as such and advising that portions of the records would be disclosed.
- [5] On August 16, 2019, Graham Construction responded indicating it wished for all records to be withheld pursuant to subsection 19(1)(b) of FOIP.
- [6] On August 20, 2019, SaskBuilds advised Graham Construction that it would be proceeding to release portions of the records. SaskBuilds also noted that Graham Construction would have 20 days to request a review from my office pursuant to subsections 49(3) and (4) of FOIP. In this letter, SaskBuilds noted that allowing for delivery of the notice, the third party’s opportunity to request a review in 20 days would expire September 9, 2019.
- [7] On September 10, 2019, my office received a letter by courier dated September 9, 2019, from Graham Construction’s Calgary office requesting a review of the decision of SaskBuilds to release the records at issue.

[8] On September 12, 2019, my office notified SaskBuilds, Graham Construction and the Applicant that had requested access to the records that my office would be undertaking a review of if the information qualifies as third party information pursuant to any subsections of 19(1) of FOIP. All parties were invited to provide representations for my office’s consideration in this review.

II RECORDS AT ISSUE

[9] SaskBuilds provided my office with portions of the 206 pages of the responsive records. It had severed the portions of the records it had intended to withhold, only providing my office with the portions it had concluded no exemptions applied to. These portions that SaskBuilds had concluded no exemptions applied to are the portions of the records that Graham Construction has objected to the release of. No portion of these records have been released to the Applicant. This review was requested by the third party in response to SaskBuilds’ notification that it intended to release some portions of the records. As such, this review will only consider the portions of the records that SaskBuilds intended to release and Graham Construction objected to the release of. Those records are outlined as follows:

Page Number	Title/Description	Portions of the record SaskBuilds intended to release that the third party objected to the release of pursuant to subsections 19(1)(a), (b) and (c) of FOIP
1 – 8	Email with attachment May 14, 2019	Page 1: Portions of email header information and portions of email signature line would have been released Pages 2 to 8: Report would have been mostly withheld, only the name of the firm that completed the report and the title of the report would have been released
9 – 10	Email thread May 14, 2019	Three email thread, only portions of the email header information would have been released. It appears there may have

	Between: SaskBuilds, Gracorp Capital Advisors and The Ministry of Central Services	been additional email threads above where the first email thread on page 9 that SaskBuilds also would have withheld.
11 – 26	Attachment to email, an engineering report May 2, 2019	Pages 11 to 25: Report would have been mostly withheld, with exception of the name of the engineering firm, their contact information and logo Page 26: Report would have been mostly withheld, only the name of the hospital at the top of the page would have been released
27	Email thread May 14, 2019 Between: SaskBuilds and Graham Construction	Portions of email header information and the email confidentiality statement would have been released. It appears there may have been additional email threads above where the first email thread on this page that SaskBuilds also would have withheld.
28	Email thread May 15, 2019 Between: SaskBuilds, Graham Construction, The Ministry of Central Services, The Saskatchewan Health Authority and The Ministry of Corrections and Policing	Portions of email header information, names of attachments to email, the body of email, the logo of the company sending the email and the email confidentiality statement would have been released
29 – 30	Attachment to email, meeting agenda May 16, 2019 Author: Graham Construction	Information under the headings ‘chair’ and ‘designate’ would have been withheld, releasing the remaining portions of the document
31 – 40	Attachment to email, working group tracker updates	Page 31 and 33: Report would have been mostly withheld, only the name of the name of the report at the top and the

	<p>May 8, 2019</p> <p>Author: Graham Construction</p>	<p>report footer information would have been released</p> <p>Page 32: a single row of a table would have been released, it appears there would have been additional rows in the table that would have been withheld</p> <p>Page 34: No information on this page would have been released, would have been withheld in full</p> <p>Pages 35 to 39: The tables on these pages would have been released in full, with the exception of three cells of information on page 38 that would have been withheld</p> <p>Page 40: Most of this report would have been release with the exception of the information under the ‘Generated By’ and ‘Recipients’ headings of the Report that would have been withheld</p>
41 – 42	<p>Email thread</p> <p>May 22, 2019</p> <p>Between: SaskBuilds and Graham Construction</p>	<p>Portions of email header information, the logo of the company sending the email and the email confidentiality statement would have been released. It appears there may have been additional emails in this thread above this single email that SaskBuilds also would have withheld.</p>
43	<p>Email thread</p> <p>May 22, 2019</p> <p>Between: SaskBuilds, Graham Construction, The Ministry of Central Services, The Saskatchewan Health Authority and The Ministry of Corrections and Policing</p>	<p>Portions of email header information, the names of the attachments to the email, the body of email, the logo of the company sending the email and the email confidentiality statement would have been released</p>
44 – 45	<p>Attachment to email, meeting minutes and materials</p> <p>May 22, 2019</p>	<p>Information under the headings ‘chair’ and ‘designate’ and portions of information under the heading ‘Attendees’ would have been withheld</p>

	<p>Author: Graham Construction</p>	<p>releasing the remaining portions of the document</p>
46 – 55	<p>Attachment to email, working group tracker updates</p> <p>May 22, 2019</p> <p>Author: Graham Construction</p>	<p>Page 46 and 48 to 49: Report would have been mostly withheld, on page 46 only the name of the name of the report at the top and the report footer information would have been released; on pages 48 and 49 only the report footer information would have been released</p> <p>Page 47: a single row of a table would have been released, it appears there would have been additional rows in the table that would have been withheld</p> <p>Page 50: No information on this page would have been released, would have been withheld in full</p> <p>Pages 51 to 55: The tables on these pages would have been released in full, with the exception of three cells of information on page 54 that would have been withheld</p>
56 – 59	<p>Email thread</p> <p>May 17, 2019 to May 22, 2019</p> <p>Between: SaskBuilds, Graham Construction and the Ministry of Central Services</p>	<p>Most of the two email threads on these pages would have been released, withholding portions of the email header information and the name of the email sender. It appears there may have been additional email threads above the first email thread on these pages that SaskBuilds also would have withheld.</p>
60 – 204	<p>Report, performance monitoring report</p> <p>April 2019</p> <p>Author: Graham Construction</p>	<p>Pages 60 and 61: Title and Table of Contents would have been released in full</p> <p>Page 62 and 63: Portions of the information on this pages would have been released</p> <p>Pages 64 and 65: Employee names would have been withheld, releasing the remaining information related to an</p>

		<p>organization chart and a table related to employee qualifications</p> <p>Pages 66 to 79, 119, 125, 160, 170, 181, 186, 188, 198: these pages would have been released in full</p> <p>Pages 80 to 118 and 120 to 124 (Reports attached as an appendix to the Performance Monitoring Report): Report would have been mostly withheld, only the name of the firm that completed the report and the title of the report would have been released. On pages 117 and 118 it appears the first line in the report below the title also would have been released. Page 124 part of the report footer also would have been released. These report appear similar to those on pages 2 to 8 and completed by the same firm.</p> <p>Pages 126 to 159 and 161 to 169 (Reports attached as an appendix to the Performance Monitoring Report): The reports that appear in these two sections of the Performance Monitoring Report would have been released in full.</p> <p>Pages 171 to 180 (Reports attached as an appendix to the Performance Monitoring Report): This report would have been mostly withheld, releasing the name of a company the report came from, the title and date of the report and the headings in the report.</p> <p>Pages 182 to 185 (Reports attached as an appendix to the Performance Monitoring Report): This report would have been mostly withheld. The title page of the report would have been released in full, and the header and footer on the remaining pages of the report would have been released.</p>
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		<p>Page 187 (Report attached as an appendix to the Performance Monitoring Report): This is single page report that would have been mostly withheld, releasing the title at of the report.</p> <p>Pages 189 to 197 (Documents attached as an appendix to the Performance Monitoring Report): These documents would have been mostly withheld. The title on each of these pages would have been released</p> <p>Pages 199 to 204 (Documents attached as an appendix to the Performance Monitoring Report): There were a group of three documents. These documents would have been released in full, with the exception of the name at the end of each of the documents and a signature on page 204.</p>
<p>205 – 206</p>	<p>Email thread May 24, 2019 Between: SaskBuilds and Graham Construction</p>	<p>Most of the two email threads on these pages would have been released, withholding portions of the email header information and the name of the email sender. It appears there may have been additional email threads between these two emails and an email attachment that also were being withheld.</p>

[10] In reviewing the record, my office noticed that some pages of the record appeared to be missing. As only those pages or portions of the records that SaskBuilds was intending to release, my office requested SaskBuilds clarify if those pages had been withheld or if they were missing from our record package. Page 206 was part of an email thread which appeared to reference an attached media release. However, my office did not appear to have a copy of the media release.

[11] On February 9, 2021, SaskBuilds responded indicating that there were no any pages missing from the record. It indicated that it had not included portions of the email threads as it had deemed that those pages had duplicate information on them and were not included

for improved readability. In the future, when SaskBuilds is identifying records responsive to a request, it should ensure that all records that contain responsive information are included, unless an applicant has requested duplicates not be included. In my office's resource, *Best Practices for Responding to Access Requests*, it provides that, "[a] summary, condensation, or secondary document, should not be substituted for source documents. In other words, an Applicant is entitled to original records, unless exemptions apply". SaskBuilds should ensure it is identifying all records that contain information responsive to the request, not choosing select documents that contain the information that an applicant is seeking. This could prevent applicants from becoming suspicious that information is being hidden.

[12] A number of the records provided to my office had portions redacted by SaskBuilds and identified as being non-responsive. While the application of non-responsive is not being considered in this review, my office had considered the application of non-responsive to records in Review Report 274-2019. At paragraph [19] of this report, my office found that even if the information was non-responsive to the Applicant's request it should be released to the Applicant, subject to any applicable exemptions.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[13] At the time the access to information request was processed and the third party requested the review, SaskBuilds was considered a Crown corporation and qualified as a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP. As well, the Ministry of SaskBuilds and Procurement qualifies as a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. As such, I have jurisdiction to conduct this review.

[14] Further, SaskBuilds identified Graham Construction as a third party. Graham Construction qualifies as a "third party" as defined by subsection 2(1)(j) of FOIP.

2. Do subsections 19(1)(a), (b) or (c) of FOIP apply to the records at issue?

[15] On August 20, 2019, SaskBuilds notified Graham Construction that it intended to release portions of the responsive records. SaskBuilds advised Graham Construction it had the right to request a review by my office if they did not agree with SaskBuilds' decision to release this information. In a letter dated September 9, 2019, my office received a request for review form and accompanying letter from Graham Construction. The letter stated that SaskBuilds had informed them of the decision to release certain portions of records relating to one of their projects. Graham Construction stated that its view is that the records should be withheld pursuant to section 19 of FOIP.

[16] In its submission to my office, Graham Construction asserted that the information was its third party information pursuant to subsections 19(1)(a), (b) and (c) of FOIP as follows:

The records should not be disclosed pursuant to the exceptions contained in Section 19(1) of the Freedom of Information and Protection of Privacy act (the "FOIPP Act").

Graham is a "third party" as such term is used in the FOIPP Act. While it is our view that all of section 19(1) is applicable, we make comments below specifically relating to sections 19(1)(a), 19(1)(b) and 19(1)(c).

The records at issue generally relate to the work conducted in relation to the Project. Such Project was a P3 project delivery model governed by a network of agreements, some or all of which contain confidentiality clauses limiting third party disclosure of information regarding the Project. Accordingly, it is clear that records relating to the Project were supplied "in confidence, implicitly, or explicitly, to a government institution" as contemplated by 19(1)(b) of the FOIPP Act.

Disclosure of the records could also reasonably be expected to trigger all three of the consequences contained in section 19(1)(c) of the FOIPP Act. The records relate to problematic construction issues encountered on the Project. If such information were to become generally available to disclosure under the FOIPP Act, it could result in negative publicity for Graham (whether warranted or not) which could negatively affect Graham's ability to win other work in a competitive environment.

Since the records generally relate to construction methodology, the records also contain trade secrets of Graham. They should therefore be exempt from disclosure under section 19(1)(a) of the FOIPP Act.

[17] In its submission to my office, SaskBuilds' position was that the information in the records did not constitute third party information pursuant to subsection 19(1)(b) of FOIP as follows:

SaskBuilds reached its decisions to refrain from withholding any records, in full or part, under subsection 19(1)(b)... as it was determined that the **information is not considered third party** as not all three parts of the tests for third party information under subsection 19(1)(b) were able to be applied... SaskBuilds recommends the release of the information as it is not considered third party information, and for that reason SaskBuilds **did not apply subsection 19(1)(b)** to any of the records and the release is not occurring under subsection 19(3).

[Emphasis added]

[18] As SaskBuilds has not relied on subsection 19(3) of FOIP as reason to release the information, I do not need to consider this provision in this review. However, it appears that there is disagreement between SaskBuilds and Graham Construction on whether the information constitutes third party information of Graham Construction pursuant to subsections 19(1)(a), (b) and (c) of FOIP.

[19] Subsections 19(1)(a), (b) and (c) of FOIP provide:

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

(a) trade secrets of a third party;

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

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

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with the contractual or other negotiations of;

a third party;

- [20] Section 19 of FOIP is a mandatory, class-based and harm-based provision, meaning, it contains both class and harm based exemptions. As a mandatory provision, the government institution has no, or more limited, discretion regarding whether or not to apply the exemption. That is, if the information is covered by the exemption and the conditions for the exercise of discretion do not exist, then it must not be disclosed.
- [21] The Government of Saskatchewan collects a wide range of information from third parties. This information may be submitted voluntarily, such as in a bid for a government contract, or submitted as required by law, such as for proof of regulatory compliance. There is a compelling need to protect information that is provided to the government by third parties if the information falls within one of the enumerated exemptions under section 19 of FOIP.
- [22] Although government institutions need to be open and accountable, they also need to conduct business and enter into business relationships; in doing so, they must be able to assure their private sector partners that their trade secrets and commercial and financial secrets will not be readily disclosed to competitors and the public.
- [23] In order for subsection 19(1)(a) of FOIP to apply, the information must qualify as a trade secret. My office's *Guide to FOIP, Chapter 4: Exemptions from the Right of Access*, Updated: February 4, 2020, at page 189 (Guide to FOIP) defines a *trade secret* as information, including a plan or process, tool, mechanism or compound, which possesses each of the four following characteristics:
- i) the information must be secret in an absolute or relative sense (is known only by one or a relatively small number of people);
 - ii) the possessor of the information must demonstrate he/she has acted with the intention to treat the information as secret;
 - iii) the information must be capable of industrial or commercial application; and
 - iv) the possessor must have an interest (e.g. an economic interest) worthy of legal protection.
- [24] In order for subsection 19(1)(b) of FOIP to apply, my office considers the following three part test:

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

(Guide to FOIP, p. 191)

[25] In order for subsection 19(1)(c) of FOIP to apply, my office considers the following tests for the application of subsections 19(1)(c)(i), (ii) and (iii):

Test for the application of subsection 19(1)(c)(i) of FOIP

1. What is the financial loss or gain being claimed?
2. Could release of the record reasonably be expected to result in financial loss or gain to a third party?

(Guide to FOIP, p. 204)

Test for the application of subsection 19(1)(c)(ii) of FOIP

1. What is the prejudice to a third party's competitive position that is being claimed?
 2. Could release of the record reasonably be expected to result in the prejudice?
- (Guide to FOIP, pp. 208 to 209)

Test for the application of subsection 19(1)(c)(iii) of FOIP

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

(Guide to FOIP, pp. 213 to 214)

[26] The responsive records include emails and various other reports and documents. The email threads are as follows:

- Pages 1, 9 to 10, 27, and 41 to 42, are email communications. SaskBuilds had intended to withhold the majority of these email communications, with the exception of some portions of the email header information (from, sent, to, carbon

copy (cc), subject and attachment file name fields), as well as the signature lines and confidentiality statements.

- Pages 28 and 43 are emails where some names were redacted, but the remainder SaskBuilds was intending to release. The content of the email is general in nature and simply advises that there were attachments.
- Pages 56 to 59 and pages 205 to 206 are email communications that are redacted in part that discuss a media advisory.

[27] The various reports and documents found in the responsive records are as follows:

- Pages 29 to 40 are pages of documents that were attached to the email on page 28. Pages 29 and 30 are meeting agenda items. Page 31 is only the title line and footer of a report, page 32 is one row of information from what appears to be numerous rows of data. Pages 33 and 34 were marked as non-responsive. Pages 35 to 39 are tables of information relating to various events. Page 40 is a list of tasks and their current status.
- Pages 44 to 55 are pages of documents that were attached to the email on page 43. Pages 44 and 45 are meeting agenda items. Page 46 is only the title line and footer of a report, page 47 is one row of information from what appears to be numerous rows of data. Pages 48 to 50 were marked as non-responsive. Pages 51 to 55 are tables of information relating to various events.
- Pages 60 to 204 is a Performance Monitoring Report. SaskBuilds had redacted some portions or pages of this report, but intended to release other portions.

[28] For subsections 19(1)(a) and (c) of FOIP, the third party's submission provided general arguments for why it believed that subsection 19(1)(a) and (c) of FOIP applied. Its arguments did not specifically indicate how each provision applied to each portion of the record or information in the record. For example, the third party did not explain how the information possessed the four characteristics required to qualify as a "trade secret" for subsection 19(1)(a) of FOIP. As such, there are insufficient arguments provided by the third party to support the application of subsections 19(1)(a) and (c) of FOIP. Therefore, I find that subsections 19(1)(a) and (c) of FOIP do not apply to the records.

[29] For the first part of the test for subsection 19(1)(b) of FOIP, the third party did not specify what type of third party information was involved (i.e. financial, commercial, scientific, technical or labour relations information). Upon review of the information, it is not clear

on the face of the record that the information qualifies as financial, commercial, scientific, technical or labour relations information of the third party. Therefore, I find that the first part of the test is not met. As all three parts of the test must be met, there is no need to consider subsection 19(1)(b) of FOIP further.

[30] In conclusion, I find that subsections 19(1)(a), (b) and (c) of FOIP do not apply.

[31] I recommend SaskBuilds release the responsive portions of the records, as it had intended to prior to the third party requesting the review.

3. Has SaskBuilds properly processed this access to information request?

[32] The Applicant was also invited to provide a submission on this matter. The submission provided by the Applicant related to their concerns that the third party may not have complied with the legislated timeframes. Based on their submission, the Applicant concluded that they wished for my office to reject the request for review and the records be released to them. As Graham Construction is the party requesting the review by my office, the scope is established based on the concerns they have brought forward. As such, the issue of timeline is outside of the scope of this review. However, I will briefly address how the request was processed below.

[33] Subsection 34(1) of FOIP provides:

34(1) Where a head intends to give access to a record that the head has reason to believe may contain:

(a) information described in subsection 19(1) that affects the interest of a third party; or

(b) personal information that may be disclosed pursuant to clause 29(2)(o) and that relates to a third party;

and, in the opinion of the head, the third party can reasonably be located, the head shall give written notice to the third party in accordance with subsection (2).

- [34] The Applicant's submission outlined that SaskBuilds had provided the third party with two separate third party notifications over the course of approximately five weeks. This caused delay in the processing of the access to information request and was not in compliance with section 34 of FOIP. Section 34 of FOIP does not provide for multiple third party notifications for one access to information request. In the future, SaskBuilds should limit its third party notification, when required, to a single instance as section 34 of FOIP requires. Additionally, for the third party's request for review to my office, while it had been received one day past the deadline provided to request a review, it was clear it had been sent the day prior. The letter was on letterhead from Graham Construction's Calgary office and was dated the day prior to its delivery date. The letter was delivered to my office by courier the following morning.
- [35] Additionally, I agree there is no mechanism under FOIP for SaskBuilds to provide an extension to the third party for their response. However, when communications are being delivered by mail, it is reasonable to anticipate that there may be a couple of days delay to account for delivery.
- [36] However, I do caution third parties that missing the deadline of 20 days to make its representations to a public body (subsection 36(1)(b) of FOIP) or requesting a review by my office (subsection 49(4) of FOIP) may result in records being released. As such, electronic communication should be considered wherever possible as it can be delivered without delay.
- [37] SaskBuilds had identified other portions of the record that it had determined were exempt pursuant to subsection 19(1)(b) of FOIP, or other exemptions, that it had intended to withhold. However, the portions that the third party has objected to the release of are the portions of the records that SaskBuilds had determined were not subject to any exemptions. It is up to the "head" of SaskBuilds to determine whether exemptions apply to records in its possession or under its control. Section 34 of FOIP only requires for a government institution to provide notice to a third party where it intends to release information that it has reason to believe contains information described in subsection 19(1) of FOIP. If SaskBuilds was not intending to release any portions of the record that it believed

subsection 19(1) of FOIP applied to, there was no need to notify the third party at the time it was processing the access to information requests. In the future, SaskBuilds can simplify its process by only notifying third parties when it has identified information that it has reason to believe is exempt pursuant to subsection 19(1) of FOIP, but is intending to release the information.

[38] On September 13, 2019, SaskBuilds notified the Applicant of the third party request for review. In that letter, SaskBuilds stated, “SaskBuilds is notifying you that we are in receipt of a review from a third party regarding our intention to release records that are responsive to your access to information request.

[39] Section 7 of FOIP provides that “the head shall give written notice to the applicant within 30 days after the application is made.” At the time my office commenced the review, a section 7 response had not been provided. Following a telephone conversation with my office, SaskBuilds issued its section 7 response to the Applicant on December 23, 2019. Subject to some exemptions, SaskBuilds released some records that were responsive to the Applicant’s request, but were not subject to the third party request for review. The response letter stated that some portions of the records released to the Applicant were being withheld pursuant to specified exemptions. However, the response letter did not appear to address the records that my office is reviewing in this Report.

[40] In SaskBuilds’ September 13, 2019 notification letter to the Applicant it stated it was intending to release records responsive to its request. It did not specify that it was intending to withhold some information pursuant to various exemptions under FOIP as required by subsection 7(2)(d) of FOIP. Additionally, in its December 23, 2019, section 7 response letter, SaskBuilds only addressed the portions of the records being withheld from the pages of the records being released. This letter did not address that SaskBuilds was also intending to withhold portions of the records for the pages of the record that were under review by my office. In the future, SaskBuilds should clearly specify when it is intending to withhold information and cite the specific exemptions it has determined apply to all the records responsive to the Applicant’s access to information request. This would ensure that applicants are fully aware of SaskBuilds’ intentions and would allow an applicant to

request a review of other exemptions SaskBuilds has applied, even where a third party requests the review of only the third party exemption.

- [41] I recommend that SaskBuilds ensure it has a policy or procedure for the processing of access to information requests, including the processing of requests involving third parties to ensure it is processed in accordance with FOIP.

IV FINDING

- [42] I find that subsections 19(1)(a), (b) and (c) of FOIP do not apply to the portions of the record at issue.

V RECOMMENDATIONS

- [43] I recommend SaskBuilds release the responsive portions of the records, as it had intended to prior to the third party requesting the review.
- [44] I recommend that SaskBuilds ensure it has a policy or procedure for the processing of access to information requests, including the processing of requests involving third parties to ensure it is processed in accordance with FOIP.

Dated at Regina, in the Province of Saskatchewan, this 30th day of March, 2021.

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