



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 416-2019

Ministry of SaskBuilds and Procurement (formerly Ministry of Central Services)

September 30, 2021

Summary:

The Applicant made an access to information request to the Ministry of Central Services (Central Services) which was partially denied. The Applicant submitted a request for review of Central Services' decision to deny access to portions of requested records pursuant to sections 13(2), 16(1)(a), 17(1)(a), (b), 18(1)(f) and 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that sections 16(1)(a), 17(1)(a) and 19(1)(b) of FOIP applied to some portions of the withheld portions of the responsive record, but not others. The Commissioner recommended Central Services continue to withhold the portions of the record where an exemption was found to apply and release the rest.

I BACKGROUND

[1] As of the date of the issuance of this Report, the Ministry of Central Services (Central Services) is now a part of the Ministry of SaskBuilds and Procurement; however, as it was referred to as Central Services at the time this access to information request was processed, I will refer to it as Central Services 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 October 2, 2019, Central Services received an access to information request from the Applicant requesting the following records between October 1, 2017 and October 2, 2019:

RE: [a certain parcel of land]

All correspondence and records which provides any of the following information:

A description of the various departmental uses within the building, their activities where they are coming from (i.e. downtown, existing industrial areas etc) and if they have any non-office needs (such as compound, warehousing, parking) on the property. Dates when the departmental use has or will commence.

- [3] On October 3, 2019, Central Services responded:

Your access request has not provided enough details for us to identify the records you wish to access. In order for your request to be processed, my office requires additional details to identify the records you are requesting. Therefore, please provide my office with more specificity on the records you are seeking so that we can determine an appropriate search strategy.

Once you provide our office with the details enabling us to clarify the request, we will proceed with processing your access request. The notification has been provided pursuant to subsection 6(3) of *The Freedom of Information and Protection of Privacy Act*, which I have enclosed as a copy of for your reference.

- [4] On October 10, 2019, the Applicant responded advising they were interested in records that would be held in Central Services' Property Management Division. The revised access to information request clarified that the records they were seeking were between October 1, 2017 to October 10, 2019 as follows:

RE: [a certain parcel of land]

Copies of all correspondence regarding the above including emails, letters, and all attachments (if any), sent to or from an employee or contractor of the Ministry of Central Services Property Management Division including the letter dated February 12, 2018 signed by [name of employee], Realty Manager.

- [5] On October 15, 2019, the Applicant further clarified that they had previously received:

...the redacted lease and redacted amended lease which will be dealt with under the other Access to Information request so you can remove this from your search... I am

only interested in the records within the realty unit of [sic] property management division.

- [6] On October 17, 2019, Central Services issued a \$240 fee estimate to the Applicant requesting \$120 as a deposit in order to proceed with processing their access to information request.
- [7] On October 21, 2019, Central Services received the Applicant's \$120 deposit to allow Central Services to proceed with processing their request.
- [8] On October 31, 2019, Central Services notified the Applicant that the requested records may contain third party information subject to section 19(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). As such, it was providing third party notice to the third parties pursuant to section 34 of FOIP. The third parties would have the opportunity to provide representations to Central Services within 20 days of receiving the notice.
- [9] On November 7, 2019, Central Services notified the Applicant that it would be applying a 30 day time extension to respond to the request, pursuant to section 12(1)(c) of FOIP.
- [10] On November 28, 2019, Central Services responded to the Applicant advising it was intending to release some portions of the responsive records and withhold other portions pursuant to sections 13(2), 16(1)(a), 17(1)(a), (b), 18(1)(d), (e), (f), 19(1)(a) and (b) of FOIP. It had notified the third parties that it intended to give access to some portions of records and provided the third party with notice of their right to request a review by my office within 20 days. Central Services notified the Applicant that it would proceed with releasing the records, subject to exemptions, provided the third party did not request a review.
- [11] On November 28, 2019, Central Services followed up with an email to the Applicant noting that if a third party did not request a review, Central Services was, "prepared to release the redacted third party records on December 18, 2019 and upon second payment of the fees associated with processing this request." Central Services noted that it had estimated the

total cost to process this request at \$240, however, the actual cost to process the request was \$930. Central Services noted that “as the actual costs are higher than the original estimate and [they] cannot be charged for anything greater than the estimate, the second payment due is \$120.”

[12] On December 2, 2019, Central Services emailed the Applicant stating:

Thank you for your second payment of \$120 received November 29, 2019. There are some responsive records that did not require third party notification of where the third party consented to the release of the record (five pdf files in total) in which the Ministry is prepared to release now that the second payment has been received. Please note that as stated in my email dated November 28, 2019, the records containing third party information will be released to you on December 18, 2019, if a request for review by a third party is not received.

[13] On December 18, 2019, Central Services advised that the 20 day request for review period had expired and provided partial access to the remaining responsive records.

[14] On December 19, 2019, the Applicant requested my office undertake a review. On December 30, 2019, my office requested clarification from the Applicant on which exemptions they were interested in my office reviewing the application of. On December 31, 2019, the Applicant responded indicating they were interested in my office reviewing all of the exemptions claimed by Central Services.

[15] On January 15, 2020, my office notified Central Services and the Applicant that my office would be undertaking a review of Central Services’ application of sections 13(2), 16(1)(a), 17(1)(a), (b), 18(1)(d), (e), (f), 19(1)(a) and (b) of FOIP to withhold portions of the responsive records. My office invited both parties to submit representations for my consideration in this review. Central Services’ submission did not provide any arguments for the application of sections 18(1)(d), (e) or 19(1)(a) of FOIP. These exemptions were not applied to the record, referenced in the index of records, nor were there any arguments raised in the submission. Based on this, it appears that Central Services is no longer relying on those exemptions. As such, those exemptions are not at issue in this review.

- [16] On January 29, 2020, my office requested Central Services provide third party contact information. Central Services responded on the same day providing contact information for three third parties: Shindico (334286 Manitoba Ltd.), Cushman & Wakefield and the City of Regina.
- [17] On February 5, 2020, my office provided notification to the third parties that my office would be undertaking a review of the application of section 19(1) of FOIP to their organization's information. The third parties were also invited to provide representations for my office's consideration in this review.

II RECORDS AT ISSUE

- [18] Central Services identified 13 packages of records (records A through M) totalling 279 pages. Central Services indicated it had fully released to the Applicant Packages A through E, totalling 84 pages. As Packages A through E were released in full, no exemptions were applied, and as such will not be considered in this review.
- [19] During my office's review it was discovered that some attachments to responsive records had not been identified as part of the responsive records for this review. My office requested Central Services conduct a search for these records. My office also requested Central Services either release the records to the Applicant, or provide copies of the records to my office, advising of what exemptions were being relied on to withhold the records. Once the email attachments were identified, Central Services advised that some of the information in the records may contain third party information and contacted the third party to determine if they had any concerns with the release of the email attachments. Central Services advised that three attachments totalling 13 pages to an email thread on pages 43 to 45 of Package J of the record were being withheld in full pursuant to section 19(1)(b) of FOIP. As such, I will consider the application of section 19(1)(b) of FOIP to those pages.
- [20] The other attachments listed below were released to the Applicant in full on August 30, 2021, and therefore not at issue in this review:

- One page attachment to email on page 36 of Package H;
- Eight page attachment to email thread on pages 1 and 2 of Package J; and
- One page attachment to email thread on pages 43 to 45 of Package J.

[21] In Packages F through M, Central Services withheld 38 pages in part and 24 pages in full. Only those records withheld in part or in full in Package F through M are at issue in this review, which are summarized in the table below:

Page Numbers	Description of Record	FOIP Exemptions Applied	Withheld in Full or in Part
Record F Pages 1 to 12	Ministry of Central Services internal correspondence related to [a certain parcel of land] that was partially released.	16(1)(a) – page 8 17(1)(a) – pages 1, 2, 8, 9, 10, and 12 17(1)(b)(i) – pages 1, 2, 7, 8, 10 and 12 18(1)(f) – pages 2, 5, 9, 10, and 12 19(1)(b) – page 2, 5, 9, 10 and 12	Pages 1, 2, 5, 7, 8, 8, 10 and 12 withheld in part Page 9 withheld in full
Package G Pages 1 to 49	Correspondence dated Jan. 2018 to Oct. 2018 that required notification to Shindico (334286 Manitoba Ltd.) only.	17(1)(a) - pages 16 and 49 18(1)(f) – pages 16 and 49 19(1)(b) – page 7 and 16	Pages 7, 16 and 49 withheld in part
Package H Pages 1 to 73	Correspondence dated Nov. 2018 that required notification to Shindico (334286 Manitoba Ltd.) only.	17(1)(a) – page 36 17(1)(b)(i) – page 36 18(1)(f) – page 36 19(1)(b) – page 36	Page 36 withheld in part
Package I Pages 1 to 23	Correspondence dated Dec. 2018 that required notification to Shindico (334286	18(1)(f) – page 2 19(1)(b) – page 2	Page 2 withheld in part

Page Numbers	Description of Record	FOIP Exemptions Applied	Withheld in Full or in Part
	Manitoba Ltd.) only.		
Package J Pages 1 to 88	Correspondence dated Jan. 2019 to Oct. 2019 that required notification to Shindico (334286 Manitoba Ltd.) only.	17(1)(a) – pages 19, 44, 45, 46, 48, 50, 64 to 66 17(1)(b)(i) – pages 1, 4, 6, 11, 17, 19, 44, 45, 48, 50 18(1)(f) – page 46 19(1)(b) – pages 4 and 6, 19, 44 and 45, 46, and 64 to 66 and three attachments totaling 13 pages to an email thread on pages 43 to 45	Pages 1, 4, 6, 11, 17, 18, 19, 44, 45, 46, 48 and 50 withheld in part Pages 64 to 66 withheld in full Three attachments (attachment #1, 2 pages; attachment #2, 6 pages; attachment #3, 5 pages) to email thread on pages 43 to 45 withheld in full pursuant to section 19(1)(b) of FOIP.
Package K Pages 1 to 19	Correspondence that required notification to both Shindico (334286 Manitoba Ltd.) and the City of Regina.	13(2) – pages 8, 11 and 12 19(1)(b) – pages 17 to 19	Pages 8, 11 and 12 withheld in part Pages 17 to 19 withheld in full
Package L Pages 1 to 6	Correspondence that required notification to the Regina Police Service and to Cushman & Wakefield (Shindico).	19(1)(b) – page 5	Page 5 withheld in part
Package M Pages 1 to 14	Ministry of Central Services internal correspondence related to [the specified address]	16(1)(a) – pages 4 to 8 17(1)(a) – pages 9 to 13 17(1)(b)(i) – pages 1 and 11 to 13	Pages 1, 2, 3, 4, 9, 10, 11, 12, 13 withheld in part Pages 5 to 8 withheld in full

Page Numbers	Description of Record	FOIP Exemptions Applied	Withheld in Full or in Part
		18(1)(f) – page 2 and 3 19(1)(b) – pages 2 and 3	

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[22] At the time the access to information request was processed and the Applicant requested the review, Central Services qualified as a “government institution” pursuant to section 2(1)(d)(i) of FOIP. As well, the Ministry of SaskBuilds and Procurement qualifies as a “government institution” pursuant to section 2(1)(d)(i) of FOIP. As such, I have jurisdiction to conduct this review.

[23] Further, Central Services identified Shindico (334286 Manitoba Ltd.), Cushman & Wakefield and the City of Regina as third parties. Each of these three parties qualifies as a “third party” as defined by section 2(1)(j) of FOIP.

2. Does section 13(2) of FOIP apply to the records?

[24] Central Services applied section 13(2) of FOIP to partially withhold pages 8, 11 and 12 of Package K of the responsive records.

[25] Section 13(2) of FOIP provides:

13(2) A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from a local authority as defined in the regulations.

[26] My office's *IPC Guide to FOIP, Chapter 4: Exemptions from the Right of Access*, Updated: April 30, 2021 (Guide to FOIP) at pages 34 to 35, provides the following two-part test for the application of section 13(2) of FOIP:

1. Was the information obtained from a local authority?
2. Was the information obtained implicitly or explicitly in confidence?

[27] Central Services' submission provides as follows:

The information that is withheld relates to a conversation between a third party and the City of Regina in relation to a building permit that the Ministry of Central Services was in the process of obtaining. The discussion relates to the work the third party has completed to accommodate the Ministry (tenant) and to confirm that the Ministry would be occupying the space for which the Ministry was seeking a building permit.

This conversation was not intended to be public and was treated consistently in a confidential manner. This is demonstrated later in the email chain where the third party explains that Central Services was copied on the email to confirm that it was authorized by Central Services to send the earlier information. It is also demonstrated because the emails remain between the parties who have an interest in the Building Permit (third party, City of Regina and the Ministry of Central Services).

[28] The information withheld on pages 8, 11 and 12 of Package K are all the same email communication involving the City of Regina. Based on a review of these pages of the record, in the withheld portions of the email at issue, the City of Regina appears to be receiving information from Shindico related to a building permit for the property at issue.

[29] *Obtained* means to acquire in any way; to get possession of; to procure; or to get a hold of by effort. (Guide to FOIP, p. 34) It does not appear the information at issue is information that was obtained from the City of Regina.

[30] Additionally, as noted earlier, Central Services identified the City of Regina as a third party in this review. The City of Regina also qualifies as a "local authority" pursuant to section 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). As the City of Regina was identified as a third party by Central Services, my office notified the City of Regina of this review and asked if it objected to the release of the

records at issue. In an email dated March 2, 2020, the City of Regina emailed my office stating it, “no longer has any concerns with the release of the information with no redactions applied.”

[31] As such, I do not find section 13(2) of FOIP applies to the withheld information. See Appendix A for details.

3. Does section 16(1) of FOIP apply to the records?

[32] Central Services applied section 16(1) of FOIP to partially withhold page 8 of Package F and portions of pages 4 to 8 of Package M of the responsive record.

[33] Section 16(1) of FOIP provides:

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

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

(b) agendas or minutes of the Executive Council or any of its committees, or records that record deliberations or decisions of the Executive Council or any of its committees;

(c) records of consultations among members of the Executive Council on matters that relate to the making of government decisions or the formulation of government policy, or records that reflect those consultations;

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

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

(ii) are the subject of consultations described in clause (c).

[34] My office’s Guide to FOIP at pages 91 to 93 provides as follows:

Subsection 16(1) is a mandatory class-based provision. Subsections 16(1)(a) through (d) are not an exhaustive list. Therefore, even if none of the subsections are found to

apply, the introductory wording of subsection 16(1) must still be considered. In other words, is the information a confidence of Executive Council?

Including means that the list of information that follows is incomplete (non-exhaustive). The examples in the provision are the types of information that could be presumed to disclose a confidence of the Executive Council (Cabinet).

The Saskatchewan Government is based on a Cabinet system. Consisting of the Premier and ministers. Cabinet establishes the provincial government's policies and priorities for the province. Cabinet ministers are collectively responsible for all actions taken by the Cabinet and must publicly support all Cabinet decisions. In order to reach final decisions, ministers must be able to express their views freely during the discussions held in Cabinet. To allow the exchange of views to be disclosed publicly would result in the erosion of the collective responsibility of ministers. As a result, the collective decision-making process has traditionally been protected by the rule of confidentiality, which upholds the principle of collective responsibility and enables ministers to engage in full and frank discussions necessary for the effective running of a Cabinet system.

Package F: Page 8

- [35] Central Services' submission provided the portion of this page of the record "advises Ministry officials that a decision has yet to be made by Cabinet. This discloses a confidence of the Executive Council because it advises that an issue is before Cabinet and that Cabinet has yet to make a decision."
- [36] Page 8 is part of an email thread. Central Services applied section 16(1) of FOIP to a single sentence in the initial email. The redacted sentence refers to a decision Central Services is awaiting from Cabinet. The sentence does not provide detail about what the decision would be, just that a decision had not yet been made.
- [37] The redacted sentence appears to be general in nature and it is unclear how the release of this information would, "disclose a confidence of the Executive Council" as described in section 16(1) of FOIP. As such, I do not find section 16(1) of FOIP applies. See Appendix A for details.

Package M: Pages 4 to 8

[38] Central Services' submission provided the following regarding these pages of the record:

The record on pages 4 to 8 of Package M consists of an email chain and a Treasury Board Exhibit. The email chain was necessary to inform the Ministry of Central Services about an issue that they were involved in and would be heading to Treasury Board. Officials were asked to provide comment to ensure that Treasury Board document was accurate and contained all the information it should but also to let the Ministry know so that they could properly prepare their Minister, in case the Minister was asked any questions. The email chain is a record that contains briefings to members of the Executive Council in relation to matters that are proposed to be brought before a committee of the Executive Council, in this instance, Treasury Board.

[39] In Review Report 188-2019, I also considered the application of section 16(1)(a) of FOIP to an email with an attached cabinet decision item (CDI):

[62] First, I will consider if subsection 16(1)(a) of FOIP applies to the attachments to the emails in these records, the draft CDIs. In its submission, the Ministry indicated that the record was created to present advice, proposals, recommendations, analyses or policy options to the Executive Council, within the meaning of subsection 16(1)(a) of FOIP. Upon review of the CDI's, I agree that they contain recommendations, analyses and policy options. The Ministry submitted that the CDI was ultimately prepared for Cabinet. My office has indicated in Review Report 023-2014, Review Report 056-2017 and Review Report 028-2019 that a draft memorandum that was created for the purpose of presenting proposals and recommendations to Cabinet, but that was never actually presented to Cabinet remains a confidence. In Review Report 277-2016, Review Report 051-2015 and Review Report 079-2013, my office found that particular CDIs qualified for exemption under subsection 16(1)(a) of FOIP. Upon review of the attachment, and consistent with the reports mentioned, I am persuaded that both parts of the test are met. I find that subsection 16(1)(a) of FOIP applies to all of the attachments that are draft CDIs in records 4, 7, 8, 12, 13, 15, 17, 25 and 26. See Appendix A for details.

...

[65] Finally, I will consider if the emails in this set of records meet the test for subsection 16(1)(a) of FOIP. The emails in records 4, 8, 13, 15, 17, 25 and 26 are either blank, contain only a salutation or a comment about the status of the draft CDI attachment. The text of these emails do not qualify as advice, proposals, recommendations, analyses or policy options; neither do the header information and signature lines of the emails. Further, I am not persuaded that these emails were intended to be presented to Cabinet or any of its committees. Neither of the two parts of the test have been met. As such I find that subsection 16(1)(a) of FOIP does not apply to the email portions of these records. See Appendix A for details.

- [66] The emails in records 5, 7 and 12 have text with more substance. The text in the email of record 5 lists changes made to the draft CDI as well as information that will be added in the future. This list of items does not qualify as advice, proposals, recommendations, analyses or policy options. Further, the text of the email was not meant to be presented to Cabinet or one of its committees. However, I also must consider whether the text of this email “discloses a confidence of the Executive Council” as described in subsection 16(1) of FOIP. As described above, I have already found that the attachment portion of record 5, the CDI, qualifies for exemption pursuant to subsection 16(1)(a) of FOIP. The email portion of record 5 refers to changes made to the attachment portion of record 5. Therefore, the information in the text of the email of record 5 would “disclose a confidence of the Executive Council” and subsection 16(1) of FOIP would apply. This exemption does not apply to the header and signature information in the email in record 5.
- [40] Page 4 is an email thread. The initial email is between the Ministry of Highways (Highways), Ministry of Finance (Finance) and Central Services. The second email then forwards the initial email to two additional employees of Central Services. The body of the email for both emails has been redacted and refers to the documents attached. However, based on my review of the record, beyond identifying the attachment to the email, which is already revealed in the subject line that was released, the remainder of the email appears to be general in nature.
- [41] The content of the body of the email thread on this page of the record does not qualify as advice, proposals, recommendations, analyses or policy options. Further, it does not appear that these emails were intended to be presented to Cabinet or any of its committees. Neither of the two parts of the test have been met. As such I find that section 16(1)(a) of FOIP does not apply to the email portions of these records. Additionally, I am not convinced that the content of the emails on this page, “discloses a confidence of the Executive Council” as described in section 16(1) of FOIP.
- [42] Pages 5 to 8 is the Treasury Board Exhibit document that was attached to the emails on page 4. It appears someone made some hand drawn markings on the document as well.
- [43] It appears this document is a draft that was provided for comment to Central Services and Highways before it was presented to Treasury Board. However, as noted in the analysis of Review Report 188-2019, drafts created for the purpose of presenting to Cabinet qualify

for exemption, even if the drafts are not presented to Cabinet. Based on my review of the document, the information on these pages contain recommendations, analyses and policy options. The first part of the test is met. Treasury Board is a committee of Executive Council (Guide to FOIP, p. 101). As such, the second part of the test is met and section 16(1)(a) of FOIP applies.

[44] I find section 16(1)(a) of FOIP applies to some portions of the record, but not others. See Appendix A for details.

4. Does section 17(1)(a) of FOIP apply to the records?

[45] Central Services applied section 17(1)(a) of FOIP to partially withhold the following records:

- Package F: Pages 1, 2, 8, 9, 10 and 12;
- Package G: Pages 16 and 49;
- Package H: Page 36;
- Package J: Pages 19, 44 to 46, 48, 50 and 64 to 66; and
- Package M: Pages 9 to 13.

[46] Section 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;

[47] The Guide to FOIP at pages 123 to 130, provides that the following two-part test can be applied:

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

[48] The Guide to FOIP at pages 126 to 130, provides the following definitions and interpretations for section 17(1)(a) of FOIP:

The advice, proposals, recommendations, analyses and/or policy options can be developed by or for a government institution other than the one relying on the exemption.

...

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 and at its request (for example, by a service provider or stakeholder).

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.

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; and
- 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.

[49] I will first consider both parts of the test for the application of section 17(1)(a) of FOIP.

Package F: Pages 1, 2, 8, 9, 10 and 12

[50] Pages 1 through 3 of Package F are an email thread. The information withheld on page 1 are two sentences of a three sentence email between Central Services employees. This email is an internal email discussing how to respond to questions posed by Finance relating to another property that was being discussed based on intentions to lease the property at issue. The information redacted on page 1 of the record is from the Assistant Deputy Minister indicating how they intended to handle an issue with a property.

- [51] Central Services' submission states the information redacted, "presents alternatives with respect to a specific property and as such qualifies as policy options. These policy options were developed by an official in the Ministry of Central Services for another official."
- [52] *Policy options* are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant's identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information. Records containing policy options can take many forms. They might include the full range of policy options for a given decision, comprising all conceivable alternatives, or may only list a subset of alternatives that in the public servant's opinion are most worthy of consideration. They can also include the advantages and disadvantages of each option. The list can also be less fulsome and still constitute policy options. For example, a public servant may prepare a list of all alternatives and await further instructions from the decision maker for which options should be considered in depth. Or, if the advantages and disadvantages of the policy options are either perceived as being obvious or have already been canvassed orally or in a prior draft, the policy options might appear without any additional explanation. As long as a list sets out alternative courses of action relating to a decision to be made, it will constitute policy options (Guide to FOIP, pp. 125 to 126).
- [53] The policy option was developed for Central Services in order to manage a specific property. As such, I find that the information was developed by Central Services. This information would qualify as policy options developed by a government institution, as such, section 17(1)(a) would apply. I recommend Central Services continue to withhold this information.
- [54] The first portion of information withheld on page 2 are four bullet points of information on an email between a Central Services and Finance employee. The information relates to costs associated with moving to the new location and questions relating to the property that would be vacated.

- [55] Central Services' submission stated that the information on this page of the record "contains advice and analysis in terms of why a certain course of action was not pursued. The advice and analysis was created by the Ministry of Central Services."
- [56] Based on the face of the record, this information would not qualify as advice, proposals, recommendations or policy options. It appears to be relaying factual information. As such, section 17(1)(a) of FOIP would not apply to this information.
- [57] The second portion of withheld information on page 2 is the majority of the first two sentences of an email between Central Services and Finance. The information relates to a request for approval to enter into a lease and approval limits.
- [58] Based on the face of the record, this information would not qualify as advice, proposals, recommendations or policy options. It appears to be relaying factual information. As such, section 17(1)(a) of FOIP would not apply to this information.
- [59] Pages 7 and 8 of Package F are an email thread. Both emails involve Central Services' employees. The information withheld on page 8 is within the initial email. Central Services withheld the first bullet point of the email on page 8 and three bullet points below the heading *Notes* at the bottom of the email. The first bullet point relates to the letter of intent. The three bullet points under the *Notes* heading relate to another property.
- [60] Central Services' submission provided that the information withheld:
- ...were developed by the Ministry of Central Services. One bullet provides an analysis regarding the negotiations that were underway at a specific time. The other bullet provides policy options in terms of alternatives that the Ministry of Central Services can consider, a recommendation as to the best option and an analysis for why it is the best option. The last two bullets outline an analysis of the downsides of one of the options.
- [61] *Analyses* (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements (Guide to FOIP, p. 125).

[62] The first bullet point at the top of page 8 appears to provide details about how Central Services came to an agreement of terms to revise the letter of intent for the lease of the property at issue. The three bullet points at the end of this page under the *Notes* heading contains details about why the property at issue would be a better fit for the Ministry of Highways and what the property it was currently in would be better suited for. The information would qualify as analyses developed by Central Services. As such, section 17(1)(a) of FOIP applies.

[63] Page 9 is a single page document that was attached to the email thread on pages 7 and 8. The document was withheld in full. In the email thread Central Services described the attachment as a financial analysis for the specified property. The document breaks down the costs of the lease based on the different terms.

[64] Central Services' submission provided that this information:

...is a proposal in terms of one option that could be pursued. The proposal contains a breakdown of various items so that the Ministry can make an informed decision and understand the various elements to the proposal. It was created by the Ministry of Central Services.

[65] In Review Report 196-2020, I provided the following regarding the application of section 17(1)(a) of FOIP to information related to the anticipated costs and break down of the various elements for a project:

[43] At question is, then, whether the Ministry's cost projections formulate advice, analysis and recommendations...

...

[48] In Review Report 042-2015, I considered Saskatchewan Liquor and Gaming Authority's (SLGA) application of subsection 17(1)(a) of FOIP to numerical data in an Excel Workbook. At paragraphs [12], [13] and [15] of that report, I stated as follows:

...

[13] SLGA argues that these numbers were provided to the Minister in addition to the advice which should allow it to qualify. In its submission of May 19, 2015, it stated "That analysis was used to support the information in Appendix G and H in the budget submission. While some may be numbers, it is financial analysis that was used to formulate the advice." I agree with SLGA's description. However,

subsection 17(1)(a) of FOIP is meant to protect the actual advice, not the information used to formulate the advice.

...

[49] Similar to the SLGA matter, Highways has not provided context regarding the financial information and how it qualifies for advice, analysis or recommendations. For example, Highways did not provide supporting documentation or evidence indicating the cost projections were actually used by the decision-maker to weigh the pros and cons of the advice given in order to make a decision, or even cite who the decision-maker was in this case. This is also not evident from a review of the record, and it is not something my office can just assume...

[50] As such, the first part of the test has not been met. As all parts of the test must be met, I find Highways has not properly applied subsection 17(1)(a) of FOIP...

[66] I adopt this same analysis for the case before me. I am not persuaded that the information on page 9 qualifies as advice, proposals, recommendations, analyses or policy options for the same reasons noted above.

[67] Page 10 is an email thread between Central Services employees. Central Services withheld part of a sentence relating to the annual accommodation charges. Pages 11 and 12 are an email thread between Central Services employees. The information withheld on page 12 is part of a sentence relating to the approximate annual cost of the lease.

[68] Central Services' submission provided that:

...the information that has been withheld on page 10 and 12 of Record F are estimates and therefore contain the Ministry's analysis in terms of what it would cost to consolidate staff from three locations. The information was developed by the Ministry.

[69] I am not persuaded that the annual cost for the property qualifies as advice, proposals, recommendations, analyses or policy options. As such, section 17(1)(a) of FOIP does not apply.

Package G: Pages 16 and 49

[70] Page 16 is a Preliminary Rent Schedule for the specified property. Central Services released the title of the document, the document date and the heading *Notes and*

calculations. The remainder of the document was withheld. The document breaks down the cost of the lease for each of the terms in the lease.

[71] Central Services' submission provides:

The information that has been withheld on pages 16 in Package G and page 46 of Package J is a preliminary rent schedule and contains notes and calculations subject to change. As such, it is a proposal that contains advice in terms of what the Ministry can expect to pay and an analysis of how those numbers were derived. It was developed for the Ministry.

[72] As I found on page 9 of Package F, I am not persuaded that this financial information qualifies as advice, proposals, recommendations, analyses or policy options. As such, section 17(1)(a) of FOIP does not apply.

[73] Page 49 is a single email between Central Services and Shindico. The email also had some handwritten notes on it. The information withheld are three bullet points and a handwritten note relating to discussion regarding the revisions to the wording of some sections of the letter of intent regarding its lease at the specified property.

[74] Central Services' submission states that this information, "is a proposal and ultimately a recommendation by Shindico to the Ministry of Central Services with respect to the lease agreement."

[75] I am not persuaded that this information qualifies as advice, proposals, recommendations, analyses or policy options. As such, section 17(1)(a) of FOIP does not apply.

Package H: Page 36

[76] Page 36 of the email is an email thread. The initial email is from Shindico to a Central Services employee and another Shindico employee. The email discusses the cost per square foot of the rent and the conditions in order to receive this cost per square foot.

[77] Central Services' submission stated that the information on this page of the record was "a proposal by the third party, including assumptions and understandings. The information was proposed by the third party to Central Services."

[78] The Guide to FOIP, at page 125 provides that "a *proposal* is something offered for consideration or acceptance."

[79] In Review Report 185-2019, I considered the application of section 17(1)(a) of FOIP to records that a Ministry stated qualified as a proposal or recommendation. The information was submitted to the Ministry by a third party. While I found that the information qualified as a proposal, I stated:

[60] General feedback or input from stakeholders or members of the public would not normally qualify, as they are not sufficiently engaged in an advisory role. For example, general stakeholders and members of the public responding to a survey or poll would not qualify as they have simply been asked to provide their own comments, and have developed nothing on behalf of the government institution. However, where a government institution asks a specific stakeholder – who has a particular knowledge, expertise or interest in relation to a topic – to provide advice, proposals, recommendations, analyses or policy options for it, it would be specifically engaging the stakeholder (even if not paid) in an advisory role and there would be a sufficient close connection to the government institution.

[61] In this case, **the Third Party provided the record to the Ministry to get approval for a project from which it will benefit. It does not have an advisory role in these circumstances. It would be a potential conflict of interest for the Ministry to claim that the Third Party was also participating in the Ministry's decision making process in an advisory role.** As such, the second part of the test is not met.

[Emphasis added]

[80] The information withheld on this page of the record appears to be a follow-up on a discussion between Shindico and Central Services. The information in this email does not specifically state that the conditions are to extend the cost per square foot to Central Services. It only states conditions would have to remain the same to those that were already agreed to. Regardless, the circumstances in which the information was provided to Central Services by the third party are similar to those discussed in the report above. As such, I

adopt the analysis from Review Report 185-2019. I find that section 17(1)(a) of FOIP does not apply to the withheld portion of the information on to page 36.

Package J: Pages 19, 44 to 46, 48, 50 and 64 to 66

[81] Page 19 is an email from Cushman & Wakefield to Central Services. Central Services withheld the body of the email, which relates to the amount of space available for lease for swing space. Central Services' submission states that the information is "a proposal and recommendation for a swing space solution."

[82] I am not persuaded that this information qualifies as advice, proposals, recommendations, analyses or policy options. As such, section 17(1)(a) of FOIP does not apply.

[83] Starting at the bottom of page 44, continuing onto page 45 is an email from Shindico to Central Services. Central Services withheld the body of the email relating to wording amendments to the lease agreement based on their discussions.

[84] Central Services' submission provides:

On pages 44 and 45 in Package J, the information that has been withheld based on 17(1)(a) contains proposals, recommendations, and sometimes an analysis in terms of why a specific proposal or recommendation is being pursued with respect to amendments. The proposals, recommendations and analysis were developed for the Ministry with the intent that they be considered and ultimately accepted.

[85] I am not persuaded that this information qualifies as advice, proposals, recommendations, analyses or policy options. As such, section 17(1)(a) of FOIP does not apply.

[86] Page 46 is a Preliminary Rent Schedule that looks similar to page 16 of Package G and Page 2 of Package I. Just as with those records, Central Services released only the title and the heading *Notes and calculations*. The remaining portions containing the dollar figures and type of expenses are withheld.

- [87] As I found on page 9 of Package F and page 16 of Package G, I am not persuaded that this financial information qualifies as advice, proposals, recommendations, analyses or policy options. As such, section 17(1)(a) of FOIP does not apply.
- [88] Central Services' submission provides that, "pages 48, 50 and 64 to 66 in Package J contain a proposal for tenant signage and was developed for the Ministry's consideration."
- [89] Pages 48 and 50 are parts of two separate email threads and have the same initial email from Shindico to Central Services. The email relates to a proposal for signage for the property. This email is the same email that I considered on page B36 in Review Report 274-2019. In that file, Central Services withheld this information pursuant to sections 19(1)(b), (c)(ii) and (iii) of FOIP. I found that none of those exemptions applied.
- [90] I had not considered the application of section 17(1)(a) of FOIP to this information in that report; however, I am not persuaded that this information qualifies as advice, proposals, recommendations, analyses or policy options. As such, I do not find section 17(1)(a) of FOIP applies.
- [91] Pages 64 to 66 is a quote to Shindico relating to signage for the space being leased by Central Services. Central Services released the name and logo of the company and that the quote was being sent to Shindico regarding this specific property. The quote number and all the content of the quote was withheld in full.
- [92] This appears to be the same quote that I considered in Review Report 274-2019 on pages B51 to B53 and B107 to B109 and the same first two pages of the quote as found on pages B88 to B89. In that report, Central Services applied sections 19(1)(a), (b), (c)(ii) and (iii) of FOIP and I found these exemptions did not apply.
- [93] I had not considered the application of section 17(1)(a) of FOIP to this information in that Report; however, I am not persuaded that this information qualifies as advice, proposals, recommendations, analyses or policy options. As such, I do not find section 17(1)(a) of FOIP applies.

Package M: Pages 9 to 13

- [94] Pages 9 and 10 are an email thread between Finance and Central Services. The emails relate to intentions to lease the property. Central Services' submission provides that this information "contains advice, recommendation and an analysis about a certain issue and new information that has come to light with a specific property."
- [95] The first redaction on this page is the body of an email between Central Services employees commenting on the information that had been provided in the previous email that was also withheld. The second redaction is an email from Finance to the Assistant Deputy Minister of Central Services. This email provides information related to the Ministry of Highway's finances and a recommendation to Central Services related to next steps based on this information.
- [96] A *recommendation* is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than "advice". It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation (Guide to FOIP, p. 125).
- [97] The second redaction would qualify as a recommendation developed by Finance for Central Services. As such, section 17(1)(a) of FOIP would apply. The first redaction on the page is Central Services' reaction to the information provided by Finance. However, the release on that response would not reveal information regarding the recommendation in the second redaction. As such, I find section 17(1)(a) of FOIP would not apply.
- [98] The third redaction is on an email between Central Services and Finance. The redacted information is the body of an email that starts at the bottom of page 9 and continues to the top of page 10. The second redaction on page 10 is also an email between Central Services

and Finance. These two redactions are the same information as the information redacted on page 2 of Package F of this record. However, in the second redaction, Central Services had released the second paragraph in that redaction on page 2 of Package F. As that information had been released in a different portion of the record, it is not reasonable to withhold it on a different page. Additionally, in my analysis of page 2 of Package F, I found section 17(1)(a) of FOIP would not apply to the redacted portions. As such, I find section 17(1)(a) of FOIP does not apply.

[99] Pages 11 to 14 are a memorandum from Central Services' Assistant Deputy Minister of Property Management to the Deputy Minister of Central Services. On page 11, Central Services released who the memorandum was to and from, the date and the subject line for what the memorandum was regarding. Starting at the bottom of page 11 to the top of page 12, background information about the properties being discussed in the memorandum is released. At the bottom of page 13 and all of page 14 were also released related to the time frame, approval, and signatures of Central Services' employees.

[100] Central Services' submission provides:

Pages 11 to 13 of Package M contain a recommendation, policy options, analysis and advice with respect to a request for proposal from on Ministry of Central Services employee to another. The memorandum highlights relevant factor [sic] that needs to be considered with respect to the issue and provides an analysis of the background information. The issue and background help the reader understand the financial analysis and why the policy options are either recommended or not recommended.

[101] The Guide to FOIP on pages 124 to 126 provides the following definitions for recommendation, policy options analyses and advice:

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.

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

Advice has a broader meaning than recommendations. The legislative intention was for advice to have a distinct meaning from recommendations. Otherwise, it would be redundant.

A *recommendation* is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.

...

Analyses (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements.

Policy options are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant’s identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information.

[102] The memorandum relates to the property at issue that Central Services was seeking approval to lease and how Central Services was recommending handling other space it had leased. Based on a review of the record, I agree with Central Services’ position that the record contains advice, recommendations, analyses and policy options that were developed by Central Services. As such, I find that section 17(1)(a) of FOIP applies to the redacted portions of pages 11 to 13.

[103] I find that Central Services has appropriately applied section 17(1)(a) of FOIP to some portions of the record, but not others. See Appendix A for details.

5. Does section 17(1)(b)(i) of FOIP apply to the records?

[104] Central Services applied section 17(1)(b)(i) of FOIP to partially withhold the following records:

- Package F: Pages 1, 2, 7, 8, 10 and 12;
- Package H: Page 36;
- Package J: Pages 1, 4, 6, 11, 17, 19, 44, 45, 48 and 50; and
- Package M: Pages 1 and 11 to 13.

[105] Section 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;

[106] The Guide to FOIP at pages 131 to 133 provides the following definitions and two-part test that can be applied to determine if section 17(1)(b) of FOIP applies:

1. Does the record contain consultations or deliberations?

Consultation means:

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

A consultation can occur when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation.

Deliberation means:

- the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision;
- the consideration and discussions of the reasons for and against a measure by a number of councillors.

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

Involving means including.

There is nothing in the exemption that limits the exemption to participation only of officers or employees of a government institution, a member of the Executive Council, or the staff of a member of the Executive Council. Collaboration with others is consistent with the concept of consultation.

Officers or employees of a government institution: "Employee of a government institution" means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution.

[107] I will consider the application of this two-part test to each of the redacted portions of the record.

Package F: Pages 1, 2, 7, 8, 10 and 12

[108] Pages 1 and 2 of Package F are part of an email thread. I found that section 17(1)(a) of FOIP applied to the redacted portion of the record on page 1. As such, there is no need to consider the application of section 17(1)(b)(i) of FOIP to page 1.

[109] On page 2 of the record, the first portion of information withheld on page 2 are four bullet points of information on an email between a Central Services and Finance employee. The information relates to costs associated with moving to the new location and questions relating to the property that would be vacated.

[110] Central Services' submission stated:

...there are two portions where information has been withheld based on subclause 17(1)(b)(i). Both portions are a consultation between an official in the Ministry of

Finance and an official with the Ministry of Central Services. The first portion involves follow up questions from Finance and the answers from the Ministry of Central Services. The second portion involves information that explains why a certain option was not pursued. Both consultations occurred so that Central Services could determine if there were any concerns with proceeding with a specific course of action.

- [111] Based on the face of the record, this information would not qualify as consultations or deliberations. It appears Finance is requesting factual information in order to determine budget requirements. As such, section 17(1)(b)(i) of FOIP would not apply to this information on page 2.
- [112] The second portion of withheld information on page 2 is the majority of the first two sentences of an email between Central Services and Finance. The information relates to a request for approval to enter into a lease and approval limits.
- [113] Based on the face of the record, this information would not qualify as consultations or deliberations. It appears Central Services is providing information to Finance of a factual nature. As such, section 17(1)(b)(i) of FOIP would not apply to this information.
- [114] Pages 7 and 8 of Package F are a two thread email. Both emails involve Central Services employees. As I have already found that section 17(1)(a) of FOIP applied to the redacted portions on page 8, I only have the redacted portions of page 7 to consider.
- [115] The information withheld on page 7 are three bullet points relating to what initiated looking for new property to lease and two updates on where things were at with the property it had been leasing at two different points of time.
- [116] Central Services' submission provided as follows:

On page seven of Package F, there are three portions where information has been withheld based on subclause 17(1)(b)(i). All three portions are a consultation between an official in the Ministry of Highways and the Ministry of Central Services regarding a certain property. These consultations occurred so that Central Services could determine if there were any concerns with proceeding with a specific course of action.

[117] I am not persuaded that the information withheld on page 7 of the record qualifies as consultations or deliberations. As such, section 17(1)(b)(i) of FOIP does not apply.

[118] Page 10 is an email thread between Central Services' employees. Central Services withheld part of a sentence relating to the annual accommodation charges. Central Services' submission provides that, "the deliberation is between officials in the Ministry of Central Services and is occurring so that officials understand the impact of consolidating staff."

[119] Pages 11 and 12 are an email thread between Central Services' employees. The information withheld on page 12 is part of a sentence relating to the approximate annual cost of the lease. Central Services' submission stated, "the information that has been withheld is the substance of the deliberation because it reveals the projected costs of a decision that the Ministry of Central Services is considering."

[120] There does not appear to be any information that would qualify as consultations or deliberations. As such, section 17(1)(b)(i) of FOIP does not apply to pages 10 or 12.

Package H: Page 36

[121] The information on page 36 of Package H is an email thread. The initial email is from Shindico to a Central Services employee and another employee from Shindico. The email discusses the cost per square foot of the rent and the conditions in order to receive this cost per square foot.

[122] Central Services' submission provided that the information "involves a consultation about a proposed action, including the understanding of the third party and any assumptions. The consultation occurred between an official with the Ministry and a third party."

[123] In Review Report 056-2017 concerning the Global Transportation Hub (GTH), I stated at paragraph [86] that it is not the end result of a deliberation or consultation that is protected by this provision, but rather the consultations or deliberations themselves. Upon review of

the record, it appears the records contain the end result of consultations or deliberations about cost projections, but not the consultations or deliberations that led to the determination of the cost projections. Based on Central Services' arguments and what is in the record, I cannot make assumptions about what consultations or deliberations took place in relation to these terms, or how, exactly the agreed upon terms disclose the subject of the consultations and deliberations. As such, I find that section 17(1)(b)(i) of FOIP does not apply.

Package J: Pages 1, 4, 6, 11, 17, 19, 44, 45, 48 and 50

[124] Page 1 is an email thread between Shindico and Central Services. Central Services withheld the body of the email in both of these emails in the thread. Central Services' submission provides that the information, "contains consultations between the third party and the Ministry and consultations internal to the Ministry with respect to the Ministry's need in terms of space." Based on a review of the record, Shindico had contacted Central Services to inquire about its need for space at the property in question and Central Services responded to this inquiry. I am not persuaded it would qualify as a consultation or deliberation. As such, section 17(1)(b)(i) of FOIP does not apply.

[125] Page 4 is a letter from Central Services to Shindico. Central Services withheld two sentences in this letter relating to terms and conditions the two parties agreed to regarding the compound space being leased. Page 6 appears to be the same letter with the same redaction as page 4. This letter is the same letter my office considered on page B16 of Review Report 274-2019. In Review Report 274-2019, I considered the application of sections 19(1)(b), (c)(ii) and (iii) of FOIP. I found that none of these exemptions applied.

[126] I had not previously considered the application of section 17(1)(b)(i) of FOIP to this same information. Central Services' submission provided that the information, "involves a consultation between the third party and the Ministry to ensure the parties have a mutual understanding with regard to the compound space." However, based on a review of the record, there does not appear to be any consultations or deliberations occurring. As such,

I find section 17(1)(b)(i) of FOIP does not apply to the information withheld on pages 4 and 6.

[127] Page 11 is part of an email thread that starts on page 10 to page 12. Central Services redacted two sentences in one of the emails between Central Services' employees and released the remaining information. The redacted portion on page 17 appears to be the same email. It appears one Central Services employee is inquiring about the compound space at the property in question to determine if they had received this term in writing.

[128] Central Services' submission provided that this information was withheld because "Ministry officials discuss their understanding of the compound space. This is a deliberation because it involves the substance of their understanding." However, I am not persuaded that this qualifies as a consultation or deliberation. As such, section 17(1)(b)(i) of FOIP does not apply to the redacted portions on pages 11 and 17.

[129] Page 19 is an email from Cushman & Wakefield to Central Services. Central Services withheld the body of the email which relates to the amount of space available for lease for swing space. Central Services' submission takes the position that this qualifies as a consultation between Central Services and a third party. However, I am not persuaded that this information qualifies as consultations or deliberations. As such, section 17(1)(b)(i) of FOIP does not apply.

[130] Starting at the bottom of page 44, continuing onto page 45 is an email from Shindico to Central Services. Central Services withheld the body of the email which relates to wording amendments to the lease agreement based on their discussions. Central Services' submission provides that this information "is a consultation between the third party and Ministry officials about amendments." However, I am not persuaded that this information qualifies as consultations or deliberations. As such, section 17(1)(b)(i) of FOIP does not apply.

[131] Pages 48 and 50 are parts of two separate email threads that have the same initial email from Shindico to Central Services. The email relates to a proposal for signage for the

property. This email is the same email that I considered on page B36 in Review Report 274-2019. In that report, Central Services withheld this information pursuant to sections 19(1)(b), (c)(ii) and (iii) of FOIP. I found that none of these exemptions applied.

[132] I had not considered the application of section 17(1)(b)(i) of FOIP to this information in that report; however, I am not persuaded that this information qualifies as consultations or deliberations. As such, I do not find section 17(1)(b)(i) of FOIP applies.

Package M: Pages 1 and 11 to 13

[133] Page 1 is an email between Central Services' employees. Central Services released the email header information and the name of the email sender at the bottom of the email, but redacted all of the content of the email.

[134] Central Services' submission provided:

On page 1 of Package M, the information that has been withheld is a consultation and deliberation involving Ministry of Central Services' employees with respect to the building permit application for a specific location. The consultation and deliberation involves conversations had earlier in the day and what is being requested in terms of additional information and an update about another conversation with the third party. The information provided in the email is necessary for the Ministry to discuss how to approach a certain issue.

[135] Based on a review of the information, it appears to be one Central Services' employee relaying a conversation with the City of Regina related to a building permit they were trying to obtain. The email appears to be sharing the information it had obtained and requesting a meeting to discuss how to address an issue they were facing. It does not appear there are any consultations or deliberations occurring in the email, simply relaying of factual information about the building permit they were seeking so that all parties can meet to further discuss.

[136] As such, I am not persuaded that the information contains any consultations or deliberations. I find that section 17(1)(b)(i) of FOIP does not apply.

[137] I have already found that section 17(1)(a) of FOIP applies to the redacted portions on pages 11 to 13 of Package M; therefore, there is no need to consider the application of this exemption to those pages.

[138] In conclusion, I find that Central Services has not appropriately applied section 17(1)(b)(i) of FOIP to any portion of the records at issue. See Appendix A for details.

6. Does section 18(1)(f) of FOIP apply to the records?

[139] Central Services applied section 18(1)(f) of FOIP to partially withhold the following records:

- Package F: Pages 2, 5, 9, 10 and 12;
- Package G: Pages 16 and 49;
- Package H: Page 36;
- Package I: Page 2;
- Package J: Page 46; and
- Package M: Pages 2 and 3.

[140] Section 18(1)(f) of FOIP provides:

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

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

[141] The Guide to FOIP at pages 182 to 184 provides the following definitions and test that can be applied to determine if section 18(1)(f) of FOIP applies:

Could disclosure reasonably be expected to prejudice the economic interests of the Government of Saskatchewan or a government institution?

“Could reasonably be expected to” means there must be a reasonable expectation that disclosure could prejudice the economic interests of the government institution or the Government of Saskatchewan. The Supreme Court of Canada set 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”...

The government institution does not have to prove that a harm is probable, but needs 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.

Government institutions should not assume that the harm is self-evident. The harm must be described in a precise and specific way in order to support the application of the provision.

The expectation of harm must be reasonable, but it need not be a certainty. The evidence of harm must:

- show how the disclosure of the information would cause harm;
- indicate the extent of harm that would result; and
- provide facts to support the assertions made.

...

Prejudice in this context refers to detriment to economic interests.

Economic interests refers to both the broad interests of a government institution and, for the government as a whole, in managing the production, distribution and consumption of goods and services. This also covers financial matters such as the management of assets and liabilities by a government institution and the government institution’s ability to protect its own or the government’s interests in financial transactions.

[142] Central Services’ submission provides as follows:

In this case, there is evidence of prejudice of economic interests of the Government of Saskatchewan that is reasonably probable. This exemption has been applied to various correspondence. This includes negotiations leading up to the lease agreement, discussions regarding potential projects, and projections as to the cost of the lease agreement.

The prejudice to the economic interests of the Government of Saskatchewan from releasing portions of the records withheld pursuant to clause 18(1)(f) of FOIP may be described in three ways:

- (a) loss of bargaining power;
- (b) loss of competitive advantage; and
- (c) loss of confidence in the Government of Saskatchewan.

The records contain substantial information about the Government of Saskatchewan's agreements with third parties and how these agreements and business relationships are forged. There is a significant amount of correspondence between the Ministry of Central Services and Shindico in the records related to the formation of the parties' business relationship. Releasing this information would inform prospective third parties about concessions the Government of Saskatchewan may be willing to contemplate. This would prejudice the bargaining power of the Government of Saskatchewan with prospective third parties since these prospective third parties will already know what benefits they can expect to extract from the Government of Saskatchewan in the negotiation process.

The Government of Saskatchewan needs to remain competitive in its negotiations with respect to lease agreements as it is a major tenant in Saskatchewan. Releasing the information where clause 18(1)(f) has been applied would undermine the Government of Saskatchewan's ability to effectively negotiate in a competitive market environment.

The information in the records disclose information about potential clients of Shindico and the negotiation process used by the Government of Saskatchewan. Given the competition that exists in the rental market, it is submitted that it is probable that competitors will seek out this information if the Government of Saskatchewan had to release it and use this information for their own competitive advantage to the detriment of the Government of Saskatchewan.

Further, it is probable that the release of the information would result in a loss of confidence in the Government of Saskatchewan from the perspective of both existing and prospective third parties thereby prejudicing the Government of Saskatchewan's economic interests. The release of existing third party information by the Government of Saskatchewan would negatively impact the Government of Saskatchewan's relationship with these third parties and dissuade them from continuing the open dialogue and collaboration the Government of Saskatchewan currently experiences with them. The Government of Saskatchewan acknowledges its obligations under FOIP but also emphasizes the balance between disclosure and its need to operate effectively in negotiating with third parties in a competitive marketplace.

There is also the loss of confidence in the Government of Saskatchewan from the perspective of prospective third parties. The Government of Saskatchewan has only applied this exemption to base rent payments, market value of building, whether specific clauses apply in the lease, both estimated and actual numbers to include in the ASSA. The site plans, potential users and uses for the building, information regarding

the minimum rent, basic operating costs, tax payments and parking stall rent represent the commercial interests of the third party. Finally, this exemption has been applied to amendments Shindico has suggested for the Ministry's consideration. If we were to release this information the confidence of third parties in our ability to keep the information they provide to us during negotiations would diminish and would ultimately effect the Government of Saskatchewan's ability to negotiate leases or other agreements effectively. Therefore, the Government of Saskatchewan respectfully submits that it has properly applied clause 18(1)(f) to portions of the records as the release of this information could reasonably be expected to prejudice the economic interests of the Government of Saskatchewan.

[143] In Review Report 274-2019, I considered the application of section 18(1)(f) of FOIP to the lease for this property. In that report, I referred to an Ontario Information and Privacy Commissioner Order that I had considered in Review Report 086-2019, when I was looking at the application of this exemption to letters of intent to lease this same property as follows:

[92] In Review Report 086-2019, my office considered similar arguments for the application of subsection 18(1)(f) of FOIP to the letter of intent and amended letter of intent for the lease of this property. In that report, I also considered an ON IPC Order which provided as follows:

[53] ... at the time of writing this Report, the negotiations are complete and a lease has been finalized. In ON IPC Order PO-2289, it provides:

The ORC Submits:

...disclosure of the pricing information in the Lease can reasonably be expected to harm the economic interests or competitive position of the ORC or to harm the financial interests of the Government of Ontario.

...one of the main responsibilities of the ORC is the leasing of property from third parties where additional space is required for the Government of Ontario. The ORC is obliged to ensure a competitive process and cost-effective solutions in the leasing of property. It can be seen that it is in the financial interests of the ORC and the Government and in the public interest for the ORC to be able to keep pricing matters confidential to ensure their competitive position in the market and obtain the best pricing available. The lease containing the information at issue has already been executed, as opposed to being the subject of any ongoing negotiations. In addition, the age of the lease (which was executed in 1993) tends to refute any claims of prejudice to any future negotiations or renegotiations.

Based on the materials before me, I am not persuaded that disclosing the information at issue could reasonably be expected to prejudice the ORC's economic interests or competitive position. The ORC has not provided the

“detailed and convincing” evidence required to demonstrate that the harms it alleges are not merely speculative.

[144] Similar to the above, I am not persuaded in this case by the arguments presented by Central Services. The harm alleged appears speculative. As such, I find that section 18(1)(f) of FOIP does not apply to the information withheld by Central Services. See Appendix A for details.

7. Does section 19(1)(b) of FOIP apply to the records?

[145] Central Services applied section 19(1)(b) of FOIP to partially withhold the following records:

- Package F: Pages 2, 5, 9, 10 and 12;
- Package G: Pages 7 and 16;
- Package H: Page 36;
- Package I: Page 2;
- Package J: Pages 4 and 6, 19, 44 and 45, 46 and 64 to 66;
- Package K: Pages 17 to 19;
- Package L: Page 5; and
- Package M: Page 2 and 3.

[146] Section 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;

[147] Central Services’ submission provides as follows:

The Ministry has applied this exemption to Shindico’s commercial information. The preliminary information regarding the site plan, layout, potential users and other building and site information each represent the commercial information of Shindico. This information demonstrates the way in which Shindico would be able to provide services and product [sic] (the space options available) to satisfy the Government of Saskatchewan’s needs and has commercial value for that reason.

The preliminary information regarding minimum rent, basic operating costs, tax payments, parking stall rent and the calculation of each component is Shindico's commercial information because this information represents the way in which Shindico proposes to satisfy the Ministry's space needs. It is information that was created and presented by Shindico. Further the information has commercial value because it breaks down, in a preliminary fashion, how rent will be calculated.

The proposed amendments and reasons for the proposed amendments to the lease agreement brought forward by Shindico represents Shindico's commercial interests as it provides insight into how Shindico negotiates and the items it prioritizes.

The tenant signage proposal is commercial in nature because it demonstrates how Shindico proposes to offer a specific service to the Government of Saskatchewan.

[148] My office's Guide to FOIP at pages 198 to 202 provides the following three-part test for the application of section 19(1)(b) of FOIP:

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?

[149] *Commercial information* is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records (Guide to FOIP, p. 198).

[150] *Supplied* means provided or furnished (Guide to FOIP, p. 200).

[151] The following terms are defined in the Guide to FOIP, at page 202 as follows:

In confidence usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained *in confidence* means that the supplier of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the government institution and the third party providing the information.

Implicitly means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential.

Explicitly means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was supplied on the understanding that it would be kept confidential.

[152] I will consider the application of this exemption to each of the pages of the record where Central Services applied section 19(1)(b) of FOIP.

Package F: Pages 2, 5, 9, 10 and 12

[153] The information redacted pursuant to section 19(1)(b) of FOIP on page 2 of the record is the third line of the last email of the email string. The information redacted is about five words and relates to an approximate annual cost of a proposed lease agreement. As found in Review Report 150-2020, the total cost of an agreement should be released to ensure transparency. Additionally, it is unclear how this information would qualify as financial, commercial, scientific, technical or labour relations information of a third party. As such, I find that section 19(1)(b) of FOIP does not apply to this page of the record.

[154] The information redacted on page 5 of the record are three lines from one of the emails of the email thread. The redacted information is responding to items from the previous email in the thread which inquires about the base rent payments, market value of the building and whether or not there is a lease to own clause in the lease.

[155] The first line relating to base rent payments includes a total annual cost and the cost per square foot. In Review Report 086-2019, my office considered the application of section 19(1)(b) of FOIP to a letter of intent and amended letter of intent for this same property. In that report, at paragraph [32], I stated as follows:

[32] As I have found that all three parts of the test have been met, I find that Central Services appropriately applied subsection 19(1)(b) of FOIP to the cost per square foot for the Office Space Base Rent/Main Floor Office Space Base Rent and Property Tax Rent. While I have not found that the total dollar amount for these two figures was supplied by the Third Party, the release of the total dollar amount, along with the total

- square footage Central Services was considering leasing at that time would allow for the calculation of this information. As such, subsection 19(1)(b) of FOIP would apply.
- [156] The cost per square foot on this page is the same as the Office Space Base Rent/Main Floor Office Space Rent in Review Report 086-2019. I adopt the analysis from that report and find that section 19(1)(b) of FOIP applies to the cost per square foot.
- [157] In Review Report 086-2019, I also found that the release of the total dollar amount combined with other information that had been released would allow for the calculation of the cost per square foot. As such, the total dollar amount was also exempt under section 19(1)(b) of FOIP. However, in this record, it is not clear what total square footage is being used to calculate the total cost. Therefore, it does not appear that the release of the total cost would allow the Applicant to calculate the cost per square foot in this instance. Accordingly, I find that section 19(1)(b) of FOIP does not apply to the total cost of the base rent payments.
- [158] The second line on this page has a cost per square foot, total square footage and total dollar amount for the market value. In Review Report 229-2015, I found that unit prices in a contract between Saskatchewan Government Insurance and a third party qualified as commercial information of the third party. This was later upheld by Justice Zarzeczny in *Canadian Bank Note Limited v. Saskatchewan Government Insurance*, 2016 SKQB 362. However, the total square footage and total cost of the market value would not qualify as financial, commercial, scientific, technical or labour relations information of a third party. As such, I find that section 19(1)(b) of FOIP does not apply to those pieces of information in that line.
- [159] Although the cost per square foot would qualify as commercial information, Central Services did not provide sufficient argument to show that this information was supplied in confidence by the third party. As all three parts of the test must be met in order for section 19(1)(b) of FOIP to apply, I find that section 19(1)(b) of FOIP does not apply to the cost per square foot for the market value.

- [160] The third line on this page is a single word response to the inquiry of whether or not the lease included a rent to own clause. It is unclear how this information would qualify as financial, commercial, scientific, technical or labour relations information of a third party. As such, I find that section 19(1)(b) of FOIP does not apply to the line on this page of the record.
- [161] Page 9 of the record was withheld in full. The information on page 9 of the record is the attachment to the first email of the email thread beginning on page 7. The document provides a breakdown of the costs associated with the proposal of this property. The document has a title and contains a variety of information regarding the proposal including, the number of years for the lease, cost per square foot, monthly and yearly costs for a number of items, total square footage and the total rent.
- [162] Some of the information withheld on this page is the cost per square foot for the base rent (main floor), base rent (2nd floor), operating rate, property tax rate and the cost per parking stall. As noted above, in past reports my office found that unit prices in a contract between a public body and a third party qualified as commercial information of the third party.
- [163] The base rent (main floor) is the same dollar figure as the base rent payments cost per square foot on page 5 of the record. As noted in my analysis above, I found that section 19(1)(b) of FOIP applied to this figure. Accordingly, I find section 19(1)(b) of FOIP applies to the cost per square foot for the base rent (main floor).
- [164] My office has issued reports related to this property, including Review Report 150-2020, I have found that unit prices provided by the third party to Central Services in its proposal competition document in response to an RFP was found to have been supplied by the third party to Central Services in confidence. The annual cost per parking stall is noted in the proposal document, the cost per parking stall per month is easily calculated, which would be the same cost per parking stall noted on this page of the record. As such, I find that section 19(1)(b) of FOIP applies to this monthly cost per parking stall.

[165] However, it is not clear how the base rent (2nd floor), operating rent and property tax rate were supplied in confidence by the third party. As such, I do not find that section 19(1)(b) of FOIP applies to this information. Additionally, it is not clear how any other portion of information on this page, aside from the portions noted above, would be exempt under section 19(1)(b) of FOIP.

[166] Review Report 150-2020 at paragraph [26] provides that if a unit price that I have found section 19(1)(b) of FOIP applies to can be calculated combining information already released to the Applicant and releasing the monthly and yearly total, section 19(1)(b) of FOIP would apply to the total dollar figures. In this case, Central Services has withheld the page in full and while I have only found the base rent payments per square foot and the monthly cost per parking stall qualify for section 19(1)(b) of FOIP, the release of all the remaining portions would allow the calculating of these figures. If Central Services releases the information on this page of the record, it should ensure that it withholds portions that would allow for the calculation of the dollar figures found to be exempt under section 19(1)(b) of FOIP.

[167] The information redacted on page 10 of the record is in the second email of the email thread. The only portion of information redacted from the body of this email is a portion of a sentence related to an annual dollar figure for the Accommodation Space and Services Agreement (ASSA). It is unclear how this information would qualify as financial, commercial, scientific, technical or labour relations information of a third party. As such, I find that section 19(1)(b) of FOIP does not apply to this page of the record.

[168] The information redacted on page 12 of the record is the last email of the email thread on the second line. Only the end of this sentence was redacted. The information redacted is about four words and relates to an approximate annual cost of the lease. It is unclear how this information would qualify as financial, commercial, scientific, technical or labour relations information of a third party. As such, I find that section 19(1)(b) of FOIP does not apply to this page of the record.

Package G: Pages 7 and 16

- [169] Page 7 of the record was withheld in full. The information on page 7 in the first attachment of the first email in an email thread starting on page 3 of the record. The email it was attached to was released in full to the Applicant, including the document names of all attachments. The document on page 7 is Highway's Main Floor Plan.
- [170] It is unclear how the remaining information on this page would qualify as financial, commercial, scientific, technical or labour relations information of a third party. Additionally, in other reports issued related to this property, including Review Report 274-2019, I have recommended the release of floor plans and site plans. As such, I find that section 19(1)(b) of FOIP does not apply to this page of the record. I recommend Central Services release this page of the record.
- [171] The information redacted on page 16 of the record is the content of a Preliminary Rent Schedule. Only the title of the document, date, the heading, *Notes and calculations* near the middle of the page, as well as the numbers 1 through 7 down the side of the page under this heading were released. The Preliminary Rent Schedule breaks down the calculations and costs for Rent for Office Space, Basic Operating Costs, 2018 Tax Payment (Actual), 2019 Tax Payment (Estimated), 2020 Tax Payment (Estimated), Parking Stall Rent and Total Due.
- [172] This page of the record identifies the cost per square foot for the main floor rent of the office space and the monthly cost per parking stall, which I found on page 9 of Package F, section 19(1)(b) of FOIP applies to. As such, section 19(1)(b) of FOIP also applies to these figures on this page.
- [173] It is not clear how any other portion of information on this page, aside from the portions noted above, would be exempt under section 19(1)(b) of FOIP.
- [174] Review Report 150-2020 at paragraph [26] provides that if a unit price that I have found section 19(1)(b) of FOIP applies to can be calculated combining information already released

to the Applicant and releasing the monthly and yearly total, section 19(1)(b) of FOIP would apply to the total dollar figures. In this case, Central Services has withheld the page in full and while I have only found the base rent payments per square foot and the monthly cost per parking stall qualify for exemption, the release of all the remaining portions would allow the calculating of these figures. Central Services should release information from this page of the record, ensuring that it withholds portions that would allow for the calculation of these dollar figures.

Package H: Page 36

[175] The information redacted on page 36 of the record is the body of an email in an email thread consisting of about five lines of information. The email discusses the cost per square foot of the rent and the conditions in order to receive this cost per square foot.

[176] I have already discussed above how my office interprets the application of section 19(1)(b) of FOIP to unit prices or the cost per square foot. This same interpretation applies to the information on this page.

[177] Therefore, I find that section 19(1)(b) of FOIP applies to the cost per square foot referenced on this page of the record.

[178] The remainder of the email is general conditions for the proposal cost per square foot. It is unclear how the remaining information on this page would qualify as financial, commercial, scientific, technical or labour relations information of a third party. As such, I find that section 19(1)(b) of FOIP would not apply to the remaining withheld portions of this page of the record.

Package I: Page 2

[179] The information redacted on page 2 of the record is a revised rent schedule. This document is similar to page 16 of Package G, except with revised dollar figures. The document is redacted in the same manner as the other document only releasing the title of the document,

date, the heading, *Notes and calculations* near the middle of the page, as well as the numbers 1 through 7 down the side of the page under this heading.

[180] As found on page 16 of Package G, this page of the record identifies the cost per square foot for the main floor rent of the office space and the monthly cost per parking stall, which I found on page 9 of Package F, section 19(1)(b) of FOIP applies to. As such, section 19(1)(b) of FOIP also applies to these figures on this page. It is not clear how any other portion of information on this page would be exempt under section 19(1)(b) of FOIP.

[181] As noted earlier in this Report, if a unit price that I have found section 19(1)(b) of FOIP applies to can be calculated combining information already released to an applicant, section 19(1)(b) of FOIP would apply to that information also. In this case, Central Services has withheld page 16 in full and while I have only found the base rent payments per square foot and the monthly cost per parking stall qualify for section 19(1)(b) of FOIP, the release of all the remaining portions would allow the calculating of these figures. Central Services should release the information from this page of the record, ensuring that it withholds portions that would allow for the calculation of these dollar figures while ensuring transparency.

Package J: Pages 4, 6, 19, 44, 45, 46 and 64 to 66 and three attachments to pages 43 to 46

[182] Page 4 is a letter from Central Services to Shindico. Central Services withheld two sentences in this letter relating to terms and conditions the two parties agreed to regarding the compound space being leased. Page 6 appears to be the same letter with the same redaction as page 4. This letter is the same letter my office reviewed on page B16 in Review Report 274-2019. In Review Report 274-2019, my office considered the application of sections 19(1)(b), (c)(ii) and (iii) of FOIP. I found that none of these exemptions applied. As such, I find section 19(1)(b) of FOIP does not apply to page 4.

[183] Page 19 is an email from Cushman & Wakefield to Central Services. Central Services withheld the body of the email, which relates to the amount of space available for lease for

swing space. I am not persuaded that section 19(1)(b) of FOIP applies to these portions of the record.

[184] Starting at the bottom of page 44, continuing onto page 45 is an email from Shindico to Central Services. Central Services withheld the body of the email relating to amendments to some clauses and appendixes of the lease agreement based on their discussions. In Review Report 086-2019, my office considered the application of exemptions to the letter of intent and amended letter of intent for this property. As well, in Review Report 274-2019, my office considered the application of exemptions to the lease for this same property. In both of these reports, I recommended release of the majority of these records, with the exception of only a couple of dollar figures. I am not persuaded that the information in the email relating to amendments discussed between the parties would qualify as third party information supplied in confidence.

[185] As noted earlier, in my office's review of the records, my office identified that some attachments to emails had not been provided to my office as responsive records. Central Services provided my office with three attachments it was withholding in full attached to the email thread on pages 43 to 45. These attachments were withheld in full pursuant to section 19(1)(b) of FOIP.

[186] The first attachment is a two page appendix titled, *Statement of Facility Compatibility*. The second attachment is a six page letter from Stantec to Shindico related to an architectural review of the specified property. The third attachment is a five page appendix titled, *Performance Requirements Review – Mechanical*. All three of these records were part of Shindico's proposal submission to Central Services in response to the request for proposal for this property. Additionally, while Shindico was the successful bidder to the request for proposal, it does not appear these documents were included in the final lease agreement that followed.

[187] In Review Report 197-2016, I found that an entire proposal package submitted by a third party to the government institution was commercial information. As such, the three attachments described above would qualify as commercial information. Additionally, I

have found in other reports related to this property, including Review Report 247-2019, the proposal submitted by Shindico qualified as being supplied in confidence. As such, I find that section 19(1)(b) of FOIP applies to these three attachments in full.

[188] Page 46 is a Preliminary Rent Schedule that looks similar to Page 16 of Package G and Page 2 of Package I. Just as with those records, Central Services released only the title and the heading, *Notes and calculations*. The remaining portions containing the dollar figures and type of expenses were withheld. In my analysis of the information withheld on page 16 of Package G and page 2 of Package I, I found that section 19(1)(b) of FOIP applied to the cost per square foot for the main floor rent of the office space and the monthly cost per parking stall. As such, section 19(1)(b) of FOIP also applies to these figures on this page.

[189] It is not clear how any other portion of information on this page, aside from the portions noted above, would be exempt under section 19(1)(b) of FOIP.

[190] As noted earlier in this Report, if a unit price that I have found section 19(1)(b) of FOIP applies to can be calculated combining information already released to an applicant, section 19(1)(b) of FOIP would apply to that information also. In this case, Central Services has withheld page 46 in full and while I have only found the base rent payments per square foot and the monthly cost per parking stall qualify for section 19(1)(b) of FOIP, the release of all the remaining portions would allow the calculating of these figures. Central Services should release the information from this page of the record, ensuring that it withholds portions that would allow for the calculation of these dollar figures.

[191] Pages 64 to 66 is a quotation to Shindico relating to signage for the space being leased by Central Services. Central Services released the name and logo of the company and that the quotation was being sent to Shindico regarding this specific property. The quote number and all the content of the quote was withheld in full.

[192] This appears to be the same quote that I considered in Review Report 274-2019, on pages B51 to B53 and B107 to B109 and the same first two pages of the quote as found on pages B88 to B89. In that Report, Central Services applied sections 19(1)(a), (b), (c)(ii) and (iii)

of FOIP and I found these exemptions did not apply. As such, I do not find that section 19(1)(b) of FOIP applies to pages 64 to 66 of Package J.

Package K: Pages 17 to 19

[193] Pages 17 to 19 were withheld in full. These pages are the floor plans for the main floor and the second floor and a site plan for the property.

[194] In Review Report 108-2019, I considered the application of sections 13(1), 18(1)(a) and (b) of LA FOIP to these same records withheld by the City of Regina. Section 18(1)(b) of LA FOIP is the equivalent of section 19(1)(b) of FOIP. In that Report, these same floor plans and site plans were on pages B50 to B52, and I found that none of the exemptions applied and recommended the City of Regina release these pages. As such, I adopt the analysis from that report and recommend Central Services release these pages of the record.

Package L: Page 5

[195] The withheld information on this page is a portion of an email between Cushman & Wakefield and the Regina Police Service. This email was later forwarded to Central Services. The portion of the email redacted relates to available space in the specified property and notes the amount of space being leased by Central Services as well as a couple of items on other information relating to the property. It is unclear how the information withheld would qualify for exemption under section 19(1)(b) of FOIP. As such, I recommend Central Services release this portion of the record.

Package M: Page 2 and 3

[196] Pages 2 and 3 are an email thread between Central Services' employees. The second email and third email have a line redacted in each specifying the building rate for the property. The fourth email which starts at the bottom of page 2 and continues on to page 3, the portions withheld is on page 3 relating to lease costs for the property.

[197] The information withheld are costs per square foot or meters squared and the total square footage as well as the number of parking stalls and the monthly cost per stall. As discussed earlier in this Report, the costs per square foot and the cost per parking stall would be considered commercial information. As found earlier in this Report, the cost per square foot to lease the main floor and the cost per parking stall were supplied to Central Services by the third party in confidence. As such, section 19(1)(b) of FOIP would apply to those dollar figures.

[198] I am not persuaded that the remaining portions of the information withheld on these pages qualify for exemption under section 19(1)(b) of FOIP.

[199] In conclusion, I find that Central Services has appropriately applied section 19(1)(b) of FOIP to some portions of the record, but not others. See Appendix A for details.

IV FINDINGS

[200] I find that sections 16(1)(a), 17(1)(a) and 19(1)(b) of FOIP applies to some withheld portions of the record, but not others. See Appendix A for details.

[201] I find that sections 13(2), 17(1)(b)(i) and 18(1)(f) of FOIP do not apply to the withheld portions of the record. See Appendix A for details.

V RECOMMENDATIONS

[202] I recommend that Central Services continue to withhold the portions of the record where sections 16(1)(a), 17(1)(a), and 19(1)(b) of FOIP were found to apply. See Appendix A for details.

[203] I recommend that Central Services release the portions of the record where I have not found any exemptions apply. See Appendix A for details.

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

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

Appendix A

Record Package	Page Number	Exemption(s) Claimed	Does the Exemption Apply?	Release or Withhold
Record F	Page 1	Section 17(1)(a) of FOIP	Yes	Withhold redacted portion of record pursuant to section 17(1)(a) of FOIP.
		Section 17(1)(b)(i) of FOIP	No	
Package F	Page 2	Section 17(1)(a) of FOIP	No	Release in full.
		Section 17(1)(b)(i) of FOIP		
		Section 18(1)(f) of FOIP	No	
		Section 19(1)(b) of FOIP	No	
Package F	Page 5	Section 18(1)(f) of FOIP	No	Withhold cost per square foot for base rent pursuant to section 19(1)(b) of FOIP. Release remaining portions of record.
		Section 19(1)(b) of FOIP	Yes – cost per square foot for base rent	
Package F	Page 7	Section 17(1)(b)(i) of FOIP	No	Release in full.
Package F	Page 8	Section 16(1) of FOIP	No	Continue to withhold redacted portions.
		Section 17(1)(a) of FOIP	Yes	
		Section 17(1)(b)(i) of FOIP	No	
Package F	Page 9	Section 17(1)(a) of FOIP	No	Withhold the cost per square foot for the base rent (main floor) and monthly cost per parking stall.
		Section 18(1)(f) of FOIP	No	

Record Package	Page Number	Exemption(s) Claimed	Does the Exemption Apply?	Release or Withhold
		Section 19(1)(b) of FOIP	Yes – cost per square foot for the base rent (main floor) and monthly cost per parking stall.	Release remaining portions of the page, ensuring to withhold any information that would allow for the calculation of these dollar figures, while releasing the most information to ensure transparency.
Package F	Page 10	Section 17(1)(a) of FOIP	No	Release in full.
		Section 17(1)(b)(i) of FOIP	No	
		Section 18(1)(f) of FOIP	No	
		Section 19(1)(b) of FOIP	No	
Package F	Page 12	Section 17(1)(a) of FOIP	No	Release in full.
		Section 17(1)(b)(i) of FOIP	No	
		Section 18(1)(f) of FOIP	No	
		Section 19(1)(b) of FOIP	No	
Package G	Page 7	Section 19(1)(b) of FOIP	No	Release in full.
Package G	Page 16	Section 17(1)(a) of FOIP	No	Withhold the cost per square foot for main floor rent for office space and the monthly cost per parking stall pursuant to section 19(1)(b) of FOIP.
		Section 18(1)(f) of FOIP	No	

Record Package	Page Number	Exemption(s) Claimed	Does the Exemption Apply?	Release or Withhold
		Section 19(1)(b) of FOIP	Yes – cost per square foot for main floor rent for office space and the monthly cost per parking stall.	Release remaining portions of the page, ensuring to withhold any information that would allow for the calculation of these dollar figures, while releasing the most information to ensure transparency.
Package G	Page 49	Section 17(1)(a) of FOIP	No	Release in full.
		Section 18(1)(f) of FOIP	No	
Package H	Page 36	Section 17(1)(a) of FOIP	No	Withhold the cost per square foot of Net Base Rent pursuant to section 19(1)(b) of FOIP. Release remaining portions.
		Section 17(1)(b)(i) of FOIP	No	
		Section 18(1)(f) of FOIP	No	
		Section 19(1)(b) of FOIP	Yes – cost per square foot of Net Base Rent	
Package I	Page 2	Section 18(1)(f) of FOIP	No	Withhold the cost per square foot for main floor rent for office space and the monthly cost per parking stall pursuant to section 19(1)(b) of FOIP. Release remaining portions of the page, ensuring to withhold any information that would allow for the calculation of these dollar figures, while releasing the most information to ensure transparency.
		Section 19(1)(b) of FOIP	Yes – cost per square foot for main floor rent for office space and the monthly cost per parking stall.	

Record Package	Page Number	Exemption(s) Claimed	Does the Exemption Apply?	Release or Withhold
Package J	Page 1	Section 17(1)(b)(i) of FOIP	No	Release in full.
Package J	Page 4	Section 17(1)(b)(i) of FOIP	No	Release in full.
		Section 19(1)(b) of FOIP	No	
Package J	Page 6	Section 17(1)(b)(i) of FOIP	No	Release in full.
		Section 19(1)(b) of FOIP	No	
Package J	Page 11	Section 17(1)(b)(i) of FOIP	No	Release in full.
Package J	Page 17	Section 17(1)(b)(i) of FOIP	No	Release in full.
Package J	Page 19	Section 17(1)(a) of FOIP	No	Release in full.
		Section 17(1)(b)(i) of FOIP	No	
		Section 19(1)(b) of FOIP	No	
Package J	Pages 44 to 45	Section 17(1)(a) of FOIP	No	Release in full.
		Section 17(1)(b)(i) of FOIP	No	
		Section 19(1)(b) of FOIP	No	
Package J	Attachment #1 (2 pages) to email thread on	Section 19(1)(b) of FOIP	Yes	Withhold in full.

Record Package	Page Number	Exemption(s) Claimed	Does the Exemption Apply?	Release or Withhold
	pages 43 to 45			
Package J	Attachment #2 (6 pages) to email thread on pages 43 to 45	Section 19(1)(b) of FOIP	Yes	Withhold in full.
Package J	Attachment #3 (5 pages) to email thread on pages 43 to 45	Section 19(1)(b) of FOIP	Yes	Withhold in full.
Package J	Page 46	Section 17(1)(a) of FOIP	No	Withhold the cost per square foot for main floor rent for office space and the monthly cost per parking stall pursuant to section 19(1)(b) of FOIP. Release remaining portions of the page, ensuring to withhold any information that would allow for the calculation of these dollar figures, while releasing the most information to ensure transparency.
		Section 18(1)(f) of FOIP	No	
		Section 19(1)(b) of FOIP	Yes – cost per square foot for the main floor rent and the monthly cost per parking stall	
Package J	Pages 48 and 50	Section 17(1)(a) of FOIP	No	Release in full.
		Section 17(1)(b)(i) of FOIP	No	
Package J	Pages 64 to 66	Section 17(1)(a) of FOIP	No	Release in full.
		Section 19(1)(b) of FOIP	No	
Package K	Page 8	Section 13(2) of FOIP	No	Release in full.

Record Package	Page Number	Exemption(s) Claimed	Does the Exemption Apply?	Release or Withhold
Package K	Page 11	Section 13(2) of FOIP	No	Release in full.
Package K	Page 12	Section 13(2) of FOIP	No	Release in full.
Package K	Pages 17 to 19	Section 19(1)(b) of FOIP	No	Release in full.
Package L	Page 5	Section 19(1)(b) of FOIP	No	Release in full.
Package M	Page 1	Section 17(1)(b)(i) of FOIP	No	Release in full.
Package M	Page 2	Section 18(1)(f) of FOIP	No	Release in full.
		Section 19(1)(b) of FOIP	No	
Package M	Page 3	Section 18(1)(f) of FOIP	No	Withhold the cost per square foot for 1 st floor leasing and the monthly cost per parking stall. Release remaining portions.
		Section 19(1)(b) of FOIP	Yes – the cost per square foot for 1 st floor leasing and the monthly cost per parking stall	
Package M	Page 4	Section 16(1)(a) of FOIP	No	Release in full.
Package M	Pages 5 to 8	Section 16(1)(a) of FOIP	Yes	Withhold in full.
Package M	Pages 9 and 10	Section 17(1)(a) of FOIP	Yes – second redaction on page 9	Withhold the second redaction on page 9. Release remaining portions.
Package M	Pages 11 to 13	Section 17(1)(a) of FOIP	Yes	Continue to withhold severed portions.
		Section 17(1)(b)(i) of FOIP	No	