

SASKATCHEWAN
OFFICE OF THE
INFORMATION AND PRIVACY COMMISSIONER

REVIEW REPORT F-2014-001

Financial and Consumer Affairs Authority of Saskatchewan

Summary:

The Applicant made an access to information request to Saskatchewan Financial Services Commission (SFSC) requesting all information associated with the Applicant held by the SFSC. During the course of the review, the SFSC was renamed the Financial and Consumer Affairs Authority of Saskatchewan. In response to the Applicant's access request, the SFSC withheld in part portions of the responsive record citing up to 26 different exemptions under *The Freedom of Information and Protection of Privacy Act* (FOIP). As the responsive record involved boxes of records, the Commissioner's review dealt with a representative sample only. During the course of the review, the Commissioner found that the SFSC failed to meet the burden of proof in establishing which exemptions applied to a number of records and that it failed to meet its obligations under section 8 of FOIP. He also found that the SFSC did not appropriately exercise its discretion by releasing as much of the record as possible, even where a discretionary exemption was found to apply by the SFSC. The Commissioner also found the SFSC failed to meet its obligations to third parties due to its unreasonable delay in notifying third parties affected by the review. The Commissioner further found that the SFSC failed to meet the burden of proof in demonstrating that sections 14(1)(a), 15(1)(b)(i), 15(1)(e), 15(1)(f), 15(1)(i) and 18(1)(f) of FOIP applied to some of the records. In addition, he found that the SFSC did not appropriately apply sections 13(1)(a), 15(1)(c), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c) and 29(1) of FOIP to portions of the record. The Commissioner did find that the SFSC appropriately applied sections 15(1)(k), 17(1)(a), 18(1)(f), 22(a), 22(b), 23(3)(h) and 29(1) of FOIP to other portions of the record. The Commissioner recommended the SFSC appropriately exercise its discretion and consider releasing as much of the record as possible. Further, he recommended that the SFSC release those records or portions of records found not to qualify for any of the

exemptions cited by the SFSC. In addition, he recommended that the SFSC continue to withhold those records or portions of records found to qualify under one of the exemptions cited by the SFSC. Finally, the Commissioner recommended that the SFSC apply the analysis, findings and recommendations in this Review Report to the larger responsive record.

Statutes Cited: *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, ss. 2(1)(d)(ii), 8, 12(1)(a)(i), 13, 13(1)(a), 13(1)(c), 13(1)(d), 14(1)(a), 15(1)(a), 15(1)(b), 15(1)(b)(i), 15(1)(c), 15(1)(d), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 15(2), 16(1)(a), 16(1)(d), 17, 17(1)(a), 17(1)(b), 17(1)(b)(i), 17(1)(b)(iii), 18(1)(d), 18(1)(f), 19(1)(b), 19(1)(c), 22, 22(a), 22(b), 22(c), 23, 23(1), 23(2), 23(3)(h), 24, 24(1), 24(1)(b), 24(1)(e), 24(1)(k)(i), 29, 29(1), 52, 52(1)(b), 61; *The Freedom of Information and Protection of Privacy Regulations*, c. F-22.01 Reg. 1; *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1, ss. 14(1), 14(1)(a), 14(1)(b)(i); *The Securities Act, 1988*, S.S. 1988-89, c.15, ss. 12, 15, 15(4), 84; *Canada's Access to Information Act*, R.S., 1985, c. A-1, s. 16(1)(c); *The Financial and Consumer Affairs Authority of Saskatchewan Act*, S.S. 2012, c. F-13.5, ss. 2, 2(d)(vi), 2(h)(iv), 2(h)(x), 5(1), 25, 25(1); *The Mortgage Brokers Act*, S.S. 2007, c. 65, ss. 2(2), 15; *The Consumer Protection Act*, S.S. 1996, c. S-50.11, ss. 3(c), 9(2), 10(2); *The Mortgage Protection Act*, S.S. 1986-87-88, c. M-21.11. *The Mortgage Brokerages and Mortgage Administrators Act*, S.S. 2007, c. M-20.1; *Alberta's Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25, ss. 20(1)(c), 20(1)(d), 27(1)(b); *Newfoundland and Labrador's Access to Information and Protection of Privacy Act*, S.N. 2002, c.-A-1.1, s. 22(1)(c); *Ontario's Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 14(1)(c); *British Columbia's Freedom of Information and Protection of Privacy Act* [RSBC 1996] c. 165, s. 15(1)(d).

Authorities Cited: Saskatchewan OIPC Review Reports 93/021, 95/012, 95/020, 95/021, 2000/028, 2002/041, F-2004-001, F-2004-002, F-2004-006, F-2004-007, F-2005-002, F-2005-004, F-2006-001, F-2006-002, F-2006-003, F-2006-004, F-2007-002, F-2010-001, F-2012-003, F-2012-004, F-2012-006, F-2013-007, LA-2007-001, LA-2010-001, LA-2011-001, LA-2012-002, F-2012-001/LA-2012-001, Saskatchewan OIPC Investigation Report LA-2010-001; Newfoundland and Labrador IPC Reports, A-2009-003, A-2008-005; Alberta IPC Orders 98-016, F2007-008, F2012-12, F2013-13; Ontario IPC Orders P-999, MO-1583, M-202, British Columbia IPC Order No. 28-1994; *Evenson v Saskatchewan Ministry of Justice* 2013 SKQB 296.

Other Sources

Cited: Saskatchewan OIPC, *Submission to the Workers Compensation Act Committee of Review*, April 29, 2011; Government of Alberta, Service Alberta, *FOIP Guidelines and Practices* (2009); Office of the Information Commissioner of Canada, *Investigator's Guide to Interpreting the ATIA*; *Blacks' Law Dictionary*, St. Paul, Minnesota, West Corp., 9th ed., 2009; *The Report on the Commission on Freedom of Information and Individual Privacy/1980*.

I BACKGROUND

[1] This Review Report involves the Financial and Consumer Affairs Authority of Saskatchewan (FCAA). When the access to information request was made and during the course of this review, it was known as the Saskatchewan Financial Services Commission (SFSC). I will refer to it as the SFSC throughout this Review Report.

[2] The Applicant submitted an access to information request to the SFSC on December 13, 2011, requesting:

...information and records associated with me, [Applicant's name] and all my companies: [names of Applicant's businesses] in any shape, way or form. Whether it has any of these names on it or associated with it, I am formally requesting this.

I am requesting for [sic] any file, record and communication that is associated to any of the names above. Please make sure to include the following, but not limited to, in this request this:

a) Names of the US investors that called [SFSC employee] as quoted on both the SFSC website and Leader Post [date] article. I need to see the names, notes on the conversation, etc.

b) A full and complete list of any and all calls made or received by the SFSC pertaining to me and all the companies cited above. Please make sure there are the names, dates, times and all notes and further communications pertaining to any calls.

c) All emails sent out by any SFSC member/entity pertaining to me or the companies

d) All emails received by the SFSC pertaining to me or the companies by any third parties.

- e) Any and all internal SFSC emails pertaining to me or my companies.
- f) The notes and exact communication [SFSC employee] and his staff had with both the Canadian Border Services Agency and the US Border Services Agency. Names of who they spoke with, what was said and dates.
- g) Names/Sates [sic]/Communication (in any and all forms – emails/notes/audio) and names of all the people [SFSC employee] handed out [individual's name] name and/or phone number too.
- h) Notes/Communications (in any and all forms – emails/notes/audio) and names of all people [SFSC employee] spoke to about either my sisters or my health/medical conditions.
- i) Names/Dates/Communication (in any and all forms – emails/notes/audio) from [SFSC employee] of everyone he spoke to in regards to disclosing any information pertaining to my personal tax information and what exactly he said.
- j) Names/Dates/Communication (in any and all forms – emails/notes/audio) of everyone they told that my passport was taken from me (it was not...).
- k) Names/Dates/Communication (in any and all forms – emails/notes/audio) of everyone that [SFSC employee] spoke to telling them that I only had 1 nephew and was lying about having 2.
- l) Names/Dates/Communication (in any and all forms – emails/notes/audio) of everyone [names of two SFSC employees] or the other investigators spoke to telling them that I did not have a house.
- m) Names/Dates/Communication (in any and all forms – emails/notes/audio) of everyone within the SFSC that spoke with [sic] stating that I was charged with Fraud...
- n) Names/Dates/Communication (in any and all forms – emails/notes/audio) of everyone that the SFSC either told that we: (a) did not have any offices or (b) did not have any products or that the products were incomplete.
- o) Exact date that [SFSC employee] knew about the [date] Order (emails with date stamps).
- p) List of the entire inventory of all the items seized from our accountant [name of accountant]...
- q) Notes/Communication (in any and all forms – emails/notes/audio) that back up [SFSC employee]'s public statement [date]...
- r) List of the US authorities that were contacted by the SFSC...

s) The notes/information as to why: (a) personal and corporate bank numbers and account amounts were printed and distributed online and in the Notice of Hearing [date] and (b) the exact reasoning as to why those certain dates were selected when the SFSC printed “snap-shot” amounts of the accounts (both personal and corporate) as opposed to any other date and (c) why the bank account numbers and amounts were publicly printed and distributed worldwide. I am requesting the detailed notes/reasons/communications to all of the above in (s).

[3] On or about January 10, 2012, the SFSC responded to the Applicant advising that it required an additional 30 days to respond citing section 12(1)(a)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP)¹.

[4] On or about February 13, 2012, the SFSC provided its section 7 response to the Applicant. The SFSC’s letter to the Applicant stated the following:

A significant number of the records that are responsive to this request can be released to you in full and are attached. This includes three compact discs that contain electronic records. The remainder of the record has been attached in paper format.

Please note that some of the records that are responsive to your request have been withheld from release in full because, if released, the records:

- i) would disclose information, testimony or a record, document or thing given or provided pursuant to Part III of *The Securities Act, 1988*;
- ii) would disclose the name of a witness examined or sought to be examined pursuant to Part III of *The Securities Act, 1988*;
- iii) would disclose information supplied in confidence to a government institution from the Government of Canada or its agencies or other institutions;
- iv) would disclose information supplied in confidence to a government institution from the government of a foreign jurisdiction or its institutions;
- v) could prejudice, interfere with or adversely affect relations between the Government of Saskatchewan and another government;
- vi) could prejudice, interfere with or adversely affect the detection, investigation, prevention or prosecution of an offence;
- vii) could be injurious to the enforcement of an act or a regulation;

¹*The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01.

viii) could interfere with a lawful investigation or disclose information with respect to a lawful investigation;

ix) could be injurious to a government institution in the conduct of existing or anticipated legal proceedings;

x) could reveal investigative techniques or procedures currently in use or likely to be used;

xi) could disclose the identity of a confidential source of information or disclose information furnished by that source with respect to a lawful investigation or a law enforcement matter;

xii) could reveal law enforcement intelligence information;

xiii) could interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

xiv) would disclose a confidence of the Executive Council, as they were created to present advise, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

xv) would disclose a confidence of the Executive Council, as they contain briefings to members of the Executive Council in relation to matters that are the subject of consultations among members of the Executive Council relating to the making of government decisions or the formulation of government policy;

xvi) could disclose advise, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

xvii) could disclose consultations or deliberations involving officers or employees of a government institution or the staff of a member of the Executive Council;

xviii) could disclose information that may interfere with contractual or other negotiations of a government institution;

xix) could disclose information that may prejudice the economic interest of a government institution;

xx) would disclose financial and commercial information supplied in confidence to a government institution by a third party;

xxi) would disclose information that could result in financial loss or gain to a third party, prejudice the competitive position of a third party or interfere with the contractual or other negotiations of a third party;

xxii) could threaten the physical or mental health of an individual;

xxiii) would disclose information subject to solicitor and client privilege;

xxiv) would disclose records prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;

xxv) would disclose correspondence in relation to a matter involving the provision of advice or other services by an agent of the Attorney General for Saskatchewan or legal counsel for a government institution; or

xxvi) would disclose personal information about an identifiable individual.

Access to this information is denied pursuant to s. 15 of *The Securities Act, 1988* and s. 13(1)(a), s. 13(1)(c), s. 14(1)(a), s. 15(1)(a), s. 15(1)(b)(i), s. 15(1)(c), s. 15(1)(d), s. 15(1)(e), s.15(1)(f), s. 15(1)(i), s. 15(1)(k), s. 16(1)(a), s. 16(1)(d), s. 17(1)(a), s. 17(1)(b)(i) and (iii), s. 18(1)(d), s. 18(1)(f), s. 19(1)(b), s. 19(1)(c), s. 21, s. 22(a), s. 22(b), s.22(c), s.23(3)(h) and s. 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[5] The Applicant submitted a request for review to my office on February 15, 2012.

[6] On or about March 15, 2012, my office provided notification letters to both the Applicant and the SFSC advising of my office's intention to conduct a review. At that time, my office requested that the SFSC provide a copy of the record and submission to my office supporting its reliance on the sections noted in its section 7 response to the Applicant.

[7] Following receipt of our notification letter, the SFSC sent my office a letter dated March 29, 2012. The SFSC stated the following:

I believe the ongoing dialogue concerning her Access Request has been productive for both [the Applicant] and the SFSC. As you can see from her latest correspondence, she has asked us to search for a specific subset of documents she believes she was wrongfully refused access. **It is my intention to seek clarification from [the Applicant] as to the specific records she has in mind and then have staff search for the documents...**

I would like to continue this dialogue with [the Applicant], as I believe it to be beneficial to both her and the SFSC for a number of reasons. She will be able to ask and receive answers to her questions in an expedited manner. At the very least, the

dialogue provides an opportunity to significantly narrow the scope of the outstanding issues relating to [the Applicant's] Access Request, thereby reducing the size and complexity of the review ultimately undertaken by your office.

...

I request you delay your review of this manner until we are able to exhaust our informal attempts with [the Applicant] to satisfy her Access Request. I would be pleased to provide you with updates at your request concerning the status of our dialogue with [the Applicant].

[emphasis added]

[8] My office responded to the SFSC via email on April 13, 2012, stating the following:

Thank you for the materials you provided our office...By all means, please continue to work directly with the Applicant. **We would appreciate it though if you could copy us on any formal correspondence so that we may keep in the loop.** Once you have resolved this to the extent possible, let us know. At that point, we will check with the Applicant and readjust as necessary. Please note that if we hear from the Applicant that this is not beneficial, we may re-engage earlier.

[emphasis added]

[9] From March to August 2012, my office was under the impression that the SFSC was negotiating with the Applicant with hopes of informally resolving the access request in a manner that would satisfy the Applicant. On three occasions the SFSC provided my office with copies of correspondences between the SFSC and the Applicant. The first was its original letter to our office received April 3, 2012. Further, my office received letters from SFSC on April 26, 2012, and May 18, 2012.

[10] However, from the copies of the correspondence provided to my office by the SFSC, it appeared there was a lack of effort to genuinely clarify and provide for the Applicant what she sought in her original access request. Rather, there appeared to be great efforts to clarify for the Applicant why she could not have the records with the hope she would accept their decision.

[11] For example, on April 3, 2012, my office received a copy of a letter sent to the Applicant by the SFSC dated February 22, 2012. In that letter, the SFSC went into detail why it had

denied access to the records requested by the Applicant. The SFSC also states the following:

If you have a particular communication in mind and can specify the parties to that communication, **we may be able to narrow the list of exemptions claimed.**

...If you can specify a particular record or type of record you seek disclosure of and that was withheld, **I would be happy to provide you with the specific grounds for withholding that record or type of record.**

[emphasis added]

[12] Further, I note in a letter from the SFSC to the Applicant dated April 10, 2012, the following:

This letter is in response to your emails sent on March 27, March 28 and April 9, 2012.

...

...It would be beneficial to all involved if we could address all of your questions and explain our position with respect to as many subsets of records as possible. **If you can identify a particular subset of records you seek disclosure of and we provide a sufficient explanation for refusing to disclose those records, you may be able to confirm that you no longer request disclosure of those records.** This could save everybody a significant amount of time and effort. **If you cannot identify any other specific records** you would like us to disclose to you, **can you confirm, based on the explanations I provided in my earlier correspondence, that you no longer seek disclosure of a particular subset of records?** I look forward to your response.

[emphasis added]

[13] From a review of the emails sent by the Applicant to the SFSC during this negotiation period, it does not appear that the Applicant ever suggested she was no longer interested in the records she originally asked for in her December 31, 2011 access to information request. Further, she consistently restated the records she was interested in, which appear to fall within the scope of her original access to information request.

[14] Further, the SFSC sent another letter to the Applicant dated April 24, 2012, stating:

I am still waiting for your response to a question I posed in my letter to you dated April 10, 2012 concerning your access request. I asked if you could either **identify**

any additional specific records you would like us to disclose to you **or confirm,** based on the explanations I provided in my earlier correspondence, **that you no longer seek disclosure of a particular subset of records.** I look forward to your response.

[emphasis added]

- [15] The Applicant should not be required to repeat her request for access to records. Having the Applicant repeat her access request appears more like an inquiry as to whether she wanted more records than those originally requested. In addition, the SFSC offered again to explain further to the Applicant why she is being denied access.
- [16] Upon review of the package my office received from the SFSC on May 18, 2012, I noted a letter which the SFSC had sent to the Applicant dated May 15, 2012. The letter goes on at length regarding a privacy breach complaint. The only apparent point that pertained to the access to information request was as follows: "...please confirm whether you still request disclosure of any records specified in your access request."
- [17] Nothing further was received from the SFSC after May 18, 2012. It did not advise my office that the negotiations had concluded or what the outcome was.
- [18] After hearing nothing from the SFSC, my office sent a letter to the Applicant on August 10, 2012, indicating we were aware of the negotiations between the Applicant and the SFSC regarding the records the Applicant sought. My office requested the Applicant advise if she was satisfied or not, following the negotiations with the SFSC.
- [19] On August 27, 2012, the Applicant contacted my office and left a message indicating she was not satisfied.
- [20] The SFSC asserted in its letter to my office on April 3, 2012, that its negotiations with the Applicant were and would be beneficial to the Applicant. However, this did not appear to be the case. Rather, it appeared that such negotiations frustrated the Applicant and delayed our review process.

[21] In my Review Report F-2012-006, I addressed delays in my office's reviews:

Once an OIPC review has commenced, it would be important for Justice to:

1. Ensure that the record and Index of Records responsive to the request is prepared and provided to our office within 30 days of receiving my office's notification letter; and
2. Ensure that the written submission is provided within 60 days of receiving my office's notification letter.

I must also acknowledge that I share responsibility for the delay in that **we attempted to work with Justice to achieve an informal resolution.** Given that I can only issue recommendations and have no order making power, **I believed that if we could achieve an informal resolution that would actually see the Applicant obtain all or most of the records in dispute that would be a preferable result.** I take responsibility for acceding to multiple requests for extensions of time which in hindsight was a mistake.²

[emphasis added]

[22] The same could be said for this review in that my office's willingness to accept the delay was based on the desire to work with the SFSC to achieve an informal resolution and to see the Applicant obtain further records. It, however, did not have the desired effect.

[23] On August 31, 2012, my office contacted the SFSC via email and advised the SFSC that the Applicant was not satisfied with the negotiations. My office requested the record, Index of Records (Index), contact information for the third parties and the SFSC's submission to support its application of the 26 exemptions it cited in its section 7 response to the Applicant to withhold records. My office requested to receive these materials by September 30, 2012.

[24] On September 21, 2012, my office had phone contact with the SFSC. It indicated that the responsive record was approximately eight boxes full of records and it did not want to provide copies of the records to our office because the records were involved in an investigation. My office clarified that copies of the records were needed for our office to

²Saskatchewan Information and Privacy Commissioner (hereinafter SK OIPC) Review Report F-2012-006 Postscript at p. 2, available at: www.oipc.sk.ca/reviews.htm.

conduct a review. It was agreed that due to the voluminous record, the SFSC would provide a representative sample of the records for each exemption cited instead. My office explained what was needed. The SFSC also advised that it cited multiple exemptions in order to avoid being “locked” to one exemption only to find out that my office did not support it. My office advised the SFSC that it needed to provide supporting arguments in its submission to our office for each of the 26 exemptions it was relying on. The SFSC did not feel they could complete a submission for all the exemptions until December 2012. My office agreed to extend the deadline to the end of December 2012. It was made clear, however, that my office could not delay its review past December 2012. The SFSC agreed to keep my office updated on its progress.

[25] On December 17, 2012, my office followed up with the SFSC as my office had not heard anything regarding the progress of the record, Index and submission. The SFSC was reminded that a representative sample and Index was needed by December 31, 2012.

[26] On December 21, 2012, the SFSC sought guidance from my office on how to prepare a representative sample, a week before the sample was due in my office. My office responded via email on December 24, 2012, providing an explanation and inquired if the process of preparing the materials for my office had started yet. My office did not receive a response.

[27] On January 2, 2013, my office received a single box of records and an Index from the SFSC. However, upon review, the records had not been paginated to correspond with the Index, making it virtually impossible to conduct a review. Further, there was no indication on the records what was severed or withheld. None of the pages were marked in any way with the applicable exemptions. In addition, nothing was provided with regards to third party contact information as requested previously. Finally, no submission was provided to support any of the 26 exemptions cited by the SFSC.

[28] On January 8, 2013, my office returned the box of records to the SFSC and explained that a review by my office could not be conducted using the records as provided. My office requested the SFSC prepare a proper record and Index. In addition, a submission to

support the multiple exemptions. My office advised that it needed these materials by January 31, 2013.

[29] My office did not receive a representative sample of records from the SFSC and an Index until February 15, 2013. There were a number of issues with the package received. This included the following:

- The representative sample was significantly smaller than the one received on January 2, 2013. The SFSC indicated in its letter that this was due to my office's timeline. The SFSC's letter stated as follows:

In terms of the representative sample, we had previously sent you a sample consisting of five representative records from each group or bundle of records. In order to attempt to meet your requested timeline for resubmission by January 31, 2013, we had to scale the sample size back to two records from each group or bundle.

- Of further concern was the fact that no submission was included to support the 26 exemptions cited by the SFSC. No definitive timeline was provided regarding when it would be provided. With regards to its submission, the SFSC stated the following:

We will now turn our focus back to the preparation of submissions, which we will provide to you as soon as we can.

- Also, no contact information for the third parties was included and no timeline for receipt was provided. In its letter, the SFSC stated it was "compiling a complete list of third parties to be contacted" regarding the review. The SFSC stated it would advise our office when the list was complete.

[30] On March 19, 2013, my office received a copy of a letter sent by the SFSC to the Applicant releasing 10 more pages of the record. The 10 pages appeared to relate to the booking and payment of the room rented to hold a hearing involving the Applicant. The pages included details of the cost of the room. Although it is positive these records were released, it is unclear why it took the SFSC a year to identify these records as releasable. No explanation was given by the SFSC. If it was discovered while preparing the submission, this suggests the SFSC did not properly review the records at the time it processed the Applicant's initial access request a year earlier.

- [31] On April 17, 2013, my office emailed the SFSC and advised that my office must receive the list of third parties and accompanying contact information by April 24, 2013. Further, if my office had not received the submission from the SFSC by this date, my office would proceed with its review without it, possibly leading to a finding that the SFSC did not meet the burden of proof on a number of exemptions claimed.
- [32] On April 24, 2013, my office received a submission from the SFSC along with copies of letters to 14 separate third parties dated April 24, 2013. Further, in the letters the SFSC notified the third parties of the review and requested consent from the third parties to release the relevant information. The SFSC indicated to my office that the 14 third parties were only those involved with the representative sample provided to our office. It was not clear if notification was provided to any other third parties in the remainder of the record (totaling eight boxes).
- [33] Further, the submission provided by the SFSC on April 24, 2013, appeared to only address the first two categories of records: *Securities Investigation/Proceeding Against [the Applicant], et.al. – Tribunal Records* and *Securities Investigation/Proceeding Against [the Applicant], et.al. – Securities Division Staff Records*. The April 24, 2013 submission indicated that a submission for the remaining two sections would come at some later date.
- [34] On April 25, 2013, my office sent letters to the 14 identified third parties, inviting them to provide a submission for our consideration and to advise if they provided consent for the release of the information. No submissions were received from the third parties by the allotted deadline of May 24, 2013.
- [35] Further, on April 25, 2013, my office reiterated that the firm deadline for a submission was April 24, 2013, as advised previously. My office also reminded the SFSC that it had since March 15, 2012 to prepare its submission for the 26 exemptions cited. Therefore, further delay would not be accepted and additional submissions would not be considered in the review.

[36] The SFSC questions this timeline in its letter to my office, received May 8, 2013, as follows:

In light of our recent exchange of correspondence on this issue, I would like to provide a recommendation to your office concerning communications with respect to the process followed in conducting a review. We commend your office for some of the approaches it took in this file, for example the representative sample approach and in allowing the FCAA to negotiate with the Applicant to attempt to narrow her request. Both of these approaches were practical and sensible for everyone involved. However, we recommend the process be more clearly set out for the government institution at the outset, to avoid the misunderstandings that occurred in this file.

For example, you say in your email of April 25, 2013 that the SFSC had since March 15, 2012 to prepare its submissions in this matter. That statement is, in our view, not entirely accurate and somewhat misleading. **The date you mention is the date you provided us with notice of your review, however, your office subsequently agreed, quite reasonably, to hold off your review while we negotiated with the Applicant to narrow the scope of her request.** It wasn't until August 31, 2012 that your office informed us that it would not delay its review any longer. **Until we received that email from your office dated August 31, 2012, there was no reason for our office to commence preparing submissions and in fact, it would have been unwise for us to do so.** If the negotiations were successful and the Applicant had narrowed the scope of her request, then the work we would already have completed to prepare submissions based on her original request would have been a wasteful dissipation of public resources and an unnecessary distraction from our mandate.

[emphasis added]

[37] The above was an interesting response given my office was provided little evidence of an effective negotiation and in fact received no updates from the SFSC after May 18, 2012. It is not clear what the SFSC was doing for three months with regards to the preparation of the record, Index and submission between May 18, 2012 and August 31, 2012, when negotiations appeared to have been concluded well before that date.

[38] My office responded to the SFSC in an email dated June 20, 2013, as follows:

The Applicant requested access to the records on December 31, 2011. On January 10, 2012 the SFSC advised the Applicant that it required 30 additional days to respond to the request. During this time, the SFSC would have been gathering the responsive record and making determinations as to what exemptions it would be relying on to withhold the records. On February 13, 2012 the SFSC knew which

records it was withholding under which exemptions as listed in the section 7 response to the Applicant. As the Applicant was not satisfied, she requested our office conduct a review.

We notified the SFSC of our intention to conduct a review on March 15, 2012. It is at this point, the SFSC should have begun preparing the record, Index and submission as requested in our letter. Regardless of what negotiations the SFSC was having with the Applicant, it was aware of our request for the record, Index and submission and should have continued preparing the materials during its negotiations with the Applicant. This should not be too time consuming given that the responsive record should already have been gathered, reviewed and exemptions applied during the initial processing period. How else would the SFSC been able to provide its statutory section 7 response if this had not occurred already?

...

Any further delays and extensions would be unfair to the Applicant who has a right to a fair and timely review. Therefore, as stated in our April 25, 2013 email... we will only consider the submission received by the April 24, 2013 deadline.

[39] Also causing delay in this review was difficulty in deciphering which exemptions the SFSC was relying on for specific bundles of records in the sample it provided to my office. It appeared that the SFSC raised exemptions on its Index that were not marked on the actual records or referred to in the SFSC's submission. This will be addressed further in the first issue in this Review Report.

II RECORDS AT ISSUE

[40] On February 15, 2013, the SFSC provided the representative sample and Index used in this review.

[41] Upon review of the sample provided, there appeared to be four categories of sample records:

- *Securities Investigation/Proceeding Against [the Applicant], et. al – Tribunal Records* [Tribunal Records];
- *Securities Investigation/Proceeding Against [the Applicant], et. al – Securities Division Staff Records* [Securities Division Staff Records];

- *Financial Institutions Division Investigation of [name of business]* [Financial Institutions Division Records]; and
- *Consumer Protection Division Investigation of [name of business]* [Consumer Protection Division Records].

[42] The following is a description of the record and applicable sections being considered for this review. As noted earlier, several sections will not be listed for records when the applicable section could not be deciphered (this will be explained further in the first issue of this Review Report):

Bundle #	Description	Sections Cited
<i>Securities Investigation/Proceeding Against [Applicant], et.al. – Tribunal Records</i>		
1a	Correspondence and contracts related to hearing room rentals.	18(1)(f), 19(1)(b)
1b	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 29
1c	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
1d	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
1e	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 29
1f	Correspondence with legal counsel	15(1)(c), 15(1)(k), 22(a), 22(b), 22(c)
1g	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 29
1h	Correspondence	15(1)(c), 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b), 18(1)(d), 19(1)(c), 29
1i	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 29
1j	Correspondence related to [Applicant] appeal to Court of Appeal	15(1)(c), 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b), 29
1k	Various correspondence between SFSC staff and between SFSC staff and witness	15(1)(c), 15(1)(k), 19(1)(c), 23(3)(h), 29
1l	Various correspondence and draft documents	15(1)(c), 15(1)(k), 29
2a	Correspondence with SFSC legal counsel and draft correspondence prepared for consultation with SFSC legal counsel.	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
2b	Correspondence dated [date removed]	15(1)(c), 15(1)(k), 16(1)(a), 16(1)(d), 17(1)(a), 17(1)(b), 23(3)(h), 29

2c	Correspondence related to [Applicant] appeal to Court of Appeal	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
2d	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b)
2e	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
2f	Various internal correspondence related to [Applicant] appeal to Court of Appeal	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 29
2g	Email dated [date removed]	15(1)(c), 15(1)(k)
2h	Various correspondence between SFSC Chair and legal counsel	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
2i	Various internal correspondence	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b), 19(1)(c), 22(a), 23(3)(h), 29
2j	Internal correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b)
2k	Internal correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b)
2l	Various correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 29
2m	Correspondence	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 21, 29
2n	Internal correspondence	15(1)(c), 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b)
3a	Correspondence between SFSC legal counsel and SFSC staff and work product of SFSC legal counsel	15(1)(c), 15(1)(k), 22(a), 22(b), 22(c)
3b	Correspondence between SFSC legal counsel and SFSC staff and SFSC legal counsel work product	15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
<i>Securities Investigation/Proceeding Against [Applicant], et.al. –Securities Division Staff Records</i>		
1	Recordings of voice messages received by staff from investigators, witnesses and sources (disk)	Sample not provided
2	Documents from Pay Pal and eBay regarding items purchased...	15(1)(c), 15(1)(e), 15(1)(k), 19(b), 23(3)(h), 29
3	Documents relating to proposed application for a freeze order...including draft memos, orders, applications to the Court and e-mails to and from potential receiver	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 19(1)(b), 23(3)(h)
4	Documents relating to application pursuant to section 12 of <i>The Securities Act, 1988</i> for investigation order dated [date removed] including staff memo and Investigation Orders.	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k)

5	Documents relating to cease trade order pursuant to section 134 of <i>The Securities Act, 1988</i> in [date removed] including staff memo, information and materials used to prepare staff memo and staff memo applying for extension	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 19(1)(b), 23(3)(h), 29
6	Documents relating to service and notice of cease trade orders	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k)
7	Records relating to subpoenas to witnesses to testify at hearing, including subpoenas, affidavits of service, and correspondence with witnesses	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 23(3)(h), 29
8	Documents relating to contents of storage locker leased...	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(1)(b), 23(3)(h), 29
9	Internet search	15(1)(c), 15(1)(e), 15(1)(k), 23(3)(h)
10	Correspondence to and from Sheriff...	15(1)(c), 15(1)(e), 15(1)(k), 23(3)(h), 29
10A	Correspondence with [police service]	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 23(3)(h), 29
10B	Correspondence with Canada Revenue Agency	13(1)(a), 15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 23(3)(h), 29
10C	Info from Saskatchewan Gaming Authority	15(1)(c), 15(1)(e), 15(1)(k), 19(b), 23(3)(h), 29
10D	Correspondence with US Immigration and Customs Enforcement	13(1)(d), 15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 23(3)(h)
11	Documents relating to private prosecution by [name removed] under the <i>Criminal Code</i> against staff of the Securities Division	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 23(3)(h)
12	Un-redacted investigation reports prepared by staff	13(1), 15(1)(c), 15(1)(e), 15(1)(k), 19(1)(b), 23(3)(h), 29
13	Redacted investigation reports prepared by staff	15(1)(e)
14	Questions for interviews of witnesses	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(1)(b), 23(3)(h), 29
15	Synopsis of interview of witnesses	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(1)(b), 23(3)(h), 29
16	E-mails – [name removed] dated from [dates removed]	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 23(3)(h)
17	E-mails – [SFSC employee] regarding [name of business] securities offered by [Applicant]	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(1)(b), 29
18	Memo of staff requesting temporary cease trade order pursuant to section 134 of <i>The Securities Act</i> including draft temporary cease trade order	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 23(3)(h)

19	Memos from staff to Commission Secretary and Chair of the Hearing Panel regarding application for extension of temporary cease trade order	17(b), 22(b), 22(c), 23(3)(h)
20	Action minutes prepared by Director, Securities Division regarding finalization of Notice of Hearing dated [date removed]	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 23(3)(h)
21	E-mails of Director of Securities Division with [lawyer's name] regarding his request for disclosure on behalf of the respondents in the Notice of Hearing	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 23(3)(h), 29
22	E-mails between Director, Securities Division and Commission Secretary.	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 23(3)(h)
23	E-mails between Director, Securities Division and staff of the Securities Division	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 23(3)(h), 29
24	E-mails between Director, Securities Division and Legal Counsel for staff of the Securities Division	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 22(c), 23(3)(h)
25	E-mails between Director, Securities Division to Chair dated [date removed]	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(a), 17(1)(b), 19, 19(b), 23(3)(h), 29
26	E-mails between Legal Counsel, Securities Division and Chair	15(1)(c), 15(1)(k), 17(1)(b), 22(c), 23(3)(h)
27	E-mails between Legal Counsel, Securities Division and staff of the Securities Division, Commission Secretary and Chair regarding appeal by [Applicant] from hearing panel's decision not to grant adjournment	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 22(c), 29
28	E-mails between Legal Counsel, Securities Division and Commission Secretary and Acting Commission Secretary	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 22(c), 23(3)(h)
29	E-mails and correspondence between Legal Counsel, Securities Division and Counsel for hearing panel regarding appeal by [Applicant] from hearing panel's decision not to grant adjournment	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 22(a), 22(b), 22(c), 29
30	Questions for witnesses for staff of the Securities Division in application by [Applicant] for further disclosure prepared by Legal Counsel for staff of the Securities Division	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(b), 22(a), 22(b), 23(3)(h), 29

31	Draft questions for witnesses to be called to testify prepared by Legal Counsel for staff of the Securities Division, for the proceedings in the Notice of Hearing	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(b), 22(a), 22(b), 23(3)(h), 29
32	E-mails between Legal Counsel, Securities Division and staff of the Securities Division	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 22(c), 23(3)(h), 29
33	Documents prepared by Legal Counsel for staff of the Securities Division, for the proceedings in the Notice of Hearing against [Applicant] and other respondents, including <ul style="list-style-type: none"> • Hearing checklist • Witness timetable • Draft bill of costs • Draft brief of law/arguments 	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 23(3)(h)
34	Analysis of financial information in bank and other records of the Respondents prepared by staff	15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 19(b), 23(3)(h), 29
35	E-mails and correspondence between staff and investors, witnesses and sources, and information received from them	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(b), 23(3)(h), 29
36	E-mails and correspondence between staff and investors and witnesses regarding hearing processes	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(b), 23(3)(h), 29
37	E-mails and correspondence between staff and investors, witnesses and sources, and information received from them	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(b), 23(3)(h), 29
38	Investigation notes, briefs and plans prepared by staff	15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 19(b), 23(3)(h), 29
39	List of exhibits to be introduced at the hearing	15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(b), 23(3)(h), 29
40	Witness “can states” prepared by staff	15(1)(c), 15(1)(e), 15(1)(k), 19(b), 23(3)(h), 29
<i>Financial Institutions Division Investigation of [name of business]</i>		
1	Correspondence between SFSC Legal Counsel and various SFSC staff	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 23(3)(h), 29
2	Correspondence between SFSC Legal Counsel and various SFSC staff	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 23(3)(h)
3	Signed authorization form	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 23(3)(h)
4	File copies of documentary evidence obtained	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 23(3)(h)

5	Transcripts and notes of witness interviews conducted by SFSC legal counsel; correspondence and draft correspondence between SFSC legal counsel and other parties; draft correspondence prepared by SFSC legal counsel; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 22(a), 22(b), 22(c), 29
6	Correspondence between SFSC legal counsel and various SFSC staff and other parties; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b), 15(1)(c), 15(1)(k), 22(a), 22(b), 22(c)
7	Draft order and draft correspondence prepared by SFSC legal counsel; correspondence between SFSC legal counsel and other parties	15(1)(b), 15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
8	Correspondence between SFSC staff and between SFSC staff and other parties; notes taken by SFSC staff during witness interviews	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 29
9	Correspondence between SFSC legal counsel and other SFSC staff	15(1)(b), 15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
10	Correspondence between SFSC staff	17(1)(a), 17(1)(b), 29
11	Documentary evidence obtained by SFSC staff in furtherance of the investigation; fax cover sheets	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 29
12	Correspondence between SFSC legal counsel, notes of meeting between SFSC legal counsel and SFSC	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
<i>Consumer Protection Division Investigation of [name of business]</i>		
1	Complaint Cover Sheet; Complaint Summary; Letter from Consumer Protection (CPD) Investigator dated [date removed]	13(1)(a), 14(1)(a), 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(i), 15(1)(k), 29
2	eBay Information Sheet	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k)
3	Copy of eBay printout	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 29
4	Copies of various investigative search results	15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k)
5	E-mail between CPD staff sent on [date & time removed]	15(1)(b), 15(1)(c), 15(1)(k), 29
6	Various e-mails and other communications between CPD staff and between the CPD investigator and the complainant	15(1)(b), 15(1)(c), 15(1)(k), 29

[43] During the course of this review, some of the exemptions cited above by the SFSC did not have to be reviewed as the records were found to be captured under other sections analyzed below.

[44] It should also be noted that the submission provided by the SFSC indicated that the SFSC abandoned reliance on section 15(1)(b) of FOIP for all records in categories: *Tribunal Records* and *Securities Division Staff Records*.

[45] Further, according to the SFSC's submission, the SFSC abandoned reliance on sections 15(1)(e), 15(1)(f) and 15(1)(i) of FOIP for bundle #1k (*Tribunal Records*). In addition, the SFSC appeared to abandon reliance on sections 15(1)(a) and 15(1)(e) of FOIP for bundle #2g (*Tribunal Records*).

III ISSUES

1. **Did the Financial and Consumer Affairs Authority of Saskatchewan establish which exemptions applied to each portion of the record?**
2. **Did the Financial and Consumer Affairs Authority of Saskatchewan meet its obligations under section 8 of *The Freedom of Information and Protection of Privacy Act*?**
3. **Did the Financial and Consumer Affairs Authority of Saskatchewan properly exercise its discretion?**
4. **Did the Financial and Consumer Affairs Authority of Saskatchewan meet its obligations with regards to third parties?**
5. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 23(3)(h) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**

6. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
7. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
8. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(e) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
9. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(f) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
10. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(k) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
11. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 22(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
12. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
13. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 17(1)(b) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**

14. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 13(1)(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
15. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 14(1)(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
16. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(i) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
17. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 29(1) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
18. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 22(b) to *The Freedom of Information and Protection of Privacy Act* to the record in question?**
19. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 22(c) to *The Freedom of Information and Protection of Privacy Act* to the record in question?**
20. **Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 18(1)(f) to *The Freedom of Information and Protection of Privacy Act* to the record in question?**

IV DISCUSSION OF THE ISSUES

[46] The SFSC is a “government institution” within the meaning of section 2(1)(d)(ii) of FOIP. Section 2(1)(d)(ii) of FOIP states as follows:

2(1) In this Act:

...

(d) “government institution” means, subject to subsection (2):

...

(ii) any prescribed board, commission, Crown corporation or other body, or any prescribed portion of a board, commission, Crown corporation or other body, whose members or directors are appointed, in whole or in part:

(A) by the Lieutenant Governor in Council;

(B) by a member of the Executive Council; or

(C) in the case of:

(I) a board, commission or other body, by a Crown corporation; or

(II) a Crown corporation, by another Crown corporation;

[47] Further, *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations)³ lists the SFSC in its Appendix. The SFSC is therefore prescribed as a government institution and qualifies as a government institution for purposes of FOIP.

1. Did the Financial and Consumer Affairs Authority of Saskatchewan establish which exemptions applied to each portion of the record?

[48] Prior to beginning this analysis, it is important to highlight the objective of FOIP:

[11] I adopt and incorporate by reference the purpose that this office has ascribed to *The Freedom of Information and Protection of Privacy Act* (“the Act”) in Report 2004-003 [5] to [13]. I accept the direction of the Saskatchewan Court of Appeal that the basic policy of the Act is that **“disclosure, not secrecy is the dominant objective of the Act”...**

[12] The right of citizens to access records in the possession or under the control of public bodies is **a quasi-constitutional right of the “highest importance in the functioning of a modern democratic state”...**⁴

[emphasis added]

³*The Freedom of Information and Protection of Privacy Regulations*, c. F-22.01 Reg. 1.

⁴SK OIPC Review Report F-2006-001, available at: www.oipc.sk.ca/reviews.htm.

[49] I approach this Review Report with this objective in mind.

[50] Section 61 of FOIP imposes on a public body the burden of proof in establishing that an exemption applies to the withheld records. Section 61 of FOIP states as follows:

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

[51] In my Review Report F-2007-002, I discussed what is required by this section of FOIP:

[8] I provided guidance on what this office requires in order for the government institution to meet the legislative burden of proof in the *Helpful Tips* sheet, available on our website, www.oipc.sk.ca, under the *Resources* tab. In the *Helpful Tips* sheet, we advised consideration of the following information:

*A government institution or local authority has the burden of proof if it claims that access should or must be refused under the FOIP Act or LA FOIP Act. The burden is not on the applicant to establish that an exemption does not apply. This means that it is not enough to write the Commissioner and simply say "Access is denied because of section 19 [or some other mandatory or discretionary exemption]". **It is up to the government institution or local authority to 'make the case' that a particular exemption(s) applies. That means presenting reasons why the exemption is appropriate for the part of the record that has been withheld.**⁵*

[emphasis added]

[52] As noted earlier, there were also a number of issues with the record, submission and Index provided to my office by the SFSC.

[53] For example, there was difficulty determining which exemptions the SFSC was relying on for specific bundles of records in the representative sample. It appears that the SFSC raised 26 exemptions on its Index which were not all marked on the actual records or referred to in the SFSC's submission my office received on April 24, 2013.

⁵SK OIPC Review Report F-2007-002, available at: www.oipc.sk.ca/reviews.htm.

[54] The fact that the SFSC raised and relied on 26 different exemptions for withholding the records to ensure that one would apply is concerning. The following exemptions were listed by the SFSC in its section 7 response to the Applicant: sections 13(1)(a), 13(1)(c), 14(1)(a), 15(1)(a), 15(1)(b)(i), 15(1)(c), 15(1)(d), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 16(1)(a), 16(1)(d), 17(1)(a), 17(1)(b)(i), 17(1)(b)(iii), 18(1)(d), 18(1)(f), 19(1)(b), 19(1)(c), 21, 22(a), 22(b), 22(c), 23(3)(h) and 29(1) of FOIP.

[55] Despite listing the above 26 exemptions to the Applicant, upon commencement of the review, my office noted that the record, Index and submission did not refer to sections 13(1)(c), 16(1)(a) and 16(1)(d) of FOIP. It is not clear why the SFSC would list them in its section 7 response to the Applicant, but then failed to list them when my office conducted its review. Without this clarification, I can only assume that the SFSC is no longer relying on them. Therefore, they will not be considered in this Review Report.

[56] Further, despite citing sections 17(1)(b)(i) and 17(1)(b)(iii) of FOIP on the section 7 response to the Applicant, the SFSC did not specify which part of 17(1)(b) of FOIP it was relying on in the record, Index, and submission provided to my office. In fact, on a number of records the SFSC did not specify which specific part of sections 13, 15(1)(b), 19(1)(c), 24(1) and 29 of FOIP it was relying on. In addition, the SFSC introduced a new mandatory exemption, section 13(1)(d) of FOIP. On some of the individual records provided to my office, the SFSC applied 10 to 15 different exemptions.

[57] The following are some of the problems my office found with the record, Index and submission provided with regards to determining what exemptions the SFSC was relying on and conclusions reached:

- Bundle #1a (*Tribunal Records*) - the SFSC listed sections 18(1)(d), 18(1)(f) and 19(1)(d) of FOIP on its Index. However, upon review of the record, only section 18(1)(f) of FOIP was marked on the record. Further, the submission only makes reference to section 18(1)(f) of FOIP.

Therefore, I will only consider section 18(1)(f) of FOIP and mandatory exemption, 19(1)(d) of FOIP, for this bundle.

- Bundle #1e (*Tribunal Records*) – the SFSC marked the record with section 17(1)(a) and 17(1)(b) of FOIP. The Index did not list these sections. The SFSC’s submission referenced both of these sections.

As it is clear on the record that the SFSC applied these sections, I will consider these sections for this bundle.

- Bundle #1g (*Tribunal Records*) - the SFSC marked the record with sections 17(1)(a) and 17(1)(b) of FOIP. The Index did not list these sections. The SFSC’s submission referenced both of these sections.

As it is clear on the record and in the submission that the SFSC applied these sections, I will consider these sections for this bundle.

- Bundle #1h (*Tribunal Records*) – the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b), 18(1)(d), 19(1)(c) and 29 of FOIP on its Index. However, the record was not marked with section 19(1)(c) of FOIP. Further, the submission did not reference this section at all.

As section 19(1)(c) of FOIP is a mandatory exemption, it will be considered for this bundle.

- Bundle #1j (*Tribunal Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c) and 29 of FOIP in its Index. However, the record was not marked in any way with sections 22(a), 22(b) and 22(c) of FOIP. Further, the submission had no reference to section 22 of FOIP. The SFSC has failed to establish that sections 22(a), 22(b) and 22(c) of FOIP applied to the record.

Therefore, sections 22(a), 22(b) and 22(c) of FOIP will not be considered for this bundle.

- Bundle #1k (*Tribunal Records*) - the SFSC listed sections: 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b), 18(1)(f), 19(1)(c), 22(a), 22(b), 22(c), 23(3)(h) and 29 of FOIP on its Index. However, the record was not marked in any way with sections 17(1)(a), 17(1)(b), 18(1)(f), 22(a), 22(b) or 22(c) of FOIP. The submission did not reference these sections either. The SFSC has failed to establish that sections 17(1)(a), 17(1)(b), 18(1)(f), 22(a), 22(b) and 22(c) of FOIP applied to the record.

Therefore, these sections will not be considered for this bundle.

- Bundle #2b (*Tribunal Records*) – the SFSC listed numerous sections on its Index including section 29 of FOIP. However, the record was not marked in any way indicating what the SFSC was withholding as personal information. The SFSC’s submission also did not indicate what the SFSC was claiming as personal information.

As it involves personal information, a mandatory exemption, I will consider section 29(1) of FOIP for this bundle.

- Bundle #2d (*Tribunal Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b) and 22(c) of FOIP on its Index. However, the record was not marked in any way with section 22 of FOIP. The submission did not reference section 22 of FOIP at all.

Section 22(a), 22(b) and 22(c) of FOIP will not be considered for this bundle as the SFSC failed to establish that these sections applied to the record.

- Bundle #2i (*Tribunal Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b), 18(1)(f), 19(1)(c), 22(a), 22(b), 22(c), 23(3)(h) and 29 of FOIP on its Index. However, the record was not marked in any way with sections 18(1)(f), 19(1)(c), 22(b), 22(c) and 29 of FOIP. The submission did not reference these sections either. The SFSC has failed to establish that these missing sections applied to the record.

Therefore, I will not consider the missing discretionary exemptions (sections 18(1)(f), 22(b) and 22(c) of FOIP) for this bundle. Mandatory exemptions, sections 19(1)(c) and 29(1) of FOIP will be considered.

- Bundle #2j (*Tribunal Records*) - the SFSC marked the record with section 17(1)(a) and 17(1)(b) of FOIP. The Index did not list these sections. The SFSC's submission referenced both of these sections. As it is clear on the record that the SFSC applied these sections.

Therefore, I will consider these sections for this bundle.

- Bundle #2l (*Tribunal Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c) and 29 of FOIP on its Index. However, the record was not marked in any way with section 22. The submission only references sections 17(1)(b) and 29 of FOIP.

Therefore, section 22 of FOIP will not be considered for this bundle.

- Bundle #2n (*Tribunal Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b) and 22(c) of FOIP on its Index. However, the record was not marked in any way with section 22 of FOIP. The submission also has no reference section 22 of FOIP.

Therefore, section 22 of FOIP will not be considered for this bundle.

- Bundle #3a (*Tribunal Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b) and 22(c) of FOIP on its Index. However, the record was not marked in any way with sections 17(1)(a) or

17(1)(b) of FOIP. The submission also does not reference section 17 of FOIP at all.

Therefore, section 17 of FOIP will not be considered for this bundle.

- Bundle #3b (*Tribunal Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 23(3)(h) and 29 on its Index. However, the record was not marked in any way with sections 15(1)(e) or 23(3)(h). The submission also does not reference section 15(1)(e) or 23(3)(h) at all for this bundle.

Therefore, sections 15(1)(e) and 23(3)(h) of FOIP will not be considered for this bundle.

- Bundle #1 (*Securities Division Staff Records*) was not provided as part of the representative sample sent to our office. Bundle #1 is described as “Recordings of voice messages received by staff from investors, witnesses and sources. (disk)”.

Therefore, these records could not be considered by my office in this review.

- Bundle #13 (*Securities Division Staff Records*) – the SFSC did not list any sections in its Index. The record was not marked in any way. The cover sheet for this bundle has a heading titled, *Release*. Next to the heading it says “Release”. The SFSC’s submission refers to section 15(1)(e) of FOIP for this record. Section 15(1)(e) of FOIP was considered for this bundle.

It is not clear if the SFSC has released this bundle to the Applicant. The SFSC should clarify this for my office.

- Bundle #17 (*Securities Division Staff Records*) - the SFSC did not list any sections on its Index. The cover letter for the record listed sections 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 19(1)(b) and 29 of FOIP. The record was marked with all sections except section 19(1)(b) of FOIP. The submission referred to sections 15(1)(e) and 15(1)(f) of FOIP only.

As section 19(1)(b) of FOIP is a mandatory exemption, it will be considered for this bundle along with the other exemptions listed on the cover sheet for this bundle.

- Bundle #29 (*Securities Division Staff Records*) - the SFSC did not list any sections on its Index. The cover letter for the record listed sections 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 22(c) and 29 of FOIP. The record was marked with all sections except sections 17(1)(b) and 29 of FOIP. The submission briefly refers only to section 17(1)(b) of FOIP and none of the other exemptions listed.

The bundle will be considered under sections 17(1)(b) and 29 of FOIP.

- Bundle #4 (*Financial Institutions Division Records*) - the SFSC marked the record with sections 17(1)(a) and 17(1)(b) of FOIP. The Index did not list these sections. There was no submission for this category of records. However, it is clear on the record that the SFSC applied these sections.

Therefore, I will consider sections 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 23(3)(h) of FOIP for this bundle.

- Bundle #6 (*Financial Institutions Division Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 22(a), 22(b) and 22(c) of FOIP on its Index. However, the record was not marked in any way with section 15(1)(e) of FOIP. There was no submission for this category of records.

Therefore, section 15(1)(e) of FOIP will not be considered for this bundle.

- Bundle #7 (*Financial Institutions Division Records*) - the SFSC marked the record with section 17(1)(a) and 17(1)(b) of FOIP. The Index did not list these sections. There was no submission for this category of records. However, it is clear on the record that the SFSC applied these sections.

Therefore, I will consider these sections along with the others indicated on the Index for this bundle.

- Bundle #9 (*Financial Institutions Division Records*) - the SFSC listed sections 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b) and 22(c) of FOIP on its Index. However, the record was not marked in any way with section 15(1)(e) of FOIP. There was no submission for this category of records.

Therefore, section 15(1)(e) of FOIP will not be considered for this bundle.

- Bundle #11 (*Financial Institutions Division Records*) - the SFSC listed sections 15(1)(b), 15(1)(c) and 15(1)(k) of FOIP on its Index. However, the record was also marked with sections 15(1)(e) and 29 of FOIP. There was no submission for this category of records.

Therefore, sections 15(1)(e) and 29 of FOIP will also be considered for this bundle.

[58] Due to the lack of clarity as to what exemptions the SFSC applied to the records noted above and the reasons given, this Review Report will not include a consideration of those exemptions in the cases detailed above. Further, I find that the SFSC failed to meet the burden of proof in accordance with section 61 of FOIP on those same records.

2. **Did the Financial and Consumer Affairs Authority of Saskatchewan meet its obligations under section 8 of *The Freedom of Information and Protection of Privacy Act*?**

[59] Section 8 of FOIP provides as follows:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[60] In its letter received February 15, 2013, the SFSC stated the following:

...As we are not aware of any prior decisions of the court or the Commissioner extending the duty of severability to other provisions, **we have claimed the entire records whenever those exemptions are applicable.** We noted that the sample index in your Helpful Hints document suggests that the entire record is exempt when relying on the exemptions detailed there. If we are incorrect in this, please refer us to the applicable decisions of the court of the Commissioner and will consider its application to our records.

[emphasis added]

[61] Rather than a 'blanket' approach to withholding each document, the SFSC should be conducting a line by line and page by page review, as required by section 8 of FOIP, to determine what parts of the document can be released. It does not appear that the SFSC has done this.

[62] I considered the requirements of section 8 of FOIP in my Review Report F-2006-003, as follows:

[20] This office offered some guidance on how to prepare records for release to applicants by means of a resource entitled *Helpful Tips* and available on our website: www.oipc.sk.ca under the tab, *Resources*. This office drew attention to the document both in the April 2004 FOIP FOLIO and on page 3 of our Annual Report for 2003-2004. Both the FOIP FOLIO issue and the Annual Report are available on the above noted website. In these documents, this office offered the following advice to government institutions and local authorities on how to submit a copy of the record to this office during a review:

If any information has been withheld, the institution or authority could submit the record in one of two ways:

- 1. Reproducing the withheld portion of the record in red ink, leaving the disclosed portion in black ink, and clearly indicating, beside or near the withheld portion, the applicable section (s) of the relevant Act; or*
- 2. Alternatively, by providing a copy of the record with:*
 - a. The withheld information outlined or highlighted, and*
 - b. The relevant section number(s) of the Act clearly indicated beside or near that withheld information.*

...

[22] Section 7 of the Act requires that when denying an applicant's access application whether in full or in part, the written notice must meet three requirements:

- (a) It must state that access is refused to all or part of the record;
- (b) It must set out the reason for refusal; and
- (c) It must identify the specific provision of the Act on which the refusal is based.

[23] There can be no question that the refusal of access to those severed portions of the record was communicated by Justice to the Applicant, as required in (a) above. However Justice failed to meet the requirements in (b) and (c).

...

[25] **The duty to sever in section 8 of the Act means that any exemption claimed by a government institution must be clearly linked to the appropriate lines in the document being severed.** When Justice provided the Applicant with the severed copy of the record, it stated that information was severed to "*remove certain details of personal information and information protected by solicitor client privilege....*" The skeletal information provided the Applicant is a concern. This minimal and general statement falls short of explaining why sections 22 and 29 of the Act would apply to the line items severed as required by the provision. It would be extremely unusual that both sections 22 and 29 would apply to every severed line in the responsive record. I take section 7(2)(d) to require a reasonable degree of transparency as to the decision of the government institution such that the applicant can understand the basis for the denial of access.⁶

[emphasis added]

⁶SK OIPC Review Report F-2006-003, available at: www.oipc.sk.ca/reviews.htm.

[63] In this case, it does not appear that each record was considered on a line by line basis at the time the SFSC processed the Applicant's access to information request or when preparing the record for my office.

[64] Further, the lack of consistency between the Index, submission and actual redactions on the records indicates that the SFSC did not fulfill its obligation under section 8 of FOIP.

3. Did the Financial and Consumer Affairs Authority of Saskatchewan properly exercise its discretion?

[65] For all discretionary exemptions relied on by the SFSC, the SFSC must demonstrate that it turned its mind to releasing all or a portion of the records, even where a discretionary exemption may appear to apply (exercise of discretion).

[66] In my Review Report F-2006-001, I referred to this obligation on public bodies:

[67] The above paragraphs raise a sub-issue concerning the government's use of blanket policies to deny access to government records to which discretionary exemptions are applied.

[68] Subsection 15(1)(c) is a discretionary exemption. As such, the public body must exercise its discretion in consideration of the access principles underlying the Act. We have addressed this issue in earlier reports such as Saskatchewan OIPC Report 2004-006. The relevant paragraph is as follows:

*"[24] This is a discretionary exemption. **Even if this section applies, the government institution may still decide to disclose the information. To exercise its discretion properly, the government institution must show that it considered the objects and purposes of the Act (one of which is to allow access to information) and did not exercise its discretion for an improper or irrelevant purpose.** The objects and purposes of the Act were considered by this office in Report 2004-03, [5] to [11]."*

[69] In Ontario IPC Order M-285, the Inquiry Officer considers blanket approaches when applying discretionary exemptions. The relevant portions of the Order are offered below:

"Section 12 of the Act is a discretionary exemption. It provides the head with the discretion to disclose the record even if the record meets the test for exemption."

In response to a specific request for representations on the exercise of discretion, the City's Freedom of Information Coordinator states:

The City Solicitor has advised that he relies on solicitor/client privilege in all instances where a claim against the City is involved or where there is an allegation of responsibility for damages.

The Co-ordinator confirms that it was the City Solicitor who reviewed the records and made the decision with respect to access and that the head of the City merely adopted the City Solicitor's decision.

Where access to disclosure is denied pursuant to a discretionary exemption, the head is required to decide whether the record falls within the exemption claimed. Having established that it does, the head must then decide whether the exemption should be applied.

Guidance as to the general principles that apply to the exercise of discretion is found in "de Smith's Judicial Review of Administrative Action" (4th ed., Toronto: Carswell, 1980) at page 285:

In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case.

Further guidance is provided in Orders P-262 and P-344, in which former Assistant Commissioner Tom Mitchinson stated at page 7 of each order:

In this appeal, the head's representations regarding the exercise of discretion do not refer to the particular circumstances of the appellant's situation. At most, they set out general concerns about the type of record at issue. The head has not explained why, in this case, the appellant's rights and interests are outweighed by these general concerns.

[Order P-262]

*In my view, taking a "blanket" approach to the application of section 14(3) in all cases involving a particular type of record would represent an improper exercise of discretion. Although it may be proper for a decision maker to adopt a policy under which decisions are made, it is not proper to apply this policy inflexibly to all cases. ***In order to preserve the discretionary aspect of a decision under sections 14(3) and 49(a), the head must take into consideration factors personal to the requester, and must ensure that the decision conforms to the policies, objects and provisions of the Act.****

[Order P-344]

I adopt the reasoning applied in both these orders and find that, in this case, the head acted under the dictation of the City Solicitor. Further, I find that the City applied a blanket approach in deciding whether section 12 of the Act applies.

There is no indication in any of the correspondence from the City that it considered the merits of this particular appellant's case or that it considered whether, in this appeal, a departure from their general policy, as stated in their representations, would be warranted. Accordingly, in my view, the head has not properly exercised his discretion, and I order him to reconsider the question of discretion, in accordance with the requirements outlined above."

[70] We view application of discretionary exemptions in the same fashion and caution government institutions to reconsider any ongoing use of policy for this purpose.

[emphasis added]

[67] Further, in Review Report LA-2011-001, I stated:

[45] I also wish to make a note about the exercise of discretion. **The exemptions applied in this case are primarily discretionary exemptions. That is, the language in the legislation is that the record "may" be withheld, as contrasted to "must" be withheld. Whenever a public body invokes a discretionary exemption, my office looks for evidence that the public body has properly exercised its discretion.** A good discussion of discretion can be found in Alberta's *FOIP Guidelines and Practices*:

The exercise of discretion is not a mere formality. The public body must be able to show that the records were reviewed, that all relevant factors were considered and, if the decision is to withhold the information, that there are sound reasons to support the decision.⁷

[68] The Alberta *FOIP Guidelines and Practices* (2009) also offers some factors to take into consideration when exercising discretion.⁸

[69] The following discretionary exemptions were considered in this analysis and would require that the SFSC demonstrate that it exercised its discretion: sections 14(1)(a),

⁷SK OIPC Review Report LA-2011-001, available at: www.oipc.sk.ca/reviews.htm.

⁸Government of Alberta, Service Alberta, *FOIP Guidelines and Practices* (2009), at p. 98, available at: www.servicealberta.ca/foip/resources/guidelines-and-practices.cfm.

15(1)(b), 15(1)(c), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b), 18(1)(f), 22(a), 22(b) and 22(c) of FOIP.

[70] In its submission received April 24, 2013, the SFSC stated the following:

22. In determining whether to exercise his discretion to withhold the records from the Applicant pursuant to s. 15(1)(c) and (k), the Head considered the potential benefit to the Applicant if she were to receive the records, the objectives of FOIP, including that citizens should have access to as much government information as possible, and the potential interference with the Securities Proceedings that may occur if the Applicant were to be provided with the records. The Head exercised his discretion to withhold the records on the basis that the potential interference to the Securities Proceedings if the records were to be disclosed to the Applicant outweighed the potential benefit to the Applicant from the release of the records to her and the general objective of FOIP that citizens should have access to as much government information as possible.

...

31. The only exemptions to access in FOIP that expressly apply to certain specified information contained within a record and not to the entire record itself are sections 13, 29 and, depending on the context, section 23(3). The other exemptions all clearly apply to the entire record, and not to specific information contained therein. We submit the fact that some exemptions relate to the entire record and others to only certain information contained in records was a deliberate policy choice of the Legislature.

32. Therefore, it is our submission that section 8 of FOIP and the duty to sever only applies to records to which those three exemptions are claimed, and not with respect to any other records. In this regard, we noted the sample index in the Helpful Hints document prepared by the Commissioner to assist government institutions to comply with FOIP suggests that the entire record is exempt when relying on exemptions detailed in the sample index.

33. We understand the Commissioner has taken the position in his decisions with respect to clauses 17(1)(a) and (b) that, notwithstanding the wording of s. 8 of FOIP, the duty to sever applies to sections 17(1)(a) and (b) as well. Accordingly, to assist the Commissioner in his review of our decision to withhold records, we specifically noted the precise portions which trigger the application of the exemption on all those records for which we claim sections 17(1)(a) and (b) as exemptions. However, we respectfully submit the duty to sever does not apply where records are subject to the exemptions in s. 17(1)(a) and (b).

...

318. In determining whether to exercise his discretion to withhold records from the Applicant pursuant to s. 14(1)(a), the Head considered the potential benefit to the Applicant if she were to receive the records, the objectives of FOIP, including that

citizens should have access to as much government information as possible, and the potential harm to, or interference with, the relationship between the FCAA and the government entity that could reasonably be expected to occur if the information were to be disclosed to the Applicant. The Head exercised his discretion to withhold the records on the basis that the potential harm to or interference with the FCAA's relationship with the government entity resulting from disclosure of the information obtained in confidence outweighed the potential benefit to the Applicant from the release of the records to her and the general objective of FOIP that citizens should have access to as much government information as possible.

...

320. In determining whether to exercise his discretion to withhold records from the Applicant pursuant to s. 15(1)(e), the Head considered the potential benefit to the Applicant if she were to receive the records, the objectives of FOIP, including that citizens should have access to as much government information as possible, and the potential harm to, or interference with, the FCAA's ability to conduct future investigations if the investigative techniques or procedures were to be disclosed to the Applicant. The Head exercised his discretion to withhold the records on the basis that the potential harm to or interference with the FCAA's ability to conduct future investigations resulting from disclosure of the investigative techniques or procedures outweighed the potential benefit to the Applicant from the release of the records to her and the general objective of FOIP that citizens should have access to as much government information as possible.

[71] The SFSC provided similarly worded arguments for the exercise of discretion for all of the discretionary exemptions relied on. In every case, the SFSC recited the language of the applicable section and suggested the harm of releasing the records outweighed the Applicant's benefit to receive them. Such a suggestion ignores a substantial body of jurisprudence that makes the motivation of the access request irrelevant in assessing the entitlement to access.

[72] It appears the SFSC may not have applied its discretion to the records on a line by line basis. It also appears the SFSC applied a blanket approach to withholding certain records.

[73] In my Investigation Report LA-2010-001, I cautioned against blanket approaches to the exercise of discretion:

[36] These statements are concerning because the City has effectively affirmed that it has a blanket policy when it applies this supposed discretionary authority vis-à-vis

CRA. I cautioned public bodies against such blanket policies in my Report F-2006-001. Although the comment was in the context of reviews and discretionary exemptions for withholding information, it is also applicable in the context of the exercise of discretion when disclosing personal information. The comment is as follows:

...

In Ontario IPC Order M-285, the Inquiry Officer considers blanket approaches when applying discretionary exemptions...

...

[Order P-262]

In my view, taking a “blanket” approach to the application of section 14(3) in all cases involving a particular type of record would represent an improper exercise of discretion...

...

[37] I adopt that reasoning in considering the discretionary provision in question in this investigation.⁹

[emphasis added]

[74] It is not the role of the Commissioner to substitute his discretion for that of the head. However, it is my role to consider whether a head has appropriately applied his/her discretion.

[75] In this case, it appears the head’s representations regarding the exercise of discretion do not refer to the particular circumstances of the Applicant’s situation. At most, they set out general concerns about the type of record at issue and do not explain why, in this case, the Applicant’s rights and interests are outweighed by these general concerns.

[76] Therefore, it appears that the SFSC did not exercise its discretion appropriately.

4. Did the Financial and Consumer Affairs Authority of Saskatchewan meet its obligations with regards to third parties?

⁹SK OIPC Investigation Report LA-2010-001, available at: www.oipc.sk.ca/reviews.htm.

[77] As noted earlier, the SFSC indicated in its section 7 response to the Applicant that it was relying on sections 19(1)(b) and 19(1)(c) of FOIP for some of the records. This is the third party exemption. These sections provide as follows:

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

...

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

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

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

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

a third party;

[78] Third parties have a right to make representation to my office during a review. My office requested the contact information for all third parties in our notification letter to the SFSC dated March 15, 2012.

[79] On April 24, 2013, my office received copies of letters sent by the SFSC to 14 separate third parties. An additional 55 letters were received on May 8, 2013. The letters advised the third parties of the review and requested the third parties indicate whether or not they consented to the release of the records. The letters were very vague in describing what information was involved. Further, an SFSC email address and fax number were provided for third parties to provide a written response. It is not clear in the letter who the third parties should have contacted if they had questions or needed clarification. The third parties were also not notified of the contact information for my office.

[80] Section 52 of FOIP requires that a public body give written notice to third parties of the review. In particular, section 52(1)(b) of FOIP is relevant. It provides as follows:

52(1) A head who has refused an application for access to a record or part of a record shall, immediately on receipt of a notice of review pursuant to section 49 by an applicant, give written notice of the review to any third party that the head:

...

(b) would have notified pursuant to subsection 34(1) if the head had intended to give access to the record or part of the record.

[81] Notification of the review was provided to the SFSC by our office on or about March 15, 2012. Best practice would be for the public body to notify the third party as soon as reasonably practicable. A year later is not reasonable in my view.

[82] On a number of records, the SFSC did not specify which part of section 19(1)(c) of FOIP it was relying on.

[83] Further, the submission received by the SFSC on April 24, 2013 offered limited arguments to support the application of section 19(1)(c) of FOIP.

[84] The SFSC listed section 19(1)(b) of FOIP for bundle #1a (*Tribunal Records*) in the Index it provided to my office. However, the record is not marked in any way with section 19(1)(b) of FOIP and the submission does not reference section 19(1)(b) of FOIP. Further, nothing on the face of the record appears to suggest that the record would qualify for exemption under section 19(1)(b) of FOIP. Therefore, I will not be considering it for this bundle.

[85] In this Review Report, I was not required to consider section 19(1)(b) or 19(1)(c) of FOIP because I found that the records in which the SFSC cited section 19(1)(b) and/or 19(1)(c) of FOIP were found to qualify under other exemptions.

5. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 23(3)(h) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[86] The SFSC cited section 23(3)(h) of FOIP on several records. Section 23 of FOIP states as follows:

23(1) Where a provision of:

- (a) any other Act; or
- (b) a regulation made pursuant to any other Act;

that restricts or prohibits access by any person to a record or information in the possession or under the control of a government institution conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail.

(2) Subject to subsection (3), subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) **Subsection (1) does not apply to:**

- (a) *The Adoption Act, 1998*;
- (b) section 27 of *The Archives Act, 2004*;
- (c) section 74 of *The Child and Family Services Act*;
- (d) section 7 of *The Criminal Injuries Compensation Act*;
- (e) section 12 of *The Enforcement of Maintenance Orders Act*;
- (e.1) *The Health Information Protection Act*;
- (f) section 38 of *The Mental Health Services Act*;
- (f.1) section 91.1 of *The Police Act, 1990*;
- (g) section 13 of *The Proceedings against the Crown Act*;
- (h) **sections 15 and 84 of *The Securities Act, 1988***;
- (h.1) section 61 of *The Trust and Loan Corporations Act, 1997*;
- (i) section 283 of *The Traffic Safety Act*;
- (j) Part VIII of *The Vital Statistics Act, 2009*;

- (j.1) section 12 of *The Vital Statistics Administration Transfer Act*;
- (k) sections 171 to 171.2 of *The Workers' Compensation Act, 1979*;
- (l) any prescribed Act or prescribed provisions of an Act; or
- (m) any prescribed regulation or prescribed provisions of a regulation;

and the provisions mentioned in clauses (a) to (m) shall prevail.

[emphasis added]

[87] Section 84 of *The Securities Act, 1988* (the SA)¹⁰ appears to have been repealed in 2004. However, section 15 under Part III (Investigations) of the SA provides as follows:

15(1) Subject to subsection (2), no person shall disclose, except to his or her counsel:

(a) any information, testimony, record, document or thing given or provided pursuant to this Part; or

(b) the name of any witness examined or sought to be examined pursuant to this Part.

(2) Subsection (1) does not apply to any person appointed to make an investigation pursuant to section 12 or 14 if the disclosure is required in the course of the investigation.

(3) Subject to subsection (4), a person appointed to make an investigation pursuant to section 12 or 14, a member of the Commission, the Director and any employee appointed pursuant to section 6 are not compellable to give evidence in any court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of that person in the exercise of the powers, the performance of the duties or the carrying out of the functions of that person pursuant to this Part.

(4) Notwithstanding subsection (3), where the Commission considers it in the public interest to do so, the Commission may authorize the disclosure of any information, testimony, record, document or thing obtained pursuant to this Part subject to those terms and conditions that the Commission may impose.

[88] The SFSC stated the following in its submission dated April 24, 2013:

1. The Saskatchewan Financial Services Commission was continued as the Financial and Consumer Affairs Authority of Saskatchewan (the "FCAA") pursuant to *The*

¹⁰*The Securities Act, 1988*, S.S. 1988-89, c.15.

Financial and Consumer Affairs Authority of Saskatchewan Act, (the “FCAA Act”) when that Act came into force on October 1, 2012. The FCAA is a Treasury Board Crown Corporation charged with the administration of financial services regulatory legislation and consumer protection legislation in Saskatchewan. In furtherance of these objectives, the FCAA has been bestowed with extensive regulatory powers, including the authority to establish subordinate legislation in the form of rules to regulate the securities industry in Saskatchewan and to conduct quasi-judicial proceedings for the purposes of imposing sanctions to enforce *The Securities Act, 1988* (the “Securities Act”).

2. The responsive records identified in relation to the request of [the Applicant] were all prepared or obtained in relation to three separate investigations and law enforcement proceedings conducted by the FCAA pursuant to Acts administered by the FCAA. These investigations and law enforcement matters were conducted pursuant to statutory authority derived from the Securities Act, The Mortgage Brokers Act (the “MBA”), and The Consumer Protection Act (the “CPA”).

3. As these investigations and law enforcement matters are separate and distinct from one another, we will deal with each in turn. **These submissions will deal only with the records relating to the Securities Act proceedings. Supplementary submissions will be filed by the FCAA shortly with respect to records relating to the MBA proceedings and the CPA proceedings.**

...

13. The Securities Division of the FCAA, the division responsible for administering the Securities Act (the “Securities Division”), commenced an investigation of the Applicant and companies she was involved with (the “Corporate Respondents”) in or about [date removed] (the “Securities Investigation”) **An Investigation Order was issued pursuant to section 12 of the Securities Act with respect to the Applicant and the Corporate Respondents on [date removed]. An Amended Investigation Order was issued on [date removed]. A copy of both Investigation Orders is enclosed with these submissions.** A Notice of Hearing was issued with respect to staff’s allegations against the Applicant and the Corporate Respondents on [date removed] (the “Notice of Hearing”), which commenced the proceedings to enforce the Securities Act...

14. As indicated above, the Securities Division first began obtaining information about the Applicant and the Corporate Respondents in [date removed] as part of an investigation conducted pursuant to Part III of the Securities Act that culminated in the issuance of the Notice of Hearing on [date removed]. At that point, the matter became a tripartite quasi-judicial proceeding before an independent tribunal to determine whether certain sanctions should be imposed against the Applicant and the Corporate Respondents...

...

25. It is our submission that subsection 15(1) of the Securities Act prohibits the disclosure of entire records or information obtained by Securities Division staff in the course of an investigation conducted pursuant to Part III of the Securities Act. In addition, subsection 15(1) prohibits the disclosure of the identity of any witnesses who are examined or sought to be examined by Securities Division staff in the course of an investigation conducted pursuant to Part III of the Securities Act. Subsection 15(4) does authorize the FCAA to disclose records or information to which subsection 15(1) applies, however, that is a discretionary decision that can only be exercised by Members of the Authority, staff of the FCAA have no authority to disclose the records or information without an Order of the Authority providing the necessary authorization.

26. If FOIP were silent as to the application of Section 15 of the Securities Act, the two Acts would conflict and consideration would need to be given as to how to resolve the conflict. However, clause 23(3)(h) of FOIP explicitly recognizes section 15 of the Securities Act as a provision that takes priority and overrides the access provisions of FOIP. Accordingly, there is no conflict between the two Acts, and where subsection 15(1) of the Securities Act applies to a record or information contained in records, an applicant has no right to access those records or portions of records pursuant to FOIP.

27. Where section 15 of the Securities Act has been identified as being applicable to records or specific information contained in records in the bundles below, it our submission that section 15 of the Securities Act supersedes the Applicant's right to access under FOIP and the FCAA is prohibited from disclosing the records or portions of records to the Applicant.

[emphasis added]

[89] In Saskatchewan, the importance of FOIP is affirmed by paramouncy provisions that ensure that in the event there is a conflict, unless otherwise stated, FOIP shall prevail.

[90] Sections 23(1) and 23(2) of FOIP combine to, in effect, ensure that FOIP would prevail over other statutory provisions unless the records or information fall within the enumerated list of exclusions in section 23(3) of FOIP. Section 23 and all of its subsections are only meant to apply to Part II and III of FOIP, which refer to access to records.

[91] It makes sense that the Legislative Assembly of Saskatchewan would provide for this paramouncy provision as section 15 of the SA is the confidentiality clause. Access to a

record or information in the possession or under the control of the SFSC may be in conflict with the confidentiality provision in section 15 of the SA.

[92] It appears that the purpose of section 15 of the SA is to ensure that the SFSC protect the confidential nature of the information involved in its investigations conducted pursuant to section 12 of the SA. Section 12 of the SA provides as follows:

12(1) Where, on a statement made under oath, it appears probable to the Commission that any person or company has:

- (a) contravened any provision of this Act, the regulations or a decision of the Commission;
- (b) committed an offence under the *Criminal Code* in connection with a transaction relating to securities or exchange contracts;
- (c) committed any act that may be unfair, oppressive, injurious, inequitable or improper to or discriminatory against:
 - (i) any holder, prospective holder, purchaser or prospective purchaser of any securities of that person or company;
 - (ii) any purchaser or prospective purchaser of an exchange contract; or
 - (iii) any creditor, prospective creditor of that person or company, or other person or company, otherwise beneficially interested in that person or company;
- (d) committed any act whereby an unfair advantage may be secured by that person or company over any other person or company;

the Commission may, by order, appoint a person to make those investigations that it considers expedient for the due administration of this Act and the regulations.

(2) The Commission may, by order, appoint a person to make any investigation that it considers necessary respecting all or any of the following:

- (a) any matter relating to the administration of this Act and the regulations;
- (b) any matter relating to trading in securities or exchange contracts;
- (c) any matter relating to trading in securities or exchange contracts in any other jurisdiction; or

(d) any matter relating to the administration of the laws of another jurisdiction that govern trading in securities or exchange contracts.

(3) In an order made pursuant to subsection (1) or (2), the Commission shall prescribe the scope of the investigation that is to be carried out pursuant to the order.

(4) For the purposes of an investigation ordered pursuant to this section, the person appointed to make the investigation may, with respect to the person who or company that is the subject of the investigation, investigate, inquire into and examine:

(a) the affairs of that person or company;

(b) any books, papers, documents, records, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with that person or company;

(c) the property, assets or things owned, acquired or alienated in whole or in part by the person or company or any person or company acting on behalf of or as agent for that person or company;

(d) the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing with respect to that person or company; and

(e) the relationship that may at any time exist or have existed between that person or company and any other person or company by reason of:

(i) investments;

(ii) commissions promised, secured or paid;

(iii) interests held or acquired;

(iv) the loaning or borrowing of money, securities or other property;

(v) the transfer, negotiation or holding of securities or exchange contracts;

(vi) interlocking directorates;

(vii) common control;

(viii) undue influence or control; or

(ix) any other relationship.

(4.1) For the purposes of an investigation pursuant to this section, a person appointed to make the investigation may examine any documents, records or other things mentioned in subsection (4), whether they are in the possession or control of:

- (a) the person who or company that is the subject of the investigation; or
- (b) another person or company.

(5) A person appointed to make an investigation pursuant to this section has the same power as is vested in the Court of Queen's Bench for the trial of civil actions to:

- (a) summon and enforce the attendance of witnesses;
- (b) compel witnesses to give evidence on oath or otherwise; and
- (c) compel witnesses to produce documents, records, securities, exchange contracts and other property.

(5.1) A person appointed to make an investigation pursuant to this section may seize and take possession of any documents, records, securities, exchange contracts or other property produced pursuant to subsection (5) and may make or cause to be made copies of them.

(6) The failure or refusal of a person summoned as a witness pursuant to subsection (5) to:

- (a) attend;
- (b) answer questions; or
- (c) produce documents, records, securities, exchange contracts or other property that are in his custody or possession;

makes that person, on application to a judge of the Court of Queen's Bench by the person making the investigation, liable to be committed for contempt by the Court of Queen's Bench in the same manner as if that person was in breach of an order or judgment of that court.

(7) **Repealed.** 1995, c.32, s.9.

(8) A person giving evidence at an investigation pursuant to this section may be represented by legal counsel at his own expense.

(9) If a justice of the peace or a judge of the Provincial Court of Saskatchewan is satisfied by information given under oath that there are reasonable grounds to believe that a contravention of this Act or the regulations or a decision of the Commission or the Director has occurred and that there is evidence to be found at the building,

receptacle or place to be searched, the justice of the peace or judge may issue a warrant authorizing a person appointed to make an investigation pursuant to this section to enter the building, receptacle or place named in the warrant and every part of the building, receptacle or place named in the warrant and of the premises connected with that building, receptacle or place to:

- (a) examine the building, receptacle or place and connected premises; and
- (b) search for and seize and take possession of any documents, records, securities, exchange contracts and other property that the person has reasonable grounds to believe may constitute evidence of the contravention of this Act, the regulations or the decision.

(9.1) A person authorized to execute a warrant issued pursuant to subsection (9) may employ other persons to assist him or her.

(10) An application for a warrant pursuant to subsection (9) may be made *ex parte* unless the judge of the Provincial Court of Saskatchewan otherwise directs.

(11) A person appointed to make an investigation pursuant to this section shall make the documents, records, securities, exchange contracts or other property available for inspection and copying where:

- (a) the person appointed to make the investigation has seized documents, records, securities, exchange contracts or other property pursuant to this section; and
- (b) the person from whom or company from which the documents, records, securities, exchange contracts or other property were seized requests an opportunity to inspect or copy those documents, records, securities, exchange contracts or other property.

(12) On the application of the person from whom or company from which documents, records, securities, exchange contracts or other property were seized pursuant to this section, the Commission may order that all or any of the documents, records, securities, exchange contracts or other property be copied and the originals be returned to the person from whom or company from which they were seized.

(12.1) A document certified by the Commission, or by a person appointed to make an investigation, to be a copy made pursuant to this section:

- (a) is admissible in evidence, without proof of the office or signature of the person appearing to have certified the document, in any proceedings before:
 - (i) the Commission, Chairperson or Director or any person appointed to make an investigation; or
 - (ii) any court; and

(b) has the same probative force as the original document.

(13) Where an investigation is ordered pursuant to this section, the Commission may appoint an expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated.

(14) Where the condition or value of any land, building or work is relevant in any investigation:

(a) the Commission; or

(b) where authorized by the Commission, the person appointed to make the investigation or a person appointed pursuant to subsection (13);

may, on reasonable notice to the owner or occupier of the land, building or work, enter on and inspect that land, building or work.

[93] Section 15 of the SA would not be paramount to the remaining Parts of FOIP including those pertaining to the protection of privacy under Part IV of FOIP.

[94] However, the case before me is not about a breach of privacy, but rather a review of a denial of access to information which is what section 23 of FOIP is meant to address.

[95] In order for section 15 of the SA to override Parts II and III of FOIP, I must find that there is a conflict between the two acts. Further, the SFSC must demonstrate that section 15 of the SA applies to the records in question and by complying with one act, it cannot comply with the other.

[96] I discussed this issue of conflict in my April 29, 2011 *Submission to the Workers Compensation Act Committee of Review*:

...A paramountcy clause is a strong expression of legislative intent and a tool for ensuring public policy objectives are met. In the event of a contest between two statutes, the legislature is presumed to not intend conflict between the statutes. Therefore, if an interpretation allows a concurrent application, that interpretation should be adopted.

...

Conflict or Inconsistency

There are three tests used to determine whether the two laws can coexist or are inconsistent or in conflict. While these tests were developed in relation to federal paramountcy, the same analysis applies to determination of conflict or inconsistency between two provincial enactments.

(1) The first test is that of pure conflict. Does compliance with one law involve the breach of the other?

(2) The second test is whether one law is supplemental to the other by adding something...If the one law is “supplemental,” then it will be valid concurrently with the other law.

(3) The third test involves whether one law duplicates another such that there is not an actual conflict or contradiction. Mere duplication without actual conflict or contradiction is normally not sufficient to invalidate a law. It would simply mean that the Board would be held to the higher standard of the competing statutes.

...

Current case law indicates that even where one piece of legislation is clearly paramount, unless there is “express conflict,” both Acts can apply concurrently and the individual is held to the higher standard. This follows through in a provincial legislation paramountcy analysis of the application of FOIP and WCA. If section 171 does not conflict with the provisions of FOIP, both can apply concurrently...¹¹

[97] In applying that reasoning to this situation, in the event there is a clear conflict between Parts II and III of FOIP and section 15 of the SA, such that to comply with one would violate the other, then the usual rule that FOIP is paramount would not apply. The specific provision in the SA would prevail.

[98] I will now apply the test laid out above to the matter before me.

(1) Does compliance with one law involve the breach of the other?

[99] Some of the information requested by the Applicant in the access request appears to be the kind of information referred to in section 15 of the SA.

¹¹SK OIPC, *Submission to the Workers Compensation Act Committee of Review*, April 29, 2011 at pp. 10, 14 and 15, available at: www.oipc.sk.ca/resources.htm.

[100] Clearly, there were a number of investigations conducted by the SFSC involving the Applicant under section 12 of the SA. The SFSC provided two documents to support this. The documents are copies of two Investigation Orders issued pursuant to section 12 of the SA. The parties being investigated are listed as the Applicant and a corporation number in both investigations.

[101] This is considered strong supporting evidence from the SFSC that it indeed conducted investigations pursuant to section 12 of the SA which section 15 of the SA appears to contemplate.

[102] Parts II and III of FOIP provide for the right of access to records in the possession or control of a government institution subject to limited exemptions in Part III of FOIP.

[103] However, section 15 of the SA forbids the release of any records provided or given to the SFSC for purposes of Part III (Investigations) of the SA.

[104] Therefore, there appears to be a conflict between the two acts.

(2) Does one law supplement the other?

[105] It appears that the SA is explicit in its confidentiality provision. FOIP allows for access under certain circumstances. The SA allows for access only “where the Commission considers it in the public interest to do so”.

[106] It appears there is a separate stand alone access provision within the SA to address access to records.

[107] Therefore, FOIP and the SA do not supplement one another.

(3) Does one law duplicate the other such that there is not an actual conflict or contradiction?

- [108] As noted above, section 15(4) of the SA creates its own scheme of disclosure that is distinct and different from that outlined under Parts II and III of FOIP.
- [109] To comply with Parts II and III of FOIP would conflict with section 15(4) of the SA, which allows for disclosure only when the Commission authorizes disclosure when deemed to be in the public interest. The considerations laid out in Parts II and III of FOIP requires a different set of considerations not consistent with the SA.
- [110] Therefore, FOIP and the SA do not duplicate each other such that there is not an actual conflict.
- [111] In conclusion, section 15 of the SA (and subsequent records obtained by the SFSC for that purpose) is paramount to Parts II and III of FOIP.
- [112] From a review of the records cited for exemption under section 23(3)(h) of FOIP by the SFSC it appears they all relate the investigations conducted by the SFSC as noted above.
- [113] Normally, records found under the *Financial Institutions Division Records* would not be investigations under the SA but rather *The Mortgage Brokers Act*¹² in this case. However, upon review, bundles #1, #2, #3 and #4 under the *Financial Institutions Division Records* are directly related to records found to qualify under section 23(3)(h) of FOIP and release of these records would reveal information on the records qualifying under section 23(3)(h) of FOIP. Therefore, I find they also qualify under section 23(3)(h) of FOIP.
- [114] Therefore, for those records under which the SFSC cited section 15 of the SA or section 23(3)(h) of FOIP, FOIP does not apply. Those records are highlighted below under section 23(3)(h) of FOIP:

¹²*The Mortgage Brokers Act*, S.S. 2007, c. 65.

Bundle #	Description	Sections Cited
<i>Securities Investigation/Proceeding Against [Applicant], et.al. – Tribunal Records</i>		
1k	Various correspondence between SFSC staff and between SFSC staff and witness	23(3)(h) withhold all of record 2 only; 15(1)(c), 15(1)(k), 19(1)(c), 29
2b	Correspondence dated [date removed]	23(3)(h) withhold all
2i	Various internal correspondence	23(3)(h) withhold portion on record 1 & record 2 only; 15(1)(c), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 29
<i>Securities Investigation/Proceeding Against [Applicant], et.al. –Securities Division Staff Records</i>		
2	Documents from Pay Pal and eBay regarding items purchased...	23(3)(h) withhold all
3	Documents relating to proposed application for a freeze order, including draft memos, orders, applications to the Court and e-mails to and from potential receiver	23(3)(h) withhold all
5	Documents relating to cease trade order pursuant to section 134 of <i>The Securities Act, 1988</i> in [date removed] including staff memo, information and materials used to prepare staff memo and staff memo applying for extension	23(3)(h) withhold all
7	Records relating to subpoenas to witnesses to testify at hearing, including subpoenas, affidavits of service, and correspondence with witnesses	23(3)(h) withhold all
8	Documents relating to contents of storage locker...	23(3)(h) withhold all
9	Internet search	23(3)(h) withhold all
10	Correspondence to and from Sheriff...	23(3)(h) withhold all
10A	Correspondence with [police service]	23(3)(h) withhold all
10B	Correspondence with Canada Revenue Agency	23(3)(h) withhold all
10C	Info from Saskatchewan Gaming Authority	23(3)(h) withhold all
10D	Correspondence with US Immigration and Customs Enforcement	23(3)(h) withhold all
11	Documents relating to private prosecution by [name removed] under the <i>Criminal Code</i> against staff of the Securities Division	23(3)(h) withhold all
12	Un-redacted investigation reports prepared by staff	23(3)(h) withhold all
14	Questions for interviews of witnesses	23(3)(h) withhold all
15	Synopsis of interview of witnesses	23(3)(h) withhold all
16	E-mails – dated from [dates removed]	23(3)(h) withhold all
18	Memo of staff requesting temporary cease trade order pursuant to section 134 of <i>The Securities Act</i> including draft temporary cease trade order	23(3)(h) withhold all

19	Memos from staff to Commission Secretary and Chair of the Hearing Panel regarding application for extension of temporary cease trade order	23(3)(h) withhold all
20	Action minutes prepared by Director, Securities Division regarding finalization of Notice of Hearing dated [date removed]	23(3)(h) withhold all
21	E-mails of Director of Securities Division with [name removed] regarding his request for disclosure on behalf of the respondents in the Notice of Hearing	23(3)(h) withhold all
22	E-mails between Director, Securities Division and Commission Secretary.	23(3)(h) withhold all
23	E-mails between Director, Securities Division and staff of the Securities Division	23(3)(h) withhold all
24	E-mails between Director, Securities Division and Legal Counsel for staff of the Securities Division	23(3)(h) withhold all
25	E-mails between Director, Securities Division to Chair dated [date removed]	23(3)(h) withhold all
26	E-mails between Legal Counsel, Securities Division and Chair	23(3)(h) withhold all
28	E-mails between Legal Counsel, Securities Division and Commission Secretary and Acting Commission Secretary	23(3)(h) withhold all
30	Questions for witnesses for staff of the Securities Division in application by [Applicant] for further disclosure prepared by Legal Counsel for staff of the Securities Division	23(3)(h) withhold all
31	Draft questions for witnesses to be called to testify prepared by Legal Counsel for staff of the Securities Division, for the proceedings in the Notice of Hearing	23(3)(h) withhold all
32	E-mails between Legal Counsel, Securities Division and staff of the Securities Division	23(3)(h) withhold all
33	Documents prepared by Legal Counsel for staff of the Securities Division, for the proceedings in the Notice of Hearing against [Applicant] and other respondents, including <ul style="list-style-type: none"> • Hearing checklist • Witness timetable • Draft bill of costs • Draft brief of law/arguments 	23(3)(h) withhold all
34	Analysis of financial information in bank and other records of the Respondents prepared by staff	23(3)(h) withhold all

35	E-mails and correspondence between staff and investors, witnesses and sources, and information received from them	23(3)(h) withhold all
36	E-mails and correspondence between staff and investors and witnesses regarding hearing processes	23(3)(h) withhold all
37	E-mails and correspondence between staff and investors, witnesses and sources, and information received from them	23(3)(h) withhold all
38	Investigation notes, briefs and plans prepared by staff	23(3)(h) withhold all
39	List of exhibits to be introduced at the hearing	23(3)(h) withhold all
40	Witness “can states” prepared by staff	23(3)(h) withhold all
<i>Financial Institutions Division Investigation of [name of business]</i>		
1	Correspondence between FCAA Legal Counsel and various FCAA staff	23(3)(h) withhold all
2	Correspondence between FCAA Legal Counsel and various FCAA staff	23(3)(h) withhold all
3	Signed Authorization Form	23(3)(h) withhold all
4	File copies of documentary evidence obtained	23(3)(h) withhold portion of record 1 & 2; 15(1)(b), 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b)

[115] The above noted records and/or portions of records should continue to be withheld from the Applicant as indicated.

[116] For records where section 23(3)(h) of FOIP was found to apply in full, it is not necessary for me to consider the other sections cited for these records.

[117] Some of these records noted above had only portions of the record which section 23(3)(h) of FOIP was applicable. The remainder of the record was withheld by the SFSC under other sections of FOIP. These records will be addressed in the other sections of this Review Report as necessary.

6. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[118] Section 15(1)(b) of FOIP provides as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(b) be injurious to the enforcement of:

(i) an Act or a regulation; or

(ii) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;

[119] The SFSC did not specify in its April 24, 2013 submission which part of section 15(1)(b) of FOIP it was relying on (i.e. (i) or (ii)). However, based on its submission, I can deduce that the SFSC is likely relying on subsection 15(1)(b)(i) of FOIP as it makes reference to provincial acts rather than federal acts which subsection 15(1)(b)(ii) of FOIP provides for. Further, the section 7 response to the Applicant listed subsection 15(1)(b)(i) of FOIP. In its April 24, 2013 submission to my office, it stated the following: “We are no longer relying on s. 15(1)(b) of FOIP with respect to the Securities Act records. However, we continue to rely on the exemption in s. 15(1)(b) with respect to the MBA records and the CPA records as indicated in the Index.”

[120] The submission defines “MBA” as *The Mortgage Brokers Act* and “CPA” as *The Consumer Protection Act*.¹³ Therefore, I will focus my analysis on subsection 15(1)(b)(i) of FOIP only.

[121] A review of the Index, provided by the SFSC to my office on February 15, 2013, lists four categories of records responsive to the Applicant’s access request:

1. *Securities Investigation/Proceeding Against [the Applicant], et. al. – Tribunal Records* [Tribunal Records];
2. *Securities Investigation/Proceeding Against [the Applicant], et. al – Securities Division Staff Records* [Securities Division Staff Records];
3. *Financial Institutions Division Investigation of [name of business]* [Financial Institutions Division Records].; and
4. *Consumer Protection Division Investigation of [name of business]* [Consumer Protection Division Records].

¹³*The Consumer Protection Act*, S.S. 1996, c.S-50.11.

[122] As noted earlier in this Review Report, and noted above in the SFSC's submission, the SFSC dropped its reliance on 15(1)(b)(i) of FOIP to records in categories 1 and 2. However, it appears that the SFSC continues to apply section 15(1)(b)(i) of FOIP to records listed under categories 3 and 4. Therefore, I will consider section 15(1)(b)(i) of FOIP to the records under categories 3 and 4 only.

[123] I have not previously formally considered section 15(1)(b)(i) of FOIP. However, former Commissioner Derril McLeod, Q.C. considered the equivalent section in *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP),¹⁴ section 14(1)(b)(i) of FOIP in Review Report 95/020.¹⁵ However, that Report is of little assistance in this case as it focuses mainly on another section of LA FOIP, section 14(1)(a) of LA FOIP.

[124] A scan of access to information legislation in other Canadian provinces reveals that Saskatchewan's section 15(1)(b)(i) of FOIP appears to be unique.

[125] The federal *Access to Information Act* (ATIA)¹⁶ has a section which contemplates a somewhat similar situation. Section 16(1)(c) of ATIA states as follows:

16. (1) The head of a government institution may refuse to disclose any record requested under this Act that contains

...

(c) information the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

(i) relating to the existence or nature of a particular investigation,

(ii) that would reveal the identity of a confidential source of information; or

(iii) that was obtained or prepared in the course of an investigation;

¹⁴*The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1.

¹⁵SK OIPC Review Report 95/020.

¹⁶Canada's *Access to Information Act*, R.S., 1985, c. A-1.

[126] The federal Information Commissioner's *Investigator's Guide to Interpreting the ATIA* describes clauses 16(1)(c) of the federal Act as follows:

Paragraph 16(1)(c) is a discretionary injury exemption. This is also a two step process. First, the head must determine whether disclosure of a record (information in) or part thereof could reasonably be expected to cause the prejudice enunciated in the exemption. Secondly, he/she must also exercise his/her discretion following proper principles whether to exempt or disclose the information.¹⁷

[127] With regards to the 'test' recommended, the federal Information Commissioner suggests the following:

A 'law of Canada' is not defined in the *Access to Information Act*. However, it clearly encompasses **all** Acts enacted by the Parliament of Canada together with any regulations issued thereunder. As well, the Canadian *Bill of Rights* makes it clear that the expression also includes any order or rule issued under those Acts or regulations. Thus, it is a very wide term.

...

As mentioned above, the main question you must ask yourself when investigating this exemption is: "under which investigative power was this investigation conducted?" If the Department can't advance any Acts, Regulations, Orders or Rules in force in any part of Canada and under which the investigation was conducted, the exemption cannot be claimed. Generally speaking you would want to see documentation contemporaneous with the investigation which shows the basis under which it was conducted.¹⁸

[emphasis added]

[128] The SFSC applied section 15(1)(b)(i) of FOIP to 14 remaining bundles under categories 3 and 4 of the record.

[129] The SFSC did not provide supporting arguments in its April 24, 2013 submission and SFSC attempted to put forward arguments after the imposed deadline of April 24, 2013. However, given the extensive period of time provided to the SFSC to assemble its arguments in a submission for this review (in excess of eight months), they were not accepted or considered in this Review Report.

¹⁷Office of the Information Commissioner of Canada, *Investigator's Guide to Interpreting the ATIA*, available at: www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati.aspx. Accessed on January 15, 2013.

¹⁸*Ibid.*

[130] As I indicated in the Postscript of my Review Report F-2012-006, once a review has commenced, the expectation is that public bodies will provide support for the exemptions relied on to my office within 60 days of receiving my office's notification letter.¹⁹ In this case, the SFSC received notification of my office's review on or about March 15, 2012. The SFSC had until April 24, 2013 to provide its written submission to my office. This amount of time was more than reasonable for it to do so.

[131] Section 15(1)(b)(i) of FOIP requires analysis of at least three discrete questions:

1. Which Act or regulation is the public body identifying as being engaged?
2. Is this an enforcement matter specific to an Act?
3. Could release of the record injure enforcement under the identified Act or regulation in this matter?

[132] I will now apply these questions to the record in question.

(1) Which Act or regulation is the public body identifying as being engaged?

[133] The SFSC did not explicitly identify specific Acts or regulations that were engaged for purposes of its application of section 15(1)(b)(i) of FOIP. It did suggest, however, in its April 24, 2013 submission, that the provincial acts, *The Mortgage Brokers Act* and *The Consumer Protection Act*, were engaged in this matter but it did not link these Acts to section 15(1)(b)(i) of FOIP.

[134] It appears from its April 24, 2013 submission that the records are a result of a number of SFSC investigations:

2. The responsive records identified in relation to the request of [the Applicant] were all prepared or obtained in relation to three separate investigations and law enforcement proceedings conducted by the FCAA pursuant to Acts administered by the FCAA. These investigations and law enforcement matters were conducted pursuant to statutory authority derived from the Securities Act, *The Mortgage Brokers Act* (the "MBA"), and *The Consumer Protection Act* (the "CPA").

¹⁹*Supra* note 2 Postscript at p. 2.

3. As these investigations and law enforcement matters are separate and distinct from one another, we will deal with each in turn...Supplementary submissions will be filed by the FCAA shortly with respect to the records relating to the MBA proceedings and the CPA proceedings.

[135] *The Financial and Consumer Affairs Authority of Saskatchewan Act*²⁰ defines the responsibilities of the SFSC as follows:

5(1) The authority is responsible to the minister:

(a) in the exercise of the powers conferred on the authority and in the performance of the **duties imposed on the authority for the purpose of administering and enforcing this Act, consumer protection legislation, financial services legislation** and any other Act that imposes or confers a duty, power or function on a consumer protection regulator or a financial services regulator; and

(b) in carrying out and providing the structure for the administration and enforcement of this Act, consumer protection legislation, financial services legislation and any other Act that imposes or confers a duty, power or function on a consumer protection regulator or a financial services regulator.

...

25(1) The authority may appoint any person to make any investigations that it considers necessary respecting any or all of the following:

(a) any matter related to the administration of this Act or the regulations;

(b) **any matter related to the responsibilities of the authority for financial services;**

(c) any matter related to the administration of any legislation of another jurisdiction that governs financial services;

(d) **any matter related to the responsibilities of the authority for consumer protection;**

(e) any matter related to the administration of any legislation of another jurisdiction that governs consumer protection.

[emphasis added]

[136] Section 2 of the *The Financial and Consumer Affairs Authority of Saskatchewan Act* lists the legislation relevant to this case that the SFSC is responsible to enforce:

²⁰*The Financial and Consumer Affairs Authority of Saskatchewan Act*, S.S. 2012, c. F-13.5.

2 In this Act:

...

(d) “**consumer protection legislation**” means:

...

(vi) *The Consumer Protection Act*;

...

...

(h) “**financial services legislation**” means:

...

(iv) *The Mortgage Brokerages and Mortgage Administrators Act*;

...

(x) *The Securities Act, 1988*;

[137] *The Mortgage Brokers Act* appears to have been repealed in 2007 and replaced with *The Mortgage Brokerages and Mortgage Administrators Act*,²¹ which took effect in 2010.²² The SFSC was renamed the Financial and Consumer Affairs Authority of Saskatchewan when *The Financial and Consumer Affairs Authority of Saskatchewan Act* came into force on October 1, 2012.²³

[138] Both the former and current Acts noted above appear to provide similar authority to the SFSC. For example, sections 2(2) and 15 of the repealed, *The Mortgage Brokers Act* appears to have provided authority to the SFSC to investigate as follows:

2(2) Notwithstanding any other provision of this Act or the regulations or of any other Act or law, where, pursuant to *The Saskatchewan Financial Services Commission Act*, the Saskatchewan Financial Services Commission is assigned the performance of all or any of the responsibilities imposed on the superintendent and the exercise of all or any of the powers given to the superintendent by this Act or the regulations:

(a) any reference with respect to those responsibilities or powers in this Act or the regulations to the superintendent is to be interpreted as a reference to the Saskatchewan Financial Services Commission; and

²¹*The Mortgage Brokerages and Mortgage Administrators Act*, S.S. 2007, c M.20.1.

²²Canadian Legal Information Institute (CanLII) website at: www.canlii.org/en/sk/laws/stat/rss-1978-c-m-21/latest/rss-1978-c-m-21.html.

²³Government of Saskatchewan, Ministry of Justice website at: www.justice.gov.sk.ca/cpb.

(b) this Act and the regulations are to be interpreted subject to the provisions of *The Saskatchewan Financial Services Commission Act*.

...

15 The superintendent or any other person authorized in writing by the superintendent may upon complaint of any person interested or, when he deems it necessary, without complaint, investigate and inquire into any matter the investigation of which he deems expedient for the due administration of this Act; and for the purpose of such investigation may inquire into and examine the business affairs of the person in respect of whom the investigation is being made and into any books, papers, documents, correspondence, communications, records, negotiations, transactions, investigations, loans, borrowing and payments to, by, on behalf of or in relation to or connected with that person and into any property, assets or things owned, acquired or alienated in whole or in part by that person or by any person acting on behalf of or as agent for that person and that person shall make prompt and explicit answers to all such inquiries.

[139] Sections 3(c), 9(2) and 10(2) of *The Consumer Protection Act* provides for similar authority for investigations as follows:

3 In this Part:

...

(c) “**director**” means the person appointed pursuant to section 9;

...

...

9(2) The minister shall appoint a director, who is to be responsible to the minister, to manage and direct the administration of this Part.

...

10(2) The director may order an investigation where, as a result of a complaint or the director’s own inquiries, the director is of the opinion that there are reasonable grounds to believe that a person has contravened, is contravening or is about to contravene:

(a) this Part or the regulations made pursuant to this Part;

(b) an order or judgment rendered pursuant to this Part; or

(c) a voluntary compliance agreement entered into pursuant to this Part.

[140] As this matter involved investigations pursuant to *The Mortgage Brokers Act* and *The Consumer Protection Act* it appears that for purposes of section 15(1)(b)(i) of FOIP, these Acts are engaged in this case.

(2) Is this an enforcement matter?

[141] FOIP does not define “enforcement”. A review of similar legislation in other jurisdictions reveals that no other jurisdiction in Canada has a section similar to Saskatchewan’s section 15(1)(b)(i) of FOIP.

[142] *Blacks’ Law Dictionary* defines “enforcement” as “the act or process of compelling compliance with a law, mandate, command, decree, or agreement”.²⁴

[143] As noted earlier, the SFSC did not provide arguments by the specified deadline to support the application of section 15(1)(b)(i) of FOIP. Therefore, little is known about the details of the investigations conducted into these matters.

[144] As noted earlier, authority of the SFSC to investigate appears to be provided for in both *The Mortgage Brokers Act* and *The Consumer Protection Act*.

[145] It is not clear when the investigations took place in this case and whether the investigations have been concluded.

[146] More specifically, if the investigations were concluded in this case, than those sections of *The Mortgage Brokers Act* and *The Consumer Protection Act* which provided authority to the SFSC to investigate would no longer be engaged.

[147] Therefore, I cannot establish that this is an enforcement matter because it is unclear if the investigation is active, ongoing, or about to be undertaken.

²⁴*Blacks’ Law Dictionary*, St. Paul, Minnesota, West Corp., 9th ed., 2009, at p. 608.

(3) Could release of the record injure enforcement in this matter?

[148] Section 15(1)(b)(i) of FOIP is a harm based exemption. Exemptions based on a harms test provide that access to information requested under FOIP may be denied if disclosure could be harmful. In this case, it must be demonstrated that release could injure the enforcement of a provincial or federal Act or regulation within the meaning of section 15(1)(b) of FOIP.

[149] In Review Report LA-2007-001, I considered the similarly worded section 14(1) in LA FOIP:

[117] In Report 92/008, a former Commissioner noted that unlike sections 14 and 17 of FOIP, where the exemption requires that the release of records “could reasonably be expected” to have a particular result, **in section 15 of FOIP the requirement is simply that the release of information “could” have the specified result. This Report supports the proposition that to invoke section 14(1)(d) the threshold test is somewhat lower than a ‘reasonable expectation’. Nonetheless, there would still have to be some kind of basis to found such an expectation. If it is fanciful or exceedingly remote, section 14(1)(d) could not be successfully invoked.**²⁵

[emphasis added]

[150] Given the lack of supporting arguments and evidence from the SFSC, it is not clear how releasing the records in this case would be injurious to the enforcement of an Act or regulation pursuant to section 15(1)(b)(i) of FOIP.

[151] In conclusion, the SFSC has failed to establish that section 15(1)(b)(i) of FOIP applies to the record in question for two reasons:

1. It cannot be established due to a lack of supporting argument and evidence from the SFSC that there is still an enforcement matter engaged in this case; and
2. The SFSC has not established that release of the records could injure enforcement of an Act in the circumstance.

²⁵SK OIPC Review Report LA-2007-001, available at: www.oipc.sk.ca/reviews.htm.

[152] As such, I find that the following bundles do not qualify for exemption under section 15(1)(b)(i) of FOIP. Those exemptions crossed out below do not apply or do not need to be considered for the records noted:

<i>Financial Institutions Division Investigation of [name of business]</i>		
4	File copies of documentary evidence obtained	15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b)
5	Transcripts and notes of witness interviews conducted by SFSC legal counsel; correspondence and draft correspondence between SFSC legal counsel and other parties; draft correspondence prepared by SFSC legal counsel; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(k), 22(a), 22(b), 22(c), 29
6	Correspondence between SFSC legal counsel and various SFSC staff and other parties; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b) , 15(1)(c), 15(1)(k), 22(a), 22(b), 22(c)
7	Draft order and draft correspondence prepared by SFSC legal counsel; correspondence between SFSC legal counsel and other parties	15(1)(b) , 15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
8	Correspondence between SFSC staff and between SFSC staff and other parties; notes taken by SFSC staff during witness interviews	15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(k), 29
9	Correspondence between SFSC legal counsel and other SFSC staff	15(1)(b) , 15(1)(c), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
11	Documentary evidence obtained by SFSC staff in furtherance of the investigation; fax cover sheets	15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(k), 29
12	Correspondence between SFSC legal counsel, notes of meeting between SFSC legal counsel and SFSC	15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
<i>Consumer Protection Division Investigation of [name of business].</i>		
1	Complaint Cover Sheet; Complaint Summary; Letter from Consumer Protection (CPD) Investigator dated [date removed]	13(1)(a), 14(1)(a), 15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(i), 15(1)(k), 29
2	eBay Information Sheet	15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(k)
3	Copy of eBay printout	15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(k), 29

4	Copies of various investigative search results	15(1)(b) , 15(1)(c), 15(1)(e), 15(1)(k)
5	E-mail between CPD staff sent on [date & time removed]	15(1)(b) , 15(1)(c), 15(1)(k), 29
6	Various e-mails and other communications between CPD staff and between the CPD investigator and the complainant	15(1)(b) , 15(1)(c), 15(1)(k), 29

[153] The SFSC also cited up to five additional exemptions on these bundles, therefore they will be considered in later sections of this Review Report.

7. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[154] Section 15(1)(c) of FOIP states as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[155] The SFSC applied section 15(1)(c) of FOIP to 42 remaining bundles of the record in question.

[156] The SFSC stated the following in its submission of April 24, 2013:

14. As indicated above, the Securities Division first began obtaining information about the Applicant and the Corporate Respondents in [date removed] as part of an investigation conducted pursuant to Part III of the Securities Act that culminated in the issuance of the Notice of Hearing on [date removed]. At that point, the matter became a tripartite quasi-judicial proceeding before an independent tribunal to determine whether certain sanctions should be imposed against the Applicant and the Corporate Respondents. Those quasi-judicial proceedings are still continuing today. The hearing of the matter has commenced, but has not yet concluded.

...

17. As the Commissioner noted in his decision in Report 2004-006, all that is required to demonstrate that clause 15(1)(c) is applicable is that the record contains information that relates to a lawful investigation. There is no need to demonstrate

that the disclosure of the information could interfere with the lawful investigation, as the Legislature chose the word “or” to indicate the disjunctive. With respect to s. 15(1)(k), as the wording of that clause pertaining to law enforcement matters is virtually identical to that of s. 15(1)(c), we submit the same principle applies. In other words, all that needs to be shown is that the records relate to a lawful investigation or a law enforcement matter, as the case may be, in order for the discretionary exemption to apply.

...

21. As is apparent on the face of the records, all of the information in the said records relate to the investigation of the Applicant pursuant to the Securities Act or the quasi-judicial proceedings against the Applicant to enforce the Securities Act. **Accordingly, the release of these records to the Applicant would disclose information with respect to a lawful investigation or a law enforcement matter.** As such, the Head of the FCAA (the “Head”) may, in his discretion, withhold these records from the Applicant.

[emphasis added]

[157] It appears that the SFSC is arguing that there are two separate parts to section 15(1)(c) of FOIP and that the record falls under the second part which is “discloses information with respect to a lawful investigation”.

[158] I will now look at the threshold previously established by this office for section 15(1)(c) of FOIP.

(1) Did the SFSC’s activities qualify as “lawful investigation” under the Act?

[159] FOIP does not define “investigation” or “lawful investigation”.

[160] However, in my Review Report F-2004-006, I adopted the same definition for lawful investigation as former Commissioner McLeod, Q.C. as follows:

[26] The term “lawful investigation” is not defined in the Act. It was considered by Saskatchewan’s first Information and Privacy Commissioner, Mr. Derril McLeod, in his Report 93/021. In that case, he chose to define “lawful investigation” to mean an investigation that is authorized or required and permitted by law. He received a submission from the government institution that “lawful investigation” should mean any investigation that is not contrary to or prohibited by law. Commissioner McLeod stated, in response,

*However, if this were so, it would encompass any and every investigation of any matter whatsoever not prohibited by some specific law. I am unable to conclude that such a broad interpretation is intended or warranted. **In my view, the expression “lawful investigation” means an investigation that is authorized or required and permitted by law...***

[27] We adopt the same definition of “lawful investigation”.²⁶

[emphasis added]

[161] Therefore, in order to qualify as a lawful investigation under section 15(1)(c) of FOIP, it must be an investigation authorized or required and permitted by law.

[162] As noted earlier, section 25 of *The Financial and Consumer Affairs Authority of Saskatchewan Act* clearly provides that the SFSC has the authority to conduct investigations under the three pieces of legislation involved in this case: The SA, *The Mortgage Brokerages and Mortgage Administrators Act* and *The Consumer Protection Act*.

[163] Therefore, the SFSC’s investigations would qualify as lawful investigations for purposes of section 15(1)(c) of FOIP.

(2) Would an investigation have to be ongoing in order for section 15(1)(c) of FOIP to apply?

[164] I have previously indicated that in order to ‘interfere’ with a lawful investigation the investigation must be open, active and on-going.²⁷

[165] The matter before me involves three separate investigations: one under the SA, another under the former Act, *The Mortgage Protection Act*²⁸ and a third under *The Consumer Protection Act*.

²⁶SK OIPC Review Report F-2004-006, available at: www.oipc.sk.ca/reviews.htm.

²⁷SK OIPC Review Reports F-2004-006 at [32], F-2006-001 at [41] and F-2006-004 at [27] and [28], available at: www.oipc.sk.ca/reviews.htm.

²⁸*The Mortgage Protection Act*, S.S. 1986-87-88, c. M-21.11. *The Mortgage Protection Act* was repealed October 1, 2010 and replaced with *The Mortgage Brokerages and Mortgage Administrators Act*.

[166] There is no indication from the SFSC that the investigations are active, ongoing or about to be undertaken. The SFSC indicated in its submission received April 24, 2013, that the SA investigation had now proceeded to “an independent tribunal to determine whether certain sanctions should be imposed...”

[167] This suggests the investigation under the SA has concluded and sanctions may now be pending.

[168] The SFSC did not provide supporting arguments related to *The Mortgage Brokers Act* and *The Consumer Protection Act* in time to be considered in this review. Therefore, it is unclear if the investigation is concluded in these two investigations.

[169] Therefore, the second part of section 15(1)(c) of FOIP would not apply to the record in question.

(3) Would the release of the record disclose information with respect to a lawful investigation?

[170] I have interpreted both parts of section 15(1)(c) of FOIP to require an investigation that is active, ongoing or about to be undertaken.²⁹ In this case, the SFSC has not demonstrated that all three investigations are still active, ongoing or about to be undertaken.

[171] In conclusion, for section 15(1)(c) of FOIP to apply, the following is required:

1. The lawful investigation must be authorized or required and permitted by law; **and**
2. There must be an active, ongoing or about to be undertaken investigation in order to claim either part of the section (i.e. interfere and/or disclose information).

²⁹*Supra* note 4 at [30], [31] and [35] to [42].

[172] Therefore, I find that the bundles cited for exemption under section 15(1)(c) of FOIP do not qualify. Those exemptions crossed out do not apply or do not need to be considered for the records noted. This includes the following bundles:

Bundle #	Description	Sections Cited
<i>Securities Investigation/Proceeding Against [Applicant], et.al. – Tribunal Records</i>		
1b	Various correspondence	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 29
1c	Various correspondence	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
1d	Various correspondence	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
1e	Various correspondence	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 29
1f	Correspondence with legal counsel	15(1)(e) ; 15(1)(k), 22(a), 22(b), 22(c)
1g	Various correspondence	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 29
1h	Correspondence	15(1)(e) ; 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b), 18(1)(d), 29
1i	Various correspondence	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 29
1j	Correspondence related to [Applicant] appeal to Court of Appeal	15(1)(e) ; 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b), 29
1k	Various correspondence between SFSC staff and between SFSC staff and witness	15(1)(e) ; 15(1)(k), 19(1)(c)(i), 29
1l	Various correspondence and draft documents	15(1)(e) ; 15(1)(k), 29
2a	Correspondence with SFSC legal counsel and draft correspondence prepared for consultation with SFSC legal counsel.	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
2c	Correspondence related to [Applicant] appeal to Court of Appeal	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
2d	Various correspondence	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b)
2e	Various correspondence	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
2f	Various internal correspondence related to [Applicant] appeal to Court of Appeal	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 29
2g	Email dated [date removed]	15(1)(e) ; 15(1)(k)
2h	Various correspondence between SFSC Chair and legal counsel	15(1)(e) ; 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)

2i	Various internal correspondence	15(1)(e) , 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 29
2j	Internal correspondence	15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b)
2k	Internal correspondence	15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b)
2l	Various correspondence	15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b), 29
2m	Correspondence	15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b), 21, 29
2n	Internal correspondence	15(1)(e) , 15(1)(d), 15(1)(k), 17(1)(a), 17(1)(b)
3a	Correspondence between SFSC legal counsel and SFSC staff and work product of SFSC legal counsel	15(1)(e) , 15(1)(k), 22(a), 22(b), 22(c)
3b	Correspondence between SFSC legal counsel and SFSC staff and SFSC legal counsel work product	15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
<i>Securities Investigation/Proceeding Against [Applicant], et.al. –Securities Division Staff Records</i>		
4	Documents relating to application pursuant to section 12 of <i>The Securities Act, 1988</i> for investigation order dated [dates removed] including staff memo and Investigation Orders.	15(1)(e) , 15(1)(e), 15(1)(f), 15(1)(k)
6	Documents relating to service and notice of cease trade orders	15(1)(e) , 15(1)(e), 15(1)(f), 15(1)(k)
17	E-mails – [SFSC employee] regarding [name of business] Securities offered by [Applicant]	15(1)(e) , 15(1)(e), 15(1)(f), 15(1)(k), 19(1)(b), 29
27	E-mails between Legal Counsel, Securities Division and staff of the Securities Division, Commission Secretary and Chair regarding appeal by [Applicant] from hearing panel’s decision not to grant adjournment	15(1)(e) , 15(1)(e), 15(1)(f), 15(1)(k), 22(a), 22(b), 22(c), 29
29	E-mails and correspondence between Legal Counsel, Securities Division and Counsel for hearing panel regarding appeal by [Applicant] from hearing panel’s decision not to grant adjournment	15(1)(e) , 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 22(c), 29
<i>Financial Institutions Division Investigation of [name of business]</i>		
4	File copies of documentary evidence obtained	15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b)

5	Transcripts and notes of witness interviews conducted by SFSC legal counsel; correspondence and draft correspondence between SFSC legal counsel and other parties; draft correspondence prepared by SFSC legal counsel; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(k), 22(a), 22(b), 22(c), 29
6	Correspondence between SFSC legal counsel and various SFSC staff and other parties; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b) , 15(1)(e) , 15(1)(k), 22(a), 22(b), 22(c)
7	Draft order and draft correspondence prepared by SFSC legal counsel; correspondence between SFSC legal counsel and other parties	15(1)(b) , 15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
8	Correspondence between SFSC staff and between SFSC staff and other parties; notes taken by SFSC staff during witness interviews	15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(k), 29
9	Correspondence between SFSC legal counsel and other SFSC staff	15(1)(b) , 15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
11	Documentary evidence obtained by SFSC staff in furtherance of the investigation; fax cover sheets	15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(k), 29
12	Correspondence between SFSC legal counsel, notes of meeting between SFSC legal counsel and SFSC	15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
<i>Consumer Protection Division Investigation of [name of business]</i>		
1	Complaint Cover Sheet; Complaint Summary; Letter from Consumer Protection (CPD) Investigator dated [date removed]	13(1)(a), 14(1)(a), 15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(i), 15(1)(k), 29
2	eBay Information Sheet	15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(k)
3	Copy of eBay printout	15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(k), 29
4	Copies of various investigative search results	15(1)(b) , 15(1)(e) , 15(1)(e), 15(1)(k)
5	E-mail between CPD staff sent on [date & time removed]	15(1)(b) , 15(1)(e) , 15(1)(k), 29
6	Various e-mails and other communications between CPD staff and between the CPD investigator and the complainant	15(1)(b) , 15(1)(e) , 15(1)(k), 29

[173] The SFSC also cited numerous other exemptions on the bundles noted above. Therefore, they will be considered in subsequent sections of this Review Report.

8. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(e) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[174] Section 15(1)(e) of FOIP is a discretionary exemption and states as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(e) reveal investigative techniques or procedures currently in use or likely to be used;

[175] The SFSC cited section 15(1)(e) of FOIP to 19 bundles of the record.

[176] The SFSC stated in its submission received April 24, 2013 that:

Bundle #4:

...

192. S. 15(1)(e) of FOIP applies. The documents were created by Securities Division staff and counsel for Securities Division staff following some investigation by [SFSC employee], an investigator for the Securities Division, into the activities of the Applicant. Some of the documents outline the details of the investigative steps taken by the Securities Division leading up to the application for an Investigative Order. The remainders of the documents indicate, by their very nature, the investigative techniques and procedures used by the Securities Division in this investigation. Disclosure of these documents will reveal the investigative techniques and procedures used in this investigation, and these are the same techniques and procedures that the Securities Division staff currently use, and will likely use in their investigations.

...

Bundle #17:

...

258. Section 15(1)(e) and (f) of FOIPA applies because the email communications contain information relating to investigative techniques and procedures used by [SFSC employee] who was previously employed as an investigator with the FCAA. The communications also contain the identity of a confidential informant...

[177] I have not previously formally considered section 15(1)(e) of FOIP.

[178] Section 15(1)(e) of FOIP requires analysis of four distinct questions:

1. Does the SFSC qualify as a body that conducts investigations pursuant to section 15 of FOIP?
2. Does the information in question constitute “investigative techniques” or “procedures”?
3. Are the techniques and procedures currently in use or likely to be used by the public body?
4. Could release of these records reveal investigative techniques or procedures?

[179] I will now address each of these questions.

(1) Does the SFSC qualify as a body that conducts investigations pursuant to section 15 of FOIP?

[180] I have already found earlier in this Review Report that the investigations conducted by the SFSC in this case constituted lawful investigations for purposes of section 15(1)(c) of FOIP. This finding would also apply for purposes of section 15(1)(e) of FOIP.

(2) Does the information in question constitute “investigative techniques” or “procedures”?

[181] I must first define the terms “investigative techniques” or “procedures” before I can determine if they apply to the record in question.

[182] The Government of Saskatchewan has not created a manual to assist public bodies in interpreting and applying the different sections of FOIP. However, other jurisdictions with similar legislation have.

[183] The Government of Alberta's *FOIP Guidelines and Practices* (2009) is one such example. This manual provides the following definitions for investigative techniques and procedures as they relate to that provinces equivalent section under law enforcement records:

Section 20(1)(c) recognizes that unrestricted access to law enforcement techniques could reduce their usefulness, effectiveness and success.

Investigative techniques and procedures means techniques and procedures used to conduct an investigation or inquiry for the purpose of law enforcement (*IPC Order F2007-005*).

Since this exception is subject to the harms test, a public body cannot rely on section 20(1)(c) to refuse to disclose basic information about well-known investigative techniques, such as wire-tapping, fingerprinting and standard sources of information about individuals' addresses, personal liabilities, real property, etc. (*IPC Orders 99-010 and F2003-005*).

If a technique or procedure is generally known to the public, disclosure would not normally compromise its effectiveness (*IPC Order 2000-027*).

The exception is more likely to apply to new technologies in electronic monitoring or surveillance equipment used for a law enforcement purpose. The exception extends to techniques and procedures that are likely to be used, in order to protect techniques and technology under development and new equipment or procedures that have not yet been used.³⁰

[184] Alberta's *Freedom of Information and Protection of Privacy Act* (Alberta's FOIP)³¹ has a similar section to Saskatchewan's FOIP. However, it is also quite different in that it includes a harms test. Section 20(1)(c) of Alberta's FOIP states as follows:

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

³⁰*Supra* note 8 at p. 150.

³¹Alberta's (hereinafter AB) *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25.

[185] Section 15(1)(e) of Saskatchewan's FOIP does not include such a harms test. The public body must demonstrate however that the records fall within the class of records that constitute investigative techniques and procedures.

[186] The definitions for investigative techniques and procedures provided by the Alberta manual will be adopted for purposes of this Review Report.

[187] Former Saskatchewan Information and Privacy Commissioner, Richard Rendek, Q.C., considered section 15(1)(e) of FOIP in his Review Report 2002/041. He was considering a public body's manual which dealt with fraud procedures and surveillance policy. Most of the manual did not detail specific procedures or investigative techniques and was found to not be exempt pursuant to section 15(1)(e) of FOIP. However, portions of the manual were found to specifically outline procedures to be followed in investigating insurance fraud and specified the responsibilities and actions to be followed by staff and investigators. This section of the manual was found to be exempt from disclosure. The following from that Review Report is helpful in this case:

[10] I have now had an opportunity to review the document of the Respondent which they are refusing to disclose to the Applicant and which I shall refer to as the "Manual". This Manual is composed of six sections which are respectively entitled:

- (i) - Fraud Procedures
- (ii) - Fraudulent Claims
- (iii) - Suspicious Claims Procedure
- (iv) - Referrals to SIU for Investigation
- (v) - New Procedure for Requesting Activity Checks
- (vi) - Surveillance Policy

[11] Section (i) outlines the **standard policy** approved by SGI's Board of Directors for dealing with matters relating to suspicious and fraudulent business transactions including claims. Subsections A, B and C outline respectively the Fraud Policy, Fraud Definition and Anti-Fraud Initiatives. **They do not deal with specific procedures or investigative techniques** and accordingly, in my view, **are not exempt** under section 15(1)(e) of *The Freedom of Information and Protection of Privacy Act*.

...

Subsection D however outlines **specific procedures to be followed in investigating insurance fraud and specifies the responsibilities and actions to be followed by**

staff, SIU's and Investigators. In my view this subsection **is clearly exempt** from production as it falls clearly within the ambit of both section 15(1)(e) and 18(1)(f) of the Act.

Subsection (ii) outlines 8 **specific steps to be taken** when dealing with fraudulent claims.

Subsection (iii) deals with **specific procedures to be followed** upon receipt of notice of a general fire loss and establishes who is to be the "responsible person" regarding the various steps in the procedure and what action is to be taken by them.

Subsection (iv) outlines the procedure to be followed when referring an injury claim to the SIU (Special Investigation Unit) and also outlines the **procedures to be considered and/or followed by the SIU in their investigation** of such claims.

Subsection (v) is a memo addressed to all Claims Branch Managers and Head Office Claims Managers that sets out the **new procedures to be followed when requesting activity checks.**

Clearly Subsection (ii) to (v) inclusive are governed by Section 15(1)(e) of the Act.

The final subsection is dated August 22, 2002 and is a memo from SGI's Litigation Department **outlining procedures to be followed regarding surveillance tracking** both in and out of Province. I am of the view that it **is also governed by Section 15(1)(e)** of the Act with the **exception of the last page which is entitled "Legal Department Surveillance Guidelines" and which is a form to be completed when requesting the use of surveillance.**

...

The refusal in the present case is made pursuant to Section 15(1)(e) of the Act to which Section 17(2)(f)(i) has no application.

In fact Section 15(2) sets out the instances of records to which Section 15(1) does not apply.

...

[15] In summary, I recommend that the Respondent continue to deny access to the records requested with the exception of Subsection A, B and C of Section (1) of the Manual and the last page of the Manual entitled "Legal Department Surveillance Guidelines".³²

[emphasis added]

³²SK OIPC Review Report 2002/041.

[188] From the former Commissioner's Review Report, it appears that it is necessary for the information to contain specific steps and/or procedures to be considered investigative techniques or procedures. General information (such as forms and standard policies that are not specific to steps and procedures) would not be considered to qualify.

[189] This is consistent with section 15(2) of FOIP, which reads as follows:

15(2) Subsection (1) does not apply to a record that:

(a) provides a general outline of the structure or programs of a law enforcement agency; or

(b) reports, by means of statistical analysis or otherwise, on the degree of success achieved in a law enforcement program.

[emphasis added]

[190] Former Saskatchewan Information and Privacy Commissioner, Derril McLeod, Q.C., addressed the equivalent section in LA FOIP in his Review Report 95/021. In that Review Report, he stated the following:

...The reports do not, in my view, reveal "investigative techniques or procedures" other than those of common use in any investigative procedure...

Accordingly, I have concluded and recommended that the City disclose the records in question to the Applicant pursuant to Section 31, of the Act.³³

[emphasis added]

[191] This suggests that even when there are specific investigative techniques or procedures in a record they are not automatically considered exempt. Techniques and procedures that are in common use may not be considered exempt under section 15(1)(e) of FOIP.

[192] Other jurisdictions have formally considered a similar exemption in their legislation. For example, Newfoundland and Labrador's *Access to Information and Protection of Privacy*

³³SK OIPC Review Report 95/021 at p. 6.

Act (ATIPPA)³⁴ has a similar section to Saskatchewan's FOIP. Section 22(1)(c) of ATIPPA states the following:

22. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

...

(c) reveal investigative techniques and procedures currently used, or likely to be used, in law enforcement;

[193] In the Office of the Information and Privacy Commissioner (IPC) of Newfoundland and Labrador Report A-2008-005, he similarly suggested that routine or customary investigative techniques and procedures would not be considered to qualify under ATIPPA's section 22(1)(c):

[32] If the investigation in question was a "law enforcement matter, then in order to rely on the exception in section 22(1)(c) the Department must show that the disclosure of the records could reasonably be expected to reveal investigative techniques and procedures currently used or likely to be used in law enforcement.

[33] The investigative techniques and procedures employed in the investigation of the Applicant's harassment complaint are set out in the *Harassment Complaint Report*, which has already been released to the Applicant. The investigator described his procedure as consisting of a number of interviews with the Applicant and the Respondent, the obtaining of written statements from the Applicant and the Respondent, and the interviewing of four management employees. Based on the information obtained in the statements and interviews, the investigator prepared a report containing his findings and recommendations. **The procedures and techniques utilized appear to be those routinely used by the investigator and would be recognized as the standard and expected methods employed to investigate complaints of workplace harassment. Given the customary nature of the procedures used, I have great difficulty accepting that the release of the records at issue would reveal any specialized or covert investigative techniques or procedures.** Furthermore, an Investigator with my Office contacted the Coordinator by e-mail dated 5 September 2007 and specifically asked what other investigative techniques or procedures were used in addition to those outlined in the *Harassment Complaint Report* and inquired as to which portions of the records at issue would reveal those techniques or procedures. However, the Department did not provide any information in response to the Investigator's questions.

³⁴Newfoundland and Labrador's (hereinafter NL) *Access to Information and Protection of Privacy Act*, S.N. 2002, c.-A-1.1.

[34] In conclusion, I find that the Department is not entitled to deny release of the records at issue by relying on the exception to disclosure set out in section 22(1)(c).³⁵

[emphasis added]

[194] Ontario's *Freedom of Information and Protection of Privacy Act* (Ontario's FOIP)³⁶ also has a similar section to Saskatchewan's section 15(1)(e). Section of 14(1)(c) of Ontario's FOIP states as follows:

14(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

...

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

[195] In Ontario IPC Order P-999, it was found that generally known investigative techniques and procedures would not qualify for exemption 14(1)(c) of Ontario's FOIP:

The Ministry submits that the disclosure of information contained in Pages FI0010, FI0016, FI0017 and FI0018 relating to cellular communications, mobile radios and the allocation of staff to the investigation could reasonably be expected to reveal investigative techniques, thereby hampering the investigation.

In Order 170, Inquiry Officer John McCamus articulated a test for the application of section 14(1)(c) as follows:

In order to constitute an "investigative technique or procedure" it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that a particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure and accordingly that the technique or procedure in question is not within the scope of section 14(1)(c).

I have reviewed the undisclosed information and find that **it is generally known to the public that the Police use encrypted cellular and radio communications. The disclosure of this fact could not reasonably be expected to reveal an investigative technique. Accordingly, I find that this information is not exempt under section 14(1)(c).** Further, I find that there does not exist a logical connection between the

³⁵Office of the Information and Privacy Commissioner (hereinafter IPC) of NL Report A-2008-005, available at: www.oipc.nl.ca/.

³⁶Ontario's (hereinafter ON) *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31.

disclosure of the number and identities of personnel assigned to the investigation and the revealing of an investigative technique or procedure. This information is not, therefore, exempt under section 14(1)(c).³⁷

[emphasis added]

[196] In consideration of the forgoing, I conclude the following:

- The information must contain techniques and procedures used to conduct an investigation or inquiry for the purpose of a lawful investigation or law enforcement matter;
- The exemption is more likely to apply to new technologies in electronic monitoring or surveillance equipment used for a law enforcement purpose. The exemption extends to techniques and procedures that are likely to be used, in order to protect techniques and technology under development and new equipment or procedures that have not yet been used;
- The techniques or procedures must include specific steps. General information (such as forms and standard policies that do not include specific investigative steps and procedures) would not qualify;
- Routine, common or customary investigative techniques and procedures would not qualify; and
- Generally known investigative techniques and procedures which the public is already aware of would not qualify.

[197] I adopt these interpretations for section 15(1)(e) of Saskatchewan's FOIP.

[198] Now that I have established what is required for records to qualify as investigative techniques and procedures under section 15(1)(e) of FOIP, I will consider the record before me to determine if the information contained would qualify as investigative techniques or procedures.

[199] From a review of the records, a number of them would not qualify under section 15(1)(e) of FOIP. For example, record 3, page 1, under bundle #4 (*Securities Division Staff Records*) is a memorandum totaling three pages. It appears to be the steps taken by the investigator in the initial stages of the investigation. The steps outlined in the memo

³⁷ON IPC Order P-999 at pp. 2 to 3, available at: www.ipc.on.ca/english/Home-Page/.

include an internet search, a database search, interviewing the Applicant, writing letters to the Applicant's lawyer and making several follow-up calls.

[200] These steps are common, routine and customary in any investigation. There does not appear to be anything that would suggest that disclosure of these common, routine and customary steps to the public would hinder or compromise its effective utilization. Further, the SFSC did not demonstrate in its submission of April 24, 2013 how disclosure could compromise their effectiveness.

[201] Also, under bundle #4, record 3, pages 4 and 5 appear to be copies of investigation orders issued by SFSC's Director of the Securities Division, following receipt of the above noted memorandum. The purpose of these orders appears to be to authorize the investigation under the SA and appointing investigators to carry out the investigation. The record is two pages (the second page being an amended copy of the first order, but otherwise nearly identical) and cites section 12 of the SA which authorizes the investigation. It also appears to be a formal order that is routinely issued prior to any investigation proceeding by the Securities Division at the SFSC. There appears to be nothing in the record that speaks to specific techniques or procedures regarding the actual investigation.

[202] Upon review of the remainder of records cited for exemption by the SFSC under section 15(1)(e) of FOIP, none of them contained specific techniques or procedures regarding the investigation. Where some records suggested steps having been taken (i.e. witness interview, email sent, phone call made) the steps would be considered common, routine and customary in any investigation and therefore found not to qualify under section 15(1)(e) of FOIP. Given this finding, it was not necessary to consider the remaining questions for this analysis (questions #3 and #4).

[203] Therefore, I find that the SFSC has failed to demonstrate that section 15(1)(e) of FOIP applies to the record in question. As such, the following records have been found not to qualify for exemption under section 15(1)(e) of FOIP. Those exemptions crossed out below do not apply or do not need to be considered for the records noted:

Bundle #	Description	Sections Cited
<i>Securities Investigation/Proceeding Against [Applicant], et.al. – Tribunal Records</i>		
2i	Various internal correspondence	15(1)(e) , 15(1)(e) , 15(1)(f), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 29
<i>Securities Investigation/Proceeding Against [Applicant], et.al. –Securities Division Staff Records</i>		
4	Documents relating to application pursuant to section 12 of <i>The Securities Act, 1988</i> for investigation order dated [dates removed] including staff memo and Investigation Orders.	15(1)(e) , 15(1)(e) , 15(1)(f), 15(1)(k)
6	Documents relating to service and notice of cease trade orders	15(1)(e) , 15(1)(e) , 15(1)(f), 15(1)(k)
13	Redacted investigation reports prepared by staff	RELEASE
17	E-mails – [SFSC employee] regarding [name of business] Securities offered by [Applicant]	15(1)(e) , 15(1)(e) , 15(1)(f), 15(1)(k), 19(1)(b), 29
27	E-mails between Legal Counsel, Securities Division and staff of the Securities Division, Commission Secretary and Chair regarding appeal by [Applicant] from hearing panel's decision not to grant adjournment	15(1)(e) , 15(1)(e) , 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 22(c), 29
29	E-mails and correspondence between Legal Counsel, Securities Division and Counsel for hearing panel regarding appeal by [Applicant] from hearing panel's decision not to grant adjournment	15(1)(e) , 15(1)(e) , 15(1)(f), 15(1)(k), 22(a), 22(b), 22(c), 29
<i>Financial Institutions Division Investigation of [name of business]</i>		
4	File copies of documentary evidence obtained	15(1)(b) , 15(1)(e) , 15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b)
5	Transcripts and notes of witness interviews conducted by SFSC legal counsel; correspondence and draft correspondence between SFSC legal counsel and other parties; draft correspondence prepared by SFSC legal counsel; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b) , 15(1)(e) , 15(1)(e) , 15(1)(k), 22(a), 22(b), 22(c), 29
8	Correspondence between SFSC staff and between SFSC staff and other parties; notes taken by SFSC staff during witness interviews	15(1)(b) , 15(1)(e) , 15(1)(e) , 15(1)(k), 29
12	Correspondence between SFSC legal counsel, notes of meeting between SFSC legal counsel and SFSC	15(1)(b) , 15(1)(e) , 15(1)(e) , 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29

<i>Consumer Protection Division Investigation of [name of business]</i>		
1	Complaint Cover Sheet; Complaint Summary; Letter from Consumer Protection (CPD) Investigator dated [date removed]	13(1)(a), 14(1)(a), 15(1)(b) , 15(1)(e) , 15(1)(e) , 15(1)(i), 15(1)(k), 29
2	eBay Information Sheet	15(1)(b) ; 15(1)(e) ; 15(1)(e) ; 15(1)(k)
3	Copy of eBay printout	15(1)(b) ; 15(1)(e) ; 15(1)(e) ; 15(1)(k), 29
4	Copies of various investigative search results	15(1)(b) ; 15(1)(e) ; 15(1)(e) ; 15(1)(k)

[204] Bundle #13 was cited for exemption by the SFSC under section 15(1)(e) of FOIP only. As it has been found not to qualify for exemption under this section, it should be released to the Applicant. It should be noted that the record also indicates on its cover letter under the heading “*Release*” it says “Yes”. It is not clear if the SFSC has released this record already, or not. The submission of April 24, 2013 does not clarify this point.

[205] The remainder of the records have other sections cited for exemption by the SFSC and will be considered in other sections to follow.

9. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(f) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[206] Section 15(1)(f) of FOIP reads as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(f) disclose the identity of a confidential source of information or disclose information furnished by that source with respect to a lawful investigation or a law enforcement matter;

[207] I have not previously formally considered section 15(1)(f) of FOIP.

[208] However, former Commissioner, Derril McLeod, Q.C., considered section 15(1)(f) of FOIP in Review Reports 93/021 and 95/012. In addition, former Commissioner, Richard

Rendek, Q.C., also considered this section in Review Report 2000/028. These Review Reports of former Commissioners will be discussed later.

[209] Other jurisdictions in Canada have similarly worded sections in their legislation. For example, section 20(1)(d) of Alberta's FOIP is similar, to an extent, to Saskatchewan's section 15(1)(f) of FOIP.

[210] The approach taken by Alberta IPC with its interpretation of its section 20(1)(d) of Alberta's FOIP is helpful here. In Alberta IPC Order F2012-12, the following is relevant:

[para 33] The Public Body applied section 20(1)(d) to some information in 11 pages of records. This provision states:

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(d) reveal the identity of a confidential source of law enforcement information,

...

[para 34] In order for section 20(1)(d) to apply, **the Public Body must establish that (i) law enforcement information is involved, (ii) there is a confidential source of law enforcement information, and (iii) the information in question could reasonably be expected to reveal the identity of that confidential source** (Order 96-019).³⁸

[emphasis added]

[211] Section 15(1)(f) of FOIP requires analysis of three distinct questions:

1. Is the information related to a "lawful investigation" or a "law enforcement matter"; and
2. Could the information disclose the identity of a confidential source of information? or
3. Does the information disclose information furnished by the confidential source?

[212] I will now address each of these questions.

³⁸AB IPC Order F2012-12, available at: www.oipc.ab.ca/pages/home/default.aspx.

(1) Is the information related to a “lawful investigation” or a “law enforcement matter”?

[213] The records to which the SFSC applied section 15(1)(f) are records pertaining to one or more lawful investigations conducted by the SFSC. Therefore, I find that the record contains information related to a lawful investigation.

(2) Does the information disclose the identity of a confidential source of information?

[214] Before I may answer this question, I must first consider what constitutes a “confidential source of information”.

[215] As noted earlier, former Commissioner’s from this office have considered section 15(1)(f) of FOIP. In former Commissioner, Derril McLeod, Q.C.’s Review Report 93/021, he found the following with regards to section 15(1)(f) of FOIP:

Finally, I am not satisfied that the information in question was obtained from a “confidential source” within the meaning of Section 15(1)(f). **The information in question was unsolicited and it is recorded that the informant stated that he was prepared to testify in court about these matters. It has not been suggested to me that the Corporation gave the informant any assurance or undertaking of confidentiality, or that any such assurance was requested.** I am therefore unable to conclude that the informant was a confidential source.³⁹

[emphasis added]

[216] Further, in former Commissioner, Richard Rendek, Q.C.’s Review Report 2000/028, he found the following:

[13] My review of the withheld documents indicates that they are in fact witness statements, and accordingly, in my opinion, section 15(1)(f) should apply to exclude these documents from disclosure. The section allows a head to deny disclosure where the information would disclose the identity of a confidential source or the information furnished by the confidential source. In this case, **the witnesses were advised before giving any statements that their identity and evidence would remain confidential**

³⁹SK OIPC Review Report 93/021 at pp. 7 to 8.

and would not be released to the Applicant. Although it is possible that the Applicant could very easily figure out who the confidential witnesses might be, it is still permissible and proper that their identities and statements be withheld.⁴⁰

[emphasis added]

[217] In another Review Report issued by former Commissioner McLeod, he stated:

I am unable to agree that the statements of these employees of the Board can be characterized as a “confidential source of information”. As between the Board and its employees **there was no arrangement whereby these employees would supply information to the Board on a confidential basis.** The employer had the right to obtain this information regarding the incident in its establishment and to use it as it saw fit, and this does not give rise to any relationship of confidentiality between the parties.⁴¹

[emphasis added]

[218] So it appears that my predecessors previously established that there needed to be a clear arrangement of confidentiality between the government institution and the source of the information in order to claim this exemption. I agree and adopt the same approach as my predecessors.

[219] The SFSC should demonstrate in its submission that there were assurances or undertakings of confidentiality with the confidential source and/or the confidential source requested same. When confidential sources have indicated that they are prepared to testify or appear as witnesses with regards to the information they have shared, the exemption would not apply.

[220] In its April 24, 2013 submission to my office, the SFSC stated the following with regards to its application of this exemption to the record in question:

Bundle #2i:

...

⁴⁰SK OIPC Review Report 2000-028.

⁴¹SK OIPC Review Report 95/012 at p. 4.

138. The entire record is exempt pursuant to 15(1)(f) as the emails disclose information that would allow the Applicant to identify confidential witnesses who provided information to Securities Division investigators.

...

Bundle #4:

...

193. S. 15(1)(f) of FOIP applies. The documents contain the identify of a confidential source of information and information furnished by that source with respect to the investigation by Securities Division staff into the Applicant's activities a lawful investigation. If these documents are disclosed, this person's identify will be disclosed.

...

Bundle #17:

257. The sample packet contained emails by [SFSC employee] to and from [name removed] regarding [name of business] securities allegedly offered by the Applicant.

258. Section 15(1)(e) and (f) of FOIPA applies because the email communications contain information relating to investigative techniques and procedures used by [SFSC employee] who was previously employed as an investigator with the FCAA. The communications also contain the identity of a confidential informant [name removed] whose complaint led to the investigation against the Applicant.

[221] Nothing further was provided by the SFSC to support its application of section 15(1)(f) of FOIP, except for the bare assertion that the section applies to the records in question.

[222] The records in question appear to be email exchanges between the "confidential source" and the SFSC investigator. The emails are repeated copies of the same email which appears to have the "confidential source" looking for information – not revealing any.

[223] The nature of the relationship is revealed in record 3, page 1 of bundle 4. The record appears to be a request for an investigation order by the Investigator to the Director at the SFSC. The request breaks down the initial investigation the SFSC Investigator completed leading to the request for a formal investigation order. The "confidential source" is not mentioned again in the request for an investigation order.

[224] In British Columbia IPC Order No. 28-1994, the Commissioner addressed the issue of what qualifies as a confidential source for purposes of section 15(1)(d) of British Columbia's *Freedom of Information and Protection of Privacy Act*:⁴²

I have concerns about the applicability of section 15(1)(d) in this case. It is not clear, on the evidence before me, whether the doctor meets the standard of a "confidential source of law enforcement information" under this section... I also am not comfortable with the view that the information about the applicant supplied by the medical practitioner is "law enforcement information" within the meaning of section 15(1)(d) and Schedule 1 of the Act. The information provided by the physician did not detail unique knowledge of past or present violations of law, nor did it set out specifics of how a law would be violated in future. Rather, the letter provided a number of concerns regarding an individual's ability, or lack thereof, to meet a standard prescribed by law.

My views in the previous paragraph are partially supported by the government's *Freedom of Information and Protection of Privacy Act Policy and Procedures Manual* (1993) (the Manual), Section C.4.6, p. 17, which was prepared by the Information and Privacy Branch in the Ministry of Government Services. The Manual states:

A 'confidential source' is someone who has provided information to a public body with the assurance that his or her identity will remain secret. There must be evidence of the circumstances in which the information was provided to establish whether the source is confidential.

In the present case, there is no explicit evidence before me that the information in dispute was provided and received in confidence, although the Motor Vehicle Branch states that it treats the sources of all voluntary reports as confidential. As I have said in previous orders, I prefer as much explicitness as possible to support such claims. In particular, there should be a mutual expectation between the parties at the time of the information collection that the information is being given and received in confidence. Marking a record as submitted "in confidence" would be a positive step. In this case, there was an unstated expectation of confidentiality.

Essentially, I do not consider the circumstances of this case appropriate for an authoritative interpretation of the breadth of section 15(1)(d).⁴³

[emphasis added]

[225] As the SFSC has not demonstrated that there were assurances or undertakings of confidentiality with the confidential source, and/or that the confidential source requested same, the SFSC has failed to meet the burden of proof in establishing that section 15(1)(f)

⁴²British Columbia's (hereinafter BC) *Freedom of Information and Protection of Privacy Act* [RSBC 1996] c. 165.

⁴³BC IPC Order No. 28-1994 at p. 9, available at: www.oipc.bc.ca/.

of FOIP applies to the record in question. Further, as the second part of the test cannot be established, there is no need to consider the remaining part of the test.

[226] Therefore, the following records do not qualify for exemption under section 15(1)(f) of FOIP. Those exemptions crossed out below do not apply or do not need to be considered for the records noted:

Bundle #	Description	Sections Cited
<i>Securities Investigation/Proceeding Against [Applicant], et.al. – Tribunal Records</i>		
2i	Various internal correspondence	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b), 22(a), 29
<i>Securities Investigation/Proceeding Against [Applicant], et.al. –Securities Division Staff Records</i>		
4	Documents relating to application pursuant to section 12 of <i>The Securities Act, 1988</i> for investigation order dated [date removed] including staff memo and Investigation Orders.	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k)
6	Documents relating to service and notice of cease trade orders	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k)
17	E-mails – [SFSC employee] regarding [business name] Securities offered by [Applicant]	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k), 19(1)(b), 29
27	E-mails between Legal Counsel, Securities Division and staff of the Securities Division, Commission Secretary and Chair regarding appeal by [Applicant] from hearing panel’s decision not to grant adjournment	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k), 17(1)(b), 22(a), 22(b), 22(c), 29
29	E-mails and correspondence between Legal Counsel, Securities Division and Counsel for hearing panel regarding appeal by [Applicant] from hearing panel’s decision not to grant adjournment	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k), 22(a), 22(b), 22(c), 29

10. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(k) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[227] Section 15(1)(k) of FOIP reads as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[228] The SFSC did not indicate whether it was arguing the records interfered with a law enforcement matter or disclosed information respecting a law enforcement matter.

[229] In its April 24, 2013 submission, the SFSC argued a broad approach to the application of section 15(1)(k) of FOIP as follows:

17. ...There is no need to demonstrate that the disclosure of the information could interfere with the lawful investigation, as the Legislature chose the word “or” to indicate the disjunctive. With respect to s. 15(1)(k), as the wording of that clause pertaining to law enforcement matters is virtually identical to that of s. 15(1)(c), we submit the same principle applies. In other words, all that needs to be shown is that the records relate to a lawful investigation or a law enforcement matter, as the case may be, in order for the discretionary exemption to apply.

[230] In my Review Report F-2012-006, I considered section 15(1)(k) of FOIP:

[87] In considering section 15(1)(k), analysis is required of three distinct questions:

1. Was this a law enforcement matter?
2. Would the release of the record interfere with a law enforcement matter?
3. Would the release of the record disclose information with respect to a law enforcement matter?

[231] I previously established the appropriate approach to the analysis of section 15(1)(k) of FOIP in Review Report F-2012-006.⁴⁴ I will apply the same approach in this Review Report.

(1) Was this a law enforcement matter?

⁴⁴*Supra* note 2 at [75] to [105].

[232] It is necessary to first determine what constitutes a “law enforcement matter”. When I considered this in Review Report F-2012-006, I took the following into consideration:

[88] I must now determine what constitutes a law enforcement matter. Saskatchewan’s FOIP Act does not define a “law enforcement matter”. However, in Review Report 93/021, former Saskatchewan Commissioner Gerald McLeod, Q.C. defined the term ‘law enforcement’ as follows:

So, also, the expression “law enforcement” must, in my view, be considered to pertain to enforcement of laws of general or particular application by appropriate law enforcement agencies, and not to the determination of private issues or rights between parties to a contract as appears to be the case here.

...

Regulations made pursuant to the Act provide that the prescribed law enforcement agencies or investigative bodies are the RCMP, CSIS, local police forces and the Department of Parks and Renewable Resources and the Department of Highways...

...

[91] Newfoundland and Labrador has a similar provision in its *Access to Information and Protection of Privacy Act* (ATIPPA) at section 22. (1)(a):

22. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

(a) interfere with or harm a law enforcement matter;

[92] Section 2(i) of Newfoundland and Labrador’s ATIPPA defines law enforcement as follows:

2. In this Act

...

(i) "law enforcement" means

(i) policing, including criminal intelligence operations, or

(ii) investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment;

[emphasis added]

[233] As established earlier in this Review Report, the SFSC was conducting investigations pursuant to three pieces of legislation and that its authority to do so could be found under section 25 of *The Financial and Consumer Affairs Authority of Saskatchewan Act*. These investigations could result in sanctions.

[234] Therefore, I find that in this case the SFSC would be an appropriate law enforcement agency for purposes of section 15(1)(k) of FOIP. As well, I find that the potential sanctions that result constitute law enforcement matters for the purposes of section 15(1)(k) of FOIP.

(2) Would the release of the record interfere with a law enforcement matter?

[235] In my Review Report F-2012-006, I considered this question and found the following:

[99] Justice has not provided any evidence to indicate that the law enforcement matter in this case is active, ongoing or about to be undertaken. In fact, the case has been concluded for some time as indicated previously.

[100] Therefore, I am not satisfied that the release of the records would interfere with a law enforcement matter within the meaning of section 15(1)(k).

[236] However, in the above case, the refusal by the Ministry of Justice to accept my recommendation was recently appealed to the Court of Queen's Bench. The Honourable Mr. Justice Gabrielson dismissed the application and ruled as follows:

[45] Similarly, in my opinion, it is not appropriate to read into the *Act* [FOIP] a limitation on the law enforcement investigation exemption as to only be applicable in respect to ongoing matters. As was outlined in Former Chief Justice Culliton's report, the right to ensure witnesses and informants of complete confidentiality and secrecy would be severely compromised if the protection only existed until the end of the criminal proceeding. Retaliation can take many forms, often not overt, and often some time after the conclusion of an investigation or proceeding.

Conclusion

[46] I, therefore, find that the exemptions found in s. 13(1)(a) and s. 15(1)(k) of the *Act* as relied upon by the Ministry to refuse disclosure of the records are applicable to

the circumstances of this case, and based on this finding, I would dismiss the application.⁴⁵

[237] I consider that I am bound by the direction of this superior court. However, there still remains the need by the public body to demonstrate how release of the records interferes with the law enforcement matter.

[238] The burden of proof in establishing that the exemption applies lies with the SFSC. Upon review of SFSC's submission received April 24, 2013, there appears to be no explanation as to how the release of the records would interfere with the law enforcement matter.

[239] Therefore, the SFSC has failed to demonstrate how the release of the records would interfere with a law enforcement matter within the meaning of section 15(1)(k) of FOIP.

(3) Would the release of the record disclose information with respect to a law enforcement matter?

[240] As noted earlier, the SFSC argued a broad approach to the application of section 15(1)(k) of FOIP in its submission, received by my office April 24, 2013:

17. ...all that needs to be shown is that the records relate to a lawful investigation or a law enforcement matter, as the case may be, in order for the discretionary exemption to apply.

[241] As noted earlier, as I am bound by the Court of Queen's Bench decision, this question cannot hinge on whether the law enforcement matter is active, ongoing or about to be undertaken unless a higher court rules otherwise.

[242] Therefore, until a higher court rules otherwise, it is only necessary for a public body to demonstrate that the information in the record is information with respect to a law enforcement matter.

⁴⁵*Evenson v Saskatchewan Ministry of Justice*, 2013 SKQB 296 at [45] to [46].

[243] Upon review of the records cited for exemption under section 15(1)(k) of FOIP by the SFSC, all of the records appear to pertain to a law enforcement matter (i.e. investigations involving the Applicant).

[244] Therefore, release of that information would disclose information with respect to a law enforcement matter.

[245] I find that section 15(1)(k) of FOIP applies to the records in question and should continue to be withheld from the Applicant. Those exemptions crossed out do not apply or do not need to be considered for the records noted:

Bundle #	Description	Sections Cited
<i>Securities Investigation/Proceeding Against [Applicant], et.al. – Tribunal Records</i>		
1b	Various correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 29
1c	Various correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
1d	Various correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
1e	Various correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 29
1f	Correspondence with legal counsel	15(1)(e), 15(1)(k) , 22(a), 22(b), 22(c)
1g	Various correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 29
1h	Correspondence	15(1)(e), 15(1)(d), 15(1)(k) , 17(1)(a), 17(1)(b), 18(1)(d), 29
1i	Various correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 29
1j	Correspondence related to [Applicant] appeal to Court of Appeal	15(1)(e), 15(1)(d), 15(1)(k) , 17(1)(a), 17(1)(b), 29
1k	Various correspondence between SFSC staff and between SFSC staff and witness	15(1)(e), 15(1)(k) , 19(1)(c), 23(3)(h) , 29
1l	Various correspondence and draft documents	15(1)(e), 15(1)(k) , 29
2a	Correspondence with SFSC legal counsel and draft correspondence prepared for consultation with SFSC legal counsel.	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
2c	Correspondence related to [Applicant] appeal to Court of Appeal	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29

2d	Various correspondence	15(1)(e), 15(1)(k) RELEASE record 2; Record 1- 17(1)(a), 17(1)(b)
2e	Various correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
2f	Various internal correspondence related to [Applicant] appeal to Court of Appeal	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 29
2g	Email dated [date removed]	15(1)(e), 15(1)(k)
2h	Various correspondence between SFSC Chair and legal counsel	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
2i	Various internal correspondence	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(i), 15(1)(k) , 17(1)(a), 17(1)(b), 22(a), 23(3)(h) , 29
2j	Internal correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b)
2k	Internal correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b)
2l	Various correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 29
2m	Correspondence	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 21, 29
2n	Internal correspondence	15(1)(e), 15(1)(d), 15(1)(k) , 17(1)(a), 17(1)(b)
3a	Correspondence between SFSC legal counsel and SFSC staff and work product of SFSC legal counsel	15(1)(e), 15(1)(k) , 22(a), 22(b), 22(c)
3b	Correspondence between SFSC legal counsel and SFSC staff and SFSC legal counsel work product	15(1)(e), 15(1)(k) , 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
<i>Securities Investigation/Proceeding Against [Applicant], et.al. –Securities Division Staff Records</i>		
4	Documents relating to application pursuant to section 12 of <i>The Securities Act, 1988</i> for investigation order dated [date removed] including staff memo and Investigation Orders.	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k)
6	Documents relating to service and notice of cease trade orders	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k)
17	E-mails – [SFSC employee] regarding [business name] Securities offered by [Applicant]	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k) , 19(1)(b), 29
27	E-mails between Legal Counsel, Securities Division and staff of the Securities Division, Commission Secretary and Chair regarding appeal by [Applicant] from hearing panel’s decision not to grant adjournment	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k) , 17(1)(b), 22(a), 22(b), 22(c), 29

29	E-mails and correspondence between Legal Counsel, Securities Division and Counsel for hearing panel regarding appeal by [Applicant] from hearing panel's decision not to grant adjournment	15(1)(e), 15(1)(e), 15(1)(f), 15(1)(k) ; 22(a), 22(b), 22(c), 29
<i>Financial Institutions Division Investigation of [name of business]</i>		
4	File copies of documentary evidence obtained	15(1)(b), 15(1)(e), 15(1)(e), 15(1)(k) ; 17(1)(a), 17(1)(b), 23(3)(h)
5	Transcripts and notes of witness interviews conducted by SFSC legal counsel; correspondence and draft correspondence between SFSC legal counsel and other parties; draft correspondence prepared by SFSC legal counsel; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b), 15(1)(e), 15(1)(e), 15(1)(k) ; 22(a), 22(b), 22(c), 29
6	Correspondence between SFSC legal counsel and various SFSC staff and other parties; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(b), 15(1)(e), 15(1)(k) ; 22(a), 22(b), 22(c)
7	Draft order and draft correspondence prepared by SFSC legal counsel; correspondence between SFSC legal counsel and other parties	15(1)(b), 15(1)(e), 15(1)(k) ; 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
8	Correspondence between SFSC staff and between SFSC staff and other parties; notes taken by SFSC staff during witness interviews	15(1)(b), 15(1)(e), 15(1)(e), 15(1)(k) ; 29
9	Correspondence between SFSC legal counsel and other SFSC staff	15(1)(b), 15(1)(e), 15(1)(k) ; 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c)
11	Documentary evidence obtained by SFSC staff in furtherance of the investigation; fax cover sheets	15(1)(b), 15(1)(e), 15(1)(e), 15(1)(k) ; 29
12	Correspondence between SFSC legal counsel, notes of meeting between SFSC legal counsel and SFSC	15(1)(e), 15(1)(k) ; 17(1)(a), 17(1)(b), 22(a), 22(b), 22(c), 29
<i>Consumer Protection Division Investigation of [name of business]</i>		
1	Complaint Cover Sheet; Complaint Summary; Letter from Consumer Protection (CPD) Investigator dated [date removed]	13(1)(a), 14(1)(a), 15(1)(b), 15(1)(e), 15(1)(e) ; 15(1)(i), 15(1)(k) ; 29
2	eBay Information Sheet	15(1)(b), 15(1)(e), 15(1)(e), 15(1)(k)

3	Copy of eBay printout	15(1)(b), 15(1)(e), 15(1)(e), 15(1)(k), 29
4	Copies of various investigative search results	15(1)(b), 15(1)(e), 15(1)(e), 15(1)(k)
5	E-mail between CPD staff sent on [date & time removed]	15(1)(b), 15(1)(e), 15(1)(k), 29
6	Various e-mails and other communications between CPD staff and between the CPD investigator and the complainant	15(1)(b), 15(1)(e), 15(1)(k), 29

[246] I have found that section 15(1)(k) of FOIP applies to the records noted above. However, in the event a higher court determines it did not apply and also as a guide for the remainder of the record (the numerous boxes of records my office has not seen) the following is left as a guide for the SFSC:

- For bundle #2g (*Tribunal Records*), as both of the sections relied on have been addressed and found not to apply, this bundle should be released to the Applicant.
- For bundle #4 (*Securities Division Staff Records*), as all sections relied on have been addressed and have been found not to apply, this bundle should be released to the Applicant.
- For bundle #6 (*Securities Division Staff Records*), as all sections relied on have been addressed and have been found not to apply, this bundle should be released to the Applicant.
- For bundle #11, the SFSC listed sections 15(1)(b), 15(1)(c) and 15(1)(k) of FOIP on record 1, page 1. None of these sections have been found to apply. Therefore, this page should be released to the Applicant. The remainder of the bundle will be considered under section 29 of FOIP.
- For bundle #2j (*Securities Division Staff Records*), all sections have been considered for record 1; page 1. None of the sections cited by the SFSC have been found to apply. Therefore, this page should be released to the Applicant. Record 2 of this bundle will be considered later under section 17(1)(a) of FOIP.
- For bundle #2m (*Securities Division Staff Records*) all sections have been considered for record 1, page 1. None of these sections have been found to apply. Therefore, this page should be released to the Applicant. Record 2 will be considered under section 17(1)(a) of FOIP.
- For bundles #2 and #4 (*Consumer Protection Division Records*) all sections have been considered as cited by the SFSC. All have been found not to apply. Therefore, bundle #2 and #4 should be released to the Applicant.

- For bundle #17 (*Securities Division Staff Records*) the SFSC applied sections 15(1)(c), 15(1)(e), 15(1)(f) and 15(1)(k) of FOIP to the entire record. The SFSC also listed section 19(1)(b) of FOIP on the Index only but not the record (as noted earlier). On the face of the record there is nothing in the email which would indicate the information contained in the record would meet the criteria for exemption under section 19(1)(b) of FOIP.⁴⁶ Therefore, I will not consider this section. The remainder of the record was also found not to qualify under any of the subsections of section 15(1) of FOIP cited by the SFSC. Therefore, the only remaining information to consider is an email address and section 29(1) of FOIP.

[247] The SFSC must apply this analysis to the remainder of the records in the numerous bankers boxes.

[248] In addition, the SFSC should properly apply its discretion to the records **and** similar records in the numerous bankers boxes and consider releasing as much of the records as possible.

[249] Section 15(1)(k) of FOIP is a discretionary exemption and not mandatory. The SFSC applied this section to almost all of the records in the representative sample. However, as this is a representative sample and not the entire record, I have decided to still address additional sections cited by the SFSC.

11. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 22(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[250] Section 22(a) of FOIP provides as follows:

22 A head may refuse to give access to a record that:

(a) contains information that is subject to solicitor-client privilege;

⁴⁶For more on the criteria required for section 19(1)(b) of FOIP to apply refer to SK OIPC Review Report F-2006-002 from [36] to [90].

[251] The SFSC cited section 22(a) of FOIP on 21 bundles of the record. Further, the SFSC stated in its submission received April 24, 2013, the following:

28. In Report 2003/004, former Commissioner Rendek adopted the common law test for determining whether solicitor-client privilege applies to a record as set out in *Stevens v. Canada*, [1998] F.C. 89. The Court in that case held that solicitor-client privilege extends to:

- (a) all communications, verbal or written, of a confidential character, between a client and a legal adviser directly related to the seeking, formulating or giving of legal advice or legal assistance (including the legal adviser's working papers, directly related thereto) are privileged; and
- (b) all papers and materials created or obtained specifically for the lawyer's "brief" for litigation, whether existing or contemplated are privileged.

29. We agree and have adopted the test set out in the *Stevens* decision for the purposes of determining whether s.22(a) applies to the withheld records.

[252] I formally considered section 22(a) of FOIP in previous Review Reports. For example, in Review Report F-2012-003, I established what was needed from a public body in order to meet the test for this exemption:

[67] In my Report LA-2011-001, I discussed the solicitor-client exemption found in LA FOIP that is almost identical to that in FOIP. The report stated:

...

[52] The primary court case on solicitor-client privilege is Canada v. Solosky, which established the following three part test:

- i) a communication between solicitor and client;
- ii) which entails the seeking or giving of legal advice; and
- iii) which is intended to be confidential by the parties.

[68] I will apply this test to the portions of Records identified as being exempt pursuant to section 22(a) by the Ministry.⁴⁷

[253] I will now apply this test to the records in question.

(1) Is it a communication between solicitor and client?

⁴⁷SK OIPC Review Report F-2012-003, available at: www.oipc.sk.ca/reviews.htm.

[254] Upon review of all of the records cited for exemption under section 22(a) of FOIP, they appear to be communications between lawyers representing the SFSC and SFSC staff.

[255] Therefore, the records could qualify as communications between solicitor and client.

(2) Do these portions of the records entail the seeking or giving of legal advice?

[256] FOIP does not define “legal advice”. However, in my Review Report F-2012-003, I accepted a definition of legal advice from Alberta IPC Order 96-017:

[97] A closer look at Alberta IPC Order 96-017...shows:

[23.] In Ontario Order 210, [1990] O.I.P.C. No. 71, “legal advice” has been defined to include **“a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.”** I accept that definition.

[emphasis added]

[257] A number of the records cited for exemption by the SFSC under section 22(a) of FOIP have been withheld in their entirety.

[258] In Review Report F-2012-003, I advised public bodies that email headers (which generally contain the names of employees, dates and subject lines) would not qualify for exemption under section 22(a) of FOIP.⁴⁸

[259] The SFSC marked the email headers in the records as also exempt under section 22(a) of FOIP. However, this type of information does not constitute the seeking or giving of legal advice.

[260] Therefore, I recommend that the SFSC release the email headers and any signature lines on the applicable records cited for exemption under section 22(a) of FOIP.

⁴⁸*Ibid.* at [73] and [76].

[261] Further, I find that some of the information on the records cited for exemption by the SFSC under section 22(a) of FOIP appears to qualify for the second part of the test: entailing the seeking or giving of legal advice. The remainder of the records do not qualify for the second part of the test as the information contained within the records do not appear to entail the seeking or giving of advice.

(3) Are these portions of the record intended to be confidential by the parties?

[262] The SFSC's submission, received by my office April 24, 2013, did not speak specifically to the issue of confidentiality and section 22(a) of FOIP. However, there is reference to confidentiality for some records.

[263] I previously established what should be considered when determining whether records qualify as confidential for purposes of section 22(a) of FOIP. I incorporate and rely on that portion of that Review Report here.⁴⁹

[264] In Alberta IPC Order F2007-008, Alberta's Information and Privacy Commissioner found that by the nature of the records themselves, implicit confidentiality could be intended.⁵⁰

[265] On the face of the records, there is nothing explicit to suggest the content was meant to be confidential. Except for numerous automatic email disclaimers noted at the bottom of the majority of the records that constitute emails. The disclaimer states:

Disclaimer: This email (including attachments) is confidential, may be legally privileged or may contain information that is otherwise exempt from disclosure under applicable law. No waiver of confidentiality or privilege nor consent to disclosure may be inferred from the electronic nature or transmission of this communication. If you are not the intended recipient, your use, dissemination, copying or retention of this email is strictly prohibited. If you have received this email in error or are not a named recipient, please immediately notify the sender, by return email, and destroy all copies of this email in your possession.

⁴⁹SK OIPC Review Report F-2005-002 at [29], available at: www.oipc.sk.ca/reviews.htm.

⁵⁰AB IPC Order F2007-008 at [para 13] and [para 14], available at: www.oipc.ab.ca/pages/home/default.aspx.

- [266] With regards to such automatic email confidentiality notices, I considered these in Review Report F-2012-003 and found that depending on the wording and content, these confidentiality clauses could pass the ‘in confidence’ test.⁵¹
- [267] The disclaimer clause, at the end of several emails in the record before me, is worded similarly as the one I considered in the above Review Report. It is a more legalistic disclaimer than the usual confidentiality clause found at the end of general emails.
- [268] Therefore, I find that this would indicate that the communication was intended to be confidential and would meet the third part of the test for section 22(a) of FOIP.
- [269] Upon review of the remainder of the records, it appears that some would also qualify as there appears to be an implicit expectation of confidentiality. Some of the frank discussions between legal counsel and members of the Board of Directors for the SFSC apparent on some of the records would appear to be the type expected to only be shared between solicitor and client on a confidential basis.
- [270] Therefore, in addition, some of the records also appear to meet the third part of the test for section 22(a) of FOIP because there would appear to be an implicit expectation of confidentiality between solicitor and client with regards to what is discussed in some of the communications.
- [271] In conclusion, section 22(a) of FOIP was appropriately applied to some of the records. However, the SFSC also did not appropriately apply section 22(a) of FOIP to other records.
- [272] The SFSC should apply this analysis to the remainder of the responsive records in the numerous bankers boxes. Further, as section 22(a) of FOIP is a discretionary exemption, the SFSC should properly apply its discretion and consider releasing as much of the records as possible, even where section 22(a) of FOIP is found to apply.

⁵¹*Supra* note 47 at [80] to [81].

12. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[273] Section 17(1)(a) of FOIP is a discretionary exemption and states the following:

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;

[274] The only record remaining for which section 17(1)(a) of FOIP would need to be considered after finding section 15(1)(k) of FOIP applied is bundle #10 (*Financial Institutions Division Records*). However, I have preserved the analysis and its references to specific bundles consistent with my reasoning at the end of the section 15(1)(k) of FOIP analysis noted earlier in this Review Report.

[275] In its submission, received by my office April 24, 2013, the SFSC stated the following with regards to section 17(1)(a) of FOIP:

Bundle #1b:

...

40. The second email in the chain is from the Registrar to the Chair (the “Panel Chair”) of the three member hearing panel appointed to adjudicate the Securities Proceedings (the “Panel”) dated [date removed]. Section 17(1)(a) applies to the entire email, or in the alternative the body of the email, because it contains the Registrar’s advice and analysis of the situation to the Panel Chair in order for the Panel Chair to make decision as to how to proceed...

...

Bundle #1h:

...

70. The entire record (or alternatively, the bodies of the last four emails) is exempt pursuant to 17(1)(a) as the emails disclose advice, proposals, recommendations, analysis or policy options developed by or for the FCAA with respect to the Panel’s potential approaches...

...

Bundle #1i:

...

75. The entire record (or alternatively, the bodies of all the emails) is exempt pursuant to 17(1)(a) as the emails disclose advice, proposals, recommendations, analysis or policy options developed by or for the FCAA with respect to...

[276] Similar sparse descriptions of bundles are provided in the submission from the SFSC.

[277] In order for section 17(1)(a) of FOIP to apply, the SFSC must demonstrate that:

- the withheld portions of the record qualify as advice, proposals, recommendations, analyses or policy options; and
- the record was developed by or for a government institution or a member of the Executive Council.

[278] I will now address these two criteria.

[279] In Review Report LA-2011-001, I considered this section of FOIP and quoted *The Report on the Commission on Freedom of Information and Individual Privacy/1980*. The quote emphasized the importance of factual material and information underlying decisions taken by government being made accessible to the public.⁵²

[280] In my recent Review Report F-2012-004, I relied on an Alberta resource, *FOIP Guidelines and Practices* (2009). That resource provided that names, correspondents, dates and subject lines that do not reveal advice or anything substantive would not qualify for the advice from officials exemption in Alberta. The exemption is meant to allow for candor during the policy-making process, rather than providing for the non-disclosure of all forms of advice.⁵³ I adopted a similar approach as Alberta in that Review Report.

[281] In order for section 17(1)(a) of FOIP to apply, there needs to be an opinion expressed involving an exercise of judgment, and/or a weighing of the significance of the facts. Simply stating factual information is not included.

⁵²*Supra* note 7 at [58].

⁵³SK OIPC Review Report F-2012-004 at [27] to [30], available at: www.oipc.sk.ca/reviews.htm.

[282] In Review Report LA-2010-001, I considered the equivalent section in LA FOIP and provided criteria and definitions for the terms “advice”, “recommendation” and “proposals and analysis or policy options”.⁵⁴ I will rely on those criteria and definitions in this Review Report.

[283] In the case before me, I examined the records cited for this discretionary exemption and the SFSC’s submission received by my office on April 24, 2013 to help me with establishing the role of each individual involved in the discussions/correspondence.

[284] From a review of the records, it appears that all are emails between SFSC staff members or officers. There does not appear to be any emails from outside entities other than one external private lawyer apparently representing the SFSC. This lawyer could be considered to have a sufficient connection to the public body whereby emails involving him could be considered to be created by the SFSC or for (on behalf of) the SFSC.

[285] Therefore, it appears that all of the records cited for exemption under section 17(1)(a) of FOIP were created by the SFSC or for the SFSC.

[286] I will now consider whether the records contain advice, proposals, recommendations, analysis or policy options as defined earlier.

[287] From a review of the records, some appear to contain advice, recommendations or proposals. However, some do not. For example, bundle #4 (*Financial Institutions Division Records*) appears to contain a copy of an *Offer to Purchase* involving the Applicant and a complaint filed by the Applicant. The records in this bundle do not appear to contain advice, proposals, recommendations, analysis or policy options as defined earlier.

⁵⁴SK OIPC Review Report LA-2010-001 at [28] to [31].

[288] Further, in Review Report F-2012-003, I advised public bodies that email headers (which generally contain the names of employees, dates and subject lines) would not qualify for exemption under an equivalent section in LA FOIP.⁵⁵

[289] I recommend that the SFSC release the email headers for all emails and release them to the Applicant. The exception are those emails where the SFSC has highlighted and marked specific email addresses, names and business contact information with section 29(1) of FOIP. These will need to be considered in the analysis for that section. However, all other email headers should be released as they do not qualify for exemption under section 17(1)(a) of FOIP.

[290] In conclusion, I find that section 17(1)(a) of FOIP has been appropriately applied by the SFSC to some of the records in question. However, I also find that the SFSC did not appropriately apply section 17(1)(a) of FOIP to others, including, but limited to, the email headers.

[291] The SFSC should apply this analysis to the remainder of the responsive records in the numerous bankers boxes. Further, as section 17(1)(a) of FOIP is a discretionary exemption, the SFSC should properly apply its discretion and consider releasing as much of the records as possible, even where section 17(1)(a) of FOIP is found to apply.

13. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 17(1)(b) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[292] Section 17(1)(b) of FOIP provides as follows:

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:

⁵⁵*Supra* note 47 at [73].

- (i) officers or employees of a government institution;
- (ii) a member of the Executive Council; or
- (iii) the staff of a member of the Executive Council;

[293] All of the remaining applicable bundles that the SFSC cited section 17(1)(b) of FOIP on were captured under section 15(1)(k) of FOIP. However, I leave this analysis consistent with my reasoning noted at the end of the 15(1)(k) of FOIP analysis.

[294] As noted earlier, the SFSC did not provide any arguments for records under the category *Financial Institutions Division Investigation Records* by the timeline provided for. Therefore, there are no supporting documents from the SFSC for bundle #4.

[295] I will now consider the application of section 17(1)(b) of FOIP to the record.

[296] I formally considered section 17(1)(b) of FOIP in a number of previously issued Review Reports.⁵⁶ In one of those Review Reports, I outlined the test for section 17(1)(b) of FOIP.⁵⁷

[297] From a review of the bundles in question, record 1 in bundle #4 appears to consist of a copy of the Applicant's *Offer to Purchase* property and accompanying *Acceptance and Property Condition Disclosure Statement*. The offer was signed by the Applicant. These documents would not constitute a "consultation" or a "deliberation", as defined in the above noted Review Report.

[298] Record 2 in bundle #4 appears to be a copy of a complaint form completed by the Applicant and submitted to the SFSC. Again, this would not constitute a consultation or a deliberation, as defined above.

⁵⁶SK OIPC Review Reports F-2004-001 at [9] to [13], F-2004-002 at [8] to [12], F-2005-004 at [15] to [21], F-2006-004 at [29] to [38], F-2007-002 at [10] to [15] and F-2013-007 at [30] to [61], available at: www.oipc.sk.ca/reviews.htm.

⁵⁷*Supra* note 5 at [11].

[299] Therefore, bundle #4 does not qualify for exemption under section 17(1)(b) of FOIP.

[300] I found earlier in this Review Report that specific information contained within bundle #4 qualified for exemption under section 23(3)(h) of FOIP. However, the remainder of bundle #4 does not qualify under the remaining sections cited by the SFSC. Therefore, the remainder of bundle #4 should be released to the Applicant.

[301] From a review of the information contained in record 2 of bundle #1c, it appears that the information pertains to the booking of a conference call.

[302] In Review Report F-2006-004, I considered this type of information and the applicability of section 17(1)(b) of FOIP to this type of information. I found Alberta IPC Order F2004-026 useful as it suggested that the fact that an employee participated in a consultation could not qualify under Alberta's equivalent section, unless this fact also revealed the substance of the consultation.⁵⁸

[303] The fact that a consultation or deliberation may be occurring on a certain date is not what is contemplated by section 17(1)(b) of FOIP. Rather, it is meant to address substantive information within a consultation or deliberation.

[304] Therefore, section 17(1)(b) of FOIP would not apply to the remaining bundles.

[305] The SFSC should apply this analysis to the remainder of the responsive records in the numerous bankers boxes. Further, as section 17(1)(b) of FOIP is a discretionary exemption, the SFSC should properly exercise its discretion and consider releasing as much of the records as possible, even where section 17(1)(a) of FOIP is found to apply.

14. Did Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 13(1)(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

⁵⁸SK OIPC Review Report F-2006-004 at [33], available at: www.oipc.sk.ca/reviews.htm.

[306] Section 13(1)(a) of FOIP is a mandatory exemption and states as follows:

13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

(a) the Government of Canada or its agencies, Crown corporations or other institutions;

[307] All of the remaining records cited for exemption by the SFSC under section 13(1)(a) of FOIP were captured under section 15(1)(k) of FOIP. However, consistent with my reasoning at the end of that section, I have left the analysis for section 13(1)(a) of FOIP as follows.

[308] As noted earlier, the SFSC did not provide a submission by the specified timeline for records listed under the category, *Consumer Protected Division Investigation* records. Therefore, there are no arguments to support the SFSC's application of section 13(1)(a) of FOIP to bundle #1 under that category.

[309] Upon review of the Index provided to my office by the SFSC on February 15, 2013, it stated as follows with regards to bundle #1: "These records contain information obtained in confidence from an agency of Government."

[310] Upon review of bundle #1, specific information is marked with section 13(1)(a) of FOIP by the SFSC. The records in this bundle appear to be SFSC complaint cover sheets and a copy of a letter from the SFSC to the Royal Canadian Mounted Police (RCMP).

[311] Section 13(1)(a) of FOIP requires that the information contained in the record be "obtained in confidence, implicitly or explicitly, **from**" [emphasis added] the other government.

[312] The information highlighted by the SFSC for consideration under section 13(1)(a) of FOIP appears to be information originating from the SFSC.

[313] A further example, record 2 (of bundle #1) is a letter from the SFSC to the RCMP Regina Border Integrity Section. The SFSC has applied section 13(1)(a) of FOIP to the address line for the RCMP and the entire body of the letter.

[314] This information does not appear to have been “obtained in confidence, implicitly or explicitly, from” another government. Therefore, I find that section 13(1)(a) of FOIP does not apply.

[315] The SFSC should apply this analysis to the remainder of the responsive records in the numerous bankers boxes. Further, the SFSC should look at severing the information that qualifies for section 13(1)(a) of FOIP and releasing as much of the records as possible.

15. Did Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 14(1)(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[316] Section 14(1)(a) of FOIP provides as follows:

14 A head may refuse to give access to a record, the release of which could reasonably be expected to prejudice, interfere with or adversely affect:

(a) relations between the Government of Saskatchewan and another government;
or

[317] All of the remaining records cited for exemption by the SFSC under section 14(1)(a) of FOIP were captured under section 15(1)(k) of FOIP. However, consistent with our reasoning at the end of that section I have left the analysis for section 14(1)(a) of FOIP as follows.

[318] I have not formally considered section 14(1)(a) of FOIP previously. Other past Commissioners from this office have also not formally considered this section.

[319] This is a discretionary harm based exemption which requires that a government institution establish that the harms contemplated by the section are likely to occur if the record were released.

[320] This is articulated well in Ontario IPC Order MO-1583:

In Order PO-1747, Senior Adjudicator David Goodis stated the following with respect to the words “could reasonably be expected to” in the provincial equivalent to section 8(1):

The words “could reasonably be expected to” appear in the preamble of section 14(1), as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated “harms”. In the case of most of these exemptions, in order to establish that the particular harm in question “could reasonably be expected” to result from disclosure of a record, the party with the burden of proof **must provide “detailed and convincing” evidence to establish a “reasonable expectation of probable harm”** [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* 1998 CanLII 7154 (ON CA), (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing reflex, (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].⁵⁹

[emphasis added]

[321] The SFSC did not provide a submission within the timeline provided for records falling under the category, *Consumer Protection Division* records. The Index provided by the SFSC simply recites section 14(1)(a) of FOIP and is not helpful in this regard.

[322] Section 14(1)(a) of FOIP contemplates three types of harm: prejudice, interfere with or adversely affect relations between the Government of Saskatchewan and another government.

[323] It is not clear what harm is expected to occur and which relations are reasonably expected to experience the harm (i.e. identifying the other government).

⁵⁹ON IPC Order MO-1583 at p. 3, available at: www.ipc.on.ca/english/Home-Page/.

[324] Therefore, I find that the SFSC has failed to meet the burden of proof in establishing that section 14(1)(a) of FOIP applies.

[325] The SFSC should review the remainder of the responsive records in the numerous bankers boxes and consider the criteria established above. Further, as section 14(1)(a) of FOIP is a discretionary exemption, the SFSC should properly apply its discretion and consider releasing as much of the records as possible, even where section 14(1)(a) of FOIP is found to apply.

16. Did Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 15(1)(i) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[326] Section 15(1)(i) of FOIP provides as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(i) reveal law enforcement intelligence information;

[327] All of the remaining records cited for exemption by the SFSC under section 15(1)(i) of FOIP were captured under section 15(1)(k) of FOIP. However, consistent with my reasoning at the end of that section, I have left the analysis for section 15(1)(i) as follows.

[328] The SFSC did not provide a submission within the timeline provided for records falling under the *Consumer Protection Division* records. The Index provided by the SFSC simply recites this section of FOIP and is not helpful in this regard.

[329] Neither I, nor past Commissioner from this office have previously considered this section of FOIP in a formal Report. However, section 15(1)(i) of FOIP would require analysis of two distinct questions:

1. Does the matter qualify as a law enforcement matter? and

2. Does the information qualify as intelligence information?

(1) Does the matter qualify as a law enforcement matter?

[330] It has already been established earlier in this Review Report that the matter which these records pertain does qualify as a law enforcement matter. I will now consider the second question.

(2) Does the information qualify as intelligence information?

[331] FOIP does not define "intelligence information". Therefore, it is necessary to consider definitions from other sources.

[332] In Ontario IPC Order M-202 the term intelligence information is defined as follows:

The term "intelligence" is not defined in the Act. The Concise Oxford Dictionary, eighth edition, defines "intelligence" as "the collection of information, [especially] of military or political value", and "intelligence department" as "a [usually] government department engaged in collecting [especially] secret information".

The Williams Commission in its report entitled Public Government for Private People, the Report of the Commission on Freedom of Information and Protection of Privacy/1980, Volume II at pages 298-99, states:

Speaking very broadly, intelligence information may be distinguished from investigatory information by virtue of the fact that the former is generally unrelated to the investigation of the occurrence of specific offenses. For example, authorities may engage in surveillance of the activities of persons whom they suspect may be involved in criminal activity in the expectation that the information gathered will be useful in future investigations. In this sense, intelligence information may be derived from investigations of previous incidents which may or may not have resulted in trial and conviction of the individual under surveillance. Such information may be gathered through observation of the conduct of associates of known criminals or through similar surveillance activities.

In my view, for the purposes of section 8(1)(g) of the Act, **"intelligence" information may be described as information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violation of law,**

and is distinct from information which is compiled and identifiable as part of the investigation of a specific occurrence.⁶⁰

[emphasis added]

[333] Newfoundland and Labrador IPC Report A-2009-003 defines intelligence information as follows:

[32] It is in this sense that “intelligence” is used in sections 2 and 22(1)(e); **it refers to information that has been secretly or covertly gathered in furtherance of police or other penal investigations and/or prosecutions.** This is the type of information that is protected by section 22(1)(e). On its face, the information that has been withheld under this section is certainly not “law enforcement intelligence information”; it is not information that has been gathered as part of a police or other penal investigation or prosecution. The Department has also not presented evidence to show how section 22(1)(e) is applicable, and therefore has failed to discharge the burden of proof with respect to this section.⁶¹

[emphasis added]

[334] It appears that in order to qualify as intelligence information, it must have been gathered in a covert or secret way. Compiled information that is identifiable and part of a specific occurrence, such as information collected as part of a regular investigation, would not qualify as intelligence information. I adopt this interpretation of intelligence information for purposes of section 15(1)(i) of FOIP.

[335] Bundle #1 consists of SFSC complaint cover sheets and a copy of a letter from the SFSC to the RCMP. Nothing in the record suggests the information contained in the complaint cover sheets or the letter to the RCMP was gathered in a covert or secret way. The information consists of a summary of a complaint received by the SFSC. Further, nothing in the letter to the RCMP suggests the information contained was gathered or compiled in a covert or secret way.

[336] As noted, the SFSC did not provide its arguments to support the application of this section within the timeframe provided. Therefore, on the face of the records, it does not

⁶⁰ON IPC Order M-202 at pp. 9-10, available at: www.ipc.on.ca/english/Home-Page/.

⁶¹NL IPC Report A-2009-003, available at: www.oipc.nl.ca/default.htm.

appear that the information in question qualifies as intelligence information as contemplated by section 15(1)(i) of FOIP.

[337] In conclusion, I find that the SFSC failed to meet the burden of proof in establishing that section 15(1)(i) of FOIP applies to the record.

[338] The SFSC should review the remainder of the responsive records in the numerous bankers boxes and consider the criteria established above. Further, as section 15(1)(i) of FOIP is a discretionary exemption, the SFSC should properly apply its discretion and consider releasing as much of the records as possible even where section 15(1)(i) of FOIP could apply.

17. Did Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 29(1) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[339] Section 29(1) of FOIP states the following:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[340] All of the remaining records cited for exemption by the SFSC under section 29(1) of FOIP were captured under other sections of FOIP already covered in this Review Report. However, consistent with my reasoning at the end of that section, I have also included my analysis for section 29(1) of FOIP as follows.

[341] In order for section 29(1) of FOIP to apply, the information in question must constitute “personal information” of someone, other than the Applicant, pursuant to section 24(1) of FOIP.

[342] Section 24 of FOIP defines “personal information” as follows:

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

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) **Repealed.** 1999, c.H-0.021, s.66.

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number as defined in *The Health Information Protection Act*;

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

(f) the personal opinions or views of the individual except where they are about another individual;

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

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

(1.1) “Personal information” does not include information that constitutes personal health information as defined in *The Health Information Protection Act*.

(2) “**Personal information**” does not include information that discloses:

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a government institution or a member of the staff of a member of the Executive Council;

(b) the salary or benefits of a legislative secretary or a member of the Executive Council;

(c) the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;

(d) financial or other details of a contract for personal services;

(e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;

(f) details of a discretionary benefit of a financial nature granted to an individual by a government institution;

(g) expenses incurred by an individual travelling at the expense of a government institution.

(3) Notwithstanding clauses (2)(e) and (f), “**personal information**” includes information that:

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1).

[343] The SFSC cited section 29(1) of FOIP to portions of the records from several bundles in the record.

[344] From an examination of the remaining bundles, it appears that the SFSC withheld the following types of information (non-exhaustive list):

- Entire emails including headers and signature lines sent and received by SFSC employees and other individuals;
- Home email addresses of SFSC Panel Members and email addresses of other individuals;
- An eBay page containing an item for sale;

- Notes by an SFSC employee taken during an interview of a witness statement; and
- The names of individuals, business fax and business telephone numbers.

[345] In its submission, received by my office April 24, 2013, the SFSC stated the following regarding those remaining bundles:

Bundle #1g:

...

65. The entire last email is exempt pursuant to 29(1)(b) and 24(1)(g). That email was sent to the FCAA by an individual who is not an employee of the FCAA and it was of a confidential nature. Further, the personal home email address of Panel Members [names removed] in the second email are exempt pursuant to s.29(1)(b) as personal information.

...

Bundle #1l:

...

90. Record 2 is a chain of emails. The earliest email dated [date removed] was sent by the Applicant's legal counsel to request an adjournment of a scheduled hearing and has been separately disclosed to the Applicant. The second email dated [date removed] sent by the Registrar to the Panel Chair forwarded the email of the Applicant's legal counsel. The last email dated [date removed] from the Panel Chair to the Registrar responded to the prior emails.

91. The last email is exempt in its entirety pursuant to 29(1)(b) and 24(1)(g) as it is correspondence provided to the FCAA by an individual who is not an employee of the FCAA and it is intended to be confidential. In the alternative, the first sentence of the email is personal information and exempt pursuant to 29(1)(b).

[346] No submission was received from the SFSC by the timeline provided for records cited for exemption under section 29(1) of FOIP for records in the *Financial Institutions Division* and *Consumer Protection* categories. The Index only cites the section and therefore is of little assistance in this regard.

[347] As a result, I can only determine whether the section applies based on what was marked on the pages of the record for the bundles under these sections.

- [348] I will first address the withholding of entire emails which included headers and signature lines sent and received by SFSC employees and other individuals.
- [349] I considered this type of information in my Review Report F-2012-006 and found “business card” information would not qualify for exemption under section 29(1) of FOIP.⁶²
- [350] In order to qualify as personal information, the information in question must be of a personal nature. I discussed this in my Review Report F-2010-001.⁶³
- [351] The SFSC appears to have withheld the business card information on several records being considered under this section. This includes the business email addresses of legal counsel for the SFSC and SFSC employees.
- [352] This type of information would not constitute personal information pursuant to section 24(1) of FOIP. I recommend release of the business card information on all records as it does not constitute personal information pursuant to section 24(1) of FOIP.
- [353] The SFSC also severed the home email addresses of several SFSC Panel Members. From a review of the emails, the content of the emails appear to be work related content (work product). The SFSC Panel Members appear to be conducting SFSC work via home email addresses. The content of the emails has already been addressed in previous sections of this analysis. The focus here is whether the home email address becomes business card information once work product is sent from the home email address.
- [354] Information must be of a personal nature of an identifiable individual to constitute personal information as noted earlier. Section 24(1)(e) of FOIP provides that home email addresses are normally considered personal information. The content of what was sent from the home email address (i.e. work product) in this case would not automatically change the personal nature of a home email address. It is unclear whether the home

⁶²*Supra* note 2 at [138] and [139].

⁶³SK OIPC Review Report F-2010-001 at [126] and [128], available at: www.oipc.sk.ca/reviews.htm.

email address is used exclusively for SFSC business by the Panel Members. If that were the case, it may be possible that the home email address is indeed a main business email address; in which case it would be considered business card information. However, that does not appear to be the case here as the home email address also includes the name of the spouse for one Panel Member.

[355] Therefore, I find that the home email address would constitute personal information pursuant to section 24(1)(e) of FOIP. I recommend the SFSC continue to withhold the home email addresses of the SFSC Panel Members.

[356] Record 2, page 1 of bundle #11 (*Tribunal Records*) appears to be an email between SFSC employees and its legal counsel. The content of the email appears to pertain largely to adjournments of a hearing.

[357] The above would not qualify as personal information about an identifiable individual, as it is not personal in nature. This appears to be general information pertaining to upcoming proceedings and processes. Therefore, this would not qualify as personal information under section 24(1) of FOIP and should be released.

[358] Other information of a similar nature in the remaining records should also be released in this bundle and the following additional bundles: #1g (*Tribunal Records*), #17 (*Securities Division Staff Records*), #1, #3, #6 (*Financial Institutions Division Records*) #8 and #11 (*Consumer Protection Division Records*).

[359] Also contained in record 2, page 1 of bundle #11 (*Tribunal Records*) is reference to an SFSC employee attending a personal family function. This would qualify as personal information pursuant to section 24(1)(k)(i) of FOIP as it contains the name of the individual combined with other information that is personal in nature of a third party. This type of information should continue to be withheld in the records.

[360] In bundle #17 (*Securities Division Staff Records*) the SFSC severed the personal home email address of an individual who appears to be a member of the public (not business

card information). This would qualify as the personal information of the individual who is not the Applicant, pursuant to section 24(1)(k)(i) of FOIP, as it contains the name of the individual combined with other information that is personal in nature (home email address).

[361] In bundle #1 (*Consumer Protection Division Records*), the SFSC withheld other information pertaining to an identifiable individual which appears to also qualify as personal information as it appears to be about the individual's financial purchases.

[362] This information would qualify as personal information pursuant to 24(1)(b) of FOIP (financial transactions in which the individual has been involved) and section 24(1)(k)(i) of FOIP (name of the individual combined with other information of a personal nature). This type of information in the record should continue to be withheld from the Applicant.

[363] The only exceptions would be record 1, page 3 in bundle #1 and record 1, page 1 of bundle #6 (*Consumer Protection Division Records*). The SFSC withheld its email responses to an individual which appear to contain questions, explanations, process and/or the role of the SFSC. This type of information would not constitute personal information of an identifiable individual that is personal in nature. This type of information would be considered work product, not personal information.

[364] In Review Report F-2006-001, I considered this type of information to be employee "work product" information and found that this type of information would not qualify as personal information.⁶⁴

[365] Bundle #1c (Tribunal Records) also contains information that appears to be work product type information and not personal information according to section 24(1) of FOIP. The SFSC withheld record 2 of bundle #1c in its entirety. Included in this email is correspondence referring to the work schedules of SFSC Panel Members with regards to

⁶⁴*Supra* note 4 at [113].

availability for a conference call. The availability appears to be work related and not personal in nature.

[366] In my Review Report LA-2012-002, I considered work product information further and found that information relating to position, function or responsibility of an individual would consist of information disclosed in a job description and would not normally be considered personal information. This includes hours of work.⁶⁵

[367] Therefore, the work schedules of when the Panel Members were in the office or not would not constitute personal information and should be released to the Applicant.

[368] Bundle #3 (*Consumer Protection Division Records*) was withheld in its entirety. The bundle appears to be copies of an eBay advertisement available on the internet. Again, the advertisement would not constitute personal information of an identifiable individual that is personal in nature. This bundle should be released to the Applicant.

[369] In bundle #11 (*Financial Institutions Division Records*), the SFSC withheld the names of three individuals and the phone number for one of them. The SFSC has not clarified if this is a business phone number for the individual or a personal home phone number. I recommend the SFSC release this information if it is the business phone number of the individual as it does not constitute personal information, but qualifies as business card information.

[370] The remaining two names on the record do not appear to be followed by any other information. In fact, one of the names appears to be the person employed by the law firm who sent the fax in his/her professional capacity.

⁶⁵SK OIPC Review Report LA-2012-002 at [25], available at: www.oipc.sk.ca/reviews.htm.

[371] In Review Report F-2012-006, I found that the name by itself did not constitute personal information. Information needs to be personal in nature to qualify under section 24(1) of FOIP.⁶⁶

[372] It is not clear how the disclosure of the names alone in this case reveals information of a personal nature about these individuals. As noted earlier in this Review Report, the SFSC did not provide a submission to support its application of the exemptions cited on those records falling under the last two categories of records in this case: *Financial Institutions Division* and *Consumer Protection Division* records.

[373] Therefore, I find that this information on bundle #11 does not qualify for exemption under section 29(1) of FOIP as it does not appear to be personal information pursuant to section 24(1) of FOIP.

[374] However, the other information withheld in bundle #11 under section 29(1) of FOIP would qualify as personal information under section 24(1) of FOIP. This includes the name of the referral source with corresponding fax number and another individual's name, along with the individual's phone number.

[375] Also in bundle #11 (*Financial Institutions Division Records*), the SFSC withheld the name of an individual that appears to be labeled a "referral source". On subsequent records in bundle #11 and bundle #8 (*Financial Institutions Division Records*), the SFSC also withheld the individual's business fax number and business email address. It should be noted that the records indicate the Applicant would already be aware of this information. The SFSC also withheld the business email address of the legal counsel for this individual.

[376] I have already established that this type of information is considered business card information and should be released.

⁶⁶*Supra* note 2 at [146] to [149].

[377] Bundle #8 (*Financial Institutions Division Records*) appears to include an email from the above noted referral source, along with notes taken from a conversation with him.

[378] The notes that appear from a witness statement do not appear to constitute personal information as they appear to contain a step by step contact the referral source had with the Applicant. Most, if not all of the information in these notes, would likely be known to the Applicant seeing as the Applicant was a party to the activities documented.

[379] The information contained in this record (notes) appear to pertain to the Applicant and not the referral source. Therefore, it would not constitute personal information of the referral source and should be released to the Applicant.

[380] The content of the email in bundle #8 is about the referral source and the referral source's lawyer. This appears to be personal information as it is the referral sources wishes directed to their lawyer. That would be considered personal in nature.

[381] In conclusion, I find that the SFSC appropriately applied section 29(1) of FOIP to some of the information in the record.

[382] I also find that the SFSC did not appropriately apply section 29(1) of FOIP to other information in the record.

[383] I recommend the SFSC continue to withhold that information found to be exempt from release pursuant to section 29(1) of FOIP. Further, that the SFSC release to the Applicant that information found not to be exempt pursuant to section 29(1) of FOIP.

[384] The SFSC should review the remainder of the responsive records in the numerous bankers boxes and apply the criteria established above.

18. Did the Saskatchewan Financial Services appropriately apply section 22(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to the record in question?

[385] Section 22(b) of FOIP is a discretionary exemption. It states the following:

22 A head may refuse to give access to a record that:

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel; or

[386] All of the remaining records cited for exemption by the SFSC under section 22(b) of FOIP were captured under other sections of FOIP addressed earlier in this Review Report. However, consistent with my reasoning at the end of section 15(1)(k) of FOIP, I have left the analysis for section 22(b) of FOIP as follows.

[387] I have formally considered section 22(b) of FOIP. In Review Report F-2012-006, I determined that the section required analysis of two distinct questions:

1. Were the records “prepared by or for” an agent or legal counsel for a government institution?
2. Were the records provided in relation to a matter involving the provision of advice or other services by the agent or legal counsel?⁶⁷

[388] I will now consider these two questions.

(1) Were the records “prepared by or for” an agent or legal counsel for a government institution?

[389] For bundles #1d, the record does not appear to have been prepared by or for an agent or legal counsel for a government institution. The marked portion appears to have been created by an SFSC employee for another SFSC employee. Legal counsel is not included in the email exchange.

[390] In bundle #2e, the second email is from an SFSC employee to other SFSC employees and includes legal counsel for the SFSC.

⁶⁷*Ibid.* at [107].

[391] Recently released Alberta IPC Order F2013-13 speaks to a similarly worded section 27(1)(b) of Alberta's FOIP.

[para 243] In Order F2008-028, the Adjudicator held that the term "prepared" in section 27(1)(b) **is not intended to refer to information that is not substantive, such as dates, letterhead, and names and business contact information.** He said at paragraphs 156 – 158 of that order:

...

However, to fall under section 27(1)(b), **there must be "information prepared" as those words are commonly understood** (Order 99-027 at para. 110). **I therefore do not extend the application of section 27(1)(b) to the dates, letterhead, and names and business contact information of the sender and recipient of the information** on pages 305-311. **These are not items of information that were "prepared".** In keeping with principles articulated in respect of sections 22 and 24 of the Act, section 27(1)(b) **does not extend to non-substantive information, such as dates and identifying information about senders and recipients, unless this reveals the substantive content elsewhere.** However, in the context of section 27(1)(b) - which applies more broadly to information that was prepared rather than the substance of deliberations or advice under sections 22 and 24 - I find that the heading on page 309 reveals the information that was prepared in the rest of the document.⁶⁸

[emphasis added]

[392] I adopt (and adapt) a similar approach to Saskatchewan's section 22(b) of FOIP. In order for section 22(b) of Saskatchewan's FOIP to apply, the following must also be considered:

- It must be a "record" that was "prepared" "in relation to" the advice or services **or** compiled or created for the purpose of providing the advice or services;
- The person preparing the record must be either the person providing the advice or service **or** a person who is preparing the record in question on behalf of, or, for the use of, the provider of advice or services;
- It generally does not include non-substantive information such as dates, letterhead, and names and business contact information unless disclosure of this reveals substantive information; and
- It generally does not include communications of an administrative nature (e.g., distributing documents, arranging meetings).

⁶⁸AB IPC Order F2013-13, available at: www.oipc.ab.ca/pages/home/default.aspx.

[393] In this case, it appears that a number of the records were prepared by legal counsel for the SFSC or involve legal counsel in some fashion.

[394] However, for bundle #1d, the portions in question appear to be communications directed at the Chairperson of the Panel and do not involve legal counsel.

[395] Therefore, I find that portions of record 2 in bundle #1d do not meet the first part of the criteria for section 22(b) of FOIP. That being, the information does not appear to have been created by or for legal counsel.

[396] I find that the first and second email on record 2 of bundle #2e would however constitute a record prepared by or for legal counsel and would qualify for the first part of the criteria for section 22(b) of FOIP.

[397] This does not include the information in record 2 of bundle #2e that constitutes dates, letterhead, names and business contact information attached to the emails. This type of information would not constitute information “prepared” and is non-substantive information. This type of information should be released.

(2) Were the records provided in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

[398] It is important to consider 22(b) of FOIP within the context of the overall section it is contained within, which is solicitor-client privilege.

[399] I have already defined legal advice in an earlier section of this Review Report. However, legal services will need to be defined.

[400] In Review Report F-2012-003, I considered the definition of “legal services” in Alberta IPC Order 98-016.⁶⁹

[401] From a review of record 2 of bundle #2e, it appears that the record also qualifies for the second part of the test. Therefore, I recommend that record 2 of bundle #2e continue to be withheld, except for the non-substantive material noted earlier (i.e. dates, letterhead, names and business contact information).

[402] The SFSC should review the remainder of the responsive records in the numerous bankers boxes and consider the criteria established above. Further, as section 22(b) of FOIP is a discretionary exemption, the SFSC should properly apply its discretion and consider releasing as much of the records as possible even where section 22(b) of FOIP is found to apply.

19. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 22(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to the record in question?

[403] Section 22(c) of FOIP provides as follows:

22 A head may refuse to give access to a record that:

...

(c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other person in relation to a matter involving the provision of advice or other services by the agent or legal counsel.

[404] All of the remaining records cited for exemption by the SFSC under section 22(c) of FOIP were captured under earlier sections of FOIP considered in this Review Report. However, consistent with my reasoning at the end of section 15(1)(k) of FOIP, I have left the analysis for section 22(c) of FOIP as follows.

⁶⁹*Supra* note 47 at [98], “legal services” was defined as “any law-related service performed by a person licensed to practice law”. I rely on the same definition for purposes of section 22(b) of FOIP.

[405] The test for this section used by my office was established in my Review Report F-2012-003 as follows:

[86] The test set out for this exemption is found in Alberta IPC Order F2006-027 as follows:

[para 49] I will first consider whether section 27(1)(c) of FOIP applies. In order for section 27(1)(c) of FOIP to apply, the following two criteria must be met:

- The record must be correspondence between an agent or lawyer of the Minister of Justice and Attorney General or a public body and any other person; and
- The information in the correspondence must be in relation to a matter involving the provision of advice or other services by the agent or lawyer (Order 98-016 (para 17)).

[87] I will adopt this test for these Records.

[406] I will now consider this test and the records before me in this case.

(1) Does the record contain correspondence between an agent or lawyer of the Minister of Justice and Attorney General or a public body and any other person?

[407] As noted under the analysis for section 22(b) of FOIP, the record in question is a portion of record 2 for bundle #1d.

[408] The portion cited by the SFSC for exemption under section 22(c) of FOIP in bundle #1d is an email between the Chairperson of the Panel and another SFSC employee. The email does not appear to include correspondence between an agent of the Attorney General or lawyer for the SFSC.

[409] Therefore, this record would not meet the first part of the test for section 22(c) of FOIP. As a result, there is no need to consider the second part of the test for section 22(c) of FOIP.

[410] The SFSC should review the remainder of the responsive records in the numerous bankers boxes and consider the criteria established above. Further, as section 22(c) of FOIP is a discretionary exemption, the SFSC should properly apply its discretion and consider releasing as much of the records as possible, even where section 22(c) of FOIP is found to apply.

20. Did the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply section 18(1)(f) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[411] Section 18(1)(f) of FOIP provides as follows:

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.

[412] The only remaining record in respect to which the SFSC cited section 18(1)(f) of FOIP is bundle #1a (*Tribunal Records*). This record was not captured by earlier sections of FOIP considered in this Report so this analysis applies to bundle #1a (*Tribunal Records*).

[413] In its submission, received April 24, 2013, the SFSC stated the following with regards to this record:

Bundle #1a:

37. Record 1 is a Facility Rental Contract the FCAA entered into with the RCMP for the rental of the RCMP Heritage Centre for the purposes of holding hearing in the Securities Proceedings. Release of the information in the contract, particularly the FCAA credit card number, could reasonably be expected to prejudice the economic interest of the FCAA. The uncontrolled dissemination of credit card information could reasonably be expected to result in unauthorized and fraudulent transactions being charged against the card.

[414] I formally considered this section in previous Review Reports.⁷⁰ In Review Report F-2012-001/LA-2012-001, I commented on this section and established that 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/records were to be released.⁷¹

[415] What is required in order for a record to be found exempt under section 18(1)(f) of FOIP is sufficient argument and/or evidence put forward by the government institution showing a reasonable expectation of harm if the record were released.

[416] From a review of the record, it appears to be a facility rental contract as indicated by the SFSC in its submission. The record is two pages long. The second page does contain a credit card number as indicated by the SFSC.

[417] It is reasonable to conclude that release of this credit card number could be expected to prejudice the economic interest of the government institution, but nothing else on the record would suggest such prejudice.

[418] Therefore, I find that section 18(1)(f) of FOIP was appropriately applied to this piece of information in the record only and as such, the credit card number should continue to be withheld.

[419] However, the remainder of the contract appears to contain the name and contact information of the SFSC employee who set up the contract, the dates of the rental, name of the event and the expected number of attendees and the amounts for the rooms and other related fees.

⁷⁰SK OIPC Review Reports F-2013-007 at [62] to [70], F-2012-001/LA-2012-001 at [60] to [71], F-2006-002 at [104] to [111] and F-2004-007 at [26] to [38], available at: www.oipc.sk.ca/reviews.htm.

⁷¹SK OIPC Review Report F-2012-001/LA-2012-001 at [66] and [67], available at: www.oipc.sk.ca/reviews.htm.

[420] The SFSC has not provided any argument to show how the release of this information could reasonably be expected to harm the economic interest of the government institution.

[421] Therefore, I find that the SFSC has failed to meet the burden of proof in establishing that section 18(1)(f) of FOIP applies to the remainder of the record. The SFSC should therefore release the remainder of the record.

[422] The SFSC should review the remainder of the responsive records in the numerous bankers boxes and consider the criteria established above. Further, as section 18(1)(f) of FOIP is a discretionary exemption, the SFSC should properly apply its discretion and consider releasing as much of the records as possible even where section 18(1)(f) of FOIP is found to apply.

V FINDINGS

[423] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not meet the burden of proof in accordance with section 61 of *The Freedom of Information and Protection of Privacy Act* for a number of records because it did not properly identify the exemption relied on to withhold the records from the Applicant.

[424] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not fulfill its duties under section 8 of *The Freedom of Information and Protection of Privacy Act*.

[425] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not exercise its discretion appropriately with regards to the discretionary exemptions it applied to the records.

[426] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not meet its obligations with regards to third parties.

- [427] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not appropriately apply section 13(1)(a) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.
- [428] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not meet the burden of proof in demonstrating that section 14(1)(a) of *The Freedom of Information and Protection of Privacy Act* applied to parts of the record in question.
- [429] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not meet the burden of proof in demonstrating that section 15(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* applied to parts of the record in question.
- [430] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not appropriately apply section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.
- [431] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not meet the burden of proof in demonstrating that section 15(1)(e) of *The Freedom of Information and Protection of Privacy Act* applied to parts of the record in question.
- [432] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not meet the burden of proof in demonstrating that section 15(1)(f) of *The Freedom of Information and Protection of Privacy Act* applied to parts of the record in question.
- [433] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not meet the burden of proof in demonstrating that section 15(1)(i) of *The Freedom of Information and Protection of Privacy Act* applied to parts of the record in question.
- [434] I find that the Financial and Consumer Affairs Authority of Saskatchewan appropriately applied section 15(1)(k) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.

- [435] I find that the Financial and Consumer Affairs Authority of Saskatchewan appropriately applied section 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.
- [436] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not appropriately apply section 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* to other parts of the record in question.
- [437] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not appropriately apply section 17(1)(b) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.
- [438] I find that the Financial and Consumer Affairs Authority of Saskatchewan appropriately applied section 18(1)(f) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.
- [439] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not meet the burden of proof in demonstrating that section 18(1)(f) of *The Freedom of Information and Protection of Privacy Act* applied to other parts of the record in question.
- [440] I find that the Financial and Consumer Affairs Authority of Saskatchewan appropriately applied section 22(a) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.
- [441] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not appropriately apply section 22(a) of *The Freedom of Information and Protection of Privacy Act* to other parts of the record in question.
- [442] I find that the Financial and Consumer Affairs Authority of Saskatchewan appropriately applied section 22(b) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.

[443] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not appropriately apply section 22(b) of *The Freedom of Information and Protection of Privacy Act* to other parts of the record in question.

[444] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not appropriately apply section 22(c) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.

[445] I find that the Financial and Consumer Affairs Authority of Saskatchewan appropriately applied section 23(3)(h) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.

[446] I find that the Financial and Consumer Affairs Authority of Saskatchewan appropriately applied section 29(1) of *The Freedom of Information and Protection of Privacy Act* to parts of the record in question.

[447] I find that the Financial and Consumer Affairs Authority of Saskatchewan did not appropriately apply section 29(1) of *The Freedom of Information and Protection of Privacy Act* to other parts of the record in question.

VI RECOMMENDATIONS

[448] The recommendations below apply to the representative sample. The Financial and Consumer Affairs Authority of Saskatchewan should take these recommendations and analyses provided and apply it to the entire record withheld from the Applicant (numerous bankers boxes). The records should be released in a manner consistent with this Review Report.

[449] I recommend that where I have found a discretionary exemption applied, the Financial and Consumer Affairs Authority of Saskatchewan appropriately apply its discretion and consider releasing as much of the records as possible.

[450] The following outlines my recommendations with respect to the record, based on my findings:

Bundle #	Description	Sections Cited
<i>Securities Investigation/Proceeding Against [Applicant], et.al. – Tribunal Records</i>		
1a	Correspondence and contracts related to hearing room rentals.	18(1)(f) withhold one piece of information RELEASE remainder
1b	Various correspondence	15(1)(k) withhold
1c	Various correspondence	15(1)(k) withhold
1d	Various correspondence	15(1)(k) withhold
1e	Various correspondence	15(1)(k) withhold
1f	Correspondence with legal counsel	15(1)(k) withhold
1g	Various correspondence	15(1)(k) withhold
1h	Correspondence	15(1)(k) withhold
1i	Various correspondence	15(1)(k) withhold
1j	Correspondence related to [Applicant] appeal to Court of Appeal	15(1)(k) withhold
1k	Various correspondence between SFSC staff and between SFSC staff and witness	23(3)(h) & 15(1)(k) withhold;
1l	Various correspondence and draft documents	15(1)(k) withhold
2a	Correspondence with SFSC legal counsel and draft correspondence prepared for consultation with SFSC legal counsel.	15(1)(k) withhold
2b	Correspondence dated [date removed]	23(3)(h) withhold all
2c	Correspondence related to [Applicant] appeal to Court of Appeal	15(1)(k) withhold
2d	Various correspondence	15(1)(k) withhold
2e	Various correspondence	15(1)(k) withhold
2f	Various internal correspondence related to [Applicant] appeal to Court of Appeal	15(1)(k) withhold
2g	Email dated [date removed]	15(1)(k) withhold
2h	Various correspondence between SFSC Chair and legal counsel	15(1)(k) withhold
2i	Various internal correspondence	23(3)(h) withhold portions found to qualify only to record 2; 15(1)(k) withhold remainder
2j	Internal correspondence	15(1)(k) withhold
2k	Internal correspondence	15(1)(k) withhold
2l	Various correspondence	15(1)(k) withhold
2m	Correspondence	15(1)(k) withhold
2n	Internal correspondence	15(1)(k) withhold

3a	Correspondence between SFSC legal counsel and SFSC staff and work product of SFSC legal counsel	15(1)(k) withhold
3b	Correspondence between SFSC legal counsel and SFSC staff and SFSC legal counsel work product	15(1)(k) withhold
<i>Securities Investigation/Proceeding Against [Applicant], et.al. –Securities Division Staff Records</i>		
1	Recordings of voice messages received by staff from investigators, witnesses and sources (disk)	23(3)(h) withhold all
2	Documents from Pay Pal and eBay regarding items purchased...	23(3)(h) withhold all
3	Documents relating to proposed application for a freeze order, including draft memos, orders, applications to the Court and e-mails to and from potential receiver	23(3)(h) withhold all
4	Documents relating to application pursuant to section 12 of <i>The Securities Act, 1988</i> for investigation order dated [date removed] including staff memo and Investigation Orders.	15(1)(k) withhold
5	Documents relating to cease trade order pursuant to section 134 of <i>The Securities Act, 1988</i> in [date removed] including staff memo, information and materials used to prepare staff memo and staff memo applying for extension	23(3)(h) withhold all
6	Documents relating to service and notice of cease trade orders	15(1)(k) withhold
7	Records relating to subpoenas to witnesses to testify at hearing, including subpoenas, affidavits of service, and correspondence with witnesses	23(3)(h) withhold all
8	Documents relating to contents of storage locker leased by [Applicant]	23(3)(h) withhold all
9	Internet search	23(3)(h) withhold all
10	Correspondence to and from Sheriff...	23(3)(h) withhold all
10A	Correspondence with [police service]	23(3)(h) withhold all
10B	Correspondence with Canada Revenue Agency	23(3)(h) withhold all
10C	Info from Saskatchewan Gaming Authority	23(3)(h) withhold all
10D	Correspondence with US Immigration and Customs Enforcement	23(3)(h) withhold all

11	Documents relating to private prosecution by [name removed] under the <i>Criminal Code</i> against staff of the Securities Division	23(3)(h) withhold all
12	Un-redacted investigation reports prepared by staff	23(3)(h) withhold all
13	Redacted investigation reports prepared by staff	RELEASE all
14	Questions for interviews of witnesses	23(3)(h) withhold all
15	Synopsis of interview of witnesses	23(3)(h) withhold all
16	E-mails – [name removed] dated [dates removed]	23(3)(h) withhold all
17	E-mails – [SFSC employee] regarding [name of business] Securities offered by [Applicant]	15(1)(k) withhold
18	Memo of staff requesting temporary cease trade order pursuant to section 134 of <i>The Securities Act</i> including draft temporary cease trade order	23(3)(h) withhold all
19	Memos from staff to Commission Secretary and Chair of the Hearing Panel regarding application for extension of temporary cease trade order	23(3)(h) withhold all
20	Action minutes prepared by Director, Securities Division regarding finalization of Notice of Hearing dated [date removed]	23(3)(h) withhold all
21	E-mails of Director of Securities Division with [name removed] regarding his request for disclosure on behalf of the respondents in the Notice of Hearing	23(3)(h) withhold all
22	E-mails between Director, Securities Division and Commission Secretary.	23(3)(h) withhold all
23	E-mails between Director, Securities Division and staff of the Securities Division	23(3)(h) withhold all
24	E-mails between Director, Securities Division and Legal Counsel for staff of the Securities Division	23(3)(h) withhold all
25	E-mails between Director, Securities Division to Chair dated [date removed]	23(3)(h) withhold all
26	E-mails between Legal Counsel, Securities Division and Chair	23(3)(h) withhold all

27	E-mails between Legal Counsel, Securities Division and staff of the Securities Division, Commission Secretary and Chair regarding appeal by [Applicant] from hearing panel's decision not to grant adjournment	15(1)(k) withhold
28	E-mails between Legal Counsel, Securities Division and Commission Secretary and Acting Commission Secretary	23(3)(h) withhold all
29	E-mails and correspondence between Legal Counsel, Securities Division and Counsel for hearing panel regarding appeal by [Applicant] from hearing panel's decision not to grant adjournment	15(1)(k) withhold
30	Questions for witnesses for staff of the Securities Division in application by [Applicant] for further disclosure prepared by Legal Counsel for staff of the Securities Division	23(3)(h) withhold all
31	Draft questions for witnesses to be called to testify prepared by Legal Counsel for staff of the Securities Division, for the proceedings in the Notice of Hearing	23(3)(h) withhold all
32	E-mails between Legal Counsel, Securities Division and staff of the Securities Division	23(3)(h) withhold all
33	Documents prepared by Legal Counsel for staff of the Securities Division, for the proceedings in the Notice of Hearing against [Applicant] and other respondents, including <ul style="list-style-type: none"> • Hearing checklist • Witness timetable • Draft bill of costs • Draft brief of law/arguments 	23(3)(h) withhold all
34	Analysis of financial information in bank and other records of the Respondents prepared by staff	23(3)(h) withhold all
35	E-mails and correspondence between staff and investors, witnesses and sources, and information received from them	23(3)(h) withhold all
36	E-mails and correspondence between staff and investors and witnesses regarding hearing processes	23(3)(h) withhold all

37	E-mails and correspondence between staff and investors, witnesses and sources, and information received from them	23(3)(h) withhold all
38	Investigation notes, briefs and plans prepared by staff	23(3)(h) withhold all
39	List of exhibits to be introduced at the hearing	23(3)(h) withhold all
40	Witness "can states" prepared by staff	23(3)(h) withhold all
<i>Financial Institutions Division Investigation of [name of business]</i>		
1	Correspondence between SFSC Legal Counsel and various SFSC staff	23(3)(h) withhold all
2	Correspondence between SFSC Legal Counsel and various SFSC staff	23(3)(h) withhold all
3	Signed authorization form	23(3)(h) withhold all
4	File copies of documentary evidence obtained	23(3)(h) withhold portions found to qualify only; 15(1)(k) withhold remainder
5	Transcripts and notes of witness interviews conducted by SFSC legal counsel; correspondence and draft correspondence between SFSC legal counsel and other parties; draft correspondence prepared by SFSC legal counsel; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(k) withhold
6	Correspondence between SFSC legal counsel and various SFSC staff and other parties; documentary evidence obtained by SFSC legal counsel in furtherance of the investigation	15(1)(k) withhold
7	Draft order and draft correspondence prepared by SFSC legal counsel; correspondence between SFSC legal counsel and other parties	15(1)(k) withhold
8	Correspondence between SFSC staff and between SFSC staff and other parties; notes taken by SFSC staff during witness interviews	15(1)(k) withhold
9	Correspondence between SFSC legal counsel and other SFSC staff	15(1)(k) withhold
10	Correspondence between SFSC staff	17(1)(a) withhold portions found to qualify only; RELEASE remainder
11	Documentary evidence obtained by SFSC staff in furtherance of	15(1)(k) withhold

	the investigation; fax cover sheets	
12	Correspondence between SFSC legal counsel, notes of meeting between SFSC legal counsel and SFSC	15(1)(k) withhold
<i>Consumer Protection Division Investigation of [name of business]</i>		
1	Complaint Cover Sheet; Complaint Summary; Letter from Consumer Protection (CPD) Investigator dated [date removed]	15(1)(k) withhold
2	eBay Information Sheet	15(1)(k) withhold
3	Copy of eBay printout	15(1)(k) withhold
4	Copies of various investigative search results	15(1)(k) withhold
5	E-mail between CPD staff sent on [date & time removed]	15(1)(k) withhold
6	Various e-mails and other communications between CPD staff and between the CPD investigator and the complainant	15(1)(k) withhold

Dated at Regina, in the Province of Saskatchewan, this 29th day of January, 2014.

R. GARY DICKSON, Q.C.
Saskatchewan Information and Privacy
Commissioner