



REVIEW REPORT 003-2024

Saskatchewan Housing Corporation

April 10, 2024

Summary:

In [Review Report 141-2023](#), the Commissioner identified that 170 pages of records that the Saskatchewan Housing Corporation (SHC) had identified as “non-responsive” were “responsive.” The Commissioner had recommended that SHC release the pages to the Applicant, subject to exemptions set out in *The Freedom of Information and Protection of Privacy Act* (FOIP). SHC released the records to the Applicant but withheld portions pursuant to subsections 17(1)(a), (b), 19(1)(b), (c)(iii) and 29(1) of FOIP. The Applicant appealed to the Court of King’s Bench, which issued an endorsement for the Applicant to request a review by the Commissioner regarding the exemptions applied to the 170 pages of records. The Commissioner conducted a review. He found that SHC properly applied subsections 17(1)(a), (b) and 29(1) of FOIP in some cases but not all. He also found that SHC did not properly apply subsection 19(1)(b) of FOIP. The Commissioner made a number of recommendations to SHC, including that it release some of the information in the records it originally withheld pursuant to subsections 17(1)(a), (b), 19(1)(b), (c) and 29(1) of FOIP within 20 days of the issuance of this Report.

I BACKGROUND

[1] On October 19, 2023, I issued [Review Report 141-2023](#). At paragraph [182], I made the following recommendation to the Saskatchewan Housing Corporation (SHC):

[182] Within 30 days of the issuance of this Report, I recommend that SHC contact the Applicant to determine if they are interested in the 170 pages that fall within the time period of June 2022 and October 2022. If so, then I recommend that the SHC release these 170 pages to the Applicant subject to any exemptions found to apply.

[2] On November 29, 2023, after not receiving a response regarding my recommendations from the SHC pursuant to section 56 of *The Freedom of Information and Protection of Privacy Act* (FOIP), the Applicant appealed to the Court of King's Bench.

[3] Then, in a letter dated December 22, 2023, SHC provided a response to the Applicant pursuant to section 56 of FOIP, albeit not within the 30 days after receiving my Review Report 141-2023. Regarding my recommendation at paragraph [182], SHC said:

[182] SHC is providing partial access to the 168 pages that fall within the time period of June 2022 and October 2022 labelled as Set 4. Sections 17(1)(a), 17(1)(b), 19(1)(b), 19(1){c} and 29(1) of FOIP have been relied on to deny access in part to these records. Please find these records attached. Within these records, SHC has removed one record (pages 13 and 14) as it is information that is available for purchase through Information Services Corporation: <https://company.isc.ca/>. This record is not subject to FOIP because of clause 3(1)(a) of FOIP. Because this record has been removed, the total number of pages is 168 instead of 170.

[4] An endorsement by Justice B. Scherman dated January 4, 2024, provided that the Applicant was to request a review by my office regarding the exemptions applied to the records.

...

This order at this stage does not encompass that additional category of documents in respect of which [name] has to request a review by the commissioners [sic] office. [name] is to make that review promptly, I and the counsel for the ministry have agreed upon that review request being received they will promptly and at the earliest possible opportunity file and provide to [name] and the commissioner their position in respect of that new request by [name] and that they will also to the extent that they are capable request the commissioner to deal with the matter on an expedited process. The intention of this separate direction is that on conclusion of commissioner's report that any remaining dispute between the ministries and [name] will be incorporated within the process already ordered.

[5] On January 6, 2024, the Applicant requested a review by my office of the 168 pages released to them by SHC.

[6] On February 2, 2024, my office notified SHC and the Applicant that my office would be undertaking a review. My office also notified third parties, Rely Ex Contracting and Wallace Klypak Architects Ltd., of the review.

[7] On February 5, 2024, Rely Ex Contracting provided a submission to my office.

[8] On February 6, 2024, Wallace Klypak Architects Ltd. provided a submission to my office.

[9] On April 1, 2024, SHC provided a submission to my office. The Applicant did not provide a submission.

II RECORDS AT ISSUE

[10] At issue are the 168 pages of records, consisting mostly of emails and email attachments.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] SHC qualifies as a government institution pursuant to subsection 2(1)(d)(ii)(A) of FOIP and subsection 3(a) and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Therefore, I find that I have jurisdiction to conduct this review.

[12] Rely Ex Contracting and Wallace Klypak Architects qualify as third parties as defined by subsection 2(1)(j) of FOIP.

2. Did SHC properly apply subsection 17(1)(a) of FOIP?

[13] SHC applied subsection 17(1)(a) of FOIP to pages 1, 10, 77, 80, 84, 85, 89, 90, 95 and 96 in part.

[14] Subsection 17(1)(a) of FOIP provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[15] My office uses the following two-part test to determine if subsection 17(1)(a) of FOIP applies:

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

(*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, update October 18, 2023 [*Guide to FOIP*, Ch. 4], pp. 125-128)

[16] Below is an analysis to determine if the two-part test is met:

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

[17] Pages 125 to 127 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

- “Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The “pros and cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a public body must make a decision for future action.
- A “recommendation” is a specific piece of advice about what to do, especially when given officially; a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.

- A “proposal” is something offered for consideration or acceptance.
- “Analyses” is a detailed examination of the elements or structure of something; the process of separating something into its constituent elements.
- “Policy options” are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant’s identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information.

[18] In its submission, SHC said the following:

Record 1 (page 1) contains a proposal. The information that has been withheld in record 1, is a quote from a contractor for renovation work that is being contemplated. This quote is part of a larger estimate the architect submitted for the renovation work.

Record 7 (page 10) contains advice and analysis. Record 7 captures meeting notes on transitioning services from the Lighthouse. The advice and analysis specify who is using the services, including the meal program, what funding is available to serve people experiencing homelessness, causes of people moving from shelters and proposed costs for detox and stabilization beds.

Records 36 (page 77), 37 (page 80), 38 (pages 84 and 85), 39 (pages 89 and 90) and 40 (pages 95 and 96) contain advice on what the projected costs will be for work to be completed on a building before the building can be occupied. These records also contain advice on options for potential funding sources to cover the costs of this proposed work.

[19] Pages 77, 84, 89 and 95 feature an email timestamped 4:38:00 p.m. SHC redacted the majority of the body of the email pursuant to subsection 17(1)(a) of FOIP. The author of the email is a Director. The email was addressed to a number of SHC employees, including the President and CEO of the SHC. The redacted record contains a list of options to be considered by the recipients of the email. Therefore, the redacted portions qualify as “policy options”. The redacted content in the email timestamped 4:38:00 p.m. on pages 77, 84, 89 and 95 meets the first part of the two-part test.

[20] However, the redacted portions of pages 1, 10, 80, 85, 90 and 96 do not qualify as advice, proposals, recommendations, analyses or policy options. For example, SHC applied subsection 17(1)(a) of FOIP to dollar amounts that appear on pages 1, 80, 85, 90 and 96.

Based on a review of the dollar amounts on these pages, they do not qualify as advice, proposals, recommendations, analyses or policy options. Similarly, the redacted portions in the email timestamped 4:23 p.m. on page 77 do not qualify as advice, proposals, recommendations, analyses or policy options. Therefore, I find that SHC did not properly apply subsection 17(1)(a) of FOIP to pages 1, 10, 80, 85, 90 and 96. Also, I find that SHC did not properly apply subsection 17(1)(a) of FOIP to the redacted portions of the email timestamped 4:23 p.m. on page 77. I recommend that SHC release the dollar amounts that appear on pages 77, 80, 85, 90 and 96 within 20 days of the issuing of this Report.

[21] I will consider if the redacted portion of the email timestamped 4:38:00 p.m. on pages 77, 84, 89, and 95 meets the second part of the two-part test.

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

[22] Page 128 of the *Guide to FOIP*, Ch. 4, provides the following definition:

- “Developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the government institution, or 2) outside the government institution but for a government institution and at its request (for example, by a service provider or stakeholder).

[23] In its submission, SHC said:

The other records (records 7, 36 to 40) are clearly developed by or for the SHC because they reflect meeting notes (record 7) or emails that include SHC staff (records 36 to 40).

[24] Based on a review of the email timestamped 4:38:00 p.m. on pages 77, 84, 89, and 95, the email was sent by a Director at SHC to recipients who were SHC employees including the President and CEO of the SHC. Therefore, the policy options were developed by or for the government institution. The second part of the two-part test is met.

[25] I find that SHC properly applied subsection 17(1)(a) of FOIP to the redacted portion of the email timestamped 4:38:00 p.m. on pages 77, 84, 89, and 95, and recommend that SHC continue to withhold these portions pursuant to subsection 17(1)(a) of FOIP.

3. Did SHC properly apply subsection 17(1)(b) of FOIP?

[26] SHC applied subsection 17(1)(b) of FOIP to pages 1, 10, 12, 77, 83, 84, 88, 89, 93, 94, and 95 in part. Since I have already found that subsection 17(1)(a) of FOIP applies to the redacted portion of the email timestamped 4:38:00 p.m. on pages 77, 84, 89, and 95, I won't consider that email in my analysis of subsection 17(1)(b) of FOIP.

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

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

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

[28] Pages 133 to 135 of the *Guide to FOIP*, Ch. 4, outlines the following two-part test to determine if subsection 17(1)(b) of FOIP applies:

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

[29] Below is analysis to determine if the two-part test is met.

1. Does the record contain consultations or deliberations?

[30] Pages 133 to 134 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

- “Consultation” means the action of consulting or taking counsel together: deliberation, conference; a conference in which the parties consult and deliberate. A consultation can occur when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation.
- “Deliberation” means the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision; A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

[31] In its submission, SHC said:

Record 1 is a quote that was included as part of the architect’s projected costs for work. As such, the quote is a consultation between the architect and the SHC to demonstrate what the projected cost is for various elements of work to be completed on the building before it can be occupied.

Record 7 reflects notes from various staff meetings. The information withheld on page 10 pursuant to this exemption shows internal deliberations regarding the implications to staff, services, individuals who use the services and the facility after the funding to the Lighthouse was terminated. This record also contains an internal consultation around the reasons individuals relied on the Lighthouse shelter.

The redaction on page 11 of record 8 reveals an internation [sic] consultation between SHC staff around a Treasury Board decision. The other redaction (on page 12) of this record is an internal deliberation about the architect’s preliminary estimate, in particular additional costs that should be considered as part of the estimate.

Record 36 shows an internal consultation around sources to fund the estimated cost for preoccupation work to the Lighthouse facility. This same consultation is found in record 38 on page 84 and record 39 on page 88 and record 40 on page 95.

Another example of an internal consultation between SHC staff is found in record 38. The withheld information on page 83 asks a question about funding. This same redaction is found on page 88 pf record 39, page 94 or record 40.

The information withheld on page 93 of record 40 is a deliberation between SHC staff that responds to the funding question found in multiple records mentioned in the previous paragraph (for example page 83 of record 38).

[32] The redacted portions on pages 83, 88, 93 and 94 feature emails. SHC redacted the body of the emails. Based on a review, the redacted portions appear to be consultations. That is, the views of SHC employees are sought regarding a particular suggested action. Therefore, the redacted portions on pages 83, 88, 93 and 94 qualify as “consultations” and meet the first part of the two-part test.

[33] The redacted portions on pages 1, 10 and 12 do not contain consultations or deliberations. They do not involve the seeking of the views of SHC employees, or there does not appear to be a decision being deliberated. Therefore, the redacted portions on pages 1, 10 and 12 do not meet the first part of the two-part test. I find that SHC did not properly apply subsection 17(1)(b) of FOIP to pages 1, 10 and 12. I recommend that SHC release the content it withheld pursuant to subsection 17(1)(a) and (b) of FOIP on page 10 within 20 days of the issuance of this Report. SHC applied other exemptions to the redacted information on pages 1 and 12, which I will consider later.

[34] Next, I will consider if the redacted portions on pages 83, 88, 93 and 94 meet the second part of the two-part test.

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

[35] Page 135 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

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

[36] Earlier, I found that the contents on pages 83, 88, 93 and 94 qualify as consultations. Based on a review of these pages, the consultations involve employees of the SHC. Therefore, the second part of the two-part test is met. I find that SHC properly applied subsection 17(1)(b) of FOIP to pages 83, 88, 93 and 94. I recommend that SHC continue to withhold the information it redacted pursuant to subsection 17(1)(b) of FOIP on pages 83, 88, 93 and 94.

4. Did SHC properly apply subsection 19(1)(b) of FOIP?

[37] SHC applied subsection 19(1)(b) of FOIP to pages 1, 12, 77, 80, 85, 90, and 96 in part. Page 1 is a letter from Rely Ex Contracting to Wallace Klypak Architects Ltd. The portion redacted from the letter is a quoted price. Page 12 is an email by a SHC employee timestamped 2:58 p.m. to other SHC employees. SHC redacted the last paragraph, which contains the Wallace Klypack Architects Ltd.'s preliminary estimate, pursuant to subsection 19(1)(b) of FOIP. Pages 77, 80, 85, 90, and 96 contains an email by a SHC employee timestamped 4:23 p.m. SHC released that email except for Wallace Klypak Architect Ltd.'s preliminary estimate pursuant to subsection 19(1)(b) of FOIP.

[38] Subsection 19(1)(b) of FOIP provides:

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

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

[39] Pages 201 to 205 of the *Guide to FOIP*, Ch. 4, outlines the following three-part test to determine if subsection 19(1)(b) of FOIP applies:

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

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

[40] Below is an analysis to determine if the three-part test is met.

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

[41] Pages 201 and 202 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

- “Financial information” is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a third party.
- “Commercial information” is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records.
- “Scientific information” is information exhibiting the principles or methods of science. The information could include designs for a product and testing procedures or methodologies. It is information belonging to an organized field of knowledge in the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information.
- “Technical information” is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information.
- “Labour relations information” is information that relates to the management of personnel by a person or organization, whether or not the personnel are organized into bargaining units. It includes relationships within and between workers, working groups and their organizations as well as managers, employers and their organizations. Labour relations information also includes collective relations between a public body and its employees. Common examples of labour relations

information are hourly wage rates, personnel contracts and information on negotiations regarding collective agreements.

[42] In its submission, SHC said:

Record 1 contains a quote created by a contractor for certain work to be done as part of an overall quote. The overall quote has been withheld on page 12 (record 8), page 77 (record 36), page 80 (record 37), page 85 (record 38), page 90 (record 39), pages 95 and 96 (record 40). Both the quote and the estimate qualify as commercial information because they are intended to bring a profit to the contractor and architect. Further, the quote and estimate are amounts that reflect the services they are offering. The SHC submits that the first part of the test has been met.

[43] Earlier, I described the redacted information in page 1 as a quote supplied by Rely Ex Contracting to Wallace Klypak Architects Ltd. Further, the redacted information at pages 12, 77, 80, 85, 90, 95 and 96 is the preliminary estimate of Wallace Klypak Architects. In my office's [Review Report 274-2019](#), I found that quotes from third party organizations for products and services supplied to a government institution qualified as "commercial information". Similarly, I find that the redacted information on pages 1, 12, 7, 80, 85, 90, 95, and 96 qualifies as "commercial information".

2. Was the information supplied by the third party to a government institution?

[44] Page 205 of the *Guide to FOIP*, Ch. 4, defines "supplied" as meaning provided or furnished.

[45] In its submission, SHC said:

The second part of the test is whether the information was supplied to the SHC by a third party. The SHC submits that record 1 and the information captured in record 8, 36 to 40 were supplied by the architect. In record 1, the contractor provides the quote to the architect and the quote is captured by the estimate provided by the architect on pages 12, 77, 80, 85, 90, 95 and 96.

[46] Considering the context and content of the records at issue, it appears that the information on page 1 was supplied by Rely Ex Contracting to Wallace Klypak Architects Ltd. Then, it was Wallace Klypak Architect Ltd. who supplied the redacted information on page 1 to

SHC. Since Wallace Klypak Architect Ltd. supplied the redacted information to SHC, then a third party supplied the information to SHC. Therefore, the redacted information on page 1 meets the second part of the two-part test.

[47] Regarding the redacted information on page 12, I described it as an email by a SHC employee to other SHC employees. The redacted portion in the email contains a preliminary estimate by Wallace Klypak Architects Ltd. Based on context, it would appear it was Wallace Klypak Architects Ltd. who would have supplied this information to SHC in order for the SHC to have quoted it in the email. Therefore, the redacted information on pages 12, 77, 80, 85, 90, 95, and 96 meets the second part of the two-part test.

3. *Was the information supplied in confidence implicitly or explicitly?*

[48] Page 205 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

- “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the supplier of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the government institution and the third party providing the information.
- “Implicitly” means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential.
- “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was supplied on the understanding that it would be kept confidential.

[49] Earlier, I found that it was Wallace Klypak Architects Ltd. who supplied the information on pages 1, 12, 77, 80, 85, 90, 95, and 96 to SHC. Therefore, I need to determine if Wallace Klypak Architects Ltd. supplied the information in confidence.

[50] In its submission, SHC said:

The final part of the test is whether the information was supplied in confidence, implicitly or explicitly. **The SHC submits that the information on pages 1, 12, 77, 80, 85, 90, 95 and 96 were supplied in confidence implicitly.** The test is met based on the substantive content of the records. Quotes by contractors and preliminary estimates by architects are implied to be supplied in confidence given the competitive nature of the industry. Third parties understand that the ultimate amount paid to them will be disclosed as part of the transparency and accountability goals of FOIP. However, the initial quotes and estimates are intended to remain confidential because this fosters a competitive environment. If initial quotes or estimates are made public, this information could be used by competitors to undercut their pricing or offer better terms, which would lead to a loss of business for the third party. In addition to the competitive environment, confidentiality at this part of the process also allows the third party to negotiate. If the quote or estimate is revealed, it could limit the third parties' ability to adjust their terms based on further discussions. This is why only the final terms are released.

[Emphasis added]

[51] In the course of this review, Wallace Klypak Architects Ltd. was notified of my office's review. Wallace Klypak Architects Ltd. indicated it has no objections to the release of the information. Wallace Klypak Architects Ltd.'s response suggests that the information was not supplied in confidence to SHC. Therefore, the third part of the three-part test is not met. I find that SHC did not properly apply subsection 19(1)(b) of FOIP to pages 1, 12, 77, 80, 85, 90, 95, and 96.

[52] SHC also applied subsection 19(1)(c)(i) and (ii) of FOIP to pages 1, 12, 77, 80, 85, 90, 95, and 96, and so I need to consider SHC's reliance on these exemptions. Before I do so, I note that subsection 19(2) of FOIP provides:

19(2) A head may give access to a record that contains information described in subsection (1) with the written consent of the third party to whom the information relate.

[53] SHC applied subsection 19(1)(c)(i) and (ii) of FOIP to the same portions of pages 1, 12, 77, 80, 85, 90, 95, and 96 as it had applied subsection 19(1)(b) of FOIP. In my analysis of subsection 19(1)(b) of FOIP, I had found that it was Wallace Klypak Architects Ltd. who was the third party that supplied information found on pages 1, 12, 77, 80, 85, 90, 95, and 96 to SHC. Wallace Klypak Architects Ltd. indicated it had no objections to the release of the information.

[54] Since Wallace Klypak Architects Ltd. did not object to the release of the information in the course of my office's review, then there is no need for me to consider SHC's application of subsection 19(1)(c)(i) and (ii) of FOIP to the same information. I recommend that SHC release the information redacted on pages 1, 12, 77, 80, 85, 90, 95, and 96 within 20 days of issuing of this Report.

5. Did SHC properly apply subsection 29(1) of FOIP?

[55] SHC applied subsection 29(1) of FOIP to pages 2 to 8, 10, 13, 15, 17, 19, 22, 25, 27 to 38, 41 to 43, 45, 49, 50, 53, 55, 77, 80, 85, 90, 96, 99, 100, 106 to 108, 114 to 116, 122, 123, 128, 129, 137, 138 in part.

[56] Subsection 29(1) of FOIP provides:

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.

[57] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure, or if the disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP (*Guide to FOIP*, Chapter 6, "Protection of Privacy", updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 183).

[58] In order to withhold information pursuant to subsection 29(1) of FOIP, the information must qualify as "personal information" as defined by subsection 24(1) of FOIP. To qualify as personal information as defined by subsection 24(1) of FOIP, the information must: 1) be about an identifiable individual; and 2) be personal in nature. Information is about an "identifiable individual" if the individual can be identified from the information (e.g., their name is provided) or if the information, when combined with information otherwise

available, could reasonably allow the individual to be identified. To be “personal in nature” means the information provides something identifiable about the individual (*Guide to FOIP*, Ch. 6, pp. 32-33).

[59] Pages 35 to 37 of the *Guide to FOIP*, Ch. 6, provides examples of information that my office has found not to qualify as “personal information”, including the following:

- Work product is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. This is not considered personal information.
- Business card information is the type of information found on a business card (name, job title, work address, work telephone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. This is considered “business contact information” and not personal information.

[60] The rationale for a distinction between personal information and information that relates to a person in their professional or official capacity preserves the integrity of the regime that establishes the public’s right of access and government’s disclosure obligations. Without this distinction, the routine disclosure of information by government would be greatly impeded. For example, withholding all recorded information relating to the activities of public servants or other individuals in their professional or official capacities impedes FOIP’s overarching goal of creating accountability and transparency over government activities. Further, not differentiating between information that is personal in nature and information that relates to a person’s professional capacity would frustrate the purpose of FOIP, namely that information under the possession or control of a government institution should be made available to the public (unless subject to a limited and specific exemption) (*Guide to FOIP*, Ch. 6, p. 37).

[61] Page 55 features an email timestamped 12:32:34 p.m. sent by an individual indicating that they are not the intended recipient of an email. The name and email address of the individual was redacted pursuant to subsection 29(1) of FOIP. I find that SHC properly applied subsection 29(1) of FOIP to the name and email address of the unintended recipient

on page 55. I recommend that SHC continue to withhold the redacted information on page 55 pursuant to subsection 29(1) of FOIP.

[62] However, SHC redacted the email addresses of individuals acting in their professional capacities but who are not government employees. For example, SHC redacted the email addresses of employees of the Saskatoon Tribal Council throughout the records at issue. It also redacted the name and email address of an employee at Rely Ex Consulting at page 2. While such information is about identifiable individuals, such information is not personal in nature. Therefore, I find that SHC did not properly apply subsection 29(1) of FOIP to pages 2 to 8, 10, 13, 15, 17, 19, 22, 25, 27, 27 to 38, 41 to 43, 45, 49, 50, 53, 77, 80, 85, 90, 96, 99 to 100, 106 to 108, 114 to 116, 122 to 123, 128 to 129 and 137 to 138. I recommend that within 20 days of the issuance of this Report that SHC release to the Applicant the information it withheld on these pages pursuant to subsection 29(1) of FOIP.

IV FINDINGS

[63] I find that I have jurisdiction to conduct this review.

[64] I find that SHC did not properly apply subsection 17(1)(a) of FOIP to pages 1, 10, 80, 85, 90 and 96.

[65] I find that SHC did not properly apply subsection 17(1)(a) of FOIP to the redacted portions of the email timestamped 4:23 p.m. on page 77.

[66] I find that SHC properly applied subsection 17(1)(a) of FOIP to the redacted portion of the email timestamped 4:38:00 p.m. on pages 77, 84, 89, and 95.

[67] I find that SHC did not properly apply subsection 17(1)(b) of FOIP to pages 1, 10 and 12.

[68] I find that SHC properly applied subsection 17(1)(b) of FOIP to pages 83, 88, 93 and 94.

- [69] I find that SHC did not properly apply subsection 19(1)(b) of FOIP to pages 1, 12, 77, 80, 85, 90, 95, and 96.
- [70] I find that SHC properly applied subsection 29(1) of FOIP to the name and email address of the unintended recipient on page 55.
- [71] I find that SHC did not properly apply subsection 29(1) of FOIP to pages 2 to 8, 10, 13, 15, 17, 19, 22, 25, 27, 27 to 38, 41 to 43, 45, 49, 50, 53, 77, 80, 85, 90, 96, 99, 100, 106 to 108, 114 to 116, 122, 123, 128, 129, 137, and 138.

V RECOMMENDATIONS

- [72] Normally when I recommend release of information, I recommend that it be released within 30 days of the issuing of this Report. Because the Court of King's Bench wishes this matter to be dealt with expeditiously, I have recommended that the information be released within 20 days of this Report. I have done this to facilitate the matter being dealt with by the Court of King's Bench.
- [73] I recommend that within 20 days of the issuance of this Report that SHC release to the Applicant the dollar amounts that appear on pages 77, 80, 85, 90 and 96.
- [74] I recommend that SHC continue to withhold the redacted portion of the email timestamped 4:38:00 p.m. on pages 77, 84, 89, and 95 pursuant to subsection 17(1)(a) of FOIP.
- [75] I recommend that within 20 days of the issuance of this Report that SHC release to the Applicant the content it withheld pursuant to subsection 17(1)(a) and (b) of FOIP on page 10.
- [76] I recommend that SHC continue to withhold the information it redacted pursuant to subsection 17(1)(b) of FOIP on pages 83, 88, 93 and 94.

- [77] I recommend that within 20 days of the issuance of this Report that SHC release to the Applicant the information redacted on pages 1, 12, 77, 80, 85, 90, 95, and 96.
- [78] I recommend that SHC continue to withhold the redacted information on page 55 pursuant to subsection 29(1) of FOIP.
- [79] I recommend that within 20 days of the issuance of this Report that SHC release to the Applicant the information it withheld pursuant to subsection 29(1) of FOIP on pages 2 to 8, 10, 13, 15, 17, 19, 22, 25, 27 to 38, 41 to 43, 45, 49, 50, 53, 77, 80, 85, 90, 96, 99, 100, 106 to 108, 114 to 116, 122, 123, 128, 129, 137, and 138.

Dated at Regina, in the Province of Saskatchewan, this 10th day of April, 2024.

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