



REVIEW REPORT 016-2024

Saskatchewan Workers' Compensation Board

August 29, 2024

Summary:

The Applicant made an access to information request to the Saskatchewan Workers' Compensation Board (WCB). WCB granted access to some records and denied access to other records in whole or in part pursuant to subsections 15(1)(c), (d), 16(1)(a), (d), 17(1)(a), (b), (c), 18(1)(d), 19(1)(b), (c), 22(a), (b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The A/Commissioner conducted a review and found that WCB properly applied subsections 15(1)(c), 17(1)(c) and 19(1)(b) of FOIP. He also found that WCB properly applied subsections 22(a), (b), 15(1)(d), 17(1)(a), (b) and 18(1)(d) of FOIP to some of the information but not all. Further, he found that WCB did not properly apply subsections 15(1)(c), 16(1)(a), (d) and 19(1)(c) of FOIP. Finally, the A/Commissioner found that subsection 19(3) of FOIP did not apply. The A/Commissioner recommended that WCB release information to the Applicant within 30 days of the issuance of this Report and continue to withhold other information as set out in the Appendix. The A/Commissioner also recommended that WCB consider the potential application of subsection 29(2)(o)(i) of FOIP. The A/Commissioner encouraged WCB to ensure it has considered all factors related to the exercise of discretion before it decides to withhold the information that he found to be exempt under a discretionary exemption.

I BACKGROUND

- [1] The Saskatchewan Workers' Compensation Board (WCB) received an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) from the Applicant on November 20, 2023. The Applicant sought access to the following records:

- 1) WCB contracts with Proactive Consulting which rented office space from Saskatchewan numbered company 101234698 which during the time period requested listed [a named individual] as a director of this numbered company.
 - 2) All complaints against [a named individual].
 - 3) Communications between [a named individual] and the WCB Board of Directors regarding complaints filed against [a named individual].
 - 4) Communications between WCB and Premier Scott Moe's office, Deputy Premier's Office and the Minister of Labour Relations and Workplace Safety concerning complaints about [a named individual].
 - 5) All the investigation reports stemming from complaints filed against [a named individual].
- [2] On December 20, 2023, WCB responded to the Applicant advising them that some of the responsive records contained third party information subject to subsection 19(1) of FOIP and notice to the affected party was required under section 34 of FOIP. WCB also stated that it was extending the time for responding to the request by 30 days pursuant to subsections 12(1)(a)(i) and (c) of FOIP. It added that given the extension, the deadline for responding to the request was January 19, 2024.
- [3] On January 25, 2024, WCB provided the Applicant with its section 7 decision. In its decision, it denied access to some records in full and some in part pursuant to subsections 15(1)(c), 16(1)(a), (d), 17(1)(a), 18(1)(d), 19(1)(b), 22(a), (b) and 29(1) of FOIP.
- [4] On January 26, 2024, the Applicant filed a request for a review of WCB's decision with my office.
- [5] On February 5, 2024, my office wrote to WCB asking it to confirm the exemptions that were applied to the withheld information. WCB responded on February 7, 2024, confirming that the exemptions applied were subsections 15(1)(c), 16(1)(a), (d), 17(1)(a), 18(1)(d), 19(1)(b), 22(a), (b) and 29(1) of FOIP and subsections 15(1)(d), 17(1)(b) and (c) of FOIP which were noted on the records released to the Applicant.

- [6] On February 29, 2024, my office wrote to WCB noting section 2-4(3) of my office's [Rules of Procedure](#) and asking WCB to explain why my office should consider the discretionary exemptions not raised in the section 7 decision in this review.
- [7] On March 5, 2024, WCB responded stating that subsections 15(1)(d), 17(1)(b) and (c) of FOIP are not new discretionary exemptions being raised at the review stage as they were set out in the "redactions package provided to the Applicant" at the same time that the section 7 decision was provided.
- [8] On March 13, 2024, my office sent a notice of review to WCB, the Applicant and the third party identified by WCB inviting them to make a submission.
- [9] The Applicant provided a submission on April 1, 2024. WCB provided a submission on May 22, 2024. The third party did not provide a submission.

II RECORDS AT ISSUE

- [10] WCB identified 568 pages of responsive records. It released 225 pages in full and withheld the remainder in full or in part. Details are set out in the Appendix.
- [11] WCB relied on subsections 15(1)(c), (d), 16(1)(a), (d), 17(1)(a), (b), (c), 18(1)(d), 19(1)(b), 22(a), (b) and 29(1) of FOIP to withhold information.
- [12] On a review of the records, it appears that WCB withheld information from page 331 and released the duplicate information appearing on page 87. Similarly, it withheld information from page 97 that it released on page 341. I will not be discussing below whether the duplicated information is exempt. I recommend that WCB release to the Applicant the duplicated information withheld from pages 97 and 331 within 30 days of the issuance of this Report.

[13] In its index of records and in the copy of the records provided to my office, WCB raised the application of subsection 19(1)(c) of FOIP for the first time. Given that subsection 19(1)(c) of FOIP is a mandatory exemption, I will address it in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[14] WCB qualifies as a “government institution” as defined by subsection 2(1)(d)(ii) of FOIP and section 3, PART I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Proactive Consulting Services Limited qualifies as a “third party” pursuant to subsection 2(1)(j) of FOIP. Therefore, I find that I have jurisdiction to conduct this review.

2. Did WCB properly apply subsection 22(a) of FOIP?

[15] As noted above, WCB claimed that information was exempt pursuant to subsection 22(a) of FOIP. In this case, WCB claimed that the withheld information was subject to solicitor-client privilege. It provided my office with copies of the records and portions of records to which it applied this exemption. The details are set out in the Appendix to this Report.

[16] Subsection 22(a) of FOIP is a discretionary exemption. It permits refusal of access in situations where a record contains information that is subject to any legal privilege, including solicitor-client privilege. The provision states:

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

(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

[17] As set out in the *Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access” updated April 8, 2024 (*Guide to FOIP*, Ch. 4) at pages 263 to 269, to determine if an institution has properly applied the exemption for solicitor-client privileged information, my office uses the following three-part test:

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Did the parties intend for the communication to be treated confidentially?

[18] The Applicant's submission does not specifically address the application of subsection 22(a) of FOIP. WCB asserted that all three parts of the test have been met. It stated:

(a) The Records contain communications between in-house counsel and/or MLT Aikins LLP and WCB. The *IPC Guide* confirms a "client" means a person who consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services, and that solicitor-client privilege can apply in the context of in-house legal counsel. The Records contain communications between in-house and/or external legal counsel and WCB regarding the funding agreements and [a complaint] and/or preparing information for in-house counsel and/or MLT Aikins LLP by WCB for the sole purpose of receiving legal advice.

(b) The communications entail the seeking or giving of legal advice by or to WCB. The Records contain, among other things, annotated copies of the funding agreement with legal counsel's comments and proposed changes for WCB's consideration, communications regarding these changes, communications regarding the funding agreements, and legal memoranda regarding the funding of Safety Associations and related considerations. Such communications clearly fall within section 22(a) of FOIP. The Records similarly contain advice relating to [a complaint] across a variety of mediums, including short memoranda and related emails. The scope of solicitor-client privilege is broad and applies to all of these communications.

(c) The parties intended the communications to remain confidential and WCB did not waive the privilege. The relevant Records were intended to be confidential and many are marked as "Privileged and Confidential". Further, they were only circulated between MLT Aikins LLP, in-house counsel, and members of WCB who were receiving the legal advice and/or had a strict need-to-know the advice.

[Emphasis in original]

[19] Pages 263 to 264 of Chapter 4 of my office's *Guide to FOIP*, provide the following definitions that are relevant here:

A "communication" is the process of bringing an idea to another's perception; the message or ideas so expressed or exchanged; the interchange of messages or ideas by speech, writing, gestures or conduct.

...

“Solicitor” means a lawyer who is duly admitted as a member and whose right to practice is not suspended. “Lawyer” means a member of the Law Society and includes a law student registered in the Society’s pre-call training program.

“Client” means a person who:

- Consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or
- Having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf;

and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client’s work.

[20] Many of the responsive records are emails. One responsive record is a letter. Before I deal with the body of the email records and letter, I will consider WCB’s claim that the headers, subject lines, footers and confidentiality statements in the emails, and the letterhead, addressee, subject line and signature block of the letter are exempt.

[21] Section 8 of FOIP sets out an obligation on a head to give access to as much of a record as can reasonably be severed. It provides:

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.

[22] My office’s *Guide to FOIP*, Ch. 4 at page 269, relying on the court’s findings in *Blank v. Canada (Minister of Justice)*, 2005 FC 1551, at [49], states that in relation to records for which a claim of solicitor-client privilege is made:

An applicant is entitled to general identifying information, such as the description of the document (for example, the “memorandum” heading and internal file identification), the name, title and address of the person to whom the communication was directed, the subject line, the generally innocuous opening words and closing words of the communication and the signature block.

[23] This approach has been followed in previous reports such as Review Reports [009-2023](#), [188-2022](#) and [204-2016](#) and I will follow it here. I am not persuaded that the headers, subject lines, footers, and confidentiality statements in the email records contain

information that entails the seeking or giving of legal advice. The practice of seeking or giving of legal advice is not privileged information. The actual communications that result from the seeking of or giving of legal advice is the privileged information.

- [24] This approach applies equally to the letterhead, subject line and signature block of the letter. It also applies to the title and other detailed information regarding the sender, receiver and subject matter in the heading of the Memoranda and reports on pages 405 to 411, 413 to 419, 468 to 474, 475 to 481, 482 to 488, 489 to 495, 502 to 508, 510 to 517 and 520 to 526. Therefore, part two of the test has not been met for this information.
- [25] Previous reports of my office have also applied this approach to emails, letters and other communications for which subsection 22(b) of FOIP was applied. See for example Review Reports [204-2016](#), [205-2016](#), [004-2018](#) and [171-2019](#). I find that WCB did not properly apply subsections 22(a) and (b) of FOIP to this information. Therefore, in my analysis of subsection 22(b) of FOIP below, I will not be addressing this information.
- [26] I recommend that WCB release to the Applicant, within 30 days of the issuance of this Report, the headers, subject lines, footers, confidentiality statements in emails, letterhead, subject line and signature block in letters, and the title and other detailed information regarding the sender, receiver and subject matter in memoranda and reports. Details are set out in the Appendix.
- [27] The remaining information in the emails, memoranda, reports and letters qualify as communications.
- [28] With two exceptions, the communications are between WCB, the client, and its internal legal counsel and between WCB and its outside legal counsel. In some cases, there are communications between WCB counsel and its outside legal counsel. At the material times, all legal counsel involved were members of the Law Society of Saskatchewan and were licensed to practice law in this province.

- [29] Pages 161 to 166 are one exception. This is a letter between WCB external counsel and legal counsel for another organization or third party, which does not qualify as a client. Therefore, the letter is not a communication between legal counsel and their client, and part one of the test has not been met for this information. Other exemptions have been applied to these pages that I will need to consider below before making a recommendation.
- [30] There is another exception on page 276 of the handwritten notes. The withheld information was prepared by the author and sets out actions they intend to take or “to dos.” This note does not include information that qualifies as a communication between a legal counsel and their client and therefore, part one of the test has not been met. As other exemptions have been claimed for this information, I will consider them below before making a recommendation.
- [31] I must now consider parts two and three of the test in relation to the remaining information. That is, whether the communications between legal counsel and their client entail the seeking or giving of legal advice and whether the parties intended for the communication to be treated confidentially.
- [32] In considering part two of the test, I will follow the approach taken in my office’s [Review Report 004-2024](#), where I stated that information that reveals that a government institution engaged its legal counsel does not entail the seeking or giving of legal advice. Therefore, any communications between WCB and its internal and external legal counsel that are about scheduling meetings and telephone calls or forwarded other information as an attachment would not meet part two of the test.
- [33] Information of this nature can be found on the following pages: 255 to 257, 258 (email time stamped 10:13:00 am and first two sentences of email time stamped 10:07 am), 259 (emails time stamped 11:41:00 am, 10:14 am and first two sentences of email time stamped 10:07 am), 261 (first two sentences), 262 (first two sentences), 263 (email time stamped 12:02:00 pm first sentence), 265 (email time stamped 12:03 first sentence), 268 (email time stamped 12:03 first sentence), 284 (two emails time stamped 11:46:03 and 11:26), 286, 288 (email time stamped 9:13:48), 496 (email time stamped 4:04:00 PM), 500 and 501.

Part two of the test has not been met for this information. Therefore, I find that WCB did not properly apply subsection 22(a) of FOIP to this information. I will consider below if subsection 22(b) of FOIP was properly applied to this information.

[34] The remaining information entailed the seeking or giving of legal advice. Further, based on a review of the information, it is apparent that the parties to the communication intended that it should be treated confidentially. In some cases, that intention is expressed on the face of the records and in other cases it is apparent from a review of the records. For these reasons, parts two and three of the test have been met for the remaining information.

[35] I find that the WCB properly applied subsection 22(a) of FOIP to some information. The details and recommendations are set out in the Appendix. I will make a recommendation regarding the other information after I have considered the exemptions that were applied in the alternative.

3. Did WCB properly apply subsection 22(b) of FOIP?

[36] The WCB applied subsection 22(b) of FOIP to records and portions of records as set out in the Appendix. In light of my findings above, I must consider if the information withheld from pages 161 to 166, 255-257, 258, 259, 261, 262, 263, 265, 268, 276, 284, 286, 288, 496, 500 and 501 is exempt under subsection 22(b) of FOIP. This provision states:

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;

[37] Subsection 22(b) of FOIP is a discretionary exemption. It permits refusal of access in situations where a record was prepared by or for legal counsel (or an agent of the Attorney General) for a government institution in relation to the provision of advice or services by legal counsel (or an agent of the Attorney General). It is broader in scope than subsection 22(a) of FOIP.

[38] My office applies the following two-part test to determine if subsection 22(b) of FOIP was properly claimed:

1. Were the records “prepared by or for” legal counsel for a government institution?
2. Were the records prepared in relation to a matter involving the provision of advice or other services by legal counsel?

[39] The *Guide to FOIP*, Ch. 4 at pages 290 and 291, includes definitions of terms used in parts one and two of the test. They are:

- “Prepared” means to be ready for use or consideration.
- “By or for” means the person preparing the record must be either the person providing the legal advice or legal service or a person who is preparing the record in question on behalf of, or for the use of, the provide or legal advice or legal related services.
- “Legal advice” includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.
- “Legal service” includes any law-related service performed by a person engaged by a government institution and who is licensed to practice law.

[40] As I stated in my office’s [Review Report 171-2019](#), the prepared record does not have to constitute legal advice or legal services to qualify for the second part of the test. The portion(s) of the record to which the government institution applies subsection 22(b) of FOIP should be substantive and not merely referencing the advice or service provided. Applying these principles, in Review Report 171-2019, I found that information about administrative matters such as booking meeting rooms or office duties would not be covered by this exemption.

[41] I now turn to consider if WCB has met part one of the test. WCB asserted that it properly applied this exemption for the following reasons:

- (a) The Records contain communications prepared for in-house legal counsel and/or MLT Aikins LLP. The Records contain communications between in-house and/or external legal counsel and WCB regarding the funding agreements and [a complaint]

and/or the preparation of information for in-house counsel and/or MLT Aikins LLP by WCB for the sole purpose of receiving legal advice.

(b) The Records were prepared specifically to receive legal advice with respect to the negotiation of the Proposed Changes and investigating [a complaint]. The Records were prepared to either directly communicate with in-house counsel to receive legal advice and/or with MLT Aikins LLP. As well, certain emails where legal counsel is not cc'ed specifically reference that the information is being compiled at the request of legal counsel for the purpose of obtaining legal advice.

[Emphasis in original]

[42] Following the approach taken in Review Report 171-2019 referred to above, I find that subsection 22(b) of FOIP does not apply to communications about administrative matters such as discussions about scheduling phone calls, meetings and forwarding documents. The details are set out in the Appendix. Where no other exemptions were claimed for that information, I recommend that WCB release it to the Applicant within 30 days of the issuance of this Report. Where other exemptions were applied in the alternative, I will consider their application later in this Report.

[43] I arrive at a different conclusion regarding the letter on pages 161 to 166. The letter was written to an outside party by WCB's external counsel and therefore, part one of the test has been met. It is clear on the face of the record that it was prepared in relation to a matter involving the provision of advice or other services by legal counsel. Therefore, part two of the test has been met. As both parts of the test have been met, I find that WCB properly applied subsection 22(b) of FOIP to this record. I recommend that WCB continue to withhold this information pursuant to subsection 22(b) of FOIP.

4. Did WCB properly apply subsection 29(1) of FOIP?

[44] Subsection 29(1) of FOIP protects the privacy of individuals whose personal information is contained within records responsive to an access to information request made by someone else. Subsection 29(1) of FOIP requires a government institution to have the consent of the individual whose personal information is in the record prior to disclosing it absent circumstances that meet the exceptions. It states:

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.

[45] As section 29(1) of FOIP only applies to personal information, I must first decide if the withheld information is personal information. To qualify as personal information under subsection 24(1) of FOIP, the information must: 1) be about an identifiable individual; and 2) be personal in nature.

[46] 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*, Chapter 6, “Protection of Privacy”, updated January 18, 2023 [*Guide to FOIP*, Ch. 6], pages 32 to 33).

[47] WCB applied subsection 29(1) of FOIP to information about an individual’s date of birth and phone number. It also applied it to signatures of other individuals, and the personal phone number and vacation days of another individual. Based on a review of the records, subsections 24(1)(a), (b), (d), (e), (h) and (k) of FOIP may be relevant. They provide 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;

...

(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;

...

(h) the views or opinions of another individual with respect to the individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

[48] Upon review, the following information qualifies as personal information:

- an individual's date of birth on page 211 (subsection 24(1)(a) of FOIP);
- the telephone number on page 202 (subsection 24(1)(e) of FOIP); and
- information about an employee's absence on page 202 (subsection 24(1)(b) of FOIP).

[49] The telephone number that appears on page 173 is the telephone number for a WCB employee that is used for work purposes. It does not qualify as personal information.

[50] WCB withheld signatures from pages 129, 131, 134, 137, 139, 145, 160, 173, 174, 182, 378, 381, 383, 389 and 404. These signatures appear in a work-related context as the individuals in question appear to have signed documents in their professional capacity. The documents in question do not relate to personal matters. In contrast, the signatures that appear on pages 167, 194 and 223 appear in a letter of complaint or concern from an individual that appears to have been written in a personal capacity.

[51] In previous reports, such as [Review Report 220-2022, 255-2022](#) and [Review Report 155-2022](#), my office has found that signatures that appear in a work-related context or that were used in a work-related capacity do not constitute personal information. However, a signature may be personal information if it appears outside of a professional context. Following this approach, I find that WCB properly applied subsection 29(1) of FOIP to pages 167, 194 and 223 but not to pages 129, 131, 134, 137, 139, 145, 160, 173, 174, 182,

378, 381, 383, 389 and 404. I recommend that the WCB continue to withhold or release information as set out in the Appendix.

[52] WCB's index of records stated that it claimed subsection 29(1) of FOIP for pages 18 to 50 of the records. However, the redacted version of the records provided to my office did not identify the personal information and WCB did not refer to it in its submission. Having reviewed the records, I find that these pages do not contain any personal information and therefore, subsection 29(1) of FOIP does not apply.

[53] As subsection 29(1) of FOIP is a mandatory exemption, I must also consider its potential application to other information, even where the exemption was not applied by WCB. I will turn to consider if the audio recording and the information withheld from pages 167, 171 to 174, 193 to 197, 202, 203, 207, 211, 214, 222 to 226, 242, 244 and 245 qualifies as personal information pursuant to subsections 24(1)(b) and (h) of FOIP.

[54] In previous reports of my office, I have defined "employment history" as that phrase is used in subsection 24(1)(b) of FOIP as the type of information normally found in a personnel file such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job or leave transactions. It does not include an employee's work product which is information generated by or associated with an individual in the normal course of performing their duties.

[55] This approach was adopted by my predecessor in [Review Report LA-2014-002](#) which dealt with the equivalent definition in *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The same approach was subsequently followed by me in [Review Report 179-2015](#), which involved an audit report involving employees and in [Investigation Report 114-2017](#), where I found that information about an investigation into harassment allegations made against an employee qualified as employment history.

[56] A letter of complaint made about a potential conflict of interest on the part of an employee of WCB appears on page 167. Duplicates can be found on pages 194 and 223. The information in the body of the letter qualifies as an employee's personal information

pursuant to subsection 24(1)(b) of FOIP as it relates to allegations of workplace wrongdoing. Other information in the record would also qualify as an employee's personal information under subsection 24(1)(h) of FOIP as it includes the personal opinions or views of an individual about an employee.

- [57] It appears as if this personal information (on pages 167 and its duplicates) was released, although the WCB did not explain its authority to do so. It also appears that information may have been released from pages 242, 244 and 245 that qualifies as personal information under subsection 24(1)(h) of FOIP. Similarly, WCB did not explain its authority to release this information. My office will make further inquiries about this with the WCB following the issuance of this Report.
- [58] Based on a review of the records, detailed information about investigations into allegations of conflict of interest on the part of an employee also appear in the audio recording that was withheld in full and on the following pages: 171 to 174, 193 to 197 (except for the information under the headings "Safety Association Funding Agreements" and "Optional Personal Coverage for Directors of Corporations"), 202 (bottom), 203, 207, 211, 214, 222 to 226 (except for the information under the headings "Safety Association Funding Agreements" and "Optional Personal Coverage for Directors of Corporations").
- [59] The audio recording, in its entirety, is an interview of an employee who is alleged to have had a conflict of interest. It qualifies as personal information of the employee pursuant to subsection 24(1)(b) of FOIP. The information withheld from the pages noted above also qualifies as the personal information of an employee pursuant to subsection 24(1)(b) of FOIP for the same reason.
- [60] As there is no information to suggest that the individuals consented to the release of their personal information, I find that subsection 29(1) of FOIP applies to the information that I have found is personal information.

Subsection 29(2)(o)(i) of FOIP

[61] Before I make my recommendation, I need to consider the Applicant's broad argument that there is a public interest in all of the information that has been withheld by WCB. As noted in my office's *Guide to FOIP*, Ch. 4 at page 14, FOIP does not contain an overarching public interest override which would require that information be disclosed in all cases where the general public interest in disclosure outweighs a specific interest which is intended to be protected.

[62] Rather, in FOIP, the public interest in disclosure is addressed on a case-by-case basis only in connection with two exemptions in FOIP – sections 29 and 19. The potential public interest in disclosure is addressed in subsections 29(2)(o) of FOIP (which applies to personal information) and 19(3) of FOIP (which applies to third party information). I will consider the possible application of subsection 29(2)(o)(i) of FOIP here and will address the potential application of subsection 19(3) of FOIP later in this Report.

[63] Subsection 29(2) of FOIP gives WCB the authority to disclose personal information in defined circumstances. Subsection 29(2)(o)(i) of FOIP states:

29(2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:

...

(o) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or

[64] As set out in my office's *Guide to FOIP*, Ch. 6 at pages 240 to 241, subsection 29(2)(o)(i) of FOIP permits a government institution to disclose personal information about an individual without consent. To rely on this provision, the public interest in disclosure must clearly outweigh any invasion of privacy that could result from disclosure.

[65] My office uses the following test to determine if there is authority to disclose under this provision:

1. Is the information “personal information” as defined by FOIP?
2. Is there a public interest in the personal information?
3. Does the public interest clearly outweigh any invasion of privacy?

[66] I first adopted this test for the purposes of subsection 29(2)(o)(i) of FOIP in my office’s [Review Report 173-2018](#). I subsequently considered it in [Review Report 082-2019, 083-2019](#) and [Review Report 342-2019](#), both concerning the Ministry of Health. I also considered this test for the equivalent provision in LA FOIP – namely, subsection 28(2)(n)(i) in [Review Report 035-2019](#) which concerned the City of Saskatoon.

[67] As set out in my office’s *Guide to FOIP*, Ch. 6 at page 242, “public interest” means the interest of the general public or of a group of individuals. It does not include the interest of only one individual. Some of the criteria for assessing if there is a public interest include: 1) if the record will show how the government institution reached or will reach a decision; and 2) if the records will shed light on the activities of a government institution.

[68] As I noted recently in my office’s [Investigation Report 043-2023, 044-2023](#), a public interest does not exist where the interests being advanced are essentially private in nature. Page 243 of the *Guide to FOIP*, Ch. 6, explains that to be in the public interest, the personal information must relate to a matter of compelling public interest, and not just be of interest or of curiosity to the public, a group of people or individuals.

[69] Where a public interest has been established, the government institution must then weigh the public interest against the personal privacy interests of the individual whose personal information may be disclosed pursuant to subsection 29(2)(o)(i) of FOIP.

[70] Page 243 of the *Guide to FOIP*, Ch. 6, provides that when considering the public interest, the government institution should create a list of factors in favour of withholding and public

interest factors for releasing. This will help when it comes to assessing the relative weight of the factors and whether disclosing is in the public interest.

[71] The Applicant asserted that WCB is involved in a conflict of interest investigation involving a senior employee. The Applicant described this as a “textbook example of where transparency is required and the discretion to release the records needs to be exercised and demonstrate accountability to the public.”

[72] They added that the issues are being covered by the media and opposition political parties in Saskatchewan and provided my office with a link to one media story. They also stated that WCB’s approach to processing this request does not recognize the transparency purpose of FOIP.

[73] Finally, the Applicant stated that harm to a safety association has resulted because their funding has been cancelled. Harm has also resulted from the “excessive severing” of records because it is not clear if WCB investigated a second conflict of interest complaint.

[74] Dealing first with the birth dates, personal telephone numbers signature and time away from the office that is discussed above. Even if there was a public interest in the conflict-of-interest allegations, the Applicant has not satisfied me that the public interest clearly outweighs the privacy interests of the individuals in relation to this personal information. This is because release of this personal information would not shed light or bring transparency to the allegations given the nature of the personal information.

[75] Therefore, the public interest does not outweigh the privacy interest in relation to this personal information.

[76] Regarding the personal information described in paragraph [58] above, it is not clear whether the WCB considered the application of subsection 29(2)(o)(i) of FOIP in making its decision.

[77] I recommend that, within 30 days of the issuance of this Report, WCB consider the exercise of its discretion under subsection 29(2)(o)(i) of FOIP in relation to the personal information referred to in paragraph [58] of this Report.

[78] Regarding the remaining personal information, as there is no information before me to suggest that the individuals to whom it relates consented to its release, I find that WCB properly applied subsection 29(1) of FOIP. I recommend that the WCB continue to withhold this information. Details are set out in the Appendix.

[79] I also recommend that WCB, within 30 days of the issuance of this Report, release the information to the Applicant that I have found does not qualify as personal information as no other exemptions have been claimed for it. Details are set out in the Appendix.

5. Did WCB properly apply subsection 15(1)(c) of FOIP?

[80] WCB applied subsection 15(1)(c) of FOIP to pages 170 to 174, an audio recording, 202 to 203, 207, 211, 214, 215 and 424 to 428.

[81] Subsection 15(1)(c) of FOIP states:

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;

[82] Subsection 15(1)(c) of FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation.

[83] Section 15 of FOIP uses the word “could” versus “could reasonably be expected to” as seen in other provisions of FOIP. The threshold for could is somewhat lower than a reasonable expectation. The requirement for could is simply that the release of the information could have the specified result. There would still have to be a basis for

asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to FOIP*, Ch. 4, p. 54).

[84] My office applies the following two-part test in determining if this exemption applies:

1. Does the government institution's activity qualify as a "lawful investigation?"
2. Could release of the information interfere with a lawful investigation or could release disclose information with respect to a lawful investigation?

[85] A "lawful investigation" is an investigation that is authorized or required and permitted by law. The government institution should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future. Further, this first part of the two-part test is not limited to investigations that are conducted by the government institution. In other words, investigations can include investigations conducted by other organizations (*Guide to FOIP*, Ch. 4, p. 53).

[86] A "lawful investigation" does not include any and every investigation of any matter whatsoever not prohibited by some specific law. This view was first set out in my office's Review Report 93/021, and subsequently followed in Review Report F-2004-006 and more recently in [Review Report 233-2020](#). Therefore, in applying this exemption, the government institution must be able to identify the statutory provision that authorizes the lawful investigation.

[87] WCB claimed that it properly applied the exemption for the following reasons:

- The information in the records involves a lawful investigation. Relying on subsections 9(1) and (5) of *The Workers' Compensation Act, 2013* (WCA), the WCB has the powers and authority of a corporation to govern and administer the act including the investigation of [...] conflict of interest.
- The information would disclose information with respect to its investigation. This includes the investigation report, an audio recording of an interview, emails outlining investigative deliberations, the results of the investigation and various other documents created for carrying out and conducting the investigation.

[88] Subsections 9(1) and (5) of *The Workers' Compensation Act, 2013* provide:

9(1) The Workers' Compensation Board is continued.

...

(5) Members of the board are responsible for the following:

(a) full-time members are responsible for hearing and deciding appeals to the board pursuant to this Act and for the governance and proper administration of matters governed by this Act; and

(b) part-time members are responsible for the governance and proper administration of matters governed by this Act.

[89] WCB's investigation into a complaint of a conflict of interest on the part of its employees may be a lawful undertaking tied to its role as an employer. However, in the absence of a legislative provision authorizing the investigation, it does not qualify as a lawful investigation as that term is used in subsection 15(1)(c) of FOIP. Subsection 9(1) and (5) of the WCA do not authorize the conduct of such an investigation.

[90] Therefore, part one of the test has not been met in relation to the audio recording and the other information withheld pursuant to subsection 15(1)(c) of FOIP and it is not necessary for me to consider the other parts of the test. I find that WCB did not properly apply subsection 15(1)(c) of FOIP. My recommendations are set out in the Appendix.

[91] I note that WCB claimed subsection 15(1)(c) of FOIP for information that appears on pages 202 to 203 and its duplicates on pages 207 and 214. However, on pages 207 and 214 it also claimed that subsection 17(1)(b) of FOIP applied. I consider the inconsistent application of subsection 17(1)(b) of FOIP a clerical error. I will consider if subsection 17(1)(b) of FOIP applies to the audio recording and pages 202 to 203, 207 and 214 later in this Report.

6. Did WCB properly apply subsection 15(1)(d) of FOIP?

[92] Subsection 15(1)(d) of FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal

proceedings. WCB applied this exemption to pages 97, 99 to 103, 107 to 115, 276, 331, 341, 343 to 347 and 351 to 359.

[93] Subsection 15(1)(d) of FOIP states:

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

...

(d) be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal proceedings;

[94] My office uses the following two-part test to determine if the exemption was properly applied:

1. Do the proceedings qualify as existing or anticipated legal proceedings?
2. Could disclosure of the records be injurious to the government institution in the conduct of the legal proceedings?

1) Do the proceedings qualify as existing or anticipated legal proceedings?

[95] “Legal proceedings” are any civil or criminal proceeding or inquiry in which evidence is or may be given and includes an arbitration. It includes proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgement of a court or a ruling by a tribunal. Legal proceedings include all proceedings authorized or sanctioned by law and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of a remedy (*Guide to FOIP*, Ch. 4, p. 56).

[96] “Anticipated” means more than merely possible; probable (*Guide to FOIP*, Ch. 4, p. 57).

[97] In support of its claim that this exemption applied, WCB asserted that legal proceedings between the Safety Association of Saskatchewan Manufacturers (SASM) and WCB regarding a funding arrangement are ongoing and that the proceedings directly relate to the withheld information. WCB added that the SASM has sought to raise an issue in those proceedings regarding the allegations of conflict of interest on the part of a WCB employee.

These assertions were supported by an affidavit sworn by a WCB Vice President attesting to their accuracy.

[98] For these reasons, I am satisfied that there are legal proceedings that are in progress. Therefore, part one of the test has been met.

2) *Could disclosure of the records be injurious to the government institution in the conduct of the legal proceedings?*

[99] WCB asserted that the disclosure of the information for which it has claimed subsection 15(1)(d) of FOIP could be injurious to WCB in the legal proceeding, noting that it contains internal communications and deliberations with respect to negotiations. It added that if released, the withheld information could be used in the proceeding despite no admissibility ruling having been made in the litigation. It could be used to disrupt the litigation, create negative public attention, and interfere with WCB's legislative mandate.

[100] WCB relied on a decision of the Court of Queens Bench in [*Britto v. University of Saskatchewan, 2018 SKQB 92*](#) (*Britto*) which states that disclosure of documents that *could* be used in an anticipated legal proceeding, before any ruling on the admissibility of those documents, could lead to potential use and abuse of the disclosed record. It also claimed that *Britto* found such disclosure in advance of an admissibility ruling could undercut the "free communications essential to seeking and obtaining legal advice".

[101] Regarding *Britto*, WCB also stated:

Notably, the Court also confirmed that the potential use and abuse of a disclosed record before any admissibility ruling is made under the legal proceeding is an example of "injury" which can support a public body applying the exemption in section 15(1)(d) to records in the context of legal proceedings.

[102] WCB stated that its position is that the allegations are not relevant to the litigation, but that given the position taken by one party it is foreseeable that the substance of the allegations may become part of the litigation.

[103] I note that despite the claims made in WCB's submission, some of the withheld information does not involve internal communications and deliberations but involves communications with an outside organization(s) which appear to have included the SASM – this includes information withheld from pages 51 to 160 and the duplicates at pages 295 to 404 which relate to a safety association meeting. WCB described this information as the "Safety Association Package/Presentation."

[104] Given that this information appears to have been shared with other organizations including safety associations, I am not persuaded that the release of it could be injurious to WCB in the conduct of the legal proceedings. Therefore, the second part of the test has not been met for this information.

[105] The handwritten note on page 276 appears to be a note that the author wrote to themselves setting out actions to be taken. It does not appear to relate in any way to the ongoing legal proceedings and I am not satisfied that its release could be injurious to WCB in the conduct of the legal proceedings. Therefore, part two of the test has not been met for this information. I find that WCB did not properly apply subsection 15(1)(d) of FOIP to this page.

[106] I find that WCB did not properly apply subsection 15(1)(d) of FOIP. Details are set out in the Appendix. I will consider below if this information is exempt pursuant to subsection 18(1)(d) of FOIP.

7. Did WCB properly apply subsection 18(1)(d) of FOIP?

[107] WCB applied subsection 18(1)(d) of FOIP to withhold information from pages 1 to 15, 97, 99 to 103, 107 to 115, 276, 341 to 347 and 351 to 359. The details are set out in the Appendix. This is a discretionary exemption intended to protect a government institution's ability to negotiate effectively with other parties.

[108] Subsection 18(1)(d) of FOIP provides:

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

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution;

[109] As set out in my office's *Guide to FOIP*, Ch. 4 at pages 180 to 183, my office uses the following two-part test to determine if subsection 18(1)(d) of FOIP has been properly applied:

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

[110] Earlier in this Report, I defined the term "negotiation". The *Guide to FOIP*, Ch. 4 at page 181 defines the term "interfere" as "to hinder or hamper."

[111] Prospective or future negotiations could be included within this exemption, as long as they are foreseeable. The exemption may be applied even though negotiations have not yet started at the time of the access to information request, including when there has not been any direct contact with the other party or their agent. However, a vague possibility of future negotiations is not sufficient. There must be a reasonable fact-based expectation that the future negotiations will take place (*Guide to FOIP*, Ch. 4 at page 182).

[112] Once a contract is executed, negotiation is concluded. Therefore, the exemption would generally not apply unless, for instance, the same strategy will be used again and it has not been publicly disclosed (*Guide to FOIP*, Ch. 4 at page 181)

[113] WCB asserted that it has properly withheld information pursuant to this exemption because:

There are ongoing contractual negotiations between WCB and the Safety Associations regarding the Proposed Changes. As outlined above, additional negotiations with the Safety Associations regarding the Proposed Changes are reasonably foreseeable.

The release of the Records would interfere with these ongoing negotiations. The Records relate to outstanding issues in the negotiations including increased oversight of the Safety Associations, perceived conflicts of interest and enhanced audit requirements. As such, release of the Records would interfere with negotiations in various ways. For example, they would reveal WCB negotiation strategies and tactics with respect to the negotiation of the funding agreements, giving the Safety Associations an unfair advantage.

[Emphasis in original]

[114] In an Affidavit dated May 13, 2024, which was provided to my office, Vice President, Prevention and Employer Services attested that additional negotiations with safety associations are reasonably foreseeable.

[115] Subsection 18(1)(d) of FOIP does not apply to the email headers, subject lines, footers and confidentiality statements because release of this information would not interfere with ongoing negotiations. Therefore, part two of the test has not been met.

[116] Pages 1 to 15 contain a draft funding agreement. WCB asserted that temporary agreements are in place with the safety associations and that additional negotiation with the safety associations are reasonably foreseeable. On this basis, part one of the test has been met. Regarding part two of the test, I accept that release of a draft funding agreement would interfere with negotiations that are foreseeable. Therefore, part two of the test has been met. I find that WCB properly applied subsection 18(1)(d) of FOIP to these pages.

[117] Regarding the information withheld from the handwritten notes on page 276, I am not persuaded that release of this information would interfere with negotiations with the safety associations. The withheld information appears to relate to a staff assignment. Given the absence of additional evidence from WCB or in the records to support its claim, I find that part two of the test has not been met. Accordingly, I find that WCB did not properly apply subsection 18(1)(d) of FOIP to this information. As no other exemptions have been claimed

for page 276, I recommend that WCB release it to the Applicant within 30 days of the issuance of this Report.

[118] The remaining withheld information was part of the “Safety Association Package/Presentation” which, as noted above, appears to have been shared with the safety associations at a meeting. In these circumstances, I am not persuaded that release of the information would interfere with negotiations with the safety associations. Therefore, I find that WCB did not properly apply subsection 18(1)(d) of FOIP to this information. Details of my recommendations regarding the records to which subsection 18(1)(d) of FOIP was applied are set out in the Appendix.

[119] I will consider later in this Report if subsections 17(1)(a), (b), (c), 19(1)(b) and (c) of FOIP apply to this information where those exemptions have been claimed in the alternative.

8. Did WCB properly apply subsection 16(1)(a) of FOIP?

[120] WCB applied subsections 16(1)(a) of FOIP to pages 192, 193 to 197, 198 and 200. This exemption states:

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

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

[121] Subsection 16(1) of FOIP is a mandatory exemption. It requires a government institution to refuse access in situations where release of a record could disclose a confidence of Cabinet, including records created to present advice, proposals, recommendations, analyses, or policy options to Cabinet or any of its committees.

[122] Regarding the purpose of the equivalent provision under Ontario’s *Freedom of Information and Protection of Privacy Act* (FIPPA), the Supreme Court of Canada (SCC) stated in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 (CanLII), at paragraph [3]:

Just as legislative privilege protects the ability of elected representatives to act on the will of the people (*Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, [2018 SCC 39](#), [2018] 2 S.C.R. 687), and deliberative secrecy preserves the independence of the judiciary (*MacKeigan v. Hickman*, [1989 CanLII 40 \(SCC\)](#), [1989] 2 S.C.R. 796, at pp. 830-31), Cabinet confidentiality grants the executive the necessary latitude to govern in an effective, collectively responsible manner (*Babcock v. Canada (Attorney General)*, [2002 SCC 57](#), [2002] 3 S.C.R. 3, at para. [15](#)). Cabinet secrecy is “essential to good government” (*ibid.*), as it promotes deliberative candour, ministerial solidarity, and governmental efficiency by protecting Cabinet’s deliberations (*B.C. Judges*, at paras. 95-97; *Carey v. Ontario*, [1986 CanLII 7 \(SCC\)](#), [1986] 2 S.C.R. 637, at pp. 658-59).

[123] Saskatchewan’s exemption for cabinet documents is different from the exemption found in Ontario’s FIPPA. However, these general comments from the SCC about the purpose of the Ontario exemption are instructive here.

[124] My office uses the following two-part test to determine if the exemption was properly applied:

1. Does the record contain advice, proposals, recommendations, analyses or policy options?
2. Was the record created to present to Cabinet or any of its committees?

[125] According to my office’s *Guide to FOIP*, Ch. 4 at page 94, subsections 16(1)(a) through (d) of FOIP are not an exhaustive list. Therefore, even if none of the subsections are found to apply, the introductory wording of subsection 16(1) of FOIP must still be considered. In other words, I must also ask if the withheld information is a confidence of Executive Council.

[126] Pages 100 to 102 of the *Guide to FOIP*, Ch. 4, include definitions for the following terms:

- “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.
- A “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or

person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”.

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

[127] WCB asserted that the records contain advice, recommendations, proposals, analyses or policy options. It asserted that this information can be revealed in two ways. First, where the information in question consists of advice, recommendations, proposals, analyses or policy options. Second, where if disclosed it would permit the drawing of accurate inference as to the nature of the advice, recommendations, proposals, analyses or policy options.

[128] It also asserted that the information withheld pursuant to this exemption was contained in a briefing note and communications “elaborating on and explaining” the briefing note. It added that the records also identify the issues presented to the Minister responsible for WCB and that they were created to present to the Minister. It claimed that the information was similar to briefing binders which were found to be properly withheld in previous review reports of my office. It added that the records were created to present to the Minister, a member of Executive Council.

1) Does the record contain advice, proposals, recommendations, analyses or policy options?

[129] Page 192 is an internal email setting out the advice of a WCB employee regarding actions that need to be taken to address an issue that was before the Minister responsible for WCB. It meets part one of the test.

[130] Pages 198 and 200 are duplicates of an email from WCB to administrative staff within the Minister's office. The email sets out a description of the actions that will be taken to prepare a briefing note for the Minister's office. It is factual or administrative or a process related in nature. The withheld information does not qualify as advice because it is factual information. It is not a specific piece of advice about what to do and it is not a recommendation. It is also not a proposal, analyses or policy options because it does not offer something for consideration, provide a detailed examination of the elements of an issue and does not set out alternative courses of action. Part one of the test has not been met for this information.

[131] Pages 193 to 197 contain a briefing note to the Minister. Some of the information in the briefing note appears to qualify as analyses because it is a detailed examination of a complaint filed with the Minister and the steps taken by the WCB in response to the complaint. Some information in the briefing note qualifies as factual information. Therefore, portions of the briefing note meet part one of the test.

2) *Was the record created to present to Cabinet or any of its committees?*

[132] As set out in the *Guide to FOIP*, Ch. 4 at page 103, records that contain advice, proposals, recommendations, analyses or policy options developed from sources outside of the Executive Council for presentation to the Executive Council are intended to be covered by the provision. On the same page, the *Guide to FOIP* includes the following definitions of Executive Council and a committee of the Executive Council:

- “Executive Council” means the Executive Council appointed pursuant to *The Executive Government Administration Act*. It consists of the Premier and Cabinet Ministers. Executive Council is also referred to as “Cabinet”. “Cabinet” has also been defined as the committee of senior ministers (heading individual provincial government ministries) which acts collectively with the Premier to decide matters of government policy.
- A “committee of the Executive Council”, also known as a Cabinet committee, includes one or more Cabinet ministers. The committee exercises some or all of the powers of Cabinet as a whole, or develops and provides recommendations to Cabinet. Also included in the definition is an entity or individual to which the

Executive Council or any of its committees has delegated decision-making authority on their behalf.

[133] As noted above, the WCB's submission stated that the information was prepared for the Minister, a member of the Executive Council. However, part two of the test for the application of subsection 16(1)(a) of FOIP requires that the record be created to present to Executive Council or a committee of Executive Council. There is no evidence or information to support a finding that the information at issue here was created to present to Executive Council or one of its committees. It was created for the Minister, in their capacity as the Minister responsible for WCB. Therefore, WCB has not met part two of the test for these records.

[134] As noted above, given that subsection 16(1) of FOIP does not provide an exhaustive list, I must also ask if the withheld information is a confidence of Executive Council. In this regard, WCB claimed that the briefing note was similar to a "briefing binder," portions of which have been found to be exempt by my office pursuant to this exemption in previous reports.

[135] In my office's [Review Report 003-2021](#), I summarized previous reports involving briefing binders and stated:

[12] In Review Reports 023-2015, 021-2015 and 032-2015, I considered the application of subsection 16(1) of FOIP to briefing binders. In those reports, I stated this exemption applied only to the parts of a record that contained a cabinet confidence. In Review Report 023-2015 at paragraph [20], I defined cabinet confidence as follows:

[20] Cabinet confidences can be generally defined as:

...in the broadest sense, the political secrets of Ministers individually and collectively, the disclosure of which would make it very difficult for the government to speak in unison before Parliament and the public.

(Federal Access to Information and Privacy Legislation Annotated 2015 (Canada: Thomas Reuters Canada Limited, 2014) at p. 1-644.4)

[13] In those reports, I further outlined that, as a result, briefing binders may contain various types of documents that would not necessarily be caught by this

exemption, including documents containing information that has already been revealed and is publicly available. Other documents may include organizational charts, financial information, information on mandate and mission of the government institution, senior management profiles, and documents containing information relating to the government institution, such as strategies and issues to address.

[14] Paragraph [63] of my office's Review Report F-2012-004, also stated that, "[b]ackground materials for Cabinet that contain essentially factual information usually should be available to the public and would not warrant the same confidentiality that applies to Cabinet confidences". This type of information is often captured in the "background" section of a briefing note.

...

[17] Upon review of the remainder of the severed briefing notes, I find the severed portions would qualify as a Cabinet confidence for the purposes of subsection 16(1) of FOIP. For example, on page 1, I note information that Cabinet would need to be apprised of.

[136] The briefing note in this case relates to a complaint filed by an individual with the Minister's office regarding WCB and one of its employees. From a review of the records, it appears that the Minister's office requested information about the complaint from WCB but there is no suggestion that the matter to which it relates was of interest to Cabinet, one of its committees or involved a cabinet confidence. There is nothing in the records to indicate that this was intended for Cabinet. As noted above, the information in the briefing note includes information that would qualify as analysis, but it is primarily factual as it provides background information, sets out actions taken by WCB relating to a complaint and reports on its findings.

[137] Unlike the circumstances in Review Report 003-2021, I am not persuaded that this is the type of information that Cabinet would need to be apprised of. I am also not persuaded that release of the record would undermine the need to protect deliberative candour, ministerial solidarity, and governmental efficiency. Therefore, I find that the briefing note does not qualify as a Cabinet confidence.

[138] Accordingly, I find that WCB did not properly apply subsection 16(1)(a) of FOIP to the withheld information.

[139] It appears from a review of the redlined records provided to my office that WCB did not apply subsection 16(1)(d) of FOIP to the briefing notes on pages 193 to 197. However, as this is a mandatory exemption, I will consider it below. I will also consider if WCB properly applied subsection 16(1)(d) to pages 192, 198 and 200.

9. Did WCB properly apply subsection 16(1)(d) of FOIP?

[140] Subsection 16(1)(d) of FOIP requires refusal of access in situations where release of a record could disclose a confidence of Cabinet including records that contain briefings to members of Cabinet in relation to matters that are before or proposed to be brought before it or any of its committees. It also requires refusal where release of a record could disclose matters that are the subject of consultations described in subsection 16(1)(c) of FOIP.

[141] Subsection 16(1)(d) of FOIP states:

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

...

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

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

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

[142] Cabinet confidences are defined above.

[143] As noted in the *Guide to FOIP*, Ch. 4 at page 120, in order for this provision to apply, the records must contain briefings and be intended for Executive Council. In addition, subsections 16(1)(d)(i) or (ii) must apply.

[144] My office uses the following test to determine if the exemption was properly applied. Only one of the questions need to be answered in the affirmative for the exemption to apply.

1. Does the record contain briefings to members of Cabinet in relation to matters that are before, or are proposed to be brought before, Cabinet or any of its committees?
2. Does the record contain briefings to members of Cabinet on matters that relate to the making of government decisions or the formulation of government policy?

[145] WCB asserted as follows:

The Records contain briefings to a member of Cabinet in relation to matters that are before, or are proposed to be brought before, Cabinet. The Records contain a Briefing Note and communications elaborating on and explaining the Briefing Note. In addition, the Records identify issues presented to the Minister responsible for WCB. As a result, this constitutes a briefing to a member of Cabinet. The IPC Guide states that “briefings” captures “drafts of these documents, and any informal notes which officials may make during the meetings. By disclosing drafts and notes, the associated substance could be disclosed”.

The Records contain briefings to the Minister responsible for WCB on matters relating to the making of government decisions. As set out above, the Records contain briefings relating to the funding of Safety Associations.

[Emphasis in original]

[146] As noted above, pages 192, 198 and 200 include an internal email and an email to staff in the Minister’s office that address administrative matters such as the actions to be taken by the WCB in response to an email from the Minister’s office. They do not qualify as briefings to members of Cabinet in relation to matters that are before or are proposed to be brought before Cabinet or any of its committees. Therefore, the first and second tests have not been met for the information withheld on these pages.

[147] Pages 193 to 197 contain a briefing to a member of Cabinet, the Minister responsible for WCB. However, WCB has not provided information to support a finding that the briefings relate to matters that are before or proposed to be brought before Cabinet other than making a bald assertion to that effect. On a review of the document, it does not identify a decision that is before Cabinet or include any recommendations or options for Cabinet’s consideration. I am not satisfied that the briefing relates to the making of government decisions or policy. I find that the second test has not been met.

[148] Therefore, the first and second tests are not met for the briefing note.

[149] I find that WCB did not properly apply subsection 16(1)(d) of FOIP. My recommendations are set out in the Appendix.

10. Did WCB properly apply subsection 17(1)(a) of FOIP?

[150] Given my findings above, I need only consider if WCB properly applied subsection 17(1)(a) of FOIP to pages 16 to 17, 19 to 27, 31 to 50, 107 to 115, 222 to 226 and 351 to 359. Note that where this exemption was claimed for records but not their duplicates, I will treat that as a clerical error and consider if the exemption applied to both versions of the records. The details of where this exemption was applied, and the duplicates are set out in the Appendix.

[151] Subsection 17(1)(a) of FOIP states:

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;

[152] Subsection 17(1)(a) of FOIP is a discretionary exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council.

[153] My office uses the following two-part test to determine if the exemption was properly applied:

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

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

[155] As set out in the *Guide to FOIP*, Ch. 4 at page 133, the exemption is not intended to protect the bare recitation of facts without anything further. It should be reserved for the opinion, policy or normative elements of advice and should not be extended to the facts on which it is based.

[156] WCB asserted that the withheld information meets the tests for the application of subsection 17(1)(a) of FOIP because:

- They contain analyses regarding a complaint, proposed changes and funding agreement consultations. It added that the withheld information qualifies as advice, proposals, recommendations and analyses and adds that it permits the drawing of inferences with respect to the proposed changes, contains suggestions and advice re courses of action, analyses of current issues, and proposals regarding amendments to funding agreements. They also contain communications and materials, the disclosure of which would allow the drawing of accurate inferences with respect to certain suggested courses of action.
- It added that the records were developed by or for the WCB and relate to the WCB and its statutory mandate and involved its staff and advisors.

[157] Section 17(1)(a) of FOIP does not apply to the email headers, subject lines, footers and confidentiality statements because they do not meet the first part of the test (see [Review Report 124-2018, 125-2018](#)). See the Appendix for further details.

[158] In previous reports of my office, I have found that subsection 17(1)(a) of FOIP may apply to information obtained from stakeholder interviews or consultations that qualified as advice, proposals, recommendations, analyses, or policy options. See for example [Review Report 019-2019, 266-2019](#). See also [Review Report 185-2019](#) at paragraph [60], where I stated:

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

[159] However, information provided by stakeholders that addresses their needs, raises questions or that involves views about stakeholders would not qualify as advice, proposal, recommendations, analyses or policy options. This is consistent with my findings made in my office's [Review Report 086-2018](#).

[160] Turning to the first part of the test, pages 16 and 17 are a summary of information gathered during a meeting with external stakeholders. The summary of information gathered, includes the external stakeholders' advice, recommendations and proposals for amendments to a funding agreement. This was information developed for WCB by stakeholders. Therefore, parts one and two of the test have been met for this information with one exception.

[161] At the bottom of page 17 is a description of the next steps in the consultation process, which does not qualify as advice, proposal, recommendations, analyses, or policy options because they are factual, and process or administrative related statements. As part one of the test has not been met, there is no need to consider part two. I find that WCB did not properly apply subsection 17(1)(a) of FOIP to this information. I will consider if it is exempt under the other exemptions applied by WCB below.

[162] Pages 19 to 27 include a chart which appears to set out information provided by one stakeholder to WCB. The information in columns three and four and the footnotes include the stakeholder's advice, proposals, recommendations, and analyses regarding a funding agreement and related policy. The text in light blue appears to have been written by WCB staff in response to the stakeholder's comments. The light blue text qualifies as proposals,

recommendations and analyses of the stakeholder's comments. The information was either developed by or for WCB.

[163] Pages 31 to 50 and 107 to 115 (and its duplicate at pages 351 to 359) appear to be another version of the chart at pages 19 to 27. My findings above apply equally to these versions of the chart.

[164] Pages 222 to 226 contain a draft briefing note. Drafts and redrafts of the advice, proposals, recommendations, analyses and/or policy options may be protected by this exemption. All the information in earlier drafts informs the end result even if the content of any one draft is not included in the final version (*Guide to FOIP*, Ch. 4, p. 132). The draft briefing note includes an analysis of a complaint involving WCB made to the Minister's office. On a reading of the record, it is clear that it was prepared by WCB staff for the Minister responsible for WCB. I find that the WCB properly applied subsection 17(1)(a) of FOIP to this record.

[165] In conclusion, I find that WCB properly applied subsection 17(1)(a) of FOIP in some cases but not all. I recommend that WCB release and continue to withhold information as set out in the Appendix.

11. Did WCB properly apply subsection 17(1)(b) of FOIP?

[166] In light of my findings above, I need only consider if WCB properly applied subsection 17(1)(b) of FOIP to the audio recording and pages 170 to 174, 202 to 203, 207, 214 and 424 to 428.

[167] Subsection 17(1)(b) of FOIP is a discretionary exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a government institution, a member of the Executive Council or the staff of a member of the Executive Council.

[168] The provision is intended to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad or appearing foolish if their frank deliberations were to be made public.

[169] As set out in my office's *Guide to FOIP*, Ch. 4 at pages 136 to 138, my office uses the following two-part test to determine if the exemption was properly applied:

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?

[170] According to the *Guide to FOIP*, Ch. 4 at pages 136 to 138, "consultation" and "deliberation" are defined as follows:

- "Consultation" means:

The act of consulting or taking counsel together:

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 act of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision.

The consideration and discussions of the reasons for and against a measure by a number of councillors.

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.

[171] In past reports such as [Review Report 168-2023](#) at paragraph [34], I provide the following clarification on the meaning of consultation and deliberation:

[34] ... There appears to be confusion as to what constitutes a “consultation” or “deliberation”. In past reports, I have quoted [Order F2013-13](#) by an adjudicator from Alberta’s Office of the Information and Privacy Commissioner (AB IPC) that speaks to subsections 24(1)(a) and (b) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP), which is very similar to subsections 17(1)(a) and (b) of FOIP. The Order clarifies what a consultation and deliberation are:

[para 146] I agree with the interpretation Commissioner Clark assigned to the terms “consultation” and “deliberation” generally. However, as I stated in Order F2012-10, section 24(1)(b) differs from section 24(1)(a) in that section. 24(1)(a) is intended to protect communications developed for a public body by an advisor, while **section 24(1)(b) protects communications involving decision makers.** That this is so is supported by the use of the word deliberation: **only a person charged with making a decision can be said to deliberate that decision.** Moreover, **“consultation” typically refers to the act of seeking advice regarding an action one is considering taking,** but not to giving advice in relation to it. Information that is the subject of section 24(1)(a) may be voluntarily or spontaneously provided to a decision maker for the decision maker’s use because it is the responsibility of an employee to provide information of this kind; however, such information cannot be described as a “consultation” or a “deliberation”. Put simply, section 24(1)(a) is concerned with the situation where advice is given, **section 24(1)(b) is concerned with the situation where advice is sought or considered.**

[Emphasis in original]

[172] WCB asserted that it properly applied the exemption for the following reasons:

The Records include consultations and deliberations. As discussed above, the Records include discussions between WCB personnel and others relating to the Proposed Changes and the funding of Safety Associations. The Records further contain consultations and deliberations with respect to [a complaint]. These consultations and deliberations take various forms in the Records including in back and forth email exchanges where one individual consults the other, the development of draft documents and commentary on those drafts both in the documents themselves and in comments, edits, and email correspondence relating to the draft documents and investigation of [a complaint].

The Records involve officers or employees of WCB who had responsibility for the implementation of the Proposed Changes, the funding of Safety Associations and the fulfilment of WCB's legislative mandate. The Records include deliberations and consultations between WCB personnel as well as with a staff member of the Minister responsible for WCB.

[Emphasis in original]

- [173] Subsection 17(1)(b) of FOIP does not apply to the email headers, subject lines, footers and confidentiality statements because they do not qualify as a consultation or deliberation (see [Review Report 188-2019](#)). Further details are set out in the Appendix.
- [174] Pages 170 to 174 contain a report on the results of an investigation. Excerpts or summaries of the report were set out in emails on pages 202 to 203 and duplicates on pages 207 and 214. The audio recording is of a witness interview conducted during the same investigation. The audio recording, report and emails do not involve the seeking of advice and therefore do not qualify as a consultation. This information was gathered as part of an internal investigation.
- [175] Nor do these records involve a deliberation because they do not include information of a decision-maker who is charged with making a decision. Accordingly, the first part of the test has not been met. I find that WCB did not properly apply subsection 17(1)(b) of FOIP to the audio recording and the above noted withheld information.
- [176] Page 424 includes an email containing information about allegations of a breach of a code of ethics or professional misconduct. The information was not shared as part of a consultation, and it does not involve a deliberation of the author as the author was not engaged in decision making. Therefore, part one of the test has not been met for page 424. There is no need for me to consider part two of the test for this information.
- [177] In contrast, and based on a review of the records, the information at the top of page 425 and portions of the email on page 426 qualify as a deliberation on the part of a WCB Vice President. The information at the bottom of page 425, and remaining information on pages 426 to 428 qualifies as a consultation involving staff of WCB because they involve the

Vice President seeking advice from WCB staff with knowledge of the subject matter of the consultation. Part one of the test has been met for this information.

[178] Regarding part two of the test, I find that these consultations and deliberations involve employees of WCB. Some were engaged in providing and gathering information and advice. The WCB Vice President was engaged in determining a course of action regarding a code of ethics and professional conduct concern. Part two of the test has also been met. Therefore, I find that WCB properly applied subsection 17(1)(b) of FOIP to pages 425 to 428. My detailed recommendations are set out in the Appendix.

12. Did WCB properly apply subsection 17(1)(c) of FOIP?

[179] In light of my findings above, I need only consider if WCB properly applied subsection 17(1)(c) of FOIP to information at the bottom of pages 17 and 560 to 563 of the records.

[180] Subsection 17(1)(c) of FOIP states:

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

...

(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution, or considerations that relate to those negotiations;

[181] Subsection 17(1)(c) of FOIP is a discretionary exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose positions, plans, procedures, criteria, or instructions developed for the purpose of contractual or other negotiations by or on behalf of a government institution. It also covers considerations related to those negotiations.

[182] Pages 142 to 145 of the *Guide to FOIP*, Ch. 4, outline the test that my office uses to determine if a government institution properly applied subsection 17(1)(c) of FOIP:

1. Does the record contain positions, plans, procedures, criteria, or instructions?
 - a. Developed for the purpose of contractual or other negotiations.
 - b. By or on behalf of the government institution.
2. Or does the record contain considerations that relate to those negotiations?

[183] The following definitions from the *Guide to FOIP*, Ch. 4 at page 143, are relevant here:

- A “position” is a point of view or attitude. An opinion; stand; a way of regarding situations or topics; an opinion that is held in opposition to another in an argument or dispute.
- A “plan” is a formulated and especially detailed method by which a thing is to be done; a design or scheme. A detailed proposal for doing or achieving something; an intention or decision about what one is going to do.
- A “procedure” is an established or official way of doing something; a series of actions conducted in a certain order or manner.

[184] WCB asserted that the withheld information met the test for the application of subsection 17(1)(c) of FOIP for the following reasons:

The Records involve positions, plans and considerations relating to the Proposed Changes and the negotiation of the funding agreements between WCB and the Safety Associations. The Records contain positions, plans and considerations that contain opinions, detailed proposals for the implementation and negotiation of the Proposed Changes and facts taken into account relating to the Proposed Changes. This information meets the definition of “positions”, “plans” and “considerations” as defined in the IPC Guide. Examples of these Records include communications outlining next steps regarding the Proposed Changes, draft versions of the funding agreements and internal WCB policies and procedures with respect to the Safety Associations and investigating and responding to [a complaint].

The Records include information developed for, and that relate to, the purpose of contractual or other negotiations by WCB. As discussed above, the Records were developed in relation to the Proposed Changes and directly relate to the negotiation of the funding agreements between WCB and the Safety Associations. These negotiations with the Safety Associations started in 2019 and, given the history of the negotiations and terms of the funding agreements, additional negotiations with all Safety Associations are reasonably foreseeable. It is also reasonably foreseeable that there may be additional negotiations with SASM as the Litigation progresses.

[Emphasis in original]

[185] I find that the information regarding next steps that was withheld from page 17 qualifies as a plan and therefore it meets part one of the test. I also find that it relates to contractual or other negotiations involving WCB and meets part two of the test. It appears from the records and the submission that the contractual negotiations have not been resolved. Accordingly, I find that WCB properly applied subsection 17(1)(c) of FOIP to this information.

[186] The information withheld from pages 560 (bottom) to 563 qualifies as a position or plan relating to the negotiations. The positions and plans were developed for the purpose of contractual negotiations by WCB. Therefore, parts one and two of the test have been met. I find that WCB properly applied subsection 17(1)(c) of FOIP to this information. My detailed recommendations are set out in the Appendix.

13. Did WCB properly apply subsection 19(1)(b) of FOIP?

[187] WCB's section 7 decision claimed that subsection 19(1)(b) of FOIP was applied to withhold some information. However, in the index of records and on the highlighted records provided to my office it claimed subsection 19(1) of FOIP for pages 189 to 191 and did not specify which clause applied. In light of its section 7 decision, I will proceed as if WCB applied subsection 19(1)(b) of FOIP to pages 189 to 191.

[188] In its submission, WCB stated that it would defer to the submission of the third party for support that subsection 19(1) of FOIP applied. I do not have a submission from the third party. However, as this is a mandatory exemption, I will consider the information or evidence set out in the records to determine if the exemption was properly applied.

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

19(1) Subject to Part B 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;

[190] As set out in my office's *Guide to FOIP*, Ch. 4 at pages 203 to 211, my office uses 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?

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

[191] Commercial information is defined in the *Guide to FOIP*, Ch. 4 at page 204, as follows:

“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.

[192] The record at pages 189 to 191 is a contract between two parties for the buying and selling of assets. In my office's [Review Report 229-2015](#) and [Review Report 123-2020](#), I found that information relating to the sale of goods or services was commercial information. Based on a review of the contract, I am satisfied that it contains commercial information.

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

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

[193] The *Guide to FOIP*, Ch. 4 at pages 205 and 206, states that “supplied” means provided or furnished. Information may qualify as supplied if it was directly supplied to a government institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.

[194] The *Guide to FOIP*, Ch. 4 at page 207, states that “in confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. 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. It also states, at pages 208 to 209 that:

“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.

...

Factors considered when determining whether a document was supplied in confidence implicitly include (not exhaustive):

- What is the nature of the information. Would a reasonable person regard it as confidential. Would it ordinarily be kept confidential by the third party or the government institution.
- Was the information treated consistently in a manner that indicated a concern for its protection by the third party and the government institution from the point at which it was supplied until the present time.
- Is the information available from sources to which the public has access.
- Does the government institution have any internal policies or procedures that speak to how records such as the one in question are to be handled confidentially.
- Was there a mutual understanding that the information would be held in confidence.

[195] It is apparent from a review of all of the records that the information on pages 189 to 191 was supplied by a third party to WCB. It is also apparent from the circumstances surrounding the provision of the record that it was supplied implicitly in confidence. In arriving at this conclusion, I note that given the nature of the information a reasonable person would regard it as confidential, and it is the type of record that would ordinarily be kept confidential. I have no information to suggest that WCB has not treated the information consistently confidentially and that the information is available from sources that the public would have access to.

[196] I find that WCB properly applied subsection 19(1)(b) of FOIP to these pages. My recommendations are set out in the Appendix.

14. Did WCB properly apply subsection 19(1)(c) of FOIP?

[197] WCB applied subsection 19(1)(c) of FOIP as set out in the Appendix. Note that it applied the exemption to some information but not its duplicates. For example, on page 99, it did not apply subsection 19(1)(c) of FOIP but it was applied to its duplicate at page 343. I will consider the application of this exemption in the case of the duplicate copies of records.

[198] I also note that WCB did not identify the parties to whom this information relates when my office asked for third parties' names and contact details as part of my office's intake process. It only identified the third party to whom the information at pages 189 to 192 related.

[199] Subsection 19(1)(c) of FOIP provides:

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

...

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

- (i) result in financial loss of gain to;
- (ii) prejudice the competitive position of; or
- (iii) interfere with the contractual or other negotiations of;

a third party

[200] Page 215 of Chapter 4 of the *Guide to FOIP*, explains that subsection 19(1)(c) of FOIP is a mandatory, harm-based provision. It permits refusal of access in situations where disclosure could reasonably be expected to result in the harms outlined at subclauses (i), (ii) or (iii). Government institutions and third parties should not assume that the harms are

self-evident. The harm must be described in a precise and specific way to support the application of the provision.

[201] Pages 213 to 224 of Chapter 4, *Guide to FOIP*, outline the following tests my office uses to determine if the exemption applies:

Subsection 19(1)(c)(i)

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

Subsection 19(1)(c)(ii) of FOIP

1. What is the prejudice to a third party's competitive position that is being claimed?
2. Could release of the record reasonable be expected to result in the prejudice?

Subsection 19(1)(c)(iii) of FOIP

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

[202] In the case of the information withheld on pages 97 and 341, it is not clear to whom the withheld information relates. Nor is it apparent from a review of the records. I also note that the information withheld from page 97 is a series of questions that were released on page 341 of the records. The person or organization that posed the questions is not apparent from a review of the records.

[203] The information withheld from page 100, bottom of page 102 and 103 (and the duplicates at bottom of page 343, 344, bottom of page 346 and 347) was provided by a third party to WCB. It includes questions, views and opinions regarding the WCB approach to the proposed safety association funding agreements.

[204] The information referred to in paragraphs [202] and [203] above appears to have been released to the safety associations as part of the “Safety Association Package/Presentation.”

[205] Given the nature of the information and that it was shared with other safety associations, it is difficult to understand how release could reasonably be expected to result in financial loss or gain to a third party, prejudice, or interfere with the contractual or other negotiations of the third party. As noted above, WCB did not provide my office with a submission on this exemption other than its bald assertion that subsection 19(1) of FOIP applies.

[206] In the absence of further information or evidence from WCB and given the nature of the information in the records and its apparent release, I find that WCB has not met its burden of establishing that access must be refused under section 61 of FOIP. I find that WCB did not properly apply subsection 19(1)(c) of FOIP. The details of my recommendations are set out in the Appendix.

15. Does subsection 19(3) of FOIP apply to the information to which subsection 19(1)(b) of FOIP applies?

[207] As the Applicant’s submission raises a public interest argument, I will consider if the discretion to give access to third party information under subsection 19(3) of FOIP applies to the information that I have found to be exempt pursuant to subsection 19(1)(b) of FOIP.

[208] Subsection 19(3) of FOIP states:

19(3) Subject to Part V, a head may give access to a record that contains information described in subsection (1) if:

(a) disclosure of that information could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment; and

(b) the public interest in disclosure could reasonably be expected to clearly outweigh in importance any:

(i) financial loss or gain to;

(ii) prejudice to the competitive position of; or

(iii) interference with contractual or other negotiations of;

a third party.

[209] Subsection 19(3) of FOIP is a discretionary exemption permitting the release of third party information in circumstances where the head of the government institution believes that disclosure “could reasonably be in the public interest as it relates to public health, public safety or protection of the environment”.

[210] As noted in the *Guide to FOIP*, Ch. 4 at pages 242 to 247, my office uses the following three-part test to determine if subsection 19(3) of FOIP applies:

1. Does the information relate to public health, public safety or protection of the environment?
2. Could the disclosure of the information reasonably be expected to be in the public interest?
3. Could the public interest in disclosure reasonably be expected to clearly outweigh the importance of the financial loss or gain, prejudice to competitive positions or interference with contractual relationship relating to a third party?

[211] From a review of the records, I note that the withheld information does not relate to public health, public safety or protection of the environment. Therefore, part one of the test has not been met. It is not necessary for me to consider the other parts of the test. I find that subsection 19(3) of FOIP does not apply.

16. Did WCB properly exercise its discretion in applying subsections 15(1)(c), (d), 17(1)(a), (b), (c), 18(1)(d), 22(a) and (b) of FOIP?

[212] The Applicant raised an issue with respect to WCB’s exercise of discretion in this matter. They stated:

The exemptions in FOIP cited by [WCB counsel] relied extensively on sections 15(1)(c), 15(1)(d), 17(1)(a), 17(1)(b), 17(1)(c), 18(1)(d), 22(a) and 22(b). These are all discretionary exemptions and use of those discretionary exemptions fails to exercise

any discretion at all in this serious situation. They are discretionary for cases exactly like this require transparency. The WCB [title redacted] is embroiled in a massive conflict of interest investigation from which [they are] accused of personally profiting by running other safety companies out of business so that [their] personal business interests prosper. This is a textbook example of where transparency is required and the discretion to release the records needs to be exercised and demonstrate accountability to the public.

[213] Subsections 15(1)(c), (d), 17(1)(a), (b), (c), 18(1)(d), 22(a) and (b) of FOIP are discretionary exemptions which means a government institution can decide whether to withhold or release information to which the exemptions apply. When applying any discretionary exemption, the government institution must first determine if the circumstances meet the applicable test. The head then should exercise their discretion when deciding whether to withhold or release records pursuant to a discretionary exemption (*Guide to FOIP*, Ch. 4, p. 11).

[214] The *Guide to FOIP*, Ch. 4 at page 12, sets out some factors to take into account when exercising discretion. They include:

- the general purposes of the Act (i.e. public bodies should make information available to the public, and individuals should have access to personal information about themselves);
- the wording of the discretionary exception and the interests which the exception attempts to protect or balance;
- whether the applicant's request may be satisfied by severing the record and providing the applicant with as much information as is reasonably practicable;
- the historical practice of the public body with respect to the release of similar types of records;
- the nature of the record and the extent to which the record is significant or sensitive to the public body;
- whether the disclosure of the information will increase public confidence in the operation of the public body;
- the age of the record;
- whether there is a definite and compelling need to release the record; and

- whether Commissioner's Orders have ruled that similar types of records or information should or should not be disclosed.

[215] The Supreme Court of Canada (SCC) ruling in [*Ontario \(Public Safety and Security\) v. Criminal Lawyers' Association, 2010 SCC 23, \[2010\]*](#) 1 S.C.R. 815, confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exemption and to return the matter for reconsideration by the head of a public body.

[216] The SCC, in the same decision, also considered the following factors to be relevant to the review of discretion:

- the decision was made in bad faith;
- the decision was made for an improper purpose;
- the decision took into account irrelevant considerations; or
- the decision failed to take into account relevant considerations.

[217] During a review of a discretionary exemption, I may recommend that the head of the government institution reconsider its exercise of discretion if I feel that one of these four factors played a part in the original decision to withhold information, or if not exercised at all. However, I will not substitute my discretion for that of the head.

[218] In this case, based on the information provided and a review of the records, I do not have concerns with any of the four factors playing a role in the WCB's exercise of discretion. Nonetheless, I encourage the WCB to ensure that it has considered all of these factors relating to the public interest before it withholds information pursuant to the discretionary exemptions.

IV FINDINGS

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

[220] I find that the WCB properly applied subsections 22(a) and (b) of FOIP to some information but not all.

[221] I find that the WCB properly applied subsection 29(1) of FOIP to some information but not all.

[222] I find that the WCB did not properly apply subsection 15(1)(c) of FOIP.

[223] I find that the WCB did not properly apply subsection 15(1)(d) of FOIP.

[224] I find that the WCB properly applied subsection 18(1)(d) of FOIP to some information but not all.

[225] I find that the WCB did not properly apply subsections 16(1)(a) and (d) of FOIP.

[226] I find that the WCB properly applied subsections 17(1)(a) and (b) of FOIP to some information but not all.

[227] I find that the WCB properly applied subsection 17(1)(c) of FOIP.

[228] I find that the WCB properly applied subsection 19(1)(b) of FOIP.

[229] I find that the WCB did not properly apply subsection 19(1)(c) of FOIP.

[230] I find that subsection 19(3) of FOIP does not apply.

V RECOMMENDATIONS

[231] I recommend that WCB, within 30 days of issuance of this Report, exercise its discretion under subsection 29(2)(o)(i) of FOIP and consider releasing additional information to the Applicant.

[232] I recommend that WCB ensure it has considered all factors related to the exercise of discretion before it decides to withhold information where I have found a discretionary exemption applies.

[233] I recommend that the WCB release to the Applicant the duplicated information withheld from pages 97 and 331 within 30 days of issuance of this Report.

[234] I recommend that the WCB release and continue to withhold information as set out in the Appendix. Where I recommend release, I recommend WCB do so within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 29th day of August, 2024.

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

Appendix

Pages	Description	Status	FOIP Exemption Applied by WCB	Commissioner's Findings and Recommendations
1 to 15	Draft Agreement	Withheld in full	Subsection 18(1)(d)	Subsection 18(1)(d) applies; Continue to withhold.
16 to 17	Consultation Minutes	Released in part	Subsections 17(1)(a), 17(1)(c) and 18(1)(d)	Subsection 17(1)(a) applies to all except for next steps at bottom of page 17. Subsection 17(1)(c) applies to next steps; Continue to withhold all.
19 to 27	Chart	Released in part	Subsections 17(1)(a), (c), and 18(1)(d),	Subsection 17(1)(a) applies; Continue to withhold.
28 to 30	Emails	Released in part	Subsections 22(a), (b), 17(1)(a), (c), and 18(1)(d)	Subsections 22(a), (b), 17(1)(a), (c) and 18(1)(d) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
31 to 50	Chart	Withheld in full	Subsections 17(1)(a), (c), 18(1)(d)	Subsection 17(1)(a) applies; Continue to withhold.
97	Email	Released in part	Subsections 15(1)(d), 18(1)(d) and 19(1)(c)	Subsections 15(1)(d), 18(1)(d) and 19(1)(c) do not apply; Release.
99 to 103	Emails	Released in part	Subsections 15(1)(d) and 18(1)(d)	Subsections 15(1)(d) and 18(1)(d) do not apply; Release.
107 to 115 (and its duplicate at pages 351-359)	Chart	Released in part	Subsections 15(1)(d), 17(1)(a), (c), 18(1)(d) and 19(1)(c)	Subsection 17(1)(a) applies; Continue to withhold.
129, 131, 134, 137, 139, 145, 160	Signatures	Withheld	Subsection 29(1)	Subsection 29(1) does not apply to signatures on page 129, 131, 134, 137, 138, 145, 160; Release.

161 to 166	Letter	Withheld in full	Subsections 22(a) and (b)	Subsection 22(a) does not apply; Section 22(b) applies; Continue to withhold.
167	Letter of complaint	Released in part	Subsection 29(1) of FOIP applied to signature	Subsection 29(1) applies to signature; Continue to withhold.
170 to 174	General Report	Released in part	Subsections 15(1)(c) and 17(1)(b)	Subsections 15(1)(c) and 17(1)(b) do not apply; Release Subsection 29(1) applies to pages 171 to 174; WCB to consider discretion to disclose personal information under section 29(2)(o)(i) and release remaining information..
171 to 172	General Report	Released in part	Subsections 15(1)(c) and 17(1)(b)	Subsection 29(1) applies; WCB to consider discretion to disclose personal information under subsection 29(2)(o)(i)
173 to 174, 182	General Report and attachments	Released in part	Subsection 29(1) for date of birth, telephone number and two signatures; Subsections 15(1)(c) and 17(1)(b)	Subsection 29(1) applies to date of birth but not telephone number on page 173; Continue to withhold date of birth and release telephone number. Subsection 29(1) does not apply to signatures on pages 173, 174, 182; Release; Subsection 29(1) of FOIP applies to remaining information; WCB to consider discretion to disclose personal information under subsection 29(2)(o)(i). Subsection 15(1)(c) and 17(1)(b) do not apply
189 to 191	Contract	Withheld in full	Subsection 19(1)(b)	Subsection 19(1)(b) applies; Continue to withhold.
192	Email	Released in part	Subsections 16(1)(a) and (d)	Subsections 16(1)(a), and (d) do not apply; Release.

193 to 197	Briefing Note	Withheld in part	Subsections 16(1)(a) and (d)	Subsections 16(1)(a) and (d) do not apply; Subsection 29(1) applies to all but for information under headings "Safety Association Funding Agreement" and "Optional Personal Coverage"; WCB to consider discretion to disclose personal information under subsection 29(2)(o)(i) and release remainder.
194	Briefing Note	Withheld in part	Subsection 29(1)	Subsection 29(1) applies to signature; Continue to withhold.
198	Email	Released in part	Subsections 16(1)(a) and (d)	Subsections 16(1)(a) and (d) do not apply; Release.
200	Email	Released in part	Subsections 16(1)(a) and (d)	Subsections 16(1)(a) and (d) do not apply; Release.
N/A	Audio recording of interview	Withheld in full	Subsections 15(1)(c), 17(1)(b)	Subsections 15(1)(c) and 17(1)(b) do not apply; Subsection 29(1) applies; WCB to consider discretion to disclose under subsection 29(2)(o)(i).
202 to 203	Email	Released in part	Subsections 15(1)(c) and 17(1)(b)	Subsections 15(1)(c) and 17(1)(b) do not apply; Subsection 29(1) applies to severance at bottom of page 202 and all of 203; WCB to consider discretion to disclose personal information under subsection 29(2)(o)(i) and release remaining information.
207	Emails	Released in part	Subsections 15(1)(c) and 17(1)(b)	Subsections 15(1)(c) and 17(1)(b) do not apply; Subsection 29(1) applies; WCB to consider discretion to disclose personal information under subsection 29(2)(o)(i).
211	WCB Interview Booklet	Released in part	Subsections 15(1)(c), 17(1)(b), 29(1)	Subsections 15(1)(c) and 17(1)(b) do not apply; Subsection 29(1) applies;

			applied to birthdate	WCB to consider discretion to disclose personal information under subsection 29(2)(o)(i) for all but for birthdate which WCB should continue to withhold.
214 to 215	Emails	Released in part	Subsections 15(1)(c) and 17(1)(b)	Subsection 15(1)(c) does not apply; Subsection 17(1)(b) applies to page 215; Subsection 29(1) applies to page 214; WCB should consider its discretion to disclose page 214 under subsection 29(2)(o)(i); Continue to withhold page 215.
222 to 226	Briefing Note (early draft of pages 193 to 197)	Released in part	Subsection 17(1)(a)	Subsection 17(1)(a) applies to all and subsection 29(1) apply to all but for sections headed "Safety Association Funding Agreements" and "Optional Personal Coverage for Directors of Corporations"; Continue to withhold.
223	Briefing Note (early draft of pages 193 to 197)	Released in part	Subsection 29(1) applied to signature	Subsection 29(1) applies; Continue to withhold.
234 to 235	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
236 (NB 237 is blank)	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.

238 to 239	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
240 to 241	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
255 to 258	Emails	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; and information about administrative matters in emails time stamped 12:02:00, 12:04, 12:03, 10:13:00; first two sentences of email time stamped 10:07; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
259	Emails	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and information about administrative matters in emails time stamped 11:41:00, 10:14, and first two sentences of email time stamped 10:07; Release. Subsection 22(a) applies to remaining information;

				Continue to withhold remaining information
260 to 261	Emails	Withheld in full	Subsections 22(a) to (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and first two sentences on page 261; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
262	Emails	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and first two sentences; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
263 to 264	Emails	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and first sentence in email on page 263 time stamped 12:02:00; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
265 to 267	Email	Withheld in full	Subsections 22(a) and (b)	Subsection 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and first line of email time stamped 12:03; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
268 to 270	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to page 268 email time stamped 12:03 1 st line and headers, subject

				lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
271 to 275	Handwritten Notes	Released in part	Subsections 15(1)(d), 18(1)(d), 22(a) and (b)	Subsection 22(a) applies; continue to withhold.
276	Handwritten Notes	Released in part	Subsections 15(1)(d), 18(1)(d), 22(a) and (b)	Subsections 15(1)(d), 18(1)(d), 22(a) and (b) do not apply; Release.
281	Handwritten Notes	Released in part	Subsections 22(a) and (b)	Subsection 22(a) applies; Continue to withhold.
282 to 283	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
284	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to the emails time stamped 11:46:03 AM and 11:26 AM and the headers, subject line and footers and confidentiality statements; Release. Subsection 22(a) applies to the remaining information; Continue to withhold remaining information.
285 (blank page) and 286	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to page 285 which is blank and page 286; Release.
287 to 289	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements, and administrative

				information in email time stamped 9:13:48; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
290	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
293 to 294	Emails	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
331	Speaking notes	Withheld in part	Subsections 15(1)(d), 17(1)(a), (b), (c), 22(a) and (b)	Release as duplicate information was released on page 87
341	Email	Withheld in part	Subsections 15(1)(d), 18(1)(d) and 19(1)(c)	Subsections 15(1)(d), 18(1)(d) and 19(1)(c) do not apply; Release.
343 to 347	Emails	Withheld in part	Subsections 15(1)(d), 18(1)(d) and 19(1)(c)	Subsection 15(1)(d), 18(1)(d) and 19(1)(c) do not apply; Release.
378, 381, 383, 389, 404	Board Decisions and 1995 Funding Agreement	Withheld in part	Subsection 29(1)	Subsection 29(1) does not apply to signatures on pages 378, 381, 383, 389, and 404; Release.
405 to 411 (and duplicates on pages 413 to 419)	Memorandum	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to title and other parts of heading; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.

412	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
420 to 421	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
422 to 423	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
424 to 428	Emails	Released in part	Subsections 15(1)(c) and 17(1)(b)	Subsection 17(1)(b) applies; Continue to withhold
430	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
431 to 434	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information;

				Continue to withhold remaining information.
435 to 437	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
440 to 443	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
446 to 448	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
451	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
452 to 453	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.

454 to 456	Email	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information</p>
457 to 458	Email	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information.</p>
459 to 460	Email	Withheld in full	Subsections 22(a) to (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information.</p>
461 to 462	Email	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information.</p>
463	Email	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information;</p>

				Continue to withhold remaining information.
464	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information
465	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
466	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
468 to 474	Draft Investigation Report	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to the title of report; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
475 to 481	Final Investigation Report	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to title of report; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
482 to 488	Draft Investigation Report	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to title of report; Release.

				Section 22(a) applies to the remaining information; Continue to withhold remaining information.
489 to 495	Draft Investigation Report	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to title of report; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
496 to 497	Email	Released in part	Subsections 22(a) and (b)	Subsection 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and email on page 496 time stamped 4:04:00; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
500	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply; Release.
501, 502-508	Email and memorandum	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and title of memorandum and email on page 501; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information
509, 510 to 517	Email and memorandum	Withheld in full	Subsections 22(a) and (b)	Subsection 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and title of memorandum; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information
518	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and

				<p>confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information</p>
519 to 526	Email and memorandum	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements and title of memorandum; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information</p>
527	Email	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information</p>
528 to 529	Email	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information</p>
530 to 531	Email	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.</p> <p>Subsection 22(a) applies to remaining information; Continue to withhold remaining information</p>
532 to 533	Email	Withheld in full	Subsections 22(a) and (b)	<p>Subsections 22(a) and (b) do not apply to headers, subject lines, footers and</p>

				confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information
534 to 536	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information
537 to 539	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
540 to 542	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
545 to 546	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
549 to 551	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release.

				Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
553 to 554	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
557	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
558 to 559	Email	Withheld in full	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
560 (top)	Email	Released in part	Subsections 22(a) and (b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
560 (bottom) to 563	Emails	Released in part	Subsections 17(1)(c) and 18(1)(d),	Subsection 17(1)(c) applies to all; Continue to withhold.
565 to 568	Email	Withheld in full	Subsections 22(a) and(b)	Subsections 22(a) and (b) do not apply to headers, subject lines, footers and

				confidentiality statements; Release. Subsection 22(a) applies to remaining information; Continue to withhold remaining information.
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