



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 030-2020, 050-2020**

### **Ministry of Government Relations**

**February 8, 2022**

#### **Summary:**

Upon receiving its response from the Ministry of Government Relations (Government Relations), the Applicant requested a review of Government Relations' decision to withhold portions of the record pursuant to sections 13(2), 15(1)(c), 17(1)(b)(i), 19(1)(b), (c)(i), (ii) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP), the delayed response time and Government Relations' search efforts. The Commissioner found Government Relations did not meet the legislated timelines pursuant to sections 7(2) and 12(3) of FOIP. The Commissioner recommended Government Relations review and amend its procedures to manage access to information requests in order to meet its legal obligations under FOIP. The Commissioner found that Government Relations conducted an adequate search for records. The Commissioner recommended Government Relations address the Applicant's questions and concerns in paragraph [38] and conduct an additional search based on those concerns. The Commissioner also recommended that if Government Relations' search results in additional records that are responsive to the October 21, 2019 narrowed scope, that it provides a copy to the Applicant within 30 days of issuance of this Report with any necessary exemptions applied and does not charge the Applicant any additional fees. The Commissioner found some of the exemptions applied to withheld information, while others did not. The Commissioner recommended Government Relations release a portion of the withheld information and continue to withhold the remainder of the information.

#### **I BACKGROUND**

- [1] The Ministry of Government Relations (Government Relations) received an access to information request from the Applicant on September 30, 2019, requesting access to:

All incoming and outgoing emails, correspondence and other documented communications received and sent by [Executive Director], Northern Municipal Services, regarding the Northern Village of Pinehouse, June 1, 2012 to August 31, 2019.

- [2] On October 9, 2019, Government Relations provided the Applicant with an estimate of costs in the amount of \$3,097.00 to process the request. The Applicant requested a review of the estimate of costs on October 10, 2019, as the Applicant was not satisfied with the fee estimate provided by Government Relations.
  
- [3] Through my office's early resolution process, the Applicant agreed to narrow the scope of the original request on October 21, 2019. Government Relations provided the Applicant with a revised estimate of costs to process the revised scope of the request on October 30, 2019, in the amount of \$660.00.
  
- [4] On November 1, 2019, the Applicant advised my office they were satisfied with the \$660.00 revised fee estimate and my office advised Government Relations of the same. Upon agreement of the Applicant, my office closed its review of the fee estimate as a result of early resolution on November 1, 2019.
  
- [5] On November 26, 2019, Government Relations received the required 50% deposit from the Applicant and continued processing the access to information request based on the new scope of the request on November 27, 2019.
  
- [6] On February 1, 2020, the Applicant advised my office they wished to request a review of the delayed response by Government Relations.
  
- [7] On February 10, 2020, Government Relations responded to the Applicant's request denying access portions of the record pursuant to sections 13(2), 15(1)(c), 17(1)(b)(i), 19(1)(b), (c)(i), (ii) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[8] As the Applicant was not satisfied with this response, on February 23, 2020, the Applicant requested another review asking my office to review the exemptions applied to the record and alleged missing records in the response.

[9] On March 2, 2020, my office notified Government Relations and the Applicant of our intention to undertake a review. My office's notification of the review to the Applicant outlined the scope as:

- The Ministry's decision not to respond to your access request within the required timeline.
- The Ministry's decision to deny access to portions of the record pursuant to subsections 13(2), 15(1)(c), 17(1)(b)(i), 19(1)(b), 19(1)(c)(i), 19(1)(c)(ii) and 29(1) of FOIP.
- the Ministry's search efforts for the requested records.

[10] Government Relations identified two third parties in this review. My office also provided notification of these reviews to the identified third parties on March 2, 2020.

## **II RECORDS AT ISSUE**

[11] The record at issue is 449 pages that Government Relations has withheld in full or in part pursuant to sections 13(2), 15(1)(c), 17(1)(b)(i), 19(1)(b), (c)(i), (ii) and 29(1) of FOIP.

[12] This review will also look at Government Relations' search efforts as the Applicant does not believe that all records were located that were responsive to their request.

[13] Finally, this review will look at the issue of why Government Relations did not respond to the access to information request within the legislated timelines.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

- [14] Government Relations is a “government institution” pursuant to section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

**2. Did Government Relations respond to the request within the legislated timelines?**

- [15] Section 7(2) of FOIP provides the time in which a government institution shall respond to an access to information request and the way in which a head shall respond to the request. Section 7(2) of FOIP provides:

**7(2)** The head shall give written notice to the Applicant within 30 days after the applicant is made:

- (a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;
- (b) if the record requested is published, referring the applicant to the publication;
- (c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;
- (d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;
- (e) stating that access is refused for the reason that the record does not exist;
- (f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or
- (g) stating that the request has been disregarded pursuant to section 45.1, and setting out the reason for which the request was disregarded.

- [16] There are some other time factors that come into play in regard to the 30-day response time when an estimate of costs is provided to the Applicant. Sections 9(1) to (4) of FOIP provide:

**9(1)** An applicant who is given notice pursuant to clause 7(2)(a) is entitled to obtain access to the record on payment of the prescribed fee.

(2) Where the amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the

amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

(4) Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced for the records for which access is sought.

[17] As outlined above, Government Relations received the Applicant's initial request on September 30, 2019. Government Relations then provided the Applicant with an estimate of costs in the amount of \$3,097.00 on October 9, 2019. Nine days had passed between the time Government Relations received the request and issued the estimate of costs.

[18] As provided for in section 9(3) of FOIP, when an estimate of costs is provided to an applicant, the time is suspended until the Applicant advises they wish to proceed. Furthermore, section 9(4) of FOIP suspends the response time until the required deposit is received. In this case, Government Relations required a 50 % deposit that was received on November 26, 2019. Therefore, when the October 9, 2019 estimate of costs was sent to the Applicant, the clock stopped.

[19] The Applicant contacted my office and with some assistance from my office, the Applicant narrowed the scope of their initial request on October 21, 2019, in order to reduce the amount of the fee estimate. Government Relations provided a revised estimate of costs on October 30, 2019 and required a 50% deposit before work commenced on the file.

[20] The 50% deposit was received by Government Relations on November 26, 2019. Once the deposit was received, the clock restarted.

[21] As nine days had elapsed from the time Government Relations received the access to information to the issuing of the initial fee estimate, November 27, 2019 was considered day 10. Government Relations had 30 calendar days to respond to the access to information

request; therefore, it had another 21 days left in the response time. The new due date for a response to the access to information request was December 17, 2019.

[22] On December 12, 2019, Government Relations sent the Applicant an extension of time notification, extending the response time to January 14, 2020, pursuant to sections 12(1)(a)(i) and (c) of FOIP.

[23] Section 12(3) of FOIP requires a government institution to respond within the period of extension. Section 12(3) of FOIP provides:

**12(3)** Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[24] Furthermore, when a government institution does not respond within the legislated timelines, it is deemed to be a refusal of access. Section 7(5) of FOIP provides:

**7(5)** A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[25] Despite the extension, Government Relations still did not provide the Applicant with its response by January 14, 2020. The response was sent February 10, 2020 – 27 days after the due date laid out in its extension of time letter. Therefore, Government Relations was in a deemed refusal position.

[26] I do commend Government Relations in its assertion that it, "... brainstormed potential solutions with the applicant that would get a response to them as fast as possible." However, it still must comply with its legal obligations under FOIP – that is to respond within the legislated timelines. As such, it must organize itself to ensure it is doing so.

[27] I find Government Relations did not meet the legislated timelines pursuant to sections 7(2) and 12(3) of FOIP. I recommend Government Relations review and amend its procedures to manage access to information requests in order to meet its legal obligations under FOIP.

**3. Did Government Relations conduct a reasonable search to locate records?**

[28] Section 5 of FOIP provides:

**5** Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted to access records that are in the possession or under the control of a government institution.

[29] Unless an exemption applies, section 5 of FOIP makes it clear that access to records must be granted if they are in the possession or under the control of the government institution.

[30] Section 5.1(1) of FOIP provides:

**5.1(1)** Subject to this Act and the regulations, a government institution shall respond to a written request for access openly, accurately and completely;

[31] The IPC *Guide to FOIP*, Chapter 3: “Access to Records”, updated June 29, 2021 (*Guide to FOIP*, Ch. 3), speaks to how a government institution should conduct its search for records responsive to an access to information request starting on page 7.

[32] Section 5.1(1) of FOIP requires a government institution to respond to an applicant’s access to information request openly, accurately and completely. This means that a government institution should make reasonable effort to not only identify and seek out records responsive to an applicant’s access to information request, but to explain the steps in the process. The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable (*Guide to FOIP*, Ch. 3, p. 7).

[33] A “reasonable search” is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances (*Guide to FOIP*, Ch. 3, p. 7).

[34] It is difficult to prove a negative; therefore, FOIP does not require a government institution to prove with absolute certainty that records do not exist (*Guide to FOIP*, Ch. 3, pp. 8-9).

[35] When a government institution receives a notification letter or email from my office requesting details of its search efforts, some or all of the following can be included in the submission (*Guide to FOIP*, Ch. 3, p. 9):

- For personal information requests – explain how the individual is involved with the government institution (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by alphabet, year, function and/or subject?
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the government institution's control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search:
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided.

(*Guide to FOIP*, Ch. 3, pp. 9-10)



[36] By email dated October 21, 2019 at 4:12 p.m., the Applicant confirmed the narrowed scope of their request with Government Relations and my office as follows:

Yes, thanks for setting this clarification out in writing. I agree to the scope of my FOI request to be narrowed down as follows:

- [Executive Director]’s emails, correspondence and other communications to and from the Northern Village of Pinehouse from April 1, 2016 to present
- [Executive Director]’s emails, correspondence and other communications to and from Ombudsman Saskatchewan from April 1, 2016 to present

Looking forward to getting these documents.

[37] In its submission, Government Relations outlined its search efforts as follows:

On October 21, 2019, our office received confirmation via email from the applicant that the scope of [their] request included:

- [Executive Director]’s emails, correspondence and other communications to and from the Northern Village of Pinehouse from April 1, 2016 to present
- [Executive Director]’s email, correspondence and other communications to and from Ombudsman Saskatchewan from April 1, 2016 to present

On the same day, our ministry’s access and privacy officer sent an email to the Executive Director of Northern Municipal Services (NMS) ... to which the request is directed, requesting that he provide records responsive to the items listed in the applicant’s request .... Seeing as though the request specifically names [Executive Director], our ministry’s access and privacy officer concluded it reasonable to assume [Executive Director] would be the only logical location/person within the ministry in which responsive records to the applicant’s request would exist. No other branches or individuals were requested to search for these records.

[Executive Director]’s search strategy started on October 24, 2019 and ended on October 25, 2019. An estimated four hours was spent on conducting his search for responsive records. [Executive Director] searched [their] current email inbox and sent items, and [their] archived email inbox and sent items since April 2016. [Executive Director] also searched the network folders of the Northern Municipal Services branch. In conducting [their] search, [Executive Director] used the following words that were not case sensitive: ‘pinehouse’, ‘nvp@sasktel.net’, ‘nvp.[name 1]@sasktel.net’, ‘nvp.[name 2]@sasktel.net’, ‘nvp.[name 3]@sasktel.net’, ‘ombudsman’ and ‘ombudsman.sk.ca’. The search was conducted on October 24 and 25, 2019. From this search, [Executive Director] combined the responsive records into two PDF documents entitled: “Correspondence” and “Emails”. On Tuesday, October 29, [2019] [Executive Director] provided the PDF documents of responsive records to the ministry’s access and privacy officer.

The ministry submits the search conducted was reasonable and conducted in a fair and logical manner. [Executive Director] is extremely experienced in the subject matter, as [Executive Director] has been Executive Director of the Northern Municipal Services branch for eight years, and has worked with government and government's records for 23 years.

- [38] It appears from the search parameters laid out by Government Relations that it conducted a reasonable search. However, in the Applicant's submission, they have raised some questions that may indicate there could be more records:

Page 2. Email [Executive Director] to [Northern Village of Pinehouse (Pinehouse) Administrator], 23 Dec 2016 (see also page 328)

"I'm putting the information together needed to get approval for NMTA Management Board appointments and part of that includes your . . ."

We don't need that personal information on [Pinehouse Administrator], but where is the information in this package that [Executive Director] was putting together? This information had been previously requested in an FOI/ATI at the end of July 2019 and a response received at the beginning of September 2019 ... [Executive Director] was involved in drafting the recommendation for [Pinehouse Administrator]'s appointment. Why is this documentation, which we know exists, not provided in the Ministry's response?

Pages 3-5. Corresp. betw [sic] ... (Assistant Provincial Ombudsman) and [Executive Director], Jan 2017.

In an email to [Assistant Provincial Ombudsman] (18 Jan 2017), [Executive Director] indicates, "I received word yesterday from the administrator for [Pinehouse] that five of the outstanding LAFOIP requests have been responded to . . ." Yet, there is no copy of the communication referred to. It seems unlikely this was simply a telephone conversation. This seems to be an incomplete record of a wider communication with [Pinehouse] office.

...

Page 328. Email [Executive Director] to [Pinehouse Administrator], 23 Oct 2019 ...

[Executive Director] says in the email that [Pinehouse Administrator] was asking him to recall a personal conversation they had had back in 2016 regarding [Pinehouse Administrator]'s potential appointment to NMTA MB. Why would this be a point of conversation now that she was in the position, except that questions had been asked (of the Ministry) in an FOI just a few months prior? ...

Page 290. Exchange of emails between [Executive Director] and [Pinehouse Administrator] re: “Response,” 2 Oct 2018.

No indication of the response to an actual letter dated 31 May 2018 ....

...

Pages 291-297. Email [Executive Director] to [Pinehouse Administrator], 10 Dec 2018

Important information regarding terms of reference for ... inspection.

... Where in those terms of reference is there any indication that [Executive Director] was to accompany [Inspector] on [Inspector] visit to Pinehouse? Where is the documentation of that travel and visit? Under what instructions was [Executive Director] when [Executive Director] performed those duties? The same applies to the absence of any documentation of when [Executive Director] “shadowed” Mr. Justice Vancise and the Inquiry special audit team while they were in Pinehouse and at Pinehouse Business North headquarters in Saskatoon during the summer of 2019 ....

Page 323. Email [Executive Director] to [Pinehouse Administrator] ..., 6 Jun 2019

Advising of Vancise appointment. “I will forward this information to [Pinehouse Administrator] via text.”

So why do we have no text records between [Executive Director] and [Pinehouse Administrator]? Or between [Executive Director] and the [Pinehouse Mayor] or other Ministry officials? Were these records searched to find communications responsive to this particular ATI request? ...

Pages 370, 404-407, 436 and 437 are missing.

I asked [Government Relations FOIP Co-ordinator] about this issue in an email, and [Government Relations FOIP Co-ordinator] says that these were just an error in manual numbering of the documents .... But considering that [Government Relations FOIP Co-ordinator] had earlier indicated ... a second review of the package became necessary when the Ministry received the Vancise Inquiry report, I can’t help be suspicious that documents were removed from the package as a result. If so, what were those documents?

Another example of completely missing documentation is contained within an email that I received from Village supervisor [Manager of Northern Municipal Services] in August 2019, in which Pinehouse administration is directly mentioned and in which [Manager of Northern Municipal Services] forwards an email [Manager of Northern Municipal Services] had received from [Executive Director] .....

And a final indication of missing documentation is found within the newly released report from the Vancise Inquiry. In a summary of [Executive Director]'s evidence before the inquiry (pages 45-48), there is mention of many briefing reports and communications by [Executive Director] to the Pinehouse situation, several of them falling within the revised scope of my FOI/ATI request. For example, the following records are mentioned:

Briefing Notes dated October 2, 2017, and November 21, 2017, stated NMS representatives met with Village officials to discuss the legislative requirements for public disclosure and provide assistance to the Village Council. NMS also established an escalation process to identify, validate, and mitigate instances of municipal non-compliance with statutory conflict of interest requirements. . . .

On September 25, 2018, NMS prepared a Briefing Note, stating NMS made repeated attempts to contact the Village Administrator to determine the status of the Village's response to the OIPC's recommendation to release the outstanding records under its control.

In the responsive package to my FOI request, there is no acknowledgement that any documentation surrounding these matters even exists ...

...

[39] Government Relations is only required to provide records that are responsive to the Applicant's October 21, 2019 narrowed scope of the request. I find Government Relations did conduct a reasonable search for records. However, the Applicant has raised questions and concerns that I have outlined in paragraph [38]. Therefore, I recommend Government Relations address the Applicant's questions and concerns in paragraph [38] and conduct an additional search based on those concerns. Further, I recommend that if Government Relation's search results in additional records that are responsive to the October 21, 2019 narrowed scope, that it provides a copy to the Applicant within 30 days of issuance of this Report with any necessary exemptions applied and does not charge the Applicant any additional fees.

#### **4. Did Government Relations properly apply section 29(1) of FOIP to the record?**

[40] Government Relations withheld portions of information found on pages 1, 10, 13, 23, 103 to 106, 108, 191, 194, 272, 273, 298, 302, 315, 318, 320, 346, 349, 350, 354, 362, 367 to

369, 383, 386 to 388, 393, 395, 397 to 400, 407, 408, 410 to 412, 414, 416 to 418, 420, 421, 433 and 434 pursuant to section 29(1) of FOIP.

[41] Section 29(1) of FOIP provides:

**29(1)** No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[42] Section 24(1) of FOIP describes the type of information that can be considered personal information; however, the list is non-exhaustive. To determine if information is personal information, it must: 1) be about an identifiable individual, and 2) be personal in nature. In its submission, Government Relations has asserted that the withheld information qualifies as personal information pursuant to sections 24(1)(a), (b), (d), (e), (f), (j) and (k)(i) and (ii) of FOIP, which provides:

**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, fingerprints or blood type of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

...

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

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

(ii) the disclosure of the name itself would reveal personal information about the individual.

[43] Government relations has withheld the name of an email recipient on page 1. The reason for withholding is, “ ... disclosure of this name would reveal the individual’s employment history pursuant to [section] 24(1)(b) [of FOIP] and potentially the individual’s business address pursuant to [section] 24(1)(e) [of FOIP].”

[44] First, from a review of the record, there is no evidence that the release of the email recipient would reveal their business address. Secondly, in [Review Report 035-2019](#), I stated:

[19] *Employment history* is 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 could also include the start date and end date of employment.

[45] The email recipient that has been withheld appears to have been invited in their official capacity, in this case to attend a media event. This would not constitute employment history, and therefore, would not qualify as personal information. Personal information also does not include the name, email address, contact information and information that relates to employment, business, roles and responsibilities of individuals who appear to be acting in their official capacity and not personally throughout the record. This type of information can be found on the first two severances on page 23, the severances on pages 191, 194, 272, 273, 298, 302, 315, 318, 320, the first, second, fourth and fifth severances on page 346, 354, severance five on page 368, 386, 387, 388, 395, 397, 399, 400, 407, 408, 410, 411, 412, 414, 416, 417, 418, 420, 421. Therefore, I find that section 29(1) of FOIP does not apply to this information as it is business card information of individuals acting in their official capacity.

[46] Government Relations has severed a teleconference telephone number and its corresponding passcode as personal information on pages 272 and 318. This information

was provided to the invitees of a conference call via email for a meeting with the Minister of Government Relations. From a review of the record, I am not sure if the number and passcode is that of the official who sent the email or that of the Minister's office. Regardless, it does not constitute personal information. Although it is not personal information, a best practice is that organizations regularly change passcodes they are providing to meeting invitees.

[47] I find section 29(1) of FOIP does not apply to the teleconference number and passcode that has been withheld on pages 272 and 318.

[48] In addition to being subject to FOIP, Government Relations is also a trustee pursuant to section 2(t)(i) of *The Health Information Protection Act* (HIPA). Section 2(t)(i) of HIPA provides:

**2** In this Act:

...

(t) **“trustee”** means any of the following that have custody or control of personal health information:

(i) a government institution;

[49] Government Relations has applied section 29(1) of FOIP to the third severance on page 23. However, this information is actually the personal health information of an individual who is not the Applicant. Section 2(m)(i) of HIPA, provides:

**2** In this Act:

...

(m) **“personal health information”** means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

[50] Section 27(1) of HIPA outlines the protection of privacy requirements as it relates to an individual's personal health information, and provides:

- 27(1)** A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.
- [51] Therefore, I find section 27(1) of HIPA applies to the third severance on page 23 as it is the personal health information of an individual other than the Applicant.
- [52] The information that has been withheld on pages 10, 13, the third severance on page 346, 349, 350, 433 and 434 includes information such as the name, contact information and signature of another individual – who is not the Applicant – that has applied for information from the Northern Village of Pinehouse (Pinehouse). This would constitute personal information pursuant to sections 24(1)(e) and 24(1)(k)(i) of FOIP.
- [53] I find section 29(1) of FOIP applies to the information that has been withheld on pages 10, 13, the third severance on page 346, 349, 350, 433 and 434 as it is the personal information of an individual who is not the Applicant.
- [54] The information that had been withheld on pages 104 to 106 and 108 include the names and contact information of individuals who are requesting lots for their homes within a subdivision of Pinehouse. The severed information on these pages would qualify as personal information pursuant to sections 24(1)(b), (e), and (k)(i).
- [55] I find section 29(1) of FOIP applies to the information that has been withheld on pages 104 to 106 and 108 as it includes individuals' names connected with their personal potential living arrangements.
- [56] The information that has been withheld on page 362 pursuant to section 29(1) of FOIP is the name of an individual, as well as a potential financial transaction that individual may become involved with. This constitutes personal information pursuant to sections 24(1)(j) and 24(1)(k)(i) and (ii).
- [57] I find section 29(1) of FOIP applies to the information that has been withheld on page 362 as it includes the individual's name connected with a personal financial transaction.



[58] The information that has been withheld on page 367 is house mortgage information of various individuals. This includes the individual's name, mortgage information and mortgage down payment amounts, as well as the employment position of a few of the individuals. This also includes the information withheld on page 368 (with the exception of the fifth), severances 1 to 3 and 10 to 12 on pages 369 and 383. This would qualify as personal information pursuant to sections 24(1)(j), (k)(i) and (ii) of FOIP as the disclosure would reveal financial information about the individuals and the release of the name itself would disclose personal information about the individuals such as their mortgage information, mortgage down payment amounts and employment information.

[59] I find section 29(1) of FOIP applies to the information that has been withheld on pages 367, 368 (with the exception of the fifth severance), severances 1 to 3 and 10 to 12 on pages 369 and 383.

[60] Government Relations has withheld one sentence found on pages 393 and 398. From a review of this information, it would qualify as personal information pursuant to section 24(1)(b) of FOIP as it is the education history of an individual.

[61] I find section 29(1) of FOIP applies to the information that has been withheld on pages 393 and 398 as it is the education history of an individual.

## **5. Did Government Relations properly apply section 13(2) of FOIP to the record?**

[62] Government Relations applied section 13(2) of FOIP to portions of information found on pages 60 to 63, 72 to 77, 81 to 84, 91, 92, 113 to 116, 125 to 129, 133 to 136, 143, 144, 148 to 151, 155, 159 to 162, 169 to 175, 179 to 182, 188, 189, 317, 348, 351, 352, 356, 362, 368, 369, 381, 383, 387, 389, 393, 395, 406 and 408 to 421.

[63] Section 13(2) of FOIP is a discretionary exemption and provides:

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

[64] Section 13(2) of FOIP permits refusal of access to information in a record where the information was obtained in confidence, implicitly or explicitly, from a local authority (IPC *Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated April 30, 2021, at page 34 (*Guide to FOIP*, Ch. 4)).

[65] In order to determine if section 13(2) of FOIP applies, the following two-part test can be applied:

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

(*Guide to FOIP*, Ch. 4, p. 34)

[66] I will now consider each part of the test.

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

[67] To determine if a public body qualifies as a “local authority”, I look to section 2(2) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations), which provides:

2(2) In these regulations and subsection 13(2) of the Act, “**local authority**” means a local authority as defined in *The Local Authority Freedom of Information and Protection of Privacy Act*;

[68] Section 2(f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) provides the definition of a local authority for the purposes of LA FOIP. Specifically, section 2(f)(i) of LA FOIP provides:

2 In this Act:

...

(f) “**local authority**” means:

- (i) a municipality;

- [69] Pinehouse qualifies as a local authority under this provision.
- [70] “Information” means facts or knowledge provided or learned as a result of research or study (*Guide to FOIP*, Ch. 4, p. 34).
- [71] “Obtained” means to acquire in any way; to get possession of; to procure; or to get ahold of by effort. A government institution could obtain information either intentionally or unintentionally. It can also include information that was received indirectly provided its original source was the local authority. However, to obtain information suggests that the government institution did not create it (*Guide to FOIP*, Ch. 4, pp. 34-35).
- [72] Section 13 of FOIP uses the term “information contained in a record” rather than “a record” like other exemptions. Therefore, the exemption can include information within a record that was authored by the government institution provided the information at issue was obtained from a local authority (*Guide to FOIP*, Ch. 4, p. 35).
- [73] “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the provider of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the government institution and the local authority at the time the information was obtained. The expectation of confidentiality must be reasonable and must have an objective basis. Whether the information is confidential will depend upon its content, its purposes, and the circumstances in which it was compiled or communicated (*Guide to FOIP*, Ch. 4, p. 35).
- [74] “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 (*Guide to FOIP*, Ch. 4, p. 35).
- [75] Factors to consider when determining whether information was obtained 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 government institution or the local authority?
- Was the information treated consistently in a manner that indicated a concern for its protection by the government institution and the local authority from the point it was obtained 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? Mutual understanding means that the government institution and the local authority both had the same understanding regarding the confidentiality of the information at the time it was provided. If one party intends the information to be kept confidential but the other does not, the information is not considered to have been obtained in confidence. However, mutual understanding alone is not sufficient. Additional factors must exist.

(*Guide to FOIP*, Ch. 4, pp. 35-36).

[76] The preceding factors are not a test, but rather guidance on factors to consider. It is not an exhaustive list. Each case will require different supporting arguments. The bare assertion that the information was obtained implicitly in confidence would not be sufficient (*Guide to FOIP*, Ch. 4, p. 36).

[77] “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was obtained with the understanding that it would be kept confidential (*Guide to FOIP*, Ch. 4, p. 36).

[78] The following factors can be used when determining if information was obtained in confidence explicitly. They are not a test but rather guidance on factors to consider and it is not an exhaustive list. Each case will require different supporting arguments:

- The existence of an express condition of confidentiality between the government institution and the local authority.
- The fact that the government institution requested the information be provided in a sealed envelope and/or outlined its confidentiality intentions prior to the information being provided.

(*Guide to FOIP*, Ch. 4, pp. 36-37).

- [79] In its submission, Government Relations provided the following explanation in support of how the information was obtained from Pinehouse:

All records withheld pursuant to subsection 13(2) [of LA FOIP]... were received by our ministry directly from the Northern Village of Pinehouse (the village), which is an incorporated municipality under *The Northern Municipalities Act, 2010*. A local authority is defined as “a municipality” in [LA FOIP].

With regards to the Financial Statements of Pinehouse Business North Limited Partnership (PBN LP) and Pinehouse Business North Inc. (PBN Inc.) ... the ministry received the financial statements under official village letterhead. With respect to email correspondence ... the ministry received the information from the village’s administrator ... in most cases, the information was sent to the ministry from Martine who was using the village’s email address ....

Therefore, the ministry submits the information withheld pursuant to subsection 13(2) was obtained from a local authority.

- [80] In its submission, Government Relations provided the following explanation in support of how the information was obtained implicitly or explicitly in confidence from Pinehouse:

With regards to the financial statements, the village explicitly informed the ministry that the financial statements were provided to our ministry in confidence .... The arguments outlined in the village’s submission ... were accepted by our ministry, as our ministry keeps this type of information, which provides for a mutual understanding regarding the confidentiality of the information.

The emails withheld pursuant to subsection 13(2) [of FOIP] on pages 317, 348, 351, 356, 362, 367, 368, 369, 381, 383, 387, 389, 393, 395, 406, 408 through 420, and 421 ... are regarding issues the village is experiencing in being compliant with LAFOIP ....

This conversation is directly related to what the village is experiencing that leads to the investigation and eventual inquiry ... into the village. These emails are correspondence between the village and ... Executive Director of Northern Municipal Services (NMS) branch and/or ... Municipal Advisor within NMS. The NMS branch is responsible for providing advisory services to all northern municipalities, similar to the ministry’s Advisory Services and Municipal Relations (ASMR) branch, which provides the same services to all southern municipalities. The ministry has always kept the inquiries made to ASMR from southern municipalities strictly confidential, as advisory services exists with an intent similar to that outlined in provision 17(1)(b) of FOIP: these services allow persons having the responsibility of governing a local authority to freely discuss issues in order to arrive at wellreasoned [sic] decisions. The intent of ASMR 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. The emails in question exchanged between NMS and the village were received and responded to with the same

intent of confidentiality. Furthermore, the emails are directly related to the issues experienced by the village that lead to the eventual investigation and inquiry .... Therefore, the implicit expectation of confidentiality among both parties regarding the issues being discussed in this correspondence pending a lawful investigation and inquiry is heightened.

[81] From a review of the record and supporting documentation, I am satisfied that the financial statement information that is being withheld on pages 60 to 63, 72 to 77, 81 to 84, 91, 92, 113 to 116, 125 to 129, 133 to 136, 143, 144, 148 to 151, 155, 159 to 162, 169 to 175, 179 to 182, 188, 189, was obtained by Government Relations from Pinehouse implicitly in confidence.

[82] The information that has been withheld on page 317 was written in an email by the Executive Director, Northern Municipal Services. In the email, they are speaking to information that was obtained from Pinehouse. However, from other information that has been released to the Applicant in this email, the confidentiality expectation would no longer apply. The information that has been withheld on page 368 is the name of an individual in their official capacity. A name is not something obtained from Pinehouse, it is simply a name.

[83] I find section 13(2) of FOIP does not apply to the information withheld on pages 317 and 368.

[84] The information that is found on pages 348, 351, 352, 356, 362, 369, 381, 383, 387, 389, 393, 395, 406 and 408 to 421 was obtained by Government Relations from Pinehouse. The information that has been withheld is information where Pinehouse is seeking advice from Northern Municipal Services, Government Relations and providing information to form the advice. As outlined in its submission, Government Relations asserted, in part:

... The [Northern Municipal Services] branch is responsible for providing advisory services to all northern municipalities, similar to the ministry's Advisory Services and Municipal Relations (ASMR), which provides the same services to all southern municipalities. The ministry has always kept the inquiries made to ASMR from southern municipalities strictly confidential .... The intent ... is to allow such persons to freely discuss issues in order to arrive at well-reasoned decisions ... [and] ... 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. The emails in question exchanged between [Northern Municipal Services] and [Pinehouse] were received and responded to with the same intent of confidentiality.

[85] From a review of the information withheld on these pages, I agree. The information was obtained by Government Relations from Pinehouse and there was an implicit expectation of confidentiality. Therefore, I find section 13(2) of FOIP applies to pages 348, 351, 352, 356, 362, 369, 381, 383, 387, 389, 393, 395, 406 and 408 to 421.

**6. Did Government Relations properly apply section 15(1)(c) of FOIP to the record?**

[86] Government Relations applied section 15(1)(c) of FOIP to information found on pages 358 to 361, 368, 369, 371 to 375, 377 to 380, 383, 384, 390, 392, 393, 395, 396, 400 to 402, 404, 407, 421 to 423, 427 to 429, 433 to 435 and 440. Government Relations fully applied section 15(1)(c) of FOIP to a 142 page payroll attachment, nine page mortgage attachment, 15 page mortgage attachment, 22 page mortgage attachment, 19 page mortgage attachment, 12 page housing program client agreement attachment and a 92 page payroll attachment.

[87] Section 15(1)(c) of FOIP provides:

**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;

[88] Section 15(1)(c) of FOIP is a discretionary class-based and 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 (*Guide to FOIP*, Ch. 4, pp. 51-52).

[89] When determining if section 15(1)(c) of FOIP applies to a record, the following two-part test can be applied:

1. Does the government institution's activity qualify as a "lawful investigation"?

2. Does one of the following exist:
  - a. Could the release of the information interfere with a lawful investigation?
  - b. Could the release disclose information with respect to a lawful investigation?

(*Guide to FOIP*, Ch. 4, pp. 52-53)

[90] I will now consider each part of the test.

**1. Does the government institution's activity qualify as a "lawful investigation"?**

**2. Does one of the following exist:**

- a. Could the release of the information interfere with a lawful investigation?**
- b. Could the release disclose information with respect to a lawful investigation?**

[91] 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. The investigation is not limited to those conducted by a government institution. It can include investigations conducted by other organizations (*Guide to FOIP*, Ch. 4, p. 52).

[92] This provision uses the word "could" rather than "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 that the harm could occur (*Guide to FOIP*, Ch. 4, p. 52).

[93] "Interfere with" includes hindering or hampering an investigation and anything that would detract from an investigator's ability to pursue the investigation. Interference can occur on concluded, active, ongoing or future investigations (*Guide to FOIP*, Ch. 4, pp. 52-53).

[94] It is only necessary for the government institution to demonstrate that the information in the record is information with respect to a lawful investigation to meet the second part of the test. "With respect to" are words of the widest possible scope. This phrase is probably



the widest of any expression intended to convey some connection between two related subject matters (*Guide to FOIP*, Ch. 4, p. 53).

[95] A government institution cannot rely on section 15(1)(c) of FOIP for a record that provides a general outline of the structure or programs of a law enforcement agency. Additionally, it cannot rely on section 15(1)(c) of FOIP for a record that reports, by means of statistical analysis or otherwise, on the degree of success achieved in a law enforcement program (*Guide to FOIP*, Ch. 4, p. 53).

[96] In its submission, Government Relations has provided the following arguments as to how section 15(1)(c) of FOIP applies to the record:

A lawful investigation is one permitted or required by law. Part XIV “Powers of the Minister” of the NMA [*The Northern Municipalities Act, 2010*], specifically sections 417 and 418, give the Minister of Government Relations the authority to order a lawful investigation....

Minister’s Orders made pursuant to the NMA that appoint individuals as an inspector, supervisor and Inquiry Officers are provided in appendices C, D, E and F.

The records that are responsive to this request that were withheld based on clause 15(1)(c) [of FOIP] were created as a result of the ministerial-appointed inspector recommending the inspection be expanded into an inquiry and that a supervisor also be appointed pursuant to section 422 of the NMA during said inquiry. The Supervisor was appointed on April 1, 2019, until March 31, 2020. The Inquiry was conducted from April 2, 2019, until December 20, 2019. During the Supervisor’s appointment, the Supervisor oversaw the general operation of the municipality and monitored the municipality’s progress among other duties ....

An inspection pursuant to section 417 of the NMA is an investigation into the management, administration or operation of any municipality. The scope of the investigation is set out in the Minister’s Order. An inquiry is conducted if it is determined during the inspection that a more in-depth investigation is required, which is what occurred with the Northern Village of Pinehouse. The scope of the inquiry is also set out in the Minister’s Order.

While these provisions use the word inspection and inquiry, the ministry submits that both an inspection and inquiry are an investigation that is permitted and authorized by law, specifically sections 417 and 418 of the NMA. This view is supported by the wording in subsection 420(1) of the NMA that equates “audit,” “inspection,” “inquiry,” and “investigation” as an “official examination.” Finally, the powers provided to the individuals who are appointed to conduct an inspection or inquiry pursuant to sections

417 and 418 of the NMA are similar to the powers of investigators (please see subsection 417(3) and 418(4) of the NMA).

...

Subsection 417(6) and 418(6) of the NMA provides that the Minister may disclose any information in the form and manner that is appropriate. The Minister has chosen to release the Inquiry Report that provides the public with a shared understanding of the truth related to longstanding questions regarding the Village's affairs. The Minister has already made the decision not to release any additional information at this time regarding the inquiry....

[97] Sections 417 and 418 of the NMA provide:

**417(1)** The minister may require any matter connected with the management, administration or operation of any municipality, any committee or other body established by a council pursuant to clause 100(a) or any controlled corporation, municipal development corporation, public utility board or service district to be inspected:

(a) if the minister considers the inspection to be necessary; or

(b) on the request of the council.

(2) The minister may appoint one or more persons as inspectors or the Saskatchewan Municipal Board as an inspector for the purposes of carrying out inspections pursuant to this section.

(3) An inspector:

(a) may require the attendance of any officer of the municipality or of any other person whose presence the inspector considers necessary during the course of the inspection; and

(b) has the same powers, privileges and immunities as commissioners pursuant to *The Public Inquiries Act*.

(4) When required to do so by an inspector, the administrator, committee or other body established by a council pursuant to clause 100(a) or the controlled corporation, municipal development corporation, public utility board or service district being inspected shall produce for examination and inspection all books and records of the municipality, committee, other body, controlled corporation, municipal development corporation, public utility board or service district.

(5) After the completion of the inspection, the inspector shall make a report to the minister and to the council.

(6) The minister or council may release the report made pursuant to subsection (5) to the public.

**418(1)** The minister may order an inquiry described in subsection (2):

(a) if the minister considers the inquiry to be necessary;

(b) on the request of the council; or

(c) on receipt of a sufficient petition of voters of the municipality respecting the inquiry.

(2) An inquiry may be conducted into all or any of the following:

(a) the affairs of the municipality, a committee or other body established by the council pursuant to clause 100(a) or a controlled corporation, municipal development corporation, public utility board or service district;

(b) the conduct of a member of council or of an employee or agent of the municipality, a committee or other body established by the council pursuant to clause 100(a) or a controlled corporation, municipal development corporation, public utility board or service district.

(3) The minister may appoint an individual to conduct the inquiry, or may request the Saskatchewan Municipal Board to conduct the inquiry.

(4) Any persons appointed to conduct an inquiry have the same powers as commissioners pursuant to *The Public Inquiries Act*.

(5) The results of the inquiry shall be reported to:

(a) the minister;

(b) the council; and

(c) any committee or other body established by the council pursuant to clause 100(a), controlled corporation, municipal development corporation, public utility board, service district, councillor, employee or agent that may be the subject of the inquiry.

[98] In these sections, the NMA uses the language “inquiry” and “inspection”; however, section 15(1)(c) of FOIP uses the term “lawful investigation”. As Government Relations asserts in its submission, “...subsection 420(1) of the NMA that equates “audit,” “inspection,” “inquiry,” and “investigation” as an “official examination.” Section 420(1) of the NMA provides:

**420(1)** In this section, “**official examination**” means:

- (a) a report pursuant to section 211;
- (b) an audit pursuant to section 416;
- (c) an inspection pursuant to section 417;
- (d) an inquiry pursuant to section 418;
- (e) an investigation, review, report or recommendation by or from the Ombudsman pursuant to *The Ombudsman Act, 2012*;
- (f) an investigation, review, report or recommendation by or from any person whose duties include the enforcement of *The Saskatchewan Employment Act* with respect to an offence within that person’s power to investigate; or
- (g) an investigation, review, report or recommendation by or from the Information and Privacy Commissioner pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act*.

[99] Pursuant to section 417(3)(b) of the NMA, an “inspector”, “... has the same powers, privileges and immunities as commissioners pursuant to *The Public Inquiries Act*.” Furthermore, pursuant to section 418(4) of the NMA, “Any persons appointed to conduct an inquiry have the same powers as commissioners pursuant to *The Public Inquiries Act*.” I would note that *The Public Inquiries Act* has been replaced by *The Public Inquiries Act, 2013* (Public Inquiries Act, 2013).

[100] The Public Inquiries Act, 2013 provides powers that are consistent with those of an “investigation”. Sections 11, 12, 13 and 14 of the Public Inquiries Act, 2013 give powers to compel evidence, power to inspect, power to search with a warrant and evidentiary privileges. For example, sections 11, 12(1) and (2), 13(1) and 14 of the Public Inquiries Act, 2013 provides:

**11** A commission may, by summons:

- (a) require a person to give evidence under oath or after making an affirmation or declaration, orally or in writing, for the purpose of an inquiry, and for that purpose may require a person to attend at any location as a witness; and

(b) require a person to produce to the commission, or to a person designated by the commission, all records and other property in his or her custody or control that may relate in any way to the matter that is the subject of the inquiry.

**12(1)** In this section and in section 13, “**commissioner**” includes a person authorized by a commission.

(2) If a commission believes it is reasonably necessary to the conduct of an inquiry, a commissioner may:

- (a) enter any premises at any reasonable time to view or inspect the premises;
- (b) enter at any reasonable time premises containing any records or other property and inspect those records or that property;
- (c) require the production of records or other property relating to the matter that is the subject of the inquiry and may examine those records or other property;
- (d) require any person on the premises to:
  - (i) answer any questions that may be relevant to the inquiry; and
  - (ii) provide all reasonable assistance, including using any computer hardware or software or any other data storage, processing or retrieval device or system to produce information;
- (e) in order to produce information, use any computer hardware or software or any other data storage, processing or retrieval device or system; and
- (f) remove for examination and copying anything that may be relevant to the inquiry, including removing any computer hardware or software or any other data storage, processing or retrieval device or system.

...

**13(1)** If a commissioner is refused entry to any premises or vehicle, or if the commission is of the opinion that entry without notice is necessary, and the commission has reasonable grounds to believe that entering and searching the premises or vehicle will assist in the conduct of an inquiry, the commission may, by application without notice, apply to the court for a warrant permitting a commissioner or a person named in the order to do those things mentioned in section 12.

...

**14** A person has the same evidentiary privileges in relation to the disclosure of information and the production of records or other property pursuant to this Act that the person would have in a court in a civil proceeding.

[101] Based upon the powers provided to an inspector or person of inquiry in the Public Inquiries Act, 2013, I am satisfied that an inspection or inquiry under the NMA, qualifies as an investigation for purposes of section 15(1)(c) of FOIP.

[102] In its submission, Government Relations has provided my office with arguments as to how the release of records could disclose information with respect to a lawful investigation:

Subsection 417(6) and 418(6) of the NMA provides that the Minister may disclose any information in the form and manner that is appropriate. The Minister has chosen to release the Inquiry Report that provides the public with a shared understanding of the truth related to longstanding questions regarding the Village's affairs. The Minister has already made the decision not to release any additional information at this time regarding the inquiry, partly because future ministerial interventions are still unknown at this time ....

[103] Government Relations has provided my office with specific arguments in its submission as to how the information withheld would disclose information with respect to a lawful investigation. The information relates specifically to the scope of the inquiry with Pinehouse.

[104] The information that has been withheld on page 392 is general information about times and dates that would not qualify under this exemption. The information that has been withheld on page 401 and the first two severances on page 402 would be general advice provided to Pinehouse. However, the last two severances on page 402 would qualify under section 15(1)(c) of FOIP, because this information relates to the lawful investigation and would disclose information with respect to that investigation.

[105] From a review of the remainder of the information Government Relations has withheld under section 15(1)(c) of FOIP, I agree that if released it would disclose information with respect to a lawful investigation.

[106] I find section 15(1)(c) of FOIP does not apply to the information that has been withheld on pages 392, 401 and the first two severances on page 402.

[107] I find section 15(1)(c) of FOIP applies to the information found on pages 358 to 361, 368, 369, 371 to 375, 377 to 380, 383, 384, 390, 393, 395, 396, 400, the last two severances on page 402, 404, 407, 421 to 423, 427 to 429, 433 to 435 and 440, the 142 page payroll attachment, the nine page mortgage attachment, the 15 page mortgage attachment, the 22 page mortgage attachment, the 19 page mortgage attachment, the 12 page housing program client agreement attachment and the 92 page payroll attachment.

**7. Did Government Relations properly apply section 19(1)(b) of FOIP to the record?**

[108] Government Relations applied section 19(1)(b) of FOIP to information found on pages 97, 98, 100, 343 and 344.

[109] Section 19(1)(b) of FOIP is a mandatory exemption, and provides:

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

...

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

[110] Section 19(1)(b) of FOIP permits refusal of access in situations where a record contains financial, commercial, scientific, technical or labour relations information that was supplied in confidence to a government institution by a third party (*Guide to FOIP*, Ch. 4, p. 197).

[111] When considering section 19(1)(b) of FOIP, the following three-part test can be applied:

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

(*Guide to FOIP*, Ch. 4, pp. 198-202)

[112] I will now consider each part of the test.

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

[113] In its submission, Government Relations asserts that the withheld information qualifies as “financial” and/or “commercial” information.

[114] “Financial information” is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a third party (*Guide to FOIP*, Ch. 4, p. 198).

[115] “Commercial information” is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records (*Guide to FOIP*, Ch. 4, p. 198).

[116] Types of information included in the definition of commercial information can include:

- Offers of products and services a third-party business proposes to supply or perform.
- A third-party business’ experiences in commercial activities where this information has commercial value.
- Terms and conditions for providing services and products by a third party.
- Lists of customers, suppliers or sub-contractors compiled by a third-party business for its use in its commercial activities or enterprises - such lists may take time and effort to compile, if not skill.
- Methods a third-party business proposes to use to supply goods and services.
- Number of hours a third-party business proposes to take to complete contracted work or tasks.

(*Guide to FOIP*, Ch. 4, p. 198).



[117] “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 (*Guide to FOIP*, Ch. 4, p. 200).

[118] Information gathered by government inspectors via their own observations does not qualify as information “supplied” to the government institution. Judgements or conclusions expressed by officials based on their own observations generally cannot be said to be information supplied by a third party. Records can still be “supplied” even when they originate with the government institution (i.e. the records still may contain or repeat information extracted from documents supplied by the third party). However, the third party objecting to disclosure will have to prove that the information originated with it and that it is confidential (*Guide to FOIP*, Ch. 4, p. 200).

[119] Whether confidential information has been “supplied” to a government institution by a third party is a question of fact. The content rather than the form of the information must be considered: the mere fact that the information appears in a government document does not, on its own, resolve the issue (*Guide to FOIP*, Ch. 4, p. 200).

[120] The following are examples of information not supplied by a third party:

- Information that reflects the viewpoints, opinions or comments of government officials.
- Reports resulting from factual observations made by government inspectors.
- The terms of a lease negotiated between a third party and a government institution.

(*Guide to FOIP*, Ch. 4, p. 200)

[121] The contents of a contract involving a government institution and a third party will not normally qualify as having been supplied by a third party. The provisions of a contract, in general, have been treated as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party (*Guide to FOIP*, Ch. 4, pp. 200-201).

[122] “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the supplier of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the government institution and the third party providing the information (*Guide to FOIP*, Ch. 4, p. 202).

[123] “Implicitly” means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was supplied on the understanding that it would be kept confidential. In order for section 19(1)(b) of FOIP to apply, a government institution must show that both parties intended the information be held in confidence at the time the information was supplied. The expectation of confidentiality must be reasonable and must have an objective basis (*Guide to FOIP*, Ch. 4, p. 202).

[124] 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?

(*Guide to FOIP*, Ch. 4, p. 202-203)

[125] “Mutual understanding” means that the government institution and the third party both had the same understanding regarding the confidentiality of the information at the time it was supplied. If one party intends the information to be kept confidential but the other does not, the information is not considered to have been supplied in confidence. However, mutual understanding alone is not sufficient. Additional factors must exist in addition. The preceding factors are not a test but rather guidance on factors to consider. It is not an exhaustive list. Each case will require different supporting arguments. The bare assertion that the information was supplied implicitly in confidence would not be sufficient (*Guide to FOIP*, Ch. 4, p. 203).

[126] Factors to consider when determining if a document was supplied in confidence explicitly include (not exhaustive):

- The existence of an express condition of confidentiality between the government institution and the third party.
- The fact that the government institution requested the information be supplied in a sealed envelope and/or outlined its confidentiality intentions to the third party prior to the information being supplied.

(*Guide to FOIP*, Ch. 4, pp. 203-204)

[127] The preceding factors are not a test but rather guidance on factors to consider. It is not an exhaustive list. Each case will require different supporting arguments. The Federal Court has summarized the following in terms of what is considered confidential:

- It is an objective standard (based on facts).
- It is not sufficient that the third party state, without further evidence, that the information is confidential.
- Information has not been held to be confidential even if the third party considered it so, where it has been available to the public from other sources or where it has been available at an earlier time or in another form from government.
- Information is not confidential where it could be obtained by observation albeit with more effort by the applicant.

(*Guide to FOIP*, Ch. 4, p. 204)

[128] “Compulsory supply” means there is a compulsory legislative requirement to supply information. Where supply is compulsory, it will not ordinarily be confidential. In some

cases, there may be indications in the legislation relevant to the compulsory supply that establish confidentiality. The relevant legislation may even expressly state that such information is deemed to have been supplied in confidence. Where information is required to be provided, unless otherwise provided by statute, confidentiality cannot be built in by agreement, informally or formally (*Guide to FOIP*, Ch. 4, p. 204).

[129] Simply labelling documents as “confidential” does not, on its own, make the documents confidential (i.e. confidentiality stamps or standard automatic confidentiality statements at the end of emails). It is just one factor to consider when determining whether the information was explicitly supplied in confidence. The typical bottom of e-mail “confidentiality” note is not sufficient to establish that information was supplied in confidence. Such notes are largely format and platitudes (*Guide to FOIP*, Ch. 4, p. 205).

[130] As Government Relations applied a third party exemption, the third parties as well as Government Relations had the right to make representations as to how the exemptions applied.

[131] My office received a submission on section 19(1)(b) of FOIP from each third party, a lawyer representing Pinehouse and Bullée Consulting Ltd. My office also received a submission on this exemption from Government Relations.

[132] I would first like to note that although Pinehouse is a “local authority” for the purposes of LA FOIP, it also qualifies as a “third party” for the purposes of FOIP. Section 2(1)(j) of FOIP defines a third party as:

2(1) In this Act:

...

(j) “**third party**” means a person, included an unincorporated entity, other than an applicant or a government institution.

[133] The information that has been withheld on pages 97, 98 and 100 is detailed budgetary information and a payback plan of Pinehouse for a 5-year land development project. This qualifies as financial information under section 19(1)(b) of FOIP.

[134] The information that has been withheld on pages 343 and 344 is costing information that the third party has supplied Pinehouse to complete a project. It includes a breakdown of costs of the third party staff, construction costs, design fees and travel. The actual costing amounts that have been withheld would qualify as the commercial information of the third party.

[135] For pages 97, 98 and 100, the information was supplied by Pinehouse to Government Relations. In the case of pages 343 and 344, the information was supplied by Bullée Consulting Ltd. to Pinehouse, and then in turn to Government Relations.

[136] In its submission, Government Relations asserted:

... third parties had an implicit expectation their commercial information would be held in confidence ... as the information was supplied for the purpose of preparing a proposal to provide services for a proposed subdivision development project.

...

The “5 Year Land Development Plan” which starts on page 94 contains the information withheld on pages 97, 98 and 100 ... was provided by the village to [Government Relations] for the sole purpose of ... funding consideration. Therefore, we believe the information ... was supplied to our ministry by the village with an implicit expectation we would hold the information in confidence.

[137] From a review of the withheld information, I agree. Therefore, Government Relations has met the three-part test for the withheld information.

[138] I find section 19(1)(b) of FOIP applies to the information withheld on pages 97, 98, 100 343 and 344.

**8. Did Government Relations properly apply section 17(1)(b)(i) of FOIP to the record?**

[139] Government Relations withheld portions of information found on pages 342, 383, 398 and 401 to 402 pursuant to section 17(1)(b)(i) of FOIP.

[140] Section 17(1)(b)(i) of FOIP is a discretionary exemption, and provides:

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

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[141] Section 17(1)(b)(i) of FOIP 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. This 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 (*Guide to FOIP*, Ch. 4, p. 131).

[142] The following two part test can be applied:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employee of a government institution?

(*Guide to FOIP*, Ch. 4, pp. 132-133)

[143] I will now consider each part of the test.

***1. Does the record contain consultations or deliberations?***

***2. Do the consultations or deliberations involve officers or employees of a government institution?***

(*Guide to FOIP*, Ch. 4, pp. 132-133)

[144] “Consultation” means:

- The action of consulting or taking counsel together: deliberation, conference
- A conference in which the parties consult and deliberate

(*Guide to FOIP*, Ch. 4, p. 132)

[145] 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 (*Guide to FOIP*, Ch. 4, p. 132).

[146] “Deliberation” means:

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

(*Guide to FOIP*, Ch. 4, p. 132)

[147] 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 (*Guide to FOIP*, Ch. 4, p. 133).

[148] “Involving” means including. There is nothing in the exemption that limits the exemption to participation only of officers or employees of a government institution. Collaboration with others is consistent with the concept of consultation. “Officers or employees of a government institution” means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution (*Guide to FOIP*, Ch. 4, p. 133).

[149] This provision is not meant to protect the bare recitation of facts, without anything further. Factual material means a cohesive body of facts, which are distinct from the consultations or deliberations. It does not refer to isolated statements of fact, or to the analyses of the factual material. Factual material refers specifically to information that cannot be withheld under section 17(1) of FOIP and which must be separated from consultations or

deliberations if those are being withheld. Where factual information is intertwined with the consultations and/or deliberations in a manner whereby no reasonable separation can be made, then the information is not factual material and can be withheld (*Guide to FOIP*, Ch. 4, p. 134).

[150] Consultations and deliberations can be revealed in two ways:

1. The information itself consists of consultations or deliberations; or
2. The information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual consultations or deliberations.

(*Guide to FOIP*, Ch. 4, p. 135)

[151] The information that has been withheld pursuant to section 17(1)(b)(i) of FOIP on pages 342, 383, 398, 400, 401 and 402 involves communications between employees of Government Relations and Pinehouse. For this exemption to be found to apply, an employee of a government institution – in this case Government Relations, must be involved. This is the case for the information that has been withheld.

[152] The communications are consultations between Government Relations employees and Pinehouse. And, although there is factual information found in a few of the severances, it is intertwined with the consultations that are occurring.

[153] Therefore, I find section 17(1)(b)(i) of FOIP applies to the withheld information found on pages 342, 383, 398, 400, 401 and 402.

**9. Did Government Relations properly apply section 17(1)(a) of FOIP to the record?**

[154] Government Relations applied section 17(1)(a) of FOIP to the first severance found on page 401.

[155] Section 17(1)(a) of FOIP is a discretionary exemption, and provides:



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

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

[156] In its submission, Government Relations has not provided my office with arguments related to the application of section 17(1)(a) of FOIP to the record. Government Relations also applied section 15(1)(c) of FOIP to this severance; however, I found that exemption did not apply to this information.

[157] Section 61 of FOIP provides:

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

[158] As Government Relations has not provided arguments for section 17(1)(a) of FOIP, it has not met the burden of proof as to how this exemption applied. Therefore, I find that section 17(1)(a) of FOIP does not apply to the first severance found on page 401.

#### **IV FINDINGS**

[159] I find Government Relations did not meet the legislated timelines pursuant to section 7(2) and 12(3) of FOIP.

[160] I find Government Relations did conduct an adequate search for records.

[161] I find section 29(1) of FOIP does not apply to the information that has been withheld on the first two severances on page 23, 191, 194, 272, 273, 298, 302, 315, 318, 320, the first, second, fourth and fifth severances on page 346, 354, severance five on page 368, 386, 387, 388, 395, 397, 399, 400, 407, 408, 410, 411, 412, 414, 416, 417, 418, 420, and 421 as it is business information of individuals acting in their official capacity.

- [162] I find section 29(1) of FOIP does not apply to the teleconference number and passcode that has been withheld on pages 272 and 318.
- [163] I find section 27(1) of HIPA applies to the third severance on page 23 as it is the personal health information of an individual other than the Applicant.
- [164] I find section 29(1) of FOIP applies to the information that has been withheld on pages 10, 13, the third severance on pages 346, 349, 350, 433 and 434 as it is the personal information of an individual who is not the Applicant.
- [165] I find section 29(1) of FOIP applies to the information that has been withheld on pages 104 to 106 and 108 as it includes individuals' names connected with their personal potential living arrangements.
- [166] I find section 29(1) of FOIP applies to the information that has been withheld on page 362 as it includes the individual's name connected with a personal financial transaction.
- [167] I find section 29(1) of FOIP applies to the information that has been withheld on pages 367, 368 (with the exception of the fifth severance), severances 1 to 3 and 10 to 12 on page 369 and 383.
- [168] I find section 29(1) of FOIP applies to the information that has been withheld on pages 393 and 398 as it is the education history of an individual.
- [169] I find section 13(2) of FOIP does not apply to the information withheld on page 317 and 368.
- [170] I find section 13(2) of FOIP applies to pages 348, 351, 352, 356, 362, 369, 381, 383, 387, 389, 393, 395, 406 and 408 to 421.
- [171] I find section 15(1)(c) of FOIP does not apply to the information that has been withheld on pages 392 and 401 and the first two severances on page 402.

- [172] I find section 15(1)(c) of FOIP applies to the information found on pages 358 to 361, 368, 369, 371 to 375, 377 to 380, 383, 384, 390, 393, 395, 396, 400, the last two severances on pages 402, 404, 407, 421 to 423, 427 to 429, 433 to 435 and 440, the 142 page payroll attachment, the nine page mortgage attachment, the 15 page mortgage attachment, the 22 page mortgage attachment, the 19 page mortgage attachment, the 12 page housing program client agreement attachment and the 92 page payroll attachment.
- [173] I find section 19(1)(b) of FOIP applies to the information found on pages 97, 98, 100 343 and 344.
- [174] I find section 17(1)(b)(i) of FOIP applies to the withheld information found on pages 342, 383, 398, 400, 401 and 402.
- [175] I find that section 17(1)(a) of FOIP does not apply to the first severance found on page 401.

## **V RECOMMENDATIONS**

- [176] I recommend Government Relations review and amend its procedures to manage access to information requests in order to meet its legal obligations under FOIP.
- [177] I recommend Government Relations address the Applicant's questions and concerns in paragraph [38] and conduct an additional search based on those concerns.
- [178] I recommend that if Government Relation's search results in additional records that are responsive to the October 21, 2019 narrowed scope, that it provides a copy to the Applicant within 30 days of issuance of this Report with any necessary exemptions applied and does not charge the Applicant any additional fees.
- [179] I recommend Government Relations release the information found on pages 1, 191, 194, 272, 273, 298, 302, 315, 317, 318, 320, 354, 386, 388, 392 and 397.

- [180] I recommend Government Relations continue to withhold the information found on pages 10, 13, 60 to 63, 72 to 77, 81 to 84, 91, 92, 97, 98, 100, 103 to 106, 108, 113 to 116, 125 to 129, 133 to 136, 143, 144, 148 to 151, 155, 159 to 162, 169 to 175, 179 to 182, 188, 189, 342 to 344, 348 to 352, 356, 358 to 362, 367, 369, 371 to 375, 377 to 381, 383, 384, 389, 390, 393, 396, 398, 399, 402, 404, 406, 409, 413, 415, 419, 422, 423, 427 to 429, 433 to 435, 440, the 142 page payroll attachment, the nine page mortgage attachment, the 15 page mortgage attachment, the 22 page mortgage attachment, the 19 page mortgage attachment, the 12 page housing program client agreement attachment and the 92 page payroll attachment.
- [181] I recommend Government Relations release the first two severances and withhold the third severance found on page 23.
- [182] I recommend Government Relations continue to withhold the third severance and release the remaining information found on page 346.
- [183] I recommend Government Relations release the name in the email salutatory and withhold the remaining information found on page 368.
- [184] I recommend Government Relations continue to withhold the information it has applied section 13(2) of FOIP to and release the remaining information found on page 387.
- [185] I recommend Government Relations continue to withhold the information it has applied sections 13(2) and 15(1)(c) of FOIP to and release the remaining information on page 395.
- [186] I recommend Government Relations release the information it has applied section 29(1) of FOIP to and withhold the remaining information on pages 400 and 421.
- [187] I recommend Government Relations continue to withhold severances two and three and release severance one on page 401.

[188] I recommend Government Relations release the name and organization found in the first sentence and continue to withhold the remainder of information found on page 407.

[189] I recommend Government Relations release the names and email addresses and continue to withhold the remainder of the information found on pages 408, 410 to 412, 414 and 418.

[190] I recommend Government Relations release the names and continue to withhold the remainder of the information found on pages 416, 417 and 420.

Dated at Regina, in the Province of Saskatchewan, this 8<sup>th</sup> day of February, 2022.

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