



REVIEW REPORT 133-2020

Ministry of Highways (formerly Ministry of Highways and Infrastructure)

April 5, 2022

Summary: The Applicant submitted an access to information request to the Ministry of Highways (Highways) (formerly the Ministry of Highways and Infrastructure). Highways provided the Applicant with portions of the records. The Applicant requested the Commissioner undertake a review of the exemptions applied and Highways' search efforts to locate responsive records. The Commissioner found that Highways did not conduct a reasonable search and recommended it undertake another search for the records. The Commissioner found that sections 19(1)(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) was appropriately applied to some portions of the record. The Commissioner found that the other exemptions applied by Highways did not apply to the remaining portions of the records. The Commissioner recommended Highways release the records to the Applicant, with the exception of the portions of the record where an exemption was found to be appropriately applied.

I BACKGROUND

[1] On October 2, 2019, the Applicant submitted an access to information request to the Ministry of Highways (Highways) (formerly Ministry of Highways and Infrastructure) for records between October 1, 2017 and October 2, 2019:

re: [specified address]

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

- [2] On October 29, 2019, Highways emailed the Applicant, based on an October 28, 2019 telephone conversation between the Applicant and Highways, requesting confirmation that it had accurately captured the revised scope for the request:

Please provide records specifically containing who (which staff) is moving, what office are they moving from, and their branch – i.e. if there is a record(s) that contain this information in a summary; records containing non-office use i.e. compound, warehousing, parking; floor plans or descriptions of floor plans prior to or after August 2018; for the period October 1, 2017 – October 2, 2019.

- [3] On October 30, 2019, the Applicant responded to Highways confirming Highways had accurately captured the scope of the request.

- [4] On November 14, 2019, Highways provided the Applicant with a fee estimate and requested a deposit of half of the total amount in order to proceed:

... Please find below an Access to Information Cost Estimate, which summarized the estimate of costs.

	Type of Fee	Calculation of Fees	Total Amount of Fees
1	Time required to search for records	[2 of hours] x \$15.00/half hour	\$60.00
2	Time required to prepare records for disclosure	[6 of hours] \$15.00/half hour	\$180.00
3	Photocopies	~300 pages (x \$0.25/page)	\$0.00 provided electronically
4	Other fees required per section 6 of the Regulations		
5	LESS:	2 hours free x \$15.00/half hour	
Total amount of fees required to process access request			\$180.00

- [5] On March 26, 2020, Highways provided the actual cost of the fees associated with this file:

	Type of Fee	Calculation of Fees	Total Amount of Fees
1	Time required to search for records	[4 of hours] x \$15.00/half hour	\$120.00
2	Time required to prepare records for disclosure	[6 of hours] \$15.00/half hour	\$180.00
3	Photocopies	155 pages (x \$0.25/page)	\$0.00 provided electronically

4	LESS:	2 hours free x \$15.00/half hour	(\$60.00)
5	LESS DEPOSIT		(\$90.00)
Total amount of fees required to process access request			\$150.00
Balance Due based on lower estimated cost of \$180.00			\$90.00

- [6] On March 30, 2020, Highways emailed the Applicant thanking them for the payment of the balance due. Highways released 155 pages of responsive records (a 107 page record and a 48 page record) to the Applicant, withholding some portions of the records pursuant to sections 17(1)(a), 19(1)(b) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [7] On May 27, 2020, the Applicant submitted a request for review to my office.
- [8] On June 2, 2020, my office notified both parties of my intention to undertake a review of the application of section 29(1) of FOIP to the 48 page record, as well as search efforts to locate responsive records as the Applicant believed additional records exist involving [name of Highways' employee] which had not been located or provided.
- [9] On the same day, the Applicant responded expanding the review to consider the application of all exemptions, not just section 29(1) of FOIP, to both the 48 page record and the 107 page record. As such, my office advised both parties that the review would consider the application of all exemptions claimed by Highways to redact portions of the responsive records. As such, my office sent updated notification emails advising the review would consider the Applicant of sections 17(1)(a), 19(1)(b) and 29(1) of FOIP, as well as portions marked as non-responsive.
- [10] On June 9, 2020, Highways provided my office with contact information for the third parties and my office notified the third parties of the review on June 10, 2020.
- [11] On December 15, 2020, Highways released some portions of the record it had previously withheld in part from the Applicant. In the letter advising the Applicant of the additional portions of records it was releasing, Highways also advised the Applicant that it was raising

additional exemptions to continue to withhold other portions of the record. Highways advised the exemptions applied to withhold portions of the record were sections 16(1), 17(1)(a), 17(1)(b)(i), 17(1)(c), 18(1)(b), 19(1)(b), 22(a) and 29(1) of FOIP. As well, in a supplementary submission to my office related to the 48 page record, Highways applied section 15(1)(m) of FOIP to withhold portions of the record.

II RECORDS AT ISSUE

- [12] Initially Highways had provided a 107 page record; however, as was noted in my office's notification email, the review involved the 107 page record, a 48 page record and any other records that Highways withheld in full from the Applicant. On November 3, 2021, Highways provided my office with a copy of the 48 page record. However, Highways took the position that the Commissioner does not have jurisdiction to review the 48 page record and provided a supplementary submission on this position, which I will consider later in this Report. On November 8, 2021, Highways advised that while exemptions were applied to some information, there were no records withheld in full from the Applicant.
- [13] I will refer to the 107 page record as Package A and the 48 page record as Package B. Highways did release some of the pages of these two packages of records in full.
- [14] For Package A, pages 1, 2, 3, 5, 6, 7, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 30, 31, 32, 34, 36, 37, 40, 56, 57, 60, 65, 66, 67, 68, 70, 71, 72, 73, 74, 77, 79, 80, 81, 82, 83, 84, 86, 87, 92, 95, 96, 97, 98, 99, 100, 101, 102, 105, 106 and 107 were released in full to the Applicant. As such, these pages of the record are not at issue in this review.
- [15] While my office was reviewing the records in Package A, it was found that a few attachments to emails in this record were not provided to my office. My office followed up with Highways on February 7, 2022, and Highways acknowledged that three attachments totalling seven pages had been overlooked when identifying the responsive records. Highways provided my office with copies of the missing attachments and advised it would release these records in full to the Applicant. Additionally, Highways chose to release pages 29 and 64 of Package A of the record. Highways also reduced the redactions applied to

page 75 and dropped all exemptions, except the third-party exemption applied to a portion of page 78 of Package A. Highways released these pages of the record to the Applicant on February 24, 2022. As such, the pages of the record that were released in full are not at issue in this review. That leaves 44 pages that were withheld in part from the Applicant from Package A.

[16] For Package B, pages 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 21 and 35 were released in full to the Applicant. That leaves 30 pages that were withheld in part from the Applicant from Package B.

[17] I note that the records provided to my office contain the records in full, and a redacted version that uses “white space redaction”.

[18] “White space redaction” is where software removes the content of a record in such a way that it renders the redacted content indistinguishable from the blank background of the document. As discussed in my office’s [Review Report 025-2020](#) and [Review Report 127-2020](#), white space redaction lacks specificity because when reviewing the responsive pages, an applicant cannot tell if the white space accounts for a missing line, paragraph, table, image etc. or if the page was naturally left blank. The preference is black-out or grey-out redacting, which allows sufficient visual context to indicate the length and general nature of the information (e.g. chart, column, list, sentence or paragraph) (*Guide to FOIP*, Chapter 3: “Access to Records”, updated: June 29, 2021 (*Guide to FOIP*, Ch. 3) at pages 46 to 48).

[19] In the future, Highways should use black-out or grey-out redacting when processing records. For assistance with severing, Highways can review my office’s webinar: [Modern Age Severing Made A Lot Easier](#).

[20] The index of records below identifies the remaining pages that were withheld in part that will be considered in this review:

Package	Record	Page Numbers	Description of Record	Exemptions Applied
A	1	Page 4	Email	Non-Responsive; Sections 17(1)(a) and 17(1)(b)(i) of FOIP
A	2	Pages 8 and 9	Email	Non-Responsive; Sections 17(1)(a) and 17(1)(b)(i) of FOIP
A	3	Page 13	Email	Non-Responsive; Section 17(1)(b)(i) of FOIP
A	5	Pages 24 and 25	Attachment to Email	Section 29(1) of FOIP
A	9	Page 33	Email	Non-Responsive; Section 17(1)(b)(i) of FOIP
A	10	Page 35	Email	Non-Responsive; Sections 16(1) and 17(1)(a) of FOIP
A	11	Pages 38, 39 and 41 to 54	Email and one attachment	Pages 38 and 39: Non-Responsive; Section 17(1)(b)(i) of FOIP Pages 41 to 54: Sections 19(1)(b) and 29(1) of FOIP
A	12	Page 55	Email	Non-Responsive; Sections 17(1)(a) and 17(1)(b)(i) of FOIP
A	14	Pages 58 and 59	Email	Non-Responsive; Section 17(1)(b)(i) of FOIP
A	15	Pages 61 to 63	Attachment to Email	Pages 61 and 62: Non-Responsive; Sections 17(1)(b)(i), 17(1)(c) and 18(1)(b) of FOIP Pages 63: Non-Responsive; Sections 16(1), 17(1)(b)(i), 17(1)(c) and 18(1)(b) of FOIP
A	18	Page 69	Email	Non-Responsive; Section 17(1)(b)(i) of FOIP
A	19	Pages 75 and 76	Email	Non-Responsive; Sections 17(1)(a) and 17(1)(b)(i) of FOIP
A	20	Page 78	Email	Section 19(1)(b) of FOIP
A	23	Page 85	Email	Non-Responsive; Section 29(1) of FOIP
A	24	Pages 88 to 90	IBC Update	Non-Responsive; Section 29(1) of FOIP
A	25	Page 91	Email	Non-Responsive; Sections 17(1)(b)(i) and 22(a) of FOIP
A	26	Pages 93, 94, 103 and 104	Email and two attachments	Page 93: Non-Responsive Page 94: Non-Responsive; Section 17(1)(b)(i) of FOIP

Package	Record	Page Numbers	Description of Record	Exemptions Applied
				Pages 103 and 104: Section 29(1) of FOIP
B	1	Page 1	Email and three attachments	Section 29(1) of FOIP
B	2	Pages 17, 19, 20 and 22	Email and two attachments	Pages 17: Section 29(1) of FOIP Pages 19, 20 and 22: Section 17(1)(a) of FOIP
B	3	Page 23	Email thread	Section 29(1) of FOIP
B	4	Page 24	Email thread	Section 29(1) of FOIP
B	5	Page 25	Email	Section 29(1) of FOIP
B	6	Pages 26 to 28	Email thread	Section 29(1) of FOIP
B	7	Pages 29 to 31	Email and two attachments	Page 29: Section 29(1) of FOIP Pages 30 and 31: Sections 15(1)(m) and 17(1)(a) of FOIP
B	8	Page 32	Email	Section 29(1) of FOIP
B	9	Page 33	Email	Section 29(1) of FOIP
B	10	Page 34	Email thread	Section 29(1) of FOIP
B	11	Page 36	Email thread	Section 29(1) of FOIP
B	12	Page 37	Email thread	Section 29(1) of FOIP
B	13	Page 38	Email thread	Section 29(1) of FOIP
B	14	Page 39	Email	Section 29(1) of FOIP
B	15	Page 40	Email	Section 29(1) of FOIP
B	16	Pages 41 to 44	Email thread and three attachments	Page 41: Section 29(1) of FOIP Pages 42 and 43: Sections 15(1)(m) and 17(1)(a) of FOIP Page 44: Section 17(1)(a) of FOIP
B	17	Pages 45 and 46	Email thread and one attachment	Page 45: Sections 19(1)(b) and 29(1) of FOIP Page 46: Sections 15(1)(m) and 17(1)(a) of FOIP
B	18	Page 47	Email	Section 29(1) of FOIP

Package	Record	Page Numbers	Description of Record	Exemptions Applied
B	19	Page 48	Email thread	Section 29(1) of FOIP

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

[22] Further, Highways identified Shindico Realty Inc., Stantec Consulting Ltd. and Kreate Architecture and Design Ltd. as third parties. Each of these three parties qualifies as a “third party” as defined by section 2(1)(j) of FOIP.

[23] As noted earlier, Highways took the position that I do not have jurisdiction to review the Package B of the record (the 48 page record) and provided a supplementary submission on this position. I will now consider Highways’ position that my office does not have authority to review Package B of the record. Package B is the 48 page record that Highways withheld from the Applicant in part.

[24] In its submission, Highways indicated that it “did not anticipate that [my office] would include... the 48 pages of records” in this review. However, in my office’s notification email to Highways on June 2, 2020, it stated that “the applicant has specified [they are] only interested in the exemptions applied to pages 1 [to] 48.” On the same day they received the notification, the Applicant contacted my office to clarify that they were interested in exemptions applied to all responsive records. In a revised notification email, my office advised Highways that, “this would include exemptions applied to the 107 page record, the 48 page record, and any record that was withheld in full...” It is clear the 48 page record would be included in this review as it was clearly referenced in both notification emails.

- [25] Highways also argued that because my office had not proceeded with a review of an earlier access to information decision that involved these records, that my office did not have the authority to review any future access decisions made regarding this record in subsequent access to information requests.
- [26] In that particular case, involving the same 48 pages noted above, the Applicant requested a review of the exemptions applied by Highways on April 8, 2020. However, in that instance, pursuant to section 49(2) of FOIP, my office was unable to proceed with a review as more than a year had passed since Highways provided its April 3, 2019 response to the Applicant's access request.
- [27] Subsequently, the Applicant submitted another access to information request to Highways requesting the same 48 page record, as well as other records, which Highways refused to process. This resulted in another request for review to my office which was resolved in my office's [Review Report 130-2020](#). In that report, Highways argued that it would be "procedurally unfair to provide a response and allow the Applicant to again have a one year period to request a review" of another access to information request from the Applicant that included this same 48 page record. As noted in that report, there is no provision in FOIP that allows a government institution with the ability to refuse to process requests because the responsive records overlap with previous requests. Additionally, I found that there is no provision in FOIP that prevents an Applicant from resubmitting a request, or submitting a request for the same records they had previously requested and then subsequently requesting a review if they are dissatisfied with the response (provided this is done within one year of the response). Further, Highways had the ability to apply to the Commissioner to disregard an access to information request pursuant to section 45.1 of FOIP. However, Highways did not make an application to disregard the request.
- [28] When Highways processed the Applicant's current access to information request, it issued a fee estimate to the Applicant. The Applicant paid the deposit to proceed with the processing of the request. Once Highways had completed its processing of the request, it requested the Applicant pay the other half of the fee estimate in order for Highways to release 155 pages of responsive records, subject to exemptions. In its March 30, 2020,

email to the Applicant releasing these records (the 107 page record and the 48 page record, for a total of 155 pages) Highways stated, “**please find attached records responsive to your request**”. [Emphasis added]

[29] The supplementary submission provided by Highways claims this review is a revisitation of an issue and did not uphold the fairness and integrity of the access to information process. However, as noted above, I have not previously considered the application of any exemptions to this 48 page record.

[30] An important distinction to be noted when dealing with access requests is that it is not the access request that is the subject of the review by my office, but rather it is a public body’s response to the access request that is under review. This was a position taken by the Alberta Office of the Information and Privacy Commissioner (AB IPC) in Order F2011-D-002 which stated:

[para 19] Section 65 of the FOIP Act sets out the issues for which a review may be requested. The relevant provision in this case is s. 65(1):

65(1) A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the Commissioner to review any decision, act or failure to act of the head that relates to the request.

While an applicant must have made an access request to fall under section 65(1), only the decisions, acts or failures to act made in response to the request are the subject of a request for review. In other words, the access request itself is not the subject of a review under section 65(1), but rather, the decisions, acts, or failures to act in responding to that access request. While I agree with the Public Body that the access request giving rise to the Public Body’s letter of May 14, 2010 is the same access request that gave rise to my review of the Public Body’s decisions, acts, or failures to act in responding to the access request in Order F2009-024, I cannot find that my duties under the FOIP Act have been performed, finally, by issuing that order, unless I find that the decisions, acts, or failures to act of which the Applicants have requested review in this inquiry are the same as those that were disposed of by Order F2009-024.

[Emphasis added]

[31] FOIP does not restrict an Applicant from applying for access to the same records more than once. My office could, upon application for a review from an Applicant, review the

government institution's actions vis-à-vis granting access to the same records in a subsequent access request.

[32] The legislature was aware that individuals may make applications to government institutions for the same records on repeated occasions and introduced section 45.1 in FOIP to address this potential problem. Multiple applications for the same records could be denied upon application from the head of the government institution under section 45.1 of FOIP. The Commissioner could then exercise their discretion to permit the government institution to disregard the access request.

[33] Highways has not submitted an application to disregard this access request. The ABIPC decision cited above shows that the door is open to review a government institution's response to an access request even when the records being requested are the same as those in a previous request.

[34] There is nothing in FOIP that specifically speaks to the finality of a decision of the Commissioner, so it is arguable that in the absence of express words prohibiting reconsideration of a decision that I am free to do so.

[35] Justice Cullen of the Federal Court in *Chan v. Canada (Ministry of Citizenship and Immigration)*, 136 DLR (4th) 433 had the following to say in allowing an immigration officer to reconsider a matter that had already been decided:

Does the Immigration Act contemplate that a visa officer can reconsider his decision? There is nothing in the statute that deals with whether a visa officer may review decisions already made. I would take this silence, however, not to be a prohibition against reconsideration of decisions. Rather, I think that the visa officer has jurisdiction to reconsider his decision, particularly when new information comes to light.

[36] In the previous requests for review that involved the 48 page record, my office had not conducted a review of the exemptions Highways relied on to redact portions of the record. In this case, the Applicant submitted their request for review to my office within the one year review period, including the request to review the exemptions claimed by Highways to redact portions of the 48 page record. My office had not previously received arguments

from Highways to support the exemptions claimed; therefore, this is new information for my office to consider in the review of this issue.

[37] Highways has also taken the position that when my office found that we could not review the previous request for review as it was outside of the one-year review period, that my office was “effectively recognizing the principle of *functus officio*.” Highways’ submission provides that, “*functus officio* brings finality to decisions by preventing a decision-maker from reconsidering a matter in the same forum in which the original decision was made.”

[38] The Canadian Bar Review [*Doctrine of Functus Officio: The Changing Face of Finality’s Old Guard*](#) by Anna S.P. Wong. Ms. Wong has proposed a more modern manner in which to determine if the doctrine should apply, but it has not been tested by the courts.

[39] Ms. Wong analyzed the post-Chandler state of the law as it applies to *functus officio* and concluded her analysis by proposing the following manner for determining if the doctrine should apply in any given circumstance:

A balancing of factors is useful for realizing justice based on the context. It provides the pliability needed to account for different fact situations—of which there will be many given the diversity of administrative decision-making processes—without sacrificing the benefits of a structured inquiry. It brings discipline to the exercise of flexibility.

Step One: Prerequisites

When faced with a situation that involves, or potentially involves, the *functus officio* doctrine, the first step should be to determine whether the prerequisites for doctrine’s application are present. To trigger *functus officio*, there must be a final and valid decision. If there is no final and valid decision, then there is no ground for *functus officio* to burrow and the inquiry ends here. If there is such a decision, then onto the second step we go.

Step Two: Existing Exceptions

The second step is concerned with whether any of the existing exceptions to *functus officio* apply. According to the majority in Chandler, there are three available exceptions:

- the common-law exception permitting correction of clerical mistakes or errors arising from an accidental slip or omission;

- the common law exception for errors in expressing the manifest intention;
- the statutory exception to the *functus officio* doctrine enacted by way of statutory provisions that vest the administrative decision-maker with the jurisdiction to reconsider its decision.

Functus officio will not apply should any of the exceptions be made out on the facts.

Step Three: Exercise Flexibility to Not Apply *Functus Officio*

The third step involves determining whether, despite the existence of a final and valid decision and the non-engagement of exceptions, operation of *functus officio* should nonetheless be suspended to enable reconsideration of the decision by the decision-maker.

This determination is to be made upon balancing an open-ended list of factors, including:

- whether the decision is amenable to appeal or judicial review;
- whether there are any errors in the decision, and the impact of the errors on the outcome;
- circumstances giving rise to the request for reconsideration, including fraud and newly discovered evidence that could have reasonably affected the outcome of the decision;
- whether there was any avoidable delay in the request for reconsideration;
- the extent to which any party has relied and acted on the decision;
- balancing between prejudice to the parties from reopening the decision and prejudice from not allowing reconsideration. How the factors will be weighed in a given case will depend on the circumstances of the case, and so, remain an open question to be addressed in context. The objective of the weighing exercise is to see whether the needs of fairness outweigh the need for finality in a particular case. If so, then justice requires deviation from the usual operation of *functus officio*.

[40] The doctrine of *functus officio* allows for discretion and flexibility. In this case, as the 48 page record was released to the Applicant in response to their access to information request and my office has not previously had the opportunity to consider Highways' decisions to withhold portions of the records and issue findings and recommendations on this issue. As such, I find that I have jurisdiction to undertake this review.

[41] As such, I will review the exemptions claimed to withhold portions of the 107 page record, Package A, and the 48 page record, Package B, and I will proceed with my review.

[42] I do, however, want to reiterate that the Applicant should proceed with caution as submitting multiple requests for the same records strains public body resources and time and may result in an application to disregard access requests. However, if the request was previously processed, the work is already complete, so may not require any further effort.

2. Did Highways perform a reasonable search for records?

[43] The Applicant requested my office conduct a review of search efforts as they were of the opinion that additional responsive records existed, but were not identified or provided. In an email to my office, the Applicant stated:

This record [the 48 page record] was recently provided to me as part of 155 Pages of records for Access to Information Request #19-025G [Highways' file number for the access request at issue in this review] for which I paid the Ministry of Highways and Infrastructures \$180 as per their fee estimate Access to Information Request #19-025G dated November 14, 2019.

The attached record has already been provided to me twice by the Ministry in two prior Access to Information requests so why do they not want to provide it here when it is certainly relevant. I also believe there are additional records involving [name of Highways employee] and [specified address] which have not yet been provided to me thus also another purpose of this request.

[44] Highways' submission provided the following regarding its efforts to locate the responsive records:

Records of the following individuals were searched:

[Name of Highways' Employee A], Executive Director, Corporate Services
[Name of Highways' Employee B], Director, Financial Services Branch, Corporate Services Director responsible for Accommodations
[Name of Highways' Employee C], Executive Director, Southern Region Operations
[Name of Employee D], Regional Administration Manager, Southern Region Operations, Project Lead on building move project
[Name of Employee E], Retired former Regional Administration Manager, Southern Region Operations

The Corporate Services Division with the Ministry of Highways portfolio is responsible for accommodations management (building, office space etc.). The Executive Director of the Division and the Director of Financial Services are the project sponsor and project manager. Southern Region Operations, Executive Director and

Regional Administration Manager, are the project leads. The Ministry of Highways asked these individuals to conduct a search for responsive records.

[45] The following are guidelines my office uses when reviewing a public body's search efforts for records responsive to a request:

An IPC review involving search efforts can occur in two situations:

- the government institution issued a section 7 response indicating records do not exist; or
- the applicant believes there are more records than what the government institution provided.

The focus of an IPC search review is whether the government institution conducted a reasonable search. As noted above, 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.

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.

When a government institution receives a notification letter or email from the IPC requesting details of its search efforts, some or all of the following can be included in the government institutions' submission (not exhaustive).

Outline the search strategy conducted:

- 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
 - 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. For more on this, see the IPC resource, Using Affidavits in a Review with the IPC available on the IPC website.

The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

(Guide to FOIP, Ch. 3, pp. 8 to 10)

[46] Highways’ submission lacked detail on when each employee searched, where they searched, or what keywords were used for the search for records. Additionally, it appears that the information regarding how records were searched for only applied to Package A of the Records, not Package B. In Highways’ submission, it stated that the records in Package B were provided to the Applicant as a “courtesy copy”. It does not appear that

Highways conducted a search for records responsive to the Applicant's specific wording of this request. Highways simply forwarded a copy of a record that it had found as responsive to a similar request it had received.

[47] I find that Highways has not provide sufficient detail of its search efforts that a reasonable search was conducted.

[48] I recommend Highways conduct another search for all records requested by the Applicant within 30 days of the issuance of this Report and issue a response that includes details of its search efforts. This should be provided to my office and the Applicant.

3. Is there information in the records that is not responsive to the access request?

[49] When a government institution receives an access to information request, it must determine which information is responsive to the access request. *Responsive* means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant's request will be considered "not responsive" (*Guide to FOIP*, Ch. 3, p. 11).

[50] Highways identified some portions of the information in the records as non-responsive on the following pages of the records:

Package A

- Record 1, Page 4
- Record 2, Pages 8 and 9
- Record 3, Page 13
- Record 9, Page 33
- Record 10, Page 35
- Record 11, Pages 38 and 39
- Record 12, Page 55
- Record 14, Pages 58 and 59
- Record 15, Pages 61 to 63
- Record 18, Page 69
- Record 19, Pages 75 and 76
- Record 23, Page 85

- Record 24, Pages 88 to 90
- Record 25, Page 91
- Record 26, Pages 93 and 94

[51] Highways' submission provided the following arguments to support its position non-responsive records should be exempt from release:

25. Part II of [FOIP] sets up two steps in providing access to records. First, pursuant to ss. 6(1)(b), the Applicant must "specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject matter to identify the record". This sets the boundary for the request. The government institution then identifies the records that fit those parameters or are "responsive" to the request. Second, once the responsive records are identified, the government institution may or must apply exemptions to them, depending upon whether the exemptions are discretionary or mandatory. There is no requirement in the Act to provide non-responsive information to the Applicant or to apply exemptions to records that are not within the parameters identified by the Applicant. These two steps prevent fishing expeditions through overly broad and unwieldy requests.

26. This was implicitly recognized by the Court in *Hennessey v Eastern Regional Integrated Health Authority*, 2013 NLTD(G) 20. In that case, the Court reviewed a number of records, indicating whether the exemptions claimed applied. At paragraph 40, the Court said, "Pages 118-122 are neither responsive nor relevant and are therefore exempt from disclosure. Similarly, the redactions on pages 123, 124 and 125 are non-responsive and irrelevant and exempt from disclosure for those reasons." Note that the Court found redactions in records, as well as whole records, to be non-responsive and exempt from disclosure.

27. In determining which records or portions of records are responsive, Highways is following the parameters identified by the Applicant (see paragraph 3 above). The Applicant has requested records specifically containing the following, with respect to [specified property]:

- who (which staff) is moving, what office are they moving from, and their branch – i.e. if there is a record(s) that contain this information in a summary;
- non-office use (i.e. compound, warehousing, parking);
- floor plans or description of floor plans prior to or after August 2018.

The time frame is a two-year period: October 1, 2017 to October 2, 2019.

[52] Based on a review of the portions of the record Highways marked as non-responsive relates to a variety of aspects of the specified property. This includes discussions to finalize

decisions on spaces and construction, accommodation costs related to the property, and staff requirements for their workspaces in the property. While Highways has taken the position that the information is not responsive, the information all relates to the specified property.

- [53] The Supreme Court of Canada has interpreted access to information laws as quasi-constitutional. It follows that as fundamental rights, the rights to access and to privacy are interpreted generously, while the exceptions to these rights must be understood strictly (*Guide to FOIP*, Ch. 3, p. 3).
- [54] When a government institution receives an access to information request, it must determine, which information is responsive to the access request. “Responsive” means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant’s request will be considered “not responsive” (*Guide to FOIP*, Ch. 3, p. 11).
- [55] As noted at paragraph [210] of my office’s [Review Report 132-2020](#), even if portions of the record are, “clearly separate and distinct and entirely unrelated to the access request... I encourage [public bodies] to release non-responsive records (subject to exemptions)...”
- [56] In this case, the information is related to the specified property that the Applicant was seeking information regarding. While Highways has indicated that some of the information on these pages of the records are not specifically responsive to the clarified scope of the Applicant’s request, other information on these pages were found to be responsive. It is clear from the wording of the Applicant’s initial access to information request that the Applicant was seeking a broad range of information about this property. As the Applicant did clarify their request, Highways does not have to conduct a search for that broad range of information. However, if there is other information relating to this property that is on the pages that Highways found to contain responsive information, I would encourage Highways to release this information, subject to exemptions. I will consider the exemptions Highways applied to these portions of the record in this report.

[57] There is one exception - record 23, page 85 - the information redacted relates to an employee being away from the office does not specifically relate to the property at issue. However, as noted above regarding non-responsive information, even if information is clearly separate and distinctly, public bodies are encouraged to release the information, subject to exemptions. Highways also applied section 29(1) of FOIP to this information. I will consider the application of this exemption to the information in this Report.

[58] Highways has also applied a variety of exemptions to the portions of the record it claimed as non-responsive. I will consider the application of those exemptions to the severed information in this Report.

4. Did Highways properly apply section 22(a) of FOIP?

[59] Highways withheld a portion of record 25, page 91 of Package A pursuant to section 22(a) of FOIP.

[60] Section 22(a) of FOIP provides:

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;

[61] Section 22(a) of FOIP is a discretionary, class-based exemption. It permits refusal of access in situations where a record contains information that is subject to any legal privilege, including solicitor-client privilege (*Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated: April 30, 2021 (*Guide to FOIP*, Ch. 4) at page 255).

[62] Highways’ submission provided that this information describes a communication between a solicitor and client.

[63] My office uses the following three-part test to determine if section 22(a) of FOIP applies:

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 of the communication to be treated confidentially?

(*Guide to FOIP*, Ch. 4, pp. 258 – 264)

- [64] Page 91 is an email from Shindico to two Highways’ employees and a gmail.com email address. Highways released portions of this email. Highways relied on section 22(a) of FOIP to sever one of the portions of this email. I appreciate that Highways provided my office with a copy of the record where it claimed section 22(a) of FOIP.
- [65] Highways’ submission provides that the information is “a description of a communication between a solicitor and client... therefore presumed to be *prima facie* confidential...”.
- [66] While the email is not between solicitor and client, in my office’s [Review Report 079-2018](#), I provided the following regarding the continuum of legal advice:

[64] In Review Report 005-2017; 214-2015 – PART II, I discussed the continuum of legal advice. I noted that documents that are not actually a communication between a solicitor and a client may be part of the continuum of legal advice, or reveal information subject to solicitor-client privilege. I listed the following examples that could qualify as part of the continuum:

- A discussion between two public officials about how to frame the question that is to be asked of the lawyer;
- Written communications between officials or employees of a public body, in which they quote or discuss the legal advice given by the public body’s solicitor;
- Communications discussing the application of legal advice given by a solicitor;
- An employee’s notes regarding a solicitor’s legal advice, and comments on that advice;
- Notes “to file” in which legal advice is quoted or discussed; and
- Solicitors’ briefing notes and working papers that are directly related to the seeking or giving of legal advice.

[67] Highway's submission also claims common interest privilege between the parties on the communication as, "Shindico and Highways had a common interest in the same transaction" relating to the leasing of the property at issue.

[68] In my office's [Review Report 205-2019, 255-2019](#), my office referenced the two-part test established by my office for common interest privilege at paragraph [153] as follows:

1. The record contains information that is subject to any privilege that is available at law; and
2. The parties who share that information must have a "common interest", but not necessarily an identical interest, in the information.

[69] Based on a review of the portion of the record, the portions withheld does not appear to be discussing legal advice. It appears Shindico is providing an update on the status of an agreement. The communication is not between solicitor and client and the email does not appear to contain any legal advice. Finally, Highways' submission did not address the gmail.com email address that was also included on the communication. It is not clear who the email address belongs to. It is not clear if there was any intention for the parties to keep the communication confidential and as the submission did not address the gmail.com email address, I cannot be persuaded that the information remained between the parties or that all parties had a common interest.

[70] As such, I do not find that the information would qualify as solicitor-client or common interest privilege. Section 22(a) of FOIP does not apply. See Appendix A for details.

5. Did Highways properly apply section 16(1) of FOIP?

[71] Highways withheld portions of record 10, page 35 and record 15, page 63 of Package A pursuant to section 16(1) of FOIP.

[72] Section 16(1) of FOIP provides as follows:

16(1) A head shall refuse to give access to a record that discloses a confidence of

the Executive Council, including:

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

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

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

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

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

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

[73] Section 16(1) of FOIP is a mandatory class-based provision. Sections 16(1)(a) through (d) are not an exhaustive list. Therefore, even if none of the sections are found to apply, the introductory wording of section 16(1) must still be considered (*Guide to FOIP*, Ch. 4, p. 93).

Package A, Record 10, Page 35

[74] The information withheld in record 10, page 35 of Package A is a portion of a sentence in an email. The email appears to discuss information that had been included in a document. The redacted portion simply identifies the type of document.

[75] Highways' submission provides as follows:

On page 35... It is submitted that disclosure of this information would reveal information about the analyses used in documents prepared for Cabinet discussions and decision-making... This is confirmed in clause 16(1)(a) which provides as one example of a Cabinet confidence "records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees". Because s. 16(1) is a mandatory exemption, this small redaction on page 35 has been made.

[76] However, Highways has not provided me with any documentation to support its assertion that this document did contain the information discussed in the email, nor that the document qualified as a cabinet confidence. I am not persuaded that the information qualifies as a cabinet confidence. As such, I find that section 16(1) of FOIP does not apply. See Appendix A for details.

Package A, Record 15, Page 63

[77] The information in record 15, page 63 of Package A that was withheld pursuant to section 16(1) of FOIP is the third redaction on this page of the record. The redacted information is a portion of a sentence related to a change in timeline.

[78] Highways' submission provides as follows:

On page 63 a redaction has been made for... information about a matter going before a Cabinet Committee and the timing of deliberations of the Cabinet Committee.

[79] The portion of this sentence withheld does not appear to contain information that would qualify as a cabinet confidence. As such, I find section 16(1) of FOIP does not apply. See Appendix A for details.

6. Did Highways properly apply section 29(1) of FOIP?

[80] Highways applied section 29(1) of FOIP to withhold the following records in part:

Package A

- Record 5, Pages 24 and 25
- Record 11, Pages 41 to 54
- Record 23, Page 85
- Record 24, Pages 88 to 90
- Record 26, Pages 103 and 104

Package B

- Record 1, Page 1

- Record 2, Page 17
- Record 3, Page 23
- Record 4, Page 24
- Record 5, Page 25
- Record 6, Pages 26 to 28
- Record 7, Page 29
- Record 8, Page 32
- Record 9, Page 33
- Record 10, Page 34
- Record 11, Page 36
- Record 12, Page 37
- Record 13, Page 38
- Record 14, Page 39
- Record 15, Page 40
- Record 16, Page 41
- Record 17, Page 45
- Record 18, Page 47
- Record 19, Page 48

[81] Section 29(1) of FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. 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.

[82] When dealing with information in a record that appears to be personal information, the first step is to confirm that the information indeed qualifies as “personal information” as defined at section 24(1) of FOIP.

[83] Highways’ submission has claimed that this information qualifies as personal information pursuant to section 24(1) of FOIP generally and specifically, sections 24(1)(b), (e) and (k) of FOIP 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:

...

(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;

...

(e) the home or business address, home or business telephone number or fingerprints of the individual;

...

(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.

[84] While Highways quoted the specific sections above, it also noted that this information would qualify as personal information pursuant to section 24(1) of FOIP. While section 24(1) of FOIP provides examples of the type of information that qualifies as personal information, this is not an exhaustive list. There may be other information that qualifies as personal information, if the following two elements exist:

1. Is there an identifiable individual? and
2. Is the information personal in nature?

[85] I will now consider each portion of the record that Highways withheld pursuant to section 29(1) of FOIP.

Package A, Record 5, Pages 24 and 25

Package A, Record 24, Pages 88 to 90

Package A, Record 26, Pages 103 and 104

[86] Record 5, pages 24 and 25 of Package A is a staff roster of Highways' staff that includes their names, their occupational code, whether they had a cubicle or office and the size of that workspace. There is also a column for notes that in some cases records the floor they are on or their employment status. For three of the staff members listed, the notes recorded for them were withheld pursuant to section 29(1) of FOIP. Another version of this staff

roster can be found on record 26, pages 103 and 104 of Package A. On page 103, one staff member's employment status is redacted in the Note's column. On page 104, the employment status and the floor where the employee's workspace is.

[87] Record 24, pages 88 to 90 of Package A is a table that lists the names, office telephone number, work issued cellphone number and email address of Highways' employees. In this table, Highways withheld the information in the table below the following columns: floor number, cubicle number, whether or not the employee has a side car, which from my understanding would relate to how an employee's monitors or displays are set up, voicemail, whether or not the telephone number for the employee has a caller menu, whether or not the employee has a Shared Call Appearance, and if so what the number is, as well as other notes. The information recorded in the note's field varies. In many instances the field is blank, others relate to accessories the employees are requesting or an employee's employment status. There are also two rows that are highlighted and have information outside of the table.

[88] Highways' submission provides that it is relying on sections 24(1)(b) and (k) of FOIP as the information is "employment history, and the name of an individual appears with other personal information that relates to the individual." Highways' submission, for information related to the employees' workspaces, states:

Pages 88-90 – The redactions on these pages are for non-responsive information, but they also contain references to cubicle numbers of some employees. The Government of Saskatchewan Directory indicates the Branches in which individuals work, but not cubicles, which could raise safety issues. There is no need for anyone outside of the office to know exactly where a particular employee sits, so it is not only non-responsive but irrelevant. Pursuant to s. 24(1)(k), it is also submitted that the individual's name, along with a cubicle number which represents that individual's personal space while they are at work, is information that is personal in nature.

[89] My office's [Review Report 109-2021](#) discusses the definition of "employment history" as it relates to section 23(1)(b) *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), which is the equivalent of FOIP's section 24(1)(b):

[37] With respect to how the RM considered section 23(1)(b) of LA FOIP, in numerous past reports I have stated that employment history relates to information found in a personnel file, such as performance reviews or reasons for termination. A person's name in conjunction with their position or job title, including being a lawyer, is not personal in nature. Rather, this information is considered business card information.

[90] Information recorded in these tables that relates to an employee's employment status would qualify as employment history pursuant to section 24(1)(b) of FOIP and therefore, should continue to be withheld pursuant to section 29(1) of FOIP. See Appendix A for details.

[91] The remaining information in these tables relates to Highways employees' workspace would not qualify as employment history and I am not persuaded that the information in the table would reveal anything personal in nature about the employees. As such, I find that section 29(1) of FOIP does not apply. See Appendix A for details.

Package A, Record 11, Pages 41 to 54

[92] Record 11, pages 41 to 54 of Package A are architectural drawings from Stantec. Highways withheld the professional seals/stamps on the drawings. In my office's [Review Report 301-2019](#), my office discussed the application of section 29(1) of FOIP to professional seals/stamps as follows:

[21] There are two seals or stamps that were withheld by Environment in the responsive records. One appears to be the professional seal of an individual and the other is a professional stamp of an organization.

[22] In my office's Investigation Report 043-2017, my office found that an engineer's professional seal did not qualify as personal information as follows:

[10] The Complainant submits that the professional seal qualifies as personal information as it is an identifying symbol and number pursuant to subsection 23(1)(d) of LA FOIP. He also submits that the entire application qualifies as his personal information.

[11] I will first address the professional seal. This seal is governed by the bylaws of The Association of Professional Engineers and Geoscientists of Saskatchewan (APEGS). It is a round seal that indicates that the professional is a Professional Engineer in Saskatchewan. It also bears the professional's name and association

member number as well as the date that the document was stamped. APEGS' publication entitled Authentication of Documents: Use of Profession Seals states: The seal constitutes the distinctive mark of the professional. It identifies work performed by, or under the direct supervision of a licensed professional. It assures the document's recipient that the work meets the standards expected of experienced professionals who take personal responsibility for their judgments and decisions. The seal is important because it is a visible commitment to the standards of the profession and signifies to the public that a particular professional has accepted responsibility for the document.

[12] By nature, the seal is meant to be a tool to signify to the public that a particular professional has accepted responsibility for the document to which it is affixed. As such, I do not find that it is personal in nature and does not qualify as personal information.

[23] Just as found in this report, these seals or stamps do not reveal any information that is personal in nature and do not qualify as personal information. As such, subsection 29(1) of FOIP does not apply.

[93] I adopt this analysis and find that section 29(1) of FOIP does not apply to the withheld information on record 11, pages 41 to 54 of Package A. See Appendix A for details.

Package A, Record 23, Page 85

[94] Record 23, page 85 of Package A is a closing statement in an email between Highways, the Ministry of Central Services and Stantec. The email relates to when an employee will be away from the office.

[95] The information related to when the employee will be away does not contain any information that is personal in nature. As such, section 29(1) of FOIP does not apply.

Package B

[96] On pages of the record in Package B list below, Highways redacted information pursuant to section 29(1) of FOIP:

- Record 1, page 1 of Package B
- Record 2, page 17 of Package B
- Record 3, page 23 of Package B

- Record 4, page 24 of Package B
- Record 5, page 25 of Package B
- Record 6, pages 26 to 28 of Package B
- Record 7, page 29 of Package B
- Record 8, page 32 of Package B
- Record 9, page 33 of Package B
- Record 10, page 34 of Package B
- Record 11, page 36 of Package B
- Record 12, page 37 of Package B
- Record 13, page 38 of Package B
- Record 14, page 39 of Package B
- Record 15, page 40 of Package B
- Record 16, page 41 of Package B
- Record 17, page 45 of Package B
- Record 18, page 47 of Package B
- Record 19, page 48 of Package B

[97] In the header of the emails, Highways redacted the work email address or the names of third party employees. In the body of the emails, Highways also redacted the names of third party employees and on page 45, the signature line includes the name of an individual, business name, address, telephone number and email address.

[98] Highways' submission states:

The Ministry recognizes that the IPC has said that business card information is not personal information. However, in view of the specific language in s. 24(1)(e) of FOIPPA, that says that "business address" and "business telephone number" are personal information, and the fact that s. 29(1) is mandatory, the Ministry feels compelled to comply with the clear language of these legislative provisions and redact that information. The Ministry also treats a business email as comparable to a business address or telephone number and has therefore claimed 24(1) generally and 24(1)(e) for that information.

...The emails disclose employment history (s. 24(1)(b)), email addresses (s. 24(1), 24(1)(e)) and the name of the individual appears with other personal information that relates to the individual (s. 24(1)(k)).

...The information includes place of employment which is employment history (s. 24(1)(b)), business address and business telephone number (s. 24(1)(e)), and email address (s. 24(1), 24(1)(e)). The name of the individual also appears with other personal information that relates to the individual (s. 24(1)(k)).

[99] In my office's [Review Report 274-2019](#), my office discusses business card information as follows:

[70] In Review Report 301-2019, my office discussed business card information as follows:

[13] In Review Report 186-2019, my office found that business card information would not be considered personal information, as follows:

[25] ...the Ministry has also applied subsection 29(1) of FOIP to cellular telephone numbers of a third party business employee. In its submission, the Ministry indicated that the cellular telephone number was withheld because if released it would disclose personal information of an identifiable individual as the number is not publicly available.

[26] Business card information is the type of information found on a business card (name, job title, work address, work phone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. Further, in Review Report 149-2019, 191-209 [sic], I noted that business card information does not qualify as personal information when found with work product. Work product is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. Work product is also not considered personal information.

...

[28] In Review Report F-2010-001, Review Report F-2012-006 and Review Report LA-2013-002, my office noted that section 4.01 the Personal Information Protection and Electronic Documents Act (PIPEDA), which applies to every organization that collects, uses or discloses personal information in the course of "commercial activities", carves out business contact information from the type of personal information that requires protection.

[29] Subsection 2.1 of PIPEDA defines "business contact information" as, "information that is used for the purpose of communicating or facilitating communication with an individual in relation to their employment, business or profession such as the individual's name, position name or title, work address, work telephone number, work fax number or work electronic address." This supports the conclusion that business card information is not meant to be personal information for the purposes of subsection 24(1) of FOIP when it appears in work product.

[30] The cellular telephone number, therefore, constitutes business card information and does not qualify as personal information in this instance. I recommend that the Ministry release it to the Applicant.

[100] This information is not personal in nature, and therefore section 29(1) of FOIP does not apply to these pages of the record. See Appendix A for details.

7. Did Highways properly apply section 19(1)(b) of FOIP?

[101] Highways applied section 19(1)(b) of FOIP to portions of record 11, pages 41 to 54 and record 20, page 78 of Package A and record 17, page 45 of Package B.

[102] Section 19(1)(b) of FOIP applies as follows:

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

...

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

[103] Section 19 of FOIP is a mandatory, class-based and harm-based provision, meaning, it contains both class and harm-based exemptions. As a mandatory provision, the government institution has no, or more limited, discretion regarding whether or not to apply the exemption. That is, if the information is covered by the exemption and the conditions for the exercise of discretion do not exist, then it must not be disclosed (*Guide to FOIP*, Ch. 4, p. 193).

[104] The following three-part test can be considered for the application of section 19(1)(b) of FOIP:

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

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

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

[105] On June 11, 2020, my office received an email from Kreate Architecture and Design Ltd. advising it had, “no concerns related to release of information related to our firm.” However, it does not appear Highways is withholding any information pertaining to this third party pursuant to section 19(1)(b) of FOIP.

Package A, Record 11, Pages 41 to 54

[106] Package A, record 11, pages 41 to 54 are described in Highways’ submission as “demo drawings” for the property at issue. Highways released the drawing and withheld the seals and signatures on the drawings.

[107] Highways’ submission provides:

...the redactions contain seals and signatures which the third party has identified as commercial information of Stantec. Highways submits that this information not only has commercial value to Stantec but could also qualify as technical information as it relates to an organized field of knowledge – in this case engineering.

[108] “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*).

[109] “Technical information” is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information

must be given a meaning separate from scientific information (*Guide to FOIP*, Ch. 4, p. 199).

[110] I am not persuaded that professional engineering seals and signatures would qualify as commercial information or technical information. As such, section 19(1)(b) of FOIP would not apply.

[111] As well, while Highways has provided correspondence from Stantec in February 2020 showing they objected to the release of this information, on June 15, 2020, my office received an email from Stantec advising it had, “reviewed the records and [did] not object to the release of the records.”

[112] Section 19(2) of FOIP provides that information in a record may be released with the consent of the third party:

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

[113] I recommend Highways release Package A, record 11, pages 41 to 54 to the Applicant. See Appendix A for details.

Package A, Record 20, Page 78

[114] Package A, record 20, page 78 is an email between Shindico and Highways. In the email, Shindico indicates it is providing an excerpt from the lease for the property in relation to parking. Highways withheld the monthly dollar amount per parking stall and the total annual costs for all parking stalls. Highways’ submission states:

On page 78 of the record, information related to unit prices for parking stalls has been redacted as commercial information of the third party supplied to Highways, implicitly in confidence since release of unit prices could affect subsequent negotiations with other parties or be helpful to competitors.

In *Canadian Bank Note Ltd v Saskatchewan Government Insurance*, 2016 SKQB 362, SGI contracted with the applicant, to provide driver's licences, and a competitor sought the unit price being paid per driver's licence/card. The Saskatchewan Court of Queen's Bench found that the unit price was commercial information under s. 19(1)(b) and had been supplied in confidence by the third party, so SGI had properly refused to give access to it. It is submitted that this is a comparable situation to the one referred to on page 78 of the record.

[115] I note that Highways failed to provide any supporting documentation that this information had been provided in confidence implicitly or explicitly. However, in my office's [Review Report 150-2020](#), my office considered the application of section 19(1)(b) of FOIP to costs associated to parking at this same property. In that review, the government institution involved was the Ministry of Central Services, the ministry that was conducting the negotiations with the third party for the space at the property for Highways. In that review, my office found as follows:

[26] The first redaction, the annual dollar amount for the rent of parking stalls; the second redaction, the monthly dollar amount for the rent of parking stalls; and the other dollar amount in the third redaction, the monthly dollar amount based on the number of parking stalls rented, qualifies as financial, commercial, scientific, technical or labour relations information of a third party. However, as Central Services has already released the total number of parking stalls, the release of any of these other redacted portions of the record would allow the Applicant to calculate the dollar amount for the rent per parking stall in the third redaction, which I have found subsection 19(1)(b) of FOIP to apply to. As such, I adopt the analysis from Review Report 086-019, and find that subsection 19(1)(b) of FOIP would apply to the remaining withheld portions of the record.

[116] As such, I find section 19(1)(b) of FOIP applies to the information withheld on record 20, page 78 of Package A. See Appendix A for details.

Package B, Record 17, Page 45

[117] Package B, record 17, page 45 of the information withheld on this page pursuant to section 19(1)(b) of FOIP is an acronym for a business name that is being discussed in an email between third party businesses and subsequently forwarded to Highways. Highways released the remainder of the body of that email that consisted of one sentence. I am not

persuaded that this information would qualify for exemption pursuant to section 19(1)(b) of FOIP. See Appendix A for details.

[118] Additionally, in Highways' submission, it indicated it would be willing to release this information. As such, it should proceed to release this information to the Applicant.

8. Did Highways properly apply section 17(1)(a) of FOIP?

[119] Highways withheld portions of the responsive records pursuant to section 17(1)(a) of FOIP as follows:

Package A

- Record 1, Page 4 (first redaction)
- Record 2, Page 8 (last redaction) and Page 9 (first redaction)
- Record 10, Page 35
- Record 12, Page 55
- Record 19, Pages 75 and 76

Package B

- Record 2, Pages 19, 20 and 22
- Record 7, Pages 30 and 31
- Record 16, Pages 42, 43 and 44
- Record 17, Page 46

[120] Section 17(1)(a) of FOIP provides as follows:

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

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

[121] Section 17(1)(a) of FOIP is a discretionary class-based 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 (*Guide to FOIP*, Ch. 4, p. 123).

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

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

“Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The “pros and cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a government institution must make a decision for future action.

Advice includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take. Advice has a broader meaning than recommendations. The legislative intention was for advice to have a distinct meaning from recommendations. Otherwise, it would be redundant. While “recommendation” is an express suggestion, “advice” is simply an implied recommendation.

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

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.

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

(Guide to FOIP, Ch. 4, pp. 124-130)

[123] I will consider the application of section 17(1)(a) of FOIP to each redacted portion of the record Highways has claimed is applies.

Package A, Record 1, Page 4

Package A, Record 2, Pages 8 and 9

[124] Highways' submission provides as follows:

48. With respect to page 4 and the same email on pages 8-9:

Part 1 of the test: The author of the record provided his analysis and opinion/advice... This is not simply a statement of fact. It provides a perspective or critique; it is an opinion that involves exercising judgment and skill in weighing the significance of fact.

Part 2 of the test: The analysis and opinion/advice was provided by [name of Ministry of Central Services' employee], an employee of Central Services to an employee of Highways.

[125] The redacted portions of this email thread were released by the Ministry of Central Services on page 9 of Package D in IPC File 274-2019. As this portion of the record had been released, it was not at issue in that review and the application of exemptions was not considered.

[126] I note that the two emails with portions withheld in the email threads on pages 4 and 8 to 9 are the same emails. Additionally, on page 13 of this record, the portion of the email thread is the same as the second email found on pages 4 and 9. Highways withheld this information on each of the pages; however, it did not apply section 17(1)(a) of FOIP in a consistent manner. Highways only noted section 17(1)(a) of FOIP in the instance on page 9. In future, Highways should ensure it applies exemptions in a consistent manner.

[127] Based on a review of these records, it appears the portion of the first email withheld pursuant to section 17(1)(a) of FOIP is attempting to schedule a meeting to finalize decisions related to the space to be leased. This does not qualify as advice. As such, section 17(1)(a) of FOIP would not apply. See Appendix A for details.

[128] Based on a review of the second email, the email appears to be noting other items that need to be discussed. There does not appear to be any information in this email that would qualify as advice, proposals, recommendations, analyses or policy options developed by or for a government institution. As such, section 17(1)(a) of FOIP would not apply. See Appendix A for details.

Package A, Record 10, Page 35

[129] Highways' submission provided as follows:

49. With respect to page 35, second redaction:

Part 1 of the test: The information redacted describes a cost analysis.

Part 2 of the test: The analysis was provided by [name of the Ministry of Central Services employee], an employee of Central Services, to an employee of Highways.

[130] The withheld information is a portion of a sentence in an email that references the type of document that information had been included in. In my office's [Review Report 274-2019](#), my office considered the application of sections 17(1)(a) and 17(1)(b)(i) of FOIP to the same information that was withheld in this record and found neither applied. Based on a review of the record, and Highways' submissions, I have not been persuaded that section 17(1)(a) of FOIP would apply. As such I do not find section 17(1)(a) of FOIP applies. See Appendix A for details.

Package A, Record 12, Page 55

[131] Highways' submission provided as follows:

50. With respect to page 55, an email from [name of Central Services' employee], an employee of Central Services provided analysis and advice to [name of Highways' employee], an employee of Highways...This is not merely factual information. It involves analysis... and is "guidance offered by one person to another" and "an opinion that involves exercising judgment and skill in weighing the significance of fact". [name of Central Services' employee] then followed up with another email to [name of Highways' employee] after a more detailed review of the agreement and expressed the view that her previous opinion was not accurate. She then corrected the advice she had earlier given [name of Highways' employee] with this opinion. This email also constitutes an analysis of the agreement... Consequently, both emails on page 55 qualify for the exemption in s. 17(1)(a) of FOIPPA.

[132] In my office's [Review Report 274-2019](#), the Ministry of Central Services had redacted similar information in Package D, page 182. The record at issue was an email thread containing two emails. In the first email, the Ministry of Central Services had released the closing statement for the email, whereas Highways withheld those portions. Otherwise, both Ministries withheld the body of the initial email. In the second email, the Ministry of Central Services had released the first two sentences and last two sentences of the body of the email, whereas Highways withheld these portions. Otherwise, both withheld the body of the second email.

[133] In my office's Review Report 274-2019, the Ministry of Central Services had applied sections 17(1)(a), 17(1)(b)(i), 18(1)(d) and 18(1)(e) of FOIP to withhold these portions of the record. In that report, the Commissioner found that none of these exemptions applied to the withheld information. Based on a review of the record, the information at issue appears to be factual in nature. As such, I find section 17(1)(a) of FOIP would not apply. See Appendix A for details.

Package A, Record 19, Pages 75 and 76

[134] Highways' submissions provided as follows:

51. With respect to pages 75-76:

Part 1 of the test:

(a) At the top of page 76, the writer provided analysis and advice... Again, this information is not simply a statement of fact. It is guidance from one person to another and permits the drawing of an inference with respect to a suggested course of action. It examines an issue critically and includes an opinion that weighs the significance of fact.

(b) On page 75, Central Services discussed with Highways a proposal to be provided to the landlord.

Part 2 of the test: (a) The analysis and advice on page 76 was provided by [name of Ministry of Central Services' employee], an employee of Central Services to [name of Highways' employee], an employee of Highways. (b) The proposal on page 75 was also conveyed by [name of Ministry of Central Services' employee] at Central Services to [name of Highways' employee] at Highways.

[135] This record is an email thread. Highways withheld portions of the body of the email thread. There are two redacted portions. One redaction on page 75 and one redaction on page 76. The information relates to the property Highways intends to lease. However, I am not persuaded that the information qualifies as analysis or advice, or that it would permit the drawing of accurate inferences. Based on my review, the information appears to be factual information. As such, section 17(1)(a) of FOIP would not apply. See Appendix A for details.

Package B, Record 7, Pages 30 and 31

Package B, Record 16, Pages 42, 43, 44

Package B, Record 17, Page 46

[136] Highways' submission provided as follows:

68. The Ministry claims the exemption in s. 17(1)(a) for redactions that appear on pages 30, 31, 42, 43, 44, and 46 of the set of 48 pages of records. All of these pages contain diagrams which were proposed plans. The diagrams were released to the Applicant but these were not final plans. Information was redacted pursuant to s. 17(1)(a) because the redacted information constituted proposals and recommendations as to where particular things would be situated, or what tenants would occupy certain areas in the building, and some of the plans indicated who had made the proposals, which were provided in confidence.

69. The proposals and recommendations on pages 30, 31, 42, 43, 44 and 46 were developed by Shindico or [name of business], for the Ministry of Highways. The plans were therefore developed for a government institution.

[137] The floor plans on pages 30 and 31 are an attachment to an email and appear to have been forwarded to Highways by a third party for the space it would be leasing at the property at issue. The email these floor plans were attached a layout for the space based on discussions and requesting a response if revisions are required.

[138] The floor plans on these two pages were released, with the exception of two redactions. The first redaction on those two pages is an area of the building and the label for that area. The second redaction is the name of the company that prepared the drawings, along with the phone number and email address.

[139] In my office's [Review Report 416-2019](#), my office considered the application of section 19(1)(b) of FOIP to withhold a floor plan in full. Package G, page 7 of that review had a floor plan that contained the same part of the drawing and label for that area of the building that Highways has severed from each of the floor plan drawings on these pages. In my office's Review Report 416-2019 at paragraph [170], I recommended the release of the floor plan drawing in full. Once information is released to an Applicant, they have the ability to disperse this information in any way they see fit and it could end up in the public domain. For these reasons, if this information has previously been released by the Ministry of Central Services, I recommend Highways also release it.

[140] In my office's [Review Report 274-2019](#), my office considered the application of section 17(1)(a) of FOIP to architectural drawings and office space floor plan drawings for the same property:

[60] Based on the emails that the architectural plans and drawings were attached to, the architectural plans and drawings were developed for 3346286 Manitoba Ltd. property that Central Services had negotiated a lease with for space. The emails forwarding the architectural plans and drawings was then approved by Central Services in order for construction to proceed. This information would qualify as a "proposal" for the purposes of subsection 17(1)(a) of FOIP, which is defined as something offered for consideration or acceptance. As this proposal was developed for Central Services'

approval to proceed with construction, I find that subsection 17(1)(a) of FOIP would apply to pages D168 to D181. See Appendix A for details.

[61] Pages D12 and D20 are office space floor plan drawings being considered by Central Services and Highways for the utilization of this space. However, unlike the architectural plans and drawings at pages D168 to D181, these drawing appear to be discussed and described in detail in the emails they are attached to. It is unclear how the drawing itself would reveal any information described in these exemptions that is not already revealed in the accompanying emails. I am not persuaded that subsections 17(1)(a) or 17(1)(b)(i) of FOIP apply to pages D12 and D20. See Appendix A for details.

[141] The floor plans on pages 30 and 31 were attached to an email that appeared to be providing a proposed office layout for the space Highways was leasing. However, it does not appear from the email that the area of the floor plan withheld was specifically proposed or recommended for consideration. As such, I do not find that section 17(1)(a) of FOIP applies to the first redaction on these pages. Additionally, the second redaction on both these pages is the name of a company and their contact information. This information would not qualify for exemption under section 17(1)(a) of FOIP.

[142] I find section 17(1)(a) of FOIP does not apply to pages 30 and 31. See Appendix A for details.

[143] The floor plans on pages 42, 43 and 44 were attached to an email thread between Highways and a third party. The email indicates it was provided for Highways' internal discussions. The floor plans on these three pages of the record release the floor plans, with severing as follows:

- Page 42: First redaction is an area of the building and the label for that area. Second redaction is a label below the floor plans and that indicates who is leasing an area of the floor plan of the building.
- Page 43: First redaction is an area of the building and the label for that area. Second and third redactions are labels below the floor plans and that indicates who is leasing an area of the floor plan of the building.
- Page 44: First and second redactions are labels below the floor plans that indicate who is leasing an area of the floor plan of the building.

[144] I am not persuaded that any of the portions of information withheld on these pages qualify as advice, proposals, recommendations, analyses or policy options. I find section 17(1)(a) of FOIP does not apply to pages 42, 43 and 44. See Appendix A for details.

[145] The floor plan on page 46 is attached to an email to Highways. The floor plan was released with the exception of one redaction to an area of the floor plan and the label for that area. The other eight redactions are labels outside of the floor plan drawing that indicates who is leasing the different areas of the floor plan.

[146] I am not persuaded that any of the portions of information withheld on this page qualifies as advice, proposals, recommendations, analyses or policy options. I find section 17(1)(a) of FOIP does not apply to page 46. See Appendix A for details.

Package B, Record 2, Pages 19, 20 and 22

[147] The copy of the records provided by Highways shows it had also redacted some portions of Record 2, Pages 19, 20 and 22 of Package B. However, its submission did not address these redactions. I will consider the application of section 17(1)(a) of FOIP to these pages of the record based on my review of the face of the record. The records appear to be office space drawings. Highways released the drawings and withheld the logos for two different businesses. The logo on pages 20 and 22 also includes the business contact information of a third party business. Based on a review of the face of the record, it is not clear how this would qualify as advice, proposals, recommendations, analyses or policy options developed for a government institution. As such, I find that section 17(1)(a) of FOIP does not apply to these portions of the record. See Appendix A for details.

9. Did Highways properly apply section 17(1)(b)(i) of FOIP?

[148] Highways withheld portions of the responsive records pursuant to section 17(1)(b)(i) of FOIP as follows:

Package A

- Record 1, Page 4
- Record 2, Page 8 and Page 9
- Record 3, Page 13
- Record 9, Page 33
- Record 11, Page 38 and 39
- Record 12, Page 55
- Record 14, Pages 58 and 59
- Record 15, Pages 61 to 63
- Record 18, Page 69
- Record 19, Pages 75 and 76
- Record 25, Page 91
- Record 26, Page 94

[149] Section 17(1)(b)(i) of FOIP provides:

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

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[150] Section 17(1)(b) of FOIP is a discretionary class-based 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 (*Guide to FOIP*, Ch. 4, p. 131).

[151] 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 (*Guide to FOIP*, Ch. 4, p. 131).

[152] My office uses the following two-part test to determine if section 17(1)(b)(i) of FOIP applies:

1. Does the record contain consultations or deliberations?

“Consultation” means:

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

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

“Deliberation” means:

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

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.

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?

(*Guide to FOIP*, Ch. 4, pp. 132-135)

[153] I will consider the application of 17(1)(b)(i) of FOIP to each redacted portion of the record Highways has claimed is applies.

Package A, Record 1, Page 4

Package A, Record 1, Pages 8 and 9

Package A Record 3, Page 13

[154] Each portion of these pages of the record contain the same emails within different email threads. Highways' submissions provided as follows:

Pages 4, 8-9, 13 – This email thread involves a consultation that occurred between an employee of Central Services ([name of Ministry of Central Services' employee]) and an employee of Highways ([name of Highways' employee]). [Name of Highways' employee] provided [name of Ministry of Central Services' employee] with drawings, noting that the design had changed and requesting approval. [Name of Highways' employee] provided [name of Ministry of Central Services' employee] with comments he had received and raised another issue that [they] wanted to discuss with [name of Central Services' employee]. [Name of Ministry of Central Services' employee] responded referring to five opinions received and requesting clarification as to whether Highways approved proposed modifications, advising of timelines and requesting a meeting. In other words, they were consulting on final plans in preparation for construction to begin.

[155] I note that this information was released by the Ministry of Central Services in Package D, page 9 in file 274-2019. Therefore, this portion of the email was not at issue in that review as no exemptions were applied to the information. Once information is released to an Applicant, they have the ability to disperse this information in any way they see fit and it could end up in the public domain. For these reasons, if this information has previously been released by the Ministry of Central Services, I recommend Highways also release it.

[156] I note that the two emails with portions withheld in the email threads on pages 4 and 8 to 9 are the same emails. Additionally, on page 13 of this record, the portion of the email thread is the same as the second email found on pages 4 and 9.

[157] Based on a review of the record first email, it appears the portion withheld is attempting to schedule a meeting to finalize decisions related to the space to be leased. Based on a review of the second email, the email appears to be noting other items that need to be discussed. I am not persuaded that the information would qualify as consultations or deliberations. As such, section 17(1)(b) of FOIP would not apply. See Appendix A for details.

Package A, Record 9, Page 33

[158] Highways' submissions provided as follows:

Page 33 – In this email exchange, an employee of Central Services ([name of Ministry of Central Services’ employee A]) consulted with another employee in the Ministry ([name of Ministry of Central Services’ employee B]) to obtain the contact information for the landlord at [the specified address], explaining why Highways needed it. [Name of Ministry of Central Services’ employee B] responded with the information and [name of Ministry of Central Services’ employee A] forwarded it to Highways. It was a three-way consultation involving two employees of Central Services and one employee of Highways, since it was implied that the employee from Highways ([name of Highways’ employee]) had requested the information.

[159] This page of the record is an email thread. Highways has withheld portions of two of the emails. The portions of the emails withheld on this page of the record are the same emails as page 36, Package D in IPC File 274-2019. In that file, the Ministry of Central Services released those emails in full. As such, this page of the record was not at issue in that review as no exemptions were applied to the information. Once information is released to an Applicant, they have the ability to disperse this information in any way they see fit and it could end up in the public domain. For these reasons, if this information has previously been released by the Ministry of Central Services, I recommend Highways also release it.

[160] Based on a review of the record, and the description provided in Highways’ submission, the email thread is requesting landlord contact information and then forwarding that information to Highways. This information is factual and I am not persuaded that either of the redactions on this page qualify as consultations or deliberations. As such, section 17(1)(b) of FOIP would not apply. See Appendix A for details.

Package A, Record 11, Pages 38 and 39

[161] Highways’ submissions provided as follows:

Pages 38-39 – This email trail involved a consultation... The individuals involved were an employee from Stantec (for demo drawings), employees of Central Services ([name of Ministry of Central Services’ employee]) and Highways (name of Highways’ employee]) and Shindico...

[162] These pages of the record are an email thread. Highways withheld portions four emails on page 38 and a portion of one email on page 39. All emails appear to be discussing

demolition plans. Based on Highways' submission and my review of the record, I am not persuaded that the information would qualify as consultations or deliberations. As such, section 17(1)(b) of FOIP would not apply. See Appendix A for details.

Package A, Record 12, Page 55

[163] Highways' submission describes the record as "an email trail between employees of Highways and Central Services" discussing additional space at the specified property.

[164] In my office's [Review Report 274-2019](#), the Ministry of Central Services had redacted similar information in Package D, page 182. In that case, the Ministry of Central Services applied sections 17(1)(a), 17(1)(b)(i), 18(1)(d) and 18(1)(e) of FOIP to the withheld portions. I found none of these exemptions applied to the withheld information.

[165] The record at issue is an email thread containing two emails. In the first email, the Ministry of Central Services had released the closing statement for the email, whereas Highways withheld those portions. Otherwise, both withheld the body of the initial email. In the second email, the Ministry of Central Services had released the first two sentences and last two sentences of the body of the email, whereas Highways withheld these portions. Otherwise, both withheld the body of the second email. The information withheld appears to be factual information and would not qualify as consultations or deliberations. As such, I find section 17(1)(b) of FOIP would not apply. See Appendix A for details.

Package A, Record 14, Pages 58 and 59

[166] Highways' submissions provided as follows:

Pages 58-59 – In this email thread, employees of Central Services and Highways consulted on potential completion dates.

[167] Highways applied three redactions to page 58. Highways withheld the body of the emails for the three emails in the email thread. Page 59 contains to a sentence and a half of the body of the email.

[168] The emails appear to discuss timelines for work to be completed. Based on my review, it doesn't appear the information at issue would qualify as consultations or deliberations. As such, I find section 17(1)(b) of FOIP does not apply. See Appendix A for details.

Package A, Record 15, Pages 61 to 63

[169] Highways' submissions provided as follows:

Pages 61-63 – This record is a Project Status Report. Project Status Reports are standard procedure in managing a project, including its scope, costs and schedule, and operate as a consultation mechanism.

[170] These pages are a report that was attached to an email. Highways has withheld portions severed three portions on page 61, one portion on page 62 and four portions on page 63. This same report can be found on pages 188-190, Package D in IPC File 274-2019. In that file, the Ministry of Central Services released that record in full. As such, these pages of the record was not at issue in that review as no exemptions were applied to the information.

[171] The report discusses the status and budgeted costs for the project at the specified address; however, there does not appear to be anything in the report that would qualify as a consultation or deliberation. As such, I find section 17(1)(b)(i) of FOIP does not apply. See Appendix A for details.

Package A, Record 18, Page 69

[172] Highways' submissions provides that this record is an email between Highways and Central Services relating to the process to acquire space at the specified address.

[173] The portion of the email withheld shows the name of the attachment and information being relayed by the Ministry of Central Services to Highways regarding an opportunity to secure additional space. It appears they are just relaying information received from the third party and requesting finalization of floor plans. Based on review of the information I am not

persuaded that it would qualify as consultation or deliberations. As such, I find section 17(1)(b)(i) of FOIP does not apply. See Appendix A for details.

Package A, Record 19, Pages 75 and 76

[174] Highways' submissions provided as follows:

Pages 75-76 – This was an email exchange between an employee from Highways ([name of Highways' employee]) and an employee from Central Services ([name of Ministry of Central Services' employee]) consulting on details with respect to the plans for the space at [the specified address]...

[175] This record is an email thread. Highways withheld portions of the body of the email thread. There are three redacted portions. One redaction on page 75 and one redaction on page 76. The information relates to the property Highways intends to lease. However, I am not persuaded that the information would qualify as consultations or deliberations as appears to be factual information. As such, section 17(1)(b)(i) of FOIP does not apply. See Appendix A for details.

Package A, Record 25, Page 91

[176] Highways' submissions provided as follows:

Page 91 – This is another consultation between the third party Shindico and [name of Highways' employee] from Highways, in which some information has been redacted. The email indicates that the consultation began with a conversation as it says, "Further to our conversation..." and "as discussed". In this email, Shindico attached a site plan and provided further information.

[177] The record is a single email from Shindico to two Highways' employees and a gmail.com email account. Highways withheld portions of the body of the email. There are three redacted portions. Based on my review of this information, it appears to be details related to the property at issue. The information appears to be factual in nature and I am not persuaded that it qualifies as a consultation. As such, section 17(1)(b)(i) of FOIP does not apply. See Appendix A for details.

Package A, Record 26, Page 94

[178] Highways' submissions provided as follows:

Page 94 – This is email from [name of Highways' employee], an employee of Highways to other employees in Highways. It is a consultation that began in a meeting of Highways employees; the email follows up with additional information arising out of that discussion.

[179] The record is a single email from a Highways employee to a number of other Highways employees. Highways redacted a portion of the body of the email. Based on my review of the redacted information, it appears to be a list of items that they are seeking responses on. One of the items also appears to provide a rough estimate. However, all of the information appears to be either seeking factual information or providing factual information. As such, section 17(1)(b)(i) of FOIP does not apply. See Appendix A for details.

10. Did Highways properly apply section 17(1)(c) of FOIP?

[180] Highways withheld portions of record 15, pages 61 to 63 of Package A pursuant to section 17(1)(c) of FOIP.

[181] Section 17(1)(c) of FOIP provides:

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

...

(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;

[182] Section 17(1)(c) of FOIP is a discretionary class-based 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 negotiations. Examples of the type of information that could be covered by this exemption are the various positions developed by a government institution's negotiators in relation to labour, financial and commercial contracts (*Guide to FOIP*, Ch. 4, pp. 136-137).

[183] The following is a two-part test that can be used when determining if section 17(1)(c) of FOIP applies to information in a record:

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the negotiations?

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.

"Criteria" are standards, rules, or tests on which a judgement or decision can be based or compared; a reference point against which other things can be evaluated.

"Instructions" are directions or orders.

Subsection 17(1)(c) extends its protection beyond positions, plans, procedures, criteria or instructions to "considerations that relate to those negotiations". To qualify, the information must constitute considerations and they must relate to the negotiations.

A "consideration" is a careful thought; a fact taken into account when making a decision. Thus, a record identifying the facts and circumstances connected to positions, plans, procedures, criteria or instructions could also fall within the scope of this provision.

"Relate to" should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as "substantial connection") for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute.

"Relating to" requires some connection between the information and the negotiations.

2. Were the positions, plans, procedures, criteria, instructions or considerations developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution?

“Developed” means to start to exist, experience or possess.

Use of the word “developed” suggests the Legislature’s intention was for the provision to include information generated in the process leading up to the contractual or other negotiations (for example, draft versions).

Drafts and redrafts of positions, plans, procedures, criteria, instructions or considerations may be protected by the exemption. A public servant may engage in writing any number of drafts before communicating part or all of their content to another person. The nature of the deliberative process is to draft and redraft until the writer is sufficiently satisfied that they are prepared to communicate the results to someone else. All the information in those earlier drafts informs the end result even if the content of any one draft is not included in the final version.

“For the purpose of” means intention; the immediate or initial purpose of something.

The negotiations can be conducted by the government or on behalf of the government.

“On behalf of” means “for the benefit of”. A person does something “on behalf of” another, when he or she does the thing in the interest of, or as a representative of, the other person.

A “negotiation” is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation”. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion.

The contractual or other negotiations can be concluded, ongoing or future negotiations.

(Guide to FOIP, Ch. 4, pp. 132-135)

[184] Highways’ submission suggests a change to the test my office uses when determining if section 17(1)(c) of FOIP applies to information in a record. The submission also provides Highways reasons why it believes section 17(1)(c) of FOIP applies to the information redacted on these pages of the record:

The IPC Guide describes a three-part test with respect to determining whether the exemption outlined in clause 17(1)(c) fits the responsive records. We propose a slight change to that test to more closely reflect the wording of the legislative provision:

1. (a) Does the record contain positions, plans, procedures, criteria, or instructions?
- (b) Were those positions, plans, procedures, criteria, or instructions developed for the purpose of contractual or other negotiations?
- (c) Were they developed by or on behalf of the Government of Saskatchewan or a government institution?

OR

2. Does the record contain considerations that relate to those negotiations?

The test in the IPC Guide includes “considerations” in the first question with “positions”, “plans”, “procedures”, “criteria” and “instructions”, thus making “considerations” subject to (b) and (c). However, the legislative provision is not worded that way. It does not say that a record containing considerations that relate to the negotiations has to be developed for the purpose of the negotiations or has to be developed by or on behalf of the Government of Saskatchewan or a government institution. If that were meant to be the case, the word “considerations” would have been included in the list with “positions, plans, procedures, criteria or instructions”. There could be a record created for another purpose (other than these negotiations), or that was not prepared by or on behalf of the Government or a government institution, but that nevertheless contains considerations that are relevant to the negotiations and need to be kept confidential for the reason that that they factor in the negotiations.

...

With respect to 1(a) and (b) of the test, the record is a Central Services report that sets out information for the project. It includes a description of the project and the project status... The report indicates that there was a scope... and that this would change the completion date and budget, for which they were seeking approval. It is apparent from the report that the contractor would need to be engaged in negotiations... The report includes budgetary information and timelines for completion of each of the following steps: initiation, planning, execution and closing.

It is submitted that this record sets out Central Services’ and Highways’ plan for changes to the original project (“a formulated and especially detailed method by which a thing is to be done”), and its position (“information that may be used in the course of negotiations”; “a way of thinking about a particular matter; opinion”) with respect to the various components of the project (e.g. timelines, budget). It sets out a procedure (an order or method of doing something), instructions (advice and information about how to do something) and considerations (thinking about something carefully; the facts that need to be thought about). It therefore meets part 1(a) of the test.

One of the purposes of the record would be for contractual and other negotiations... Thus, the record set out the parameters for negotiating with the contractor for the additional work that would be added to the original project. It therefore meets part 1(b) of the test.

This is a Central Services document, so was developed by the Government of Saskatchewan or a government institution, and meets part 1(c) of the test.

Even if any of the above three components of the test did not apply, it is submitted that Part 2 (which is an alternative to Part 1) of the test would apply as this record contains considerations that relate to the negotiations for the project, as described above.

[185] In my office's [Review Report 135-2019](#) and [Review Report 187-2019](#), I indicated that section 17(1)(c) of FOIP was meant to protect positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations and are strategies and pre-determined courses of action that would be discussed internally to a public body, and not shared with third parties. In this case, it appears the report is providing an update on timelines and budgets related to the project that require approval within the Government of Saskatchewan. It also appears that there is mention of next steps of engaging with external third parties for the project once it has the proper internal approvals in place. While Highways submission claims that it is apparent from the report that negotiations would occur, Highways has not provided me with information to establish that there were any negotiations.

[186] Section 61 of FOIP provides that the government institution has the burden of proof if it claims that access should or must be refused under FOIP (*Guide to FOIP*, Chapter 2: "Administration of FOIP", updated: August 7, 2020 (*Guide to FOIP*, Ch. 2)).

[187] As the details provided by Highways has not provided me with sufficient information to establish that negotiations were occurring, had occurred or would be occurring in the future, the burden of proof is not met. As such, I find section 17(1)(c) of FOIP does not apply. See Appendix A for details.

11. Did Highways properly apply section 18(1)(b) of FOIP?

[188] In Highways' submission regarding Package A, it argued that section 18(1)(b) of FOIP applied to a portion of record 15, pages 61 to 63 as follows:

...the Central Services report, on pages 61-63 set out financial information, including budget and cost details, and total cash flow, as well as project status, schedule status, change request details, changes to issues/risks, and activities planned for next period. This is the financial and commercial information of Central Services.

...

Since Central Services' role in property and project management requires negotiating prices with Central Services' clients and third parties, it is submitted that it has a proprietary interest in the type of financial and commercial information in the records identified, and that information would have, or would be reasonably likely to have, monetary value for Central Services.

[189] Section 18(1)(b) of FOIP provides:

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

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the Government of Saskatchewan or a government institution has a proprietary interest or right of use; and

(ii) that has monetary value or is reasonably likely to have monetary value;

[190] Section 18(1)(b) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose financial, commercial, scientific, technical or other information which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use and which has monetary value or reasonably likely to have monetary value (*Guide to FOIP*, Ch. 4, p. 164).

[191] The three-part test that is considered for the application of section 18(1)(b) of FOIP is as follows:

1. Does the information contain financial, commercial, scientific, technical or other information?
2. Does the government institution have a proprietary interest or a right to use it?
3. Does the information have monetary value for the government institution or is it reasonably likely to?

(*Guide to FOIP*, Ch. 4, pp. 164 to 167)

[192] The information in the report at issue discusses the status of the project as well as budgeted costs for the project at the specified address.

[193] In my office's [Review Report 196-2020](#), my office discussed the application of section 18(1)(b) of FOIP to tables that contained "project costs":

[16] The portions of the record released to the Applicant indicate the tables of information contain elements such as "Fiscal Year Estimates", "Fiscal Year Actuals", and "Total Expenditures". These are in relation to three separate projects concerning the junction of highways 35 and 335, and that are specific to "Highways and Bridges". This qualifies as financial information, so the first part of the test is met.

[17] Proprietary means of, relating to, or holding as property (*Guide to FOIP*, p. 165).

[18] Proprietary interest is the interest held by a property owner together with all appurtenant rights, such as a stockholder's right to vote the shares. It signifies simply "interest as an owner" or "legal right or title" (*Guide to FOIP*, p. 165).

[19] Owner means someone who has the right to possess, use, and convey something; a person in whom one or more interests are vested (*Guide to FOIP*, p. 165).

[20] Right of use means a legal, equitable, or moral title or claim to the use of property, or authority to use (*Guide to FOIP*, p. 166).

[21] Monetary value requires that the information itself have an intrinsic value. This may be demonstrated by evidence of potential for financial return to the government institution. An example of information that is reasonably likely to have monetary value might include a course developed by a teacher employed by a school board (*Guide to FOIP*, p. 166).

[22] Reasonably likely to implies that the question be considered objectively. This means that there must be evidence that will, on a balance of probabilities, support the necessary finding (*Guide to FOIP*, p. 167).

...

[25] In Review Report 185-2016 concerning the Saskatchewan Power Corporation (SaskPower), I stated the following at paragraph [24] regarding monetary value and the distinction between monetary value and information that may be beneficial in some sense:

[24] However, I am not persuaded that the contract itself would have any monetary value for SaskPower. SaskPower has only demonstrated that other organizations would find monetary value in the contract. Order 00-41 of the Office of the Information and Privacy Commissioner of British Columbia commented on this issue with respect to a similar exemption in its legislation. It stated: “There is, in my opinion, a clear distinction between information (including intellectual property) that the public body may wish to sell or license, and that reasonably could be said to have monetary value, and information that would simply be beneficial in some sense, or of interest, to a competitor.”

[26] Highways may “own” the forecast costs to make budgetary decisions, and may consistently treat such information confidentially. Highways has not, however, provided evidence to support the notion that disclosure of the information would somehow deprive it of monetary gain. Rather, it appears Highways’ interest in the information would be for the purposes of acquiring goods or services for the public through a competitive process, and not for monetary gain in a commercial sense. As with the SaskPower example from the preceding paragraph, external organizations competing for contracts may find value in knowing previous forecast costs, but for the purposes of this provision, it would not apply to Highways in the same way. As the second and third parts of the test have not been met, I find Highways has not properly applied subsection 18(1)(b) of FOIP to pages 36, 37 and 38 of the record. I will, however, continue my review of the other FOIP exemptions Highways has applied to the same portions of these pages.

[194] I adopt this analysis. Highways has not provided sufficient supporting documentation to show that section 18(1)(b) of FOIP would apply. As noted earlier, Highways has the burden of proof to establish that access should or must be refused. As Highways has not provided sufficient details, the burden of proof is not met. As such, I find section 18(1)(b) of FOIP does not apply. See Appendix A for details.

12. Did Highways properly apply section 15(1)(m) of FOIP?

[195] In Highways submission regarding Package B, it argued that section 15(1)(m) of FOIP applied to a portion of pages 30, 31, 42, 43 and 46. Section 15(1)(m) of FOIP provides:

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

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[196] Highways' submission argues that section 15(1)(m) of FOIP applies because the information on the diagrams showed the location of a critical piece of the building's infrastructure that "only those with a need to know its location should have access to this information."

[197] Section 15(1)(m) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems (*Guide to FOIP*, Ch. 4, p. 89).

[198] My office uses the following two-part test to determine if section 15(1)(m) of FOIP applies. However, only one of these questions needs to be answered in the affirmative for the exemption to apply:

1. Could release reveal security arrangements (of particular vehicles, buildings, other structures or systems)?
2. Could release reveal security methods employed to protect the particular vehicles, buildings, other structures or systems?

(*Guide to FOIP*, Ch. 4, p. 89-90).

Package B, Record 7, Pages 30 and 31

Package B, Record 16, Pages 42 and 43

Package B, Record 17, Page 46

[199] Highways' submission only stated that the information needed to be redacted for "security reasons". Beyond that, it did not specify how this information could reveal security arrangement or security methods. I find that Highways has not provided sufficient

information to meet the burden of proof to establish that access should or must be refused pursuant to section 15(1)(m) of FOIP.

[200] Additionally, it is my understanding that the Applicant has received a similar floor plan that contained information on the location of this infrastructure as a result of a previous review by my office from a different government institution.

[201] I find that section 15(1)(m) of FOIP does not apply. See Appendix A for details.

IV FINDINGS

[202] I find that I have jurisdiction and authority under FOIP to undertake this review.

[203] I find that Highways has not provided sufficient detail of its search efforts to find that a reasonable search was conducted.

[204] I find that section 29(1) of FOIP applies to a portion of information on pages 24, 25, 89, 103 and 104 of Package A of the record. See Appendix A for details.

[205] I find that section 19(1)(b) of FOIP applies to the withheld portion of information on page 78 of Package A of the record. See Appendix A for details.

[206] I find that Highways did not meet the burden of proof for sections 15(1)(m), 17(1)(c) and 18(1)(b) of FOIP.

[207] I find that Highways did not appropriately apply sections 15(1)(m), 16(1), 17(1)(a), 17(1)(b)(i), 17(1)(c), 18(1)(b), 19(1)(b), 22(a) and 29(1) of FOIP to remaining withheld portions of the record. See Appendix A for details.

V RECOMMENDATIONS

[208] I recommend Highways conduct another search for all records requested by the Applicant within 30 days of the issuance of this Report and issue a response that includes details of its search efforts. This should be provided to my office and the Applicant.

[209] I recommend Highways release the records, with the exception of the portions of the record where I have found an exemption was appropriately applied. See Appendix A for details.

Dated at Regina, in the Province of Saskatchewan, this 5th day of April, 2022.

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

Appendix A

Package	Record	Page Numbers	Description of Record	Exemptions Applied	Does the Exemption Apply?	Release or Withhold
A	1	Page 4	Email	Non-Responsive; Sections 17(1)(a) and 17(1)(b)(i) of FOIP	No	Release
A	2	Pages 8 and 9	Email	Non-Responsive; Sections 17(1)(a) and 17(1)(b)(i) of FOIP	No	Release
A	3	Page 13	Email	Non-Responsive; Section 17(1)(b)(i) of FOIP	No	Release
A	5	Pages 24 and 25	Attachment to Email	Section 29(1) of FOIP	Section 29(1) of FOIP applies to information related to an employee's employment status redacted on pages 24 and 25. Section 29(1) of FOIP does not apply to the portion of the first redaction on page 25 related to the location of an	Continue to withhold the redacted information, with the exception of the portion of the first redaction on page 25 related to the location of an employee's workspace.

Package	Record	Page Numbers	Description of Record	Exemptions Applied	Does the Exemption Apply?	Release or Withhold
					employee's workspace.	
A	9	Page 33	Email	Non-Responsive; Section 17(1)(b)(i) of FOIP	No	Release
A	10	Page 35	Email	Non-Responsive; Sections 16(1) and 17(1)(a) of FOIP	No	Release
A	11	Pages 38, 39 and 41 to 54	Email and one attachment	Pages 38 and 39: Non-Responsive; Section 17(1)(b)(i) of FOIP Pages 41 to 54: Sections 19(1)(b) and 29(1) of FOIP	No	Release
A	12	Page 55	Email	Non-Responsive; Sections 17(1)(a) and 17(1)(b)(i) of FOIP	No	Release
A	14	Pages 58 and 59	Email	Non-Responsive; Section 17(1)(b)(i) of FOIP	No	Release
A	15	Pages 61 to 63	Attachment to Email	Pages 61 and 62: Non-Responsive; Sections 17(1)(b)(i), 17(1)(c) and 18(1)(b) of FOIP	No	Release

Package	Record	Page Numbers	Description of Record	Exemptions Applied	Does the Exemption Apply?	Release or Withhold
				Pages 63: Non-Responsive; Sections 16(1), 17(1)(b)(i), 17(1)(c) and 18(1)(b) of FOIP		
A	18	Page 69	Email	Non-Responsive; Section 17(1)(b)(i) of FOIP	No	Release
A	19	Pages 75 and 76	Email	Non-Responsive; Sections 17(1)(a) and 17(1)(b)(i) of FOIP	No	Release
A	20	Page 78	Email	Section 19(1)(b) of FOIP	Section 19(1)(b) of FOIP applies.	Withhold
A	23	Page 85	Email	Non-Responsive; Section 29(1) of FOIP	No	Release
A	24	Pages 88 to 90	IBC Update	Non-Responsive; Section 29(1) of FOIP	Section 29(1) of FOIP applies to employment status of an employee found on the third row of page 89 under the "other notes" column. Section 29(1) does not apply to	Release record, with the exception of the information recorded on the third row of page 89 under the "other notes" column.

Package	Record	Page Numbers	Description of Record	Exemptions Applied	Does the Exemption Apply?	Release or Withhold
					any other information on these pages.	
A	25	Page 91	Email	Non-Responsive; Sections 17(1)(b)(i) and 22(a) of FOIP	No	Release
A	26	Pages 93, 94, 103 and 104	Email and two attachments	<p>Page 93: Non-Responsive</p> <p>Page 94: Non-Responsive; Section 17(1)(b)(i) of FOIP</p> <p>Pages 103 and 104: Section 29(1) of FOIP</p>	<p>Pages 93 and 94: No</p> <p>Pages 103 and 104: Section 29(1) of FOIP applies to information related to an employee's employment status redacted on pages 103 and 104.</p> <p>Section 29(1) of FOIP does not apply to the portion of the redaction on page 104 related to the location of an employee's workspace.</p>	<p>Pages 93 and 94: Release</p> <p>Pages 103 and 104: Continue to withhold the redacted information, with the exception of the portion of the redaction on page 104 related to the location of an employee's workspace.</p>
B	1	Page 1	Email and three attachments	Section 29(1) of FOIP	No	Release

Package	Record	Page Numbers	Description of Record	Exemptions Applied	Does the Exemption Apply?	Release or Withhold
B	2	Pages 17, 19, 20 and 22	Email and two attachments	Pages 17: Section 29(1) of FOIP Pages 19, 20 and 22: Section 17(1)(a) of FOIP	No	Release
B	3	Page 23	Email thread	Section 29(1) of FOIP	No	Release
B	4	Page 24	Email thread	Section 29(1) of FOIP	No	Release
B	5	Page 25	Email	Section 29(1) of FOIP	No	Release
B	6	Pages 26 to 28	Email thread	Section 29(1) of FOIP	No	Release
B	7	Pages 29 to 31	Email and two attachments	Page 29: Section 29(1) of FOIP Pages 30 and 31: Sections 15(1)(m) and 17(1)(a) of FOIP	No	Release
B	8	Page 32	Email	Section 29(1) of FOIP	No	Release
B	9	Page 33	Email	Section 29(1) of FOIP	No	Release
B	10	Page 34	Email thread	Section 29(1) of FOIP	No	Release
B	11	Page 36	Email thread	Section 29(1) of FOIP	No	Release
B	12	Page 37	Email thread	Section 29(1) of FOIP	No	Release
B	13	Page 38	Email thread	Section 29(1) of FOIP	No	Release
B	14	Page 39	Email	Section 29(1) of FOIP	No	Release
B	15	Page 40	Email	Section 29(1) of FOIP	No	Release

Package	Record	Page Numbers	Description of Record	Exemptions Applied	Does the Exemption Apply?	Release or Withhold
B	16	Pages 41 to 44	Email thread and three attachments	Page 41: Section 29(1) of FOIP Pages 42 and 43: Sections 15(1)(m) and 17(1)(a) of FOIP Page 44: Section 17(1)(a) of FOIP	No	Release
B	17	Pages 45 and 46	Email thread and one attachment	Page 45: Sections 19(1)(b) and 29(1) of FOIP Page 46: Sections 15(1)(m) and 17(1)(a) of FOIP	No	Release
B	18	Page 47	Email	Section 29(1) of FOIP	No	Release
B	19	Page 48	Email thread	Section 29(1) of FOIP	No	Release