



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 137-2024

Ministry of Education

September 18, 2024

Summary:

In August 2022, the Applicant submitted an access to information request to the Ministry of Education (Education). Education began to process the access request, providing records to the Applicant in batches. In my office's [Review Report 247-2022](#), the A/Commissioner had found that Education did not meet the legislated timeline in responding to the Applicant. After the review, Education continued to process the Applicant's access request and continued to provide records to the Applicant in batches. The Applicant then requested that the A/Commissioner review redactions applied by Education, Education's efforts to search and locate records, and Education's removal of records that it asserted to be duplicates, which is this review (IPC File 137-2024). The A/Commissioner made a number of findings, including that Education properly applied subsections 15(1)(c), 16(1), 17(1)(a), (b), 19(1)(b), 22(a), and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 27(1) of *The Health Information Protection Act* (HIPA) to portions of the records at issue. However, he also found that Education improperly applied subsections 29(1), 22(a), (b), (c), 19(1)(b), (c)(i), (c)(ii), (c)(iii), (d), 18(1)(b), (d), 17(1)(a), (b) and 16(1) to other portions of the records at issue. The A/Commissioner's office prepared a copy of the records at issue red-lining the portions where the A/Commissioner found Education properly applied its exemptions and recommended that Education continue to withhold those portions accordingly. The A/Commissioner recommended that Education release the portions of the records at issue that were not red-lined by the A/Commissioner's office. The A/Commissioner also found that Education made efforts to locate records responsive to the Applicant's access request; however, he found that Education did not demonstrate it made a reasonable effort to search for records dating from 1989 to 2011. He recommended that Education conduct another search for records dating from 1989 to 2011 that are responsive to the Applicant's access request within 30 days of issuance of this Report. The A/Commissioner made several other recommendations to Education, including that it ensures its record-keeping policies require records to be stored in a way such that records are retrievable.

I BACKGROUND

[1] On March 29, 2023, my office issued [Review Report 247-2022](#) involving the Ministry of Education (Education). Education had received the following access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) from the Applicant:

All records relating to the school operated by Mile Two Church Inc., formerly Saskatoon Christian Centre Inc., (Legacy Christian Academy, formerly Christian Centre Academy) including but not limited to records relating to licensing; funding; registration and approval as an independent school; teachers at the school(s) operated by Mile Two Church Inc., or its predecessors, accredited or for whom a waiver has been provided; and all complaints or reports made in relation to the school, the associated church, and their respective staff.

[2] The Applicant specified the time period for the records they were requesting was 1982 to the present.

[3] In [Review Report 247-2022](#), I discussed how Education took a staged approach in responding to the Applicant's access request. Due to the voluminous number, Education provided the Applicant with six batches of records, one batch at a time, over the course of seven months to the Applicant. My office had found that Education's responses to the Applicant's access request did not comply with the requirements of subsection 7(2) of FOIP; namely, that Education did not meet the legislated timeline to respond to an access request.

[4] After my office issued its report, Education continued to provide batches of records to the Applicant. This Report deals with Batches 7 to 32, with the exception of Batch 27. There was an error in numbering the batches and the number 27 was skipped over by Education.

[5] In a letter dated April 11, 2024, the Applicant requested a review by my office. The Applicant requested a review of the exemptions that Education applied to the records as well as Education's efforts to search for records.

[6] Below is a table summarizing the responses issued by Education to the Applicant and the exemptions applied to the records in batches 7 to 32 pursuant to FOIP and *The Health Information Protection Act* (HIPA).

Date of Response	Education Batch #	Exemptions Claimed	Non-exemption Items
April 13, 2023	7	29(1) FOIP	Non-responsive records
June 1, 2023	8	19(1)(b), 29(1) of FOIP	--
August 15, 2023	9	17(1)(a), 29(1) of FOIP	--
August 15, 2023	10	15(1)(c), (k), 16(1), 17(1)(a), 17(1)(b)(i), (iii), 19(1)(b), 29(1) of FOIP; 27(1) of HIPA	--
August 15, 2023	11	29(1) of FOIP	--
August 16, 2023	12	16(1), 17(1)(a),(b)(i), 29(1) of FOIP	duplicate copies not included
September 13, 2023	13	22(a), 29(1) of FOIP	--
October 10, 2023	14	29(1) of FOIP	Non-responsive records
October 20, 2023	15	29(1) of FOIP	Non-responsive records
October 20, 2023	16	19(1)(b), 29(1) of FOIP	Non-responsive records
October 20, 2023	17	29(1) of FOIP	ss 7(2)(e) of FOIP, records in this batch denied in full
October 23, 2023	18	16(1), 29(1) of FOIP	--
November 2, 2023	19	29(1) of FOIP	Duplicate copies not included
November 2, 2023	20	29(1) of FOIP	Duplicate copied not included
December 20, 2023	21	29(1) of FOIP	--
December 20, 2023	22	18(1)(b)(i), (b)(ii), 19(1)(b), 29(1) of FOIP	Non-responsive records
December 20, 2023	23	17(1)(b)(i), 29(1) of FOIP	Non-responsive records
December 20, 2023	24	29(1) of FOIP	Non-responsive records
December 20, 2023	25	29(1) of FOIP	Non-responsive records
December 20, 2023	26	16(1), 17(1)(a), (b)(ii), (g), 18(1)(b)(i), (b)(ii), 18(1)(e), 19(1)(b), (c)(i),	Non-responsive records

		(c)(ii), (c)(iii), 22(a), (b), (c), 29(1) of FOIP	
NOTE: No Batch 27 per Education due to clerical error in numbering	--	--	--
January 3, 2024	28	17(1)(b)(ii), 18(1)(d), 29(1) of FOIP	Non-responsive records
January 4, 2024	29	17(1)(a), 19(1)(d) and 29(1) of FOIP	Non-responsive records
January 4, 2024	30	29(1) of FOIP	Non-responsive records
March 25, 2024	31	19(1)(b), 29(1) of FOIP	Non-responsive records
March 25, 2024	32	29(1) of LA FOIP	Non-responsive records

[7] On May 31, 2024, my office sent a notice to Education and to the Applicant that my office would be undertaking a review. My office also notified the third parties (listed below) of this review and provided them with an opportunity to provide a submission.

- Allegro Montessori School
- Brilliant Star Montessori School
- Curtis-Horne Christian School
- Discovery Learning
- Elevation Academy Canadian Revival
- Flex Ed School
- Legacy Christian Academy
- Montessori School of Regina
- Morning Star Christian Academy
- Northeast Christian Academy
- Prairie Christian Academy
- Prairie Sky School
- Riverside Christian School - Formerly 7th Day Adventist
- Westgate Heights Academy
- Saskatoon Christian School
- Grace Christian
- Regent Academy
- Westdale Christian - Formerly Lifeway Christian
- Legacy Christian Academy
- Greater Saskatoon Christian Schools
- Michael Walter

- [8] There were two other third parties, Rock Solid and Rosthern Christian. However, they were schools that have closed so my office was unable to send them a notice of this review.
- [9] Then, on July 16, 2024, Education re-released some records where it was no longer relying on certain exemptions, such as subsection 17(1)(g) of FOIP. It had also cited additional exemptions (such as subsection 27(1) of HIPA) for reasons why it withheld portions of the records.
- [10] On August 20, 2024, my office received a submission from Education. Education also advised my office that when it was preparing its submission, it determined it was no longer relying on certain exemptions (such as subsections 17(1)(a), (b) and 19(1)(b) of FOIP) on certain pages. It was going to re-release those pages to the Applicant.
- [11] On August 21, 2024, my office shared Education's submission with the Applicant.
- [12] Then, on August 22, 2024, Education provided my office with copies of additional records. When originally processing the access request, Education had identified certain pages of records as "duplicates" in batches 12, 19 and 20. Education determined that some of these records, while similar to some of the records already provided to the Applicant, were not actually duplicates. Therefore, Education provided a redacted copy of these additional records to the Applicant. Education also provided my office with an addendum to its submission addressing these additional records. My office shared Education's addendum to its submission with the Applicant.
- [13] On September 3, 2024, my office received a submission from the Applicant.
- [14] My office received submissions from five of the third parties.

II RECORDS AT ISSUE

- [15] There are 24 batches of records, numbered from 7 to 32 (except for 27, which was a numbering error). In total, there are 8,273 pages of records at issue in these batches. I will refer to each batch by their batch number (Batch 7, Batch 8, Batch 9, etc.).
- [16] Education also provided my office copies of pages of records that it regarded as duplicates in Batches 12, 19 and 20. Education had taken these pages out while preparing these records when responding to the Applicant’s access request. Therefore, I will refer to these duplicate records as “Duplicate Pages - Batch 12”, “Duplicate Pages - Batch 19” and “Duplicate Pages – Batch 20”.
- [17] Along with the copy of this Report provided to Education, my office has provided a copy of the records at issue. That particular copy of the records at issue contains my office’s recommendations regarding what should be released to the Applicant and what Education should continue to withhold. Specifically, my office has red-lined where my office recommends that Education continue to refuse the Applicant access to records. Wherever my office has not red-lined the records, my office is recommending the release of those portions of the records at issue to the Applicant within 30 days of the issuance of this Report. Throughout this Report, for the sake of simplicity and given the volume of records, I will not indicate a recommendation to release after each finding.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

- [18] Education is a “government institution” as defined by subsection 2(1)(d)(i) of FOIP.
- [19] Education also qualifies as a “trustee” as defined by subsection 2(1)(t)(i) of HIPA. HIPA is engaged when three elements are present: 1) a trustee, 2) personal health information, and 3) the trustee has custody or control over the personal health information. First, Education qualifies as a “trustee” pursuant to subsection 2(1)(t)(i) of HIPA.

[20] Second, the records contain personal health information of employees of organizations as well as of students. In its submission, Education said:

Pages 3872, 3885, 3886, 3898, 3899, 3904, and 3905, contain information with respect to the physical health of an individual (2(1)(m)(i) of HIPA).

Pages 3865 to 3912 have been fully denied pursuant o [sic] subsection 29(1) of FOIP and 27(1) of HIPA. The personal health information contained on these pages include personal care, emotional well-being, current medications, health conditions, including allergies, birth and medical history and cognitive functioning score. The Ministry submits that this information falls under the definition of personal health information found in subsection 2(1)(m) of HIPA and therefore, this information has been properly withheld (ss. 27(1) of HIPA).

[21] In Batch 10, my office noted that portions of pages 597, 598 and 698 contain information about the physical health of a staff member at a school. In Batch 20, portions of pages 3872, 3885, 3886, 3898, 3899, 3904 and 3905 contain information about the physical or mental health of students. Finally, Batch 26, page 6321 contains information about the physical health of an employee. All such information qualifies as personal health information as defined by subsection 2(1)(m)(i) of HIPA, which provides as follows:

2(1) In this Act:

...

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

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

[22] Finally, the records at issue are in the custody and control of Education, and so all three elements are present for HIPA to be engaged.

[23] I also note that the entities listed a paragraph [7] qualifies as third parties as defined by subsection 2(1)(j) of FOIP.

[24] Based on the above, I find that I have jurisdiction to conduct this review.

2. Did Education properly apply subsection 29(1) of FOIP?

[25] Education applied subsection 29(1) of FOIP to pages within every batch of records, except for Batch 22.

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

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

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

[28] In order to withhold information pursuant to subsection 29(1) of FOIP, the information must qualify as “personal information” as defined by subsection 24(1) of FOIP.

[29] Subsections 24(1)(a), (b), (d), (e), (f), (g), (h), (i), (j) and (k)(i) of FOIP are relevant in this review and provide as follows:

24(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or

fingerprints of the individual;

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

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

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

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

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

(k) the name of the individual where:

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

[30] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual (*Guide to FOIP*, Ch. 6, p. 48). In other words, personal information should be just that – personal.

[31] In its submission, Education explained that it applied subsection 29(1) of FOIP to portions of records containing information about students (including school attended, student number, learning ID, grades, assessments, address, country of birth), images of passport, birth certificates, marriage licenses, and name change certificates, Educator ID numbers and social insurance numbers. It also applied subsection 29(1) of FOIP to the personal and business telephone numbers "of employees who are not government employees" and to teaching certificate numbers.

[32] In their submission, the Applicant identified many types of information that they said they were satisfied qualified as personal information, including information about students

(such as student number, sex, place of birth, reading or writing levels, grades), birth dates, passport numbers and birth certificate numbers. However, they disputed that the personal and business telephone numbers, email or mailing addresses of individuals acting in their employment capacity qualified as personal information. Further, the Applicant disputed that information such as teaching certificate numbers and Educator ID numbers qualify as personal information.

[33] Based on a review, my office found that information about students, such as their names, grades, assessments, addresses and descriptions qualify as “personal information” as defined by subsections 24(1)(a), (b), (d), (e), and (k)(i) of FOIP. Therefore, I find that Education properly applied subsection 29(1) of FOIP to information about students such as their names, grades, assessments, addresses and descriptions of students.

[34] Also, images of passports, birth certificates, marriages licenses, and name change certificates qualify as personal information as defined by subsections 24(1)(a), (d), (e), and (k)(i) of FOIP. I find that Education properly applied subsection 29(1) of FOIP to such information.

[35] Further, my office found that the information qualified as personal information is where private individuals, acting in their personal (not professional) capacity, wrote to the Minister of Education with concerns. For example, in Batch 13 at pages 829 to 832 and at pages 834 to 837, and in Batch 23 at pages 5083 to 5085. The private individuals’ names and contact information would qualify as personal information as defined by subsection 24(1)(e) of FOIP. I find that Education properly applied subsection 29(1) of FOIP to such information.

[36] Another example of where my office found information qualified as personal information is the home and/or mailing address of teachers. For example, correspondence sent by Education to teachers in Batches 31 and 32 contains the teacher’s home and/or mailing address. Such information qualifies as personal information as defined by subsection 24(1)(e) of FOIP.

[37] Finally, information about why an employee leaving their employment with an independent school qualifies as personal information as defined by subsection 24(1)(b) of FOIP; such as at pages 7419, 7487, 7533, 7534, 7535, and 7602 of Batch 31.

[38] However, as mentioned earlier, Education asserted that information such as names of teachers or names of employees of organizations (but not of the Government of Saskatchewan) qualify as personal information. In addition, Education asserted that the person's job titles qualify as personal information. In its submission, Education explained:

The information on pages...contain the name of teachers, other employees within the educational system and other employees of identifiable employers (from the record). These employees are not employees of the Government of Saskatchewan. The name of the teacher or employee links that individual to their specific job (i.e. teacher) within an institution (i.e. Legacy Christian).

...

A person's title within an organization has been withheld on pages 552, 553, 554, 556, 558, 563, 590, 592, 595, 597, 598, 600, 610, 612, 621, 626, 629, 644, and 649 as personal information because it indicates when an individual employment history [sic].

[39] Throughout the records, including Duplicate Pages – Batch 19 and Duplicate Pages – Batch 20 - Education applied subsection 29(1) of FOIP to information that is “business card information” or “work product”. This includes names that appear in letters as well as names and/or email addresses that appear in email headers where the emails are clearly sent in a professional context and are not personal in nature. Education also applied this provision to names and signatures of school administrators that appear on records where they are clearly acting in their professional capacity. Education withheld job titles within an organization, such as “teacher”. It would be absurd if a teacher, in their professional capacity, entered a classroom or met with parents but refused to identify their role as the teacher because their job title is their personal information. It is not.

[40] My office has consistently stated that business card information (contact information on a business card) does not constitute personal information because it is not personal in nature (*Guide to FOIP*, Ch. 6, p. 48). Rather, if the record is within the professional context, then business card information within the record is professional in nature. Business telephone

numbers and addresses would only qualify as personal information only if the record was personal in nature.

[41] Further, my office has regarded “work product” or information generated by or otherwise associated with an individual in the normal course of performing their professional or employment responsibilities, whether in a public or private setting, to not qualify as personal information (*Guide to FOIP*, Ch. 6, p. 36).

[42] In Batches 31 and 32, Education applied subsection 29(1) to records such as letters of eligibility (as described in *The Registered Independent Schools Regulations*) and teacher certificates per *The Teacher Certification and Classification Regulations*. I note that in [Report FI-04-15](#), the Office of the Information and Privacy Commissioner for Nova Scotia (NS IPC) had said that a certificate of qualification is a licence:

In line with *Cyril House* I must now consider whether to accept the position of the Department or the Applicant on whether an electrical trades certificate is a discretionary benefit and therefore falls under s.20(4)(h). It's noted that this subsection considers a “licence” a discretionary benefit. **Merriam-Webster defines “licence” as “permission to act” and “a permission granted by competent authority to engage in a business or occupation otherwise unlawful.” I have concluded that a certificate of qualification is a licence because it grants individuals permission to engage in electrical construction.** I agree with the Applicant that, despite the use of the mandatory word “shall” the “competent authority” is not obliged to grant a certificate. It is clear the Apprenticeship Act gives the Director the discretion to grant or not grant a certificate. In fact the Department’s submission acknowledges this.

[Emphasis added]

[43] Similarly, I find that the Letters of Eligibility and teacher certificates that appear in Batches 31 and 32 qualify as a “licence” granted by the Minister of Education. Subsection 24(2) of FOIP provides:

24(2) “Personal information” does not include information that discloses:

...

(e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;

[44] Therefore, I find that Education improperly applied subsection 29(1) of FOIP to the Letters of Eligibility and teacher certificates that appear in Batches 31 and 32.

[45] However, I note that teacher certificate numbers also appear in the records at issue, including on teacher certificates. Education's position is that teacher certificate numbers (and Educator ID numbers) qualify as personal information whereas the Applicant's position is that they do not. The Applicant's position is that a teacher's certificate number is a "detail of a licence, permit or other similar discretionary benefit granted to an individual by a government institution" pursuant to subsection 24(2)(e) of FOIP.

[46] In my office's [Review Report F-2014-005](#) at paragraphs [10] and [11], I had found that teaching certificate numbers qualify as personal information pursuant to subsections 24(1)(k)(i) of FOIP. In my office's [Investigation Report 074-2020](#) at paragraphs [16] to [21], I considered driver's licence numbers and whether they qualify as personal information pursuant to subsection 24(1)(d) of FOIP or if they do not qualify as personal information pursuant to subsection 24(2)(e) of FOIP. I noted that certain information such as name and address of the owner of a specific vehicle did not qualify as personal information pursuant to subsection 24(2)(e) of FOIP but I had found that driver's licence numbers qualified as personal information pursuant to subsection 24(1)(d) of FOIP. I said:

[18] As quoted in my [Review Report 146-2017](#), the Court of Appeal of Alberta in [Leon's Furniture Limited v. Alberta \(Information and Privacy Commissioner\), 2011 ABCCA 94 \(CanLII\)](#) (Leon's) at paragraph 49 found that a driver's licence number is "personal information" as it is used to identify a particular person:

[49] The adjudicator's conclusion that the driver's licence number is "personal information" is reasonable, because it (like a social insurance number or a passport number) is uniquely related to an individual. With access to the proper database, the unique driver's licence number can be used to identify a particular person: *Gordon v. Canada (Minister of Health)*, 2008 FC 258, 324 F.T.R. 94, 79 Admin. L.R. (4th) 258 at paras. 32-4. But a vehicle licence is a different thing. It is linked to a vehicle, not a person. The fact that the vehicle is owned by somebody does not make the licence plate number information about that individual. It is "about" the vehicle. The same reasoning would apply to vehicle information (serial or VIN) numbers of vehicles. Likewise a street address identifies a property, not a person, even though someone may well live in the property. The licence plate number may well be connected to a database that contains other personal information, but that

is not determinative. The appellant had no access to that database, and did not insist that the customer provide access to it.

[19] Section 24(1) of FOIP defines personal information as information about an identifiable individual that is recorded in any form. However, section 24(2) of FOIP carves out certain types of information to not be included in the definition of personal information, including section 24(2)(e) of FOIP. Section 24(2)(e) of FOIP provides:

24(2) “**Personal information**” does not include information that discloses:

...

(e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;

[20] The Court of Appeal for Saskatchewan’s [*General Motors Acceptance Corporation of Canada Ltd. v. Saskatchewan Government Insurance, 1993 CanLII 6655 \(SKCA\)*](#) (GMAC) and the Court of Queen’s Bench for Saskatchewan’s [*Shook Legal, Ltd v. Saskatchewan \(Government Insurance\), 2018 SKQB 238*](#) (Shook) determined that information sought by applicants such as the name and address of the owner of a specific vehicle combined with a vehicle registration would not qualify as personal information pursuant to section 24(2)(e) of FOIP. However, neither GMAC nor Shook addressed driver’s licence numbers.

[21] When I consider: (1) the resource by the OPC, AB IPC and the BC IPC and its description of the driver’s licence number as an identifying number, (2) Leon’s by the Court of Appeal of Alberta and its description of the driver’s licence number as a identifying number, and (3) the fact that SaskPower collects driver’s license numbers as a way to identify individuals, then I find that the Complainant’s driver’s licence number qualifies as personal information as defined by section 24(1)(d) of FOIP. Driver’s licence numbers being used as a uniquely identifying number for individuals means the information is about an identifiable individual and are not “details of a licence”.

[47] Similar to the driver’s licence numbers, then, I find that teacher certificate numbers and Educator ID numbers qualify as personal information pursuant to subsection 24(1)(d) of FOIP. I find that Education properly applied subsection 29(1) of FOIP to teacher certificate numbers and Educator ID numbers

[48] Education also applied subsection 29(1) of FOIP to the information submitted to the Ministry of Education for the purposes of applying for the Letters of Eligibility and teacher certificates in Batches 31 and 32. This includes copies of social insurance number cards, birth certificates, and school transcripts. Subsection 24(3) of FOIP provides:

24(3) Notwithstanding clauses (2)(e) and (f), “**personal information**” includes information that:

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1).

[49] Therefore, I find that Education properly applied subsection 29(1) of FOIP to personal information that was submitted to Education to support an application for the Letters of Eligibility or teacher certificates, which are records that appear in Batches 31 and 32.

3. Did Education make a prima facie case that subsection 22(a) of FOIP applies?

[50] My office’s [*Rules of Procedure, Part 9: Solicitor-Client or Litigation Privilege*](#), (revised August 16, 2023) at page 39, outlines the process when a government institution is claiming solicitor-client or litigation privilege. Section 9-1 provides:

9-1 Claiming solicitor-client or litigation privilege

(1) Where solicitor-client or litigation privilege is being claimed as an exemption by the head or delegate, the commissioner’s office will request the head or delegate to provide a copy of the records, or an affidavit of records, schedule and redacted record over which solicitor-client or litigation privilege is claimed setting out elements requested in Form B.

[51] Education applied subsection 22(a) of FOIP to pages 838, 839 (“Record 226”), 840, 842, 843 (“Record 227”) and 844 (“Record 228”) of Batch 13, and pages 5582 and 6195 (“Record 928”) of Batch 26. Education is making a claim that subsection 22(a) of FOIP applies to pages 38, 839, 840, 842, 843 and 844 of Batch 13, and page 6195 of Batch 26. It provided my office with a letter dated August 20, 2024, an affidavit, schedule and severed portions of pages 38, 839, 840, 842, 843 and 844 of Batch 13, and page 6195 of Batch 26 to which it applied subsection 22(a) of FOIP.

[52] It should be noted that Education provided my office with an unredacted version of page 5582 of Batch 26. Therefore, I will consider whether Education properly applied subsection 22(a) of FOIP to page 5582 of Batch 26 by reviewing the page itself. Education’s

submission did not speak to Education's application of subsection 22(a) of FOIP to page 5582 of Batch 26.

[53] Subsection 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;

[54] As set out in the *Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access" updated April 8, 2024 (*Guide to FOIP*, Ch. 4) at page 257, subsection 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.

[55] As noted in its letter dated August 20, 2024, Education is claiming that the records at issue contain information subject to solicitor-client privilege as well as litigation privilege.

[56] First, I will determine if solicitor-client privilege applies to the pages to which Education has applied subsection 22(a) of FOIP. Pages 263 to 267 of the *Guide to FOIP*, Ch. 4, sets out the following three-part test that my office applies to determine if solicitor-client privilege 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 for the communication to be treated confidentially?

[57] Pages 263 to 266 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

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

- “Solicitor” means a lawyer who is duly admitted as a member and whose right to practice is not suspended. Lawyer means a member of the Law Society and includes a law student registered in the Society’s pre-call training program.
- “Client” means a person who:
 - Consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or
 - Having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf;

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

- “Legal advice” means a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.

[58] In its letter dated August 20, 2024, Education explained that a statement of claim (claim) was issued in the Court of King’s Bench. The Government of Saskatchewan was named as a defendant. I note Saskatchewan’s Advocate for Children and Youth (Advocate) conducted an investigation and issued the report “[Making the Grade, Moving Forward in Independent Education](#)”. As well, changes were made to *The Registered Independent Schools Regulations* and the appointment of administrators to the qualified independent schools which employed individuals named in the claim.

[59] Education explained that Records 226, 227 and 228 (pages 838, 839, 840, 842, 843 and 844 of Batch 13) all pertain to the inquiry from the Advocate. It explained:

Records 226, 227, and 228 all pertain to the inquiry from the Advocate. In records 226 and 228, staff of the Ministry, including the affiant of the Affidavit of Records, engage in a discussion with Counsel about the preparation and wording of a reply to the inquiry from the Advocate about QIS and the facts underlying the Claim. Record 227 is a draft copy of a reply to the Advocate with comments from Counsel providing her advice on changes to the document. These notes are given in Counsel’s capacity as a lawyer giving legal advice to her client.

[60] Further, Education explained that Record 928 pertains to the appointment of administrators and the changes to *The Registered Independent Schools Regulations*:

Record 928 pertains to the appointment of administrators and changes to the Regulations to allow the appointments. The Privileges are being claimed with respect to an email found on the second and third page of the record which speak to the contributions of Counsel to the drafting of the relevant Order to be made, which includes an appointment of an administrator to Legacy Christian Academy, an institution at the heart of the Claim.

[61] The affiant of the affidavit is the Executive Director of the Programs Branch of Education. The affidavit provided as follows:

7. In respect of the records claimed to be protected by solicitor-client privilege, I have knowledge of, or believe, that the record relates to communications and information shared:
 - i) between solicitor and client and/or third party or among solicitors, with sufficient common interest in the same transactions;
 - ii) for the purpose of the seeking or obtaining of legal advice or legal services;
 - iii) intended to be kept confidential and have been consistently treated as confidential.

[62] Based on the above, the three-part test for solicitor-client privilege under subsection 22(a) of FOIP is met for pages 38, 839, 840, 842, 843 and 844 of Batch 13, and page 6195 of Batch 26. I find that Education made a *prima facie* case that subsection 22(a) of FOIP applies to pages 38, 839, 840, 842, 843 and 844 of Batch 13, and page 6195 of Batch 26. There is no need for me to consider whether litigation privilege applies to these pages.

[63] However, I must still consider page 5582 of Batch 26.

[64] The redacted portion on page 5582 of Batch 26 is a portion of a sentence. Based on a review by my office, the redacted portion of a sentence on page 5582 of Batch 26 does not contain a communication between a solicitor or client. Therefore, page 5582 of Batch 26 does not meet the first part of the three-part test for solicitor-client privilege.

[65] Therefore, I must consider whether litigation privilege applies to page 5582 of Batch 26. My office uses the two-part test to determine if litigation privilege applies (*Guide to FOIP*, Ch. 4, p. 282):

1. Has the record or information been prepared for the dominant purpose of litigation?
2. Is the litigation ongoing or anticipated?

[66] As described earlier, the redaction portion on page 5582 of Batch 26 is a portion of a sentence. Education's submission does not provide arguments as to how this particular portion of a sentence is information that was prepared for the dominant purpose of litigation. Based on a review of the redaction, my office could not tell that it was prepared for the dominant purpose of litigation either. Therefore, page 5582 of Batch 26 does not meet the first part of the two-part test for litigation privilege.

[67] I find that Education did not properly apply subsection 22(a) of FOIP to page 5582 of Batch 26.

4. Did Education properly apply 22(b) of FOIP?

[68] Education applied subsection 22(b) of FOIP to page 5582 of Batch 26.

[69] Subsection 22(b) of FOIP provides:

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

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;

[70] My office uses the following two-part test to determine if subsection 22(b) of FOIP applies:

1. Were the records "prepared by or for" an agent or legal counsel for a government institution?

2. Were the records prepared in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

(*Guide to FOIP*, Ch. 4, pp. 290-291)

1. ***Were the records “prepared by or for” an agent or legal counsel for a government institution?***

[71] Page 290 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

- “Prepared” means to be made ready for use or consideration.
- “By or for” means the person preparing the record must be either the person providing the legal advice or legal service or a person who is preparing the record in question on behalf of, or, for the use of, the provider of legal advice or legal related services.

[72] Education’s submission did not provide arguments for its application of subsection 22(b) of FOIP.

[73] Based on a review, the redacted portion is not a record prepared by or for an agent or legal counsel for a government institution. It merely describes the work completed by a lawyer. The first part of the two-part test is not met. I find that Education did not properly apply subsection 22(b) of FOIP to page 5582 of Batch 26.

5. Did Education properly apply subsection 22(c) of FOIP?

[74] Education applied subsection 22(c) of FOIP to page 5582 of Batch 26.

[75] Subsection 22(c) of FOIP provides:

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

...

(c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other person in relation to a matter involving the provision of advice or other services by the agent or legal counsel.

[76] My office uses the following two-part test to determine if subsection 22(c) of FOIP applies:

1. Is the record a correspondence between the government institution's legal counsel (or an agent of the Attorney General) and any other person?
2. Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?

(*Guide to FOIP*, Ch. 4, pp. 292-293)

- 1. *Is the record a correspondence between the government institution's legal counsel (or an agent of the Attorney General) and any other person?***

[77] Pages 292 to 293 of the *Guide to FOIP*, Ch. 4, provides:

- “Correspondence” means letters sent or received. It is an interchange of written communication.
- “Agent” means someone who is authorized to act for or in place of another.
- “Attorney General”, in this context, is the chief law officer of Saskatchewan responsible for advising the government on legal matters and representing it in litigation.
- “Any other person” was an intentional and inclusive phrase to capture just that – any other person. The government institution must make it sufficiently clear, as to what the nature of that other person's role in the correspondence was.

[78] Education's submission did not provide arguments for its application of subsection 22(c) of FOIP.

[79] Page 5582 of Batch 26 is not correspondence between Education's legal counsel or an agent of the Attorney General and any other person. The redacted content is from an email between the A/Director of the Programs Branch at Education and the Legislation and Privacy Coordinator. The first part of the two-part test is not met. I find that Education did not properly apply subsection 22(c) of FOIP to page 5582 of Batch 26.

6. Did Education properly apply subsection 19(1)(b) of FOIP?

[80] Education applied subsection 19(1)(b) of FOIP to the following:

- Page 759 of Batch 11,
- Pages 5558 and 5727 of Batch 26,
- Pages 6911 and 6912 of Batch 29, and
- Page 7021 of Batch 31.

[81] In its submission, Education also asserted that subsection 19(1)(b) of FOIP applied to pages 5500 to 5503 and 5598 of Batch 26. Since subsection 19(1)(b) of FOIP is a mandatory exemption, I will consider whether subsection 19(1)(b) of FOIP applies to these additional pages.

[82] Before I proceed, I should note that of the third parties that were notified of this review, only five of them provided a submission to my office. One of five, Michael Walter, objected to the release of records, which I will discuss below in my analysis of subsection 19(1)(b) of FOIP. Three of the five third parties, Allegro Montessori, Brilliant Star Montessori and Northeast Christian Academy did not object to a release of a record in Batch 16 that contained attendance numbers. However, I note that Education is no longer relying on subsection 19(1)(b) of FOIP to withhold the record in Batch 16. Finally, the fifth third party, Greater Saskatoon Christian, indicated to my office it had no objections to the release of a record in Batch 10. However, I also note that Education indicated to my office that it was no longer relying on subsection 19(1)(b) of FOIP to withhold the record in Batch 10 .

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

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

...

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

[84] My office uses the following three-part test to determine if subsection 19(1)(b) of FOIP applies:

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

(*Guide to FOIP*, Ch. 4, pp. 203-207)

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

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

[86] In its submission, Education said:

Pages 5500-5503 is a spreadsheet containing the enrolment at independent schools. This information is provided by each of the schools and is specifically tied to funding, as they receive funding based on enrolment. It also helps for projections for the following school year funding. The funding received by QIS is a monetary resource, essential to the continued operation of the school, which would qualify as financial information. The redacted information is specific to LCA. This information is exempt from release pursuant to subsection 19(1)(b) of FOIP.

Page 5558 is an inquiry from LCA to the ministry regarding contractor issues. The information was submitted in confidence and is related to a labour relations issue. The redacted information is related to a personnel contract, and concerns being raised by LCA related to the contractor. This information is exempt from release pursuant to subsection 19(1)(b).

Page 5598 is Appendix B to the agreement preceding it. This information is financial information that could potentially interfere with the contractor's ability to negotiate future contracts. That cost would have been provided by the contractor to the ministry as part of contract negotiations and is therefore subject to subsection 19(1)(c) of FOIP, which is a mandatory exemption. This information is repeated on pages 6160, 6597, and 6610.

Page 5727 is a listing of independent schools of the full-time equivalent number of staff in each of the schools. This information would be gathered from each of the schools and is labour relations information. The information related to LCA is redacted pursuant to subsection 19(1)(b) accordingly.

For pages 6911 and 6912, information was redacted pursuant to section 19(1)(b) of FOIP. The information was provided to the ministry by the third party, in confidence, and has a labour relations, commercial and financial component to it. Given the sensitivity of personal health information, and the public opinion during the pandemic related to its use, the release of this information may impact the ability of LCA to compete with other similar schools. That, in effect, would affect their ability to attract and maintain employees, affect the financial stability of LCA due to a potential reduction in overall funding from the Ministry (if enrolment went down). As such, this information is subject to exemption.

[87] In their submission, the Applicant said:

With respect to enrollment numbers at independent schools other than Legacy Christian Academy (formerly Christian Centre Academy), we are satisfied that such information is properly withheld by the Ministry.

With respect to enrollment numbers at Legacy Christian Academy (formerly Christian Centre Academy) (page 5500-5503), in which the Ministry has relied on section 19(1)(b), we dispute that enrollment numbers qualify as “financial ... information that is supplied in confidence, implicitly or explicitly” by Legacy Christian Academy (formerly Christian Centre Academy). While a financial inference may be drawn from enrollment numbers, the section requires refusal to a record that “contains” the information and not records which “could disclose” as is used elsewhere in the Act. Further, the Ministry has asserted that funding received is “essential to the continued operation of the school” without a factual supporting basis. Christian Centre Academy, the predecessor to Legacy Christian Academy, operated before Ministry funding of qualified independent schools was implemented in or about 2012. In addition, the Ministry has not identified the basis upon which enrollment numbers at Legacy Christian Academy (formerly Christian Centre Academy) were provided to the Ministry in confidence.

With respect to page 5558 we are unable to determine from the context whether the information is as described by the Ministry. Nor has the Ministry provided a basis to conclude that the information was supplied in confidence.

With respect to page 5598 (and 6190, 6597, and 6610) we are satisfied that the pay to the contractor is properly withheld by the Ministry.

With respect to page 5727, for independent schools other than Legacy Christian Academy (formerly Christian Centre Academy), we are satisfied that the number of full time equivalent number of staff is properly withheld by the Ministry.

With respect to pages 6911 and 6912 the Ministry has relied on section 19(1)(b). The Ministry has not provided a basis upon which the information was supplied in confidence, only a bare assertion. Nor has the Ministry provided a basis to conclude that the information is “financial, commercial, scientific, technical or labour relations information” as those terms are defined in the Act. In addition, the Ministry baldly asserts that the information “may impact the ability of LCA to compete with other similar schools” which would “affect their ability to attract and maintain employees” and “affect the financial stability of LCA due to a potential reduction in overall funding from the Ministry (if enrolment went down).” With respect, the Ministry has not provided a basis upon which this section applies.

[88] It appears that Education is claiming that only financial, commercial, and labour relations information is involved. Pages 204 and 205 of the *Guide to FOIP*, Ch. 4, provide the following definitions:

- “Financial information” is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a third party.
- “Commercial information” is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records.
- “Labour relations information” is information that relates to the management of personnel by a person or organization, whether or not the personnel are organized into bargaining units. It includes relationships within and between workers, working groups and their organizations as well as managers, employers and their organizations. Labour relations information also includes collective relations between a public body and its employees. Common examples of labour relations information are hourly wage rates, personnel contracts and information on negotiations regarding collective agreements.

[89] Based on a review of the pages to which Education applied subsection 19(1)(b) of FOIP, my office found the following:

- The redacted portions on page 759 of Batch 11 qualify as financial information. It contains information about contingency funding.
- The redacted portion on page 5558 of Batch 26 qualify as labour relations information. It contains information about interpersonal conflict among staff.

- The redacted portion on page 5598 of Batch 26 qualify as financial information as it contains information about the rate in which a contractor was paid.

[90] However, my office found that the redacted portions on the following pages did not contain financial, commercial, or labour relations information:

- Page 5500 to 5503 and 5727 of Batch 26,
- pages 6911 and 6912 of Batch 29, and
- page 7021 of Batch 31.

[91] As described by Education in its submission, pages 5500 to 5503 of Batch 26 are a spreadsheet containing enrolment information at independent schools. While Education makes the argument that the information is specifically tied to funding, the information itself does not reveal financial information of third parties.

[92] Page 5727 of Batch 26 is a list of “full-time equivalent number of staff” (as described by Education) in independent schools. Such information is not labour “relations” information as it just states the number of full-time staff at each school. It is not information about the management of personnel nor is it about relationships within and between workers.

[93] Pages 6911 and 6912 of Batch 29 contain an email exchange between Legacy Christian Academy and Education. The email exchange is about the number of positive COVID-19 cases among students and staff and how Legacy Christian Academy will deliver education to the students. Then, the email exchange switches to an internal email exchange between Education employees. The substance of the email exchanges do not qualify as financial, technical, or labour relations information. Therefore, the redacted information on pages 6911 and 6912 of Batch 29 does not meet the first part of the three-part test.

[94] Page 7021 of Batch 31 contains the description of work of a contractor as described in a contract between Education and a contractor. Such information does not qualify as a

financial, commercial or labour relations information. Therefore, the redacted information on page 7021 of Batch 31 does not meet the first part of the three-part test.

[95] I will proceed to consider whether page 759 of Batch 11 and pages 5558 and 5598 of Batch 26 meet the second part of the test.

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

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

[97] Based on a review, my office found the following information was supplied by a third party to Education.

- The redacted information on page 5558 of Batch 26 was supplied by Legacy Christian Academy to Education.

[98] However, my office found the following information was not supplied by a third party to Education as follows:

- Page 759 of Batch 11 contains information sent by Education to Legacy Christian Academy. Therefore, the information was not supplied by a third party to Education.
- Page 5598 of Batch 26 contains information in a contract between a contractor and Education. The provisions of a contract are mutually generated rather than “supplied” by a third party (*Guide to FOIP*, Ch. 4, p. 206).

[99] Therefore, the redacted information on page 759 of Batch 11 and page 5598 of Batch 26 does not meet the second part of the three-part test.

[100] I will proceed to consider whether the redacted information on page 5558 of Batch 26 meets the third part of the three-part test.

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

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

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

[102] Page 5558 of Batch 26 is an email from Legacy Christian Academy to Education. It provides background details of a situation regarding interpersonal conflict. Legacy Christian Academy is seeking guidance from Education on what it can do. The nature of the information supplied by Legacy Christian Academy to Education would reasonably suggest that the information was supplied in confidence. The third part of the three-part test is met. I find that Education properly applied subsection 19(1)(b) of FOIP to page 5558 of Batch 26.

[103] However, I find that Education did not properly apply subsection 19(1)(b) of FOIP to page 759 of Batch 11, page 5598 of Batch 26, pages 6911 and 6912 of Batch 29, and page 7021 of Batch 31.

7. Did Education properly apply subsection 19(1)(c)(i) of FOIP?

[104] Education applied subsection 19(1)(c)(i) of FOIP to the following:

- Page 759 of Batch 11, and
- Pages 5509 to 5513, 5598, 6240, 6270, 6597, 6610 of Batch 26.

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

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

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

(i) result in financial loss or gain to;

...
a third party;

[106] My office uses the following two-part test when determining if subsection 19(1)(c)(i) of FOIP applies:

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

(Guide to FOIP, Ch. 4, pp. 216)

[107] “Financial loss or gain” must be monetary, have a monetary equivalent or value (e.g., loss of revenue or loss of corporate reputation).

[108] Education did not provide arguments as to how subsection 19(1)(c)(i) of FOIP applies to the records.

[109] In their submission, the Applicant said:

With respect to page 755 the Ministry has relied on section 19(1)(c)(i), alleging that the “context of the information ... could reasonably prejudice the competitive position of, or interfere with contract negotiations with new teachers, as it may affect recruitment and retention.” We are unable to confirm the applicability of the section.

With respect to page 6240 the Ministry relies on section 19(1)(c), alleging that “children withdrawing from a school is a financial loss to the school.” Section 19(1)(c) applies to “information, the disclosure of which could reasonably be expected to: (i) result in a financial loss or again;”. The section does not apply, as it is the withdrawal of the student which could reasonably be expected to result in a financial loss, not the disclosure of the student(s) withdrawing from a school.

- [110] I note that the portion of page 755 of Batch 11 Education withheld pursuant to subsection 19(1)(c)(i) of FOIP, it later released to the Applicant in the course of my office's review. Therefore, I will not comment on page 755 of Batch 11.
- [111] Page 759 of Batch 11 contains a contingency funding report. On the face of the record, it is difficult to determine what financial loss or gain is being claimed.
- [112] Pages 5509 to 5513 of Batch 26 are charts and pie graphs that are separated by grade levels and schools. The charts and pie graphs appear to represent a Fountas & Pinnell assessment of each grade level at different schools. On the face of the record, it is difficult to determine what financial loss or gain is being claimed.
- [113] Page 6240 of Batch 26 is an internal email between Education employees. The redacted information describes the type of information in the attachments to the email. On the face of the record, it is difficult to determine what financial loss or gain is being claimed.
- [114] Page 6270 of Batch 26 is an email by a third party to Education. The third party says it is conducting an audit for a particular client. On the face of the sentence, it is difficult to determine what financial loss or gain is being claimed.
- [115] Pages 5598, 6597 and 6610 of Batch 26 is part of a contract between a third party, Michael Walter, and Education. Education redacted a portion of the contract which provides details of what the contractor would be paid, the maximum amount, the day rate (and the maximum amount paid per month) and the maximum amount to be paid for mileage expenses. The third party, Michael Walter, provided a submission asserting costs associated with the work they had done should not be released. They said:

At the time of the agreement, I was a private citizen contracted to work on behalf of the Ministry of Education. The release of this information could reasonably result in a financial loss to me and my family, as it would reveal the costs associated with the work I had completed on behalf of Education. In addition, **the release of this information could result in my inability to properly negotiate future contracts. Finally, this information being public may inhibit my competitive position in**

future contract negotiations, as other contractors could undercut my costs based on this release.

As I am no longer a Government of Saskatchewan employee, my ability to contract for services in the future is an option I want to leave open for myself, and releasing this information will prevent me from doing so. I ask that this information not be released to the person who requested this information.

[Emphasis added]

[116] In my office's [Review Report 236-2017](#), I said that the risk of being underbid by competitors for future contracts did not meet the threshold for subsections 19(1)(c)(i) and (ii) of FOIP. I said:

[20] WSA's arguments to support the application of subsections 19(1)(c)(i) and (ii) of FOIP appear to be that if the information was released to the Applicant, this would result in financial loss for the third parties and result in a competitive advantage.

[21] However, as provided in the IPC Guide to Exemptions, Review Reports 007-2015, 195-2015 and 196-2015, found that the risk of being underbid by competitors for future contracts did not meet the threshold for this provision. Releasing costs will increase the chances that the public body will obtain fair bids and a competitive bidding process.

[22] As such, I do find that subsection 19(1)(c)(i) or (ii) of FOIP applies to the withheld information in the record.

[Emphasis added]

[117] Similarly, I find that the third party's argument that their competitive position may be inhibited in future contract negotiations to not meet the threshold for subsection 19(1)(c)(i) of FOIP.

[118] In addition, I note that the amount paid to the third party by Education is already published in Volume 2 of the Government of Saskatchewan's Public Accounts 2022-23.

[119] As such, I find that the release of pages 5598, 6597 and 6610 would not result in the financial loss being claimed by the third party.

[120] In conclusion, I find that Education did not properly apply subsection 19(1)(c)(i) of FOIP to page 759 of Batch 11 and pages 5509 to 5513, 5598, 6240, 6270, 6597 and 6610 of Batch 26.

8. Did Education properly apply subsection 19(1)(c)(ii) of FOIP?

[121] Education applied subsection 19(1)(c)(ii) of FOIP to the following:

- Page 759 of Batch 11, and
- Pages 5509 to 5513, 5598, 6240, 6597 and 6610 of Batch 26.

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

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

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

...
(ii) prejudice the competitive position of;

...
a third party;

[123] My office uses the following two-part test to determine if subsection 19(1)(c)(ii) of FOIP applies:

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

(*Guide to FOIP*, Ch. 4, pp. 221-222)

[124] Page 221 of *Guide to FOIP*, Ch. 4, provides the following definitions:

- "Prejudice" in this context refers to detriment to the competitive position of a third party.

- “Competitive position” means the information must be capable of use by an existing or potential business competitor, whether that competitor currently competes for the same market share. For example:
 - Information that discloses the profit margin on a private company’s operations.
 - Marketing plans, including market research surveys, polls.
 - Information that reveals the internal workings of a private company.

[125] Education did not provide arguments in its submission as to how subsection 19(1)(c)(ii) of FOIP applies to the records at issue.

[126] Page 759 of Batch 11 contains a contingency funding report. Funding provided by Education to Legacy Christian Academy is published in Volume 2 of the Government of Saskatchewan’s Public Accounts each year. Further, it’s unclear how the release of contingency funding would affect Legacy Christian Academy’s ability to compete in the marketplace. Therefore, I find that the release of such information would not prejudice Legacy Christian Academy’s competitive position in seeking funding from Education.

[127] Pages 5509 to 5513 of Batch 26 are charts and pie graphs that appear to represent a Fountas & Pennell assessment of each grade level at different schools. On the face of the record, it is difficult to determine what the different schools (the third parties) would be competing for, and how the release of the information would prejudice the third party’s ability to compete.

[128] Page 6240 of Batch 26 is an internal email between Education employees. The redacted information describes the type of information in the attachments to the email. On the face of the record, it is difficult to determine which third parties would be impacted, what the third parties are competing for, and how the release the information would prejudice any third parties’ ability to compete.

[129] Pages 6270 of Batch 26 is an email by a third party to Education where the third party says it is conducting an audit for a particular client. On the face of the record, it is difficult to determine how releasing this sentence would prejudice the third party.

[130] Finally, regarding pages 5598, 6597 and 6610 of Batch 26, which involves the contract between the third party, Michael Walter, and Education, I have already quoted the submission by Michael Walter in my analysis of subsection 19(1)(c)(i) of FOIP. As noted in my office's [Review Report 236-2017](#), the risk of being underbid by competitors for future contracts do not meet the threshold for subsection 19(1)(c)(ii) of FOIP.

[131] I find that Education has not properly applied subsection 19(1)(c)(ii) of FOIP to Page 759 of Batch 11 and pages 5509 to 5513, 5598, 6240, 6597 and 6610 of Batch 26.

9. Did Education properly apply subsection 19(1)(c)(iii) of FOIP?

[132] Education applied subsection 19(1)(c)(iii) of FOIP to the following:

- Page 759 of Batch 11, and
- Pages 5598, 6240, 6597, and 6610 of Batch 26.

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

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

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

...
(iii) interfere with the contractual or other negotiations of;

a third party;

[134] My office uses the following two-part test to determine if subsection 19(1)(c)(iii) of FOIP applies:

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

(*Guide to FOIP*, Ch. 4, pp. 226-227)

[135] Pages 226 to 227 of *Guide to FOIP*, Ch. 4, provides the following definitions:

- A “negotiation” is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter.
- “Interfere” means to hinder or hamper.

[136] The government institution and third party do not have to prove that a harm is probable but need to show that there is a “reasonable expectation of harm” if any of the information were to be released. In [*British Columbia \(Minister of Citizens' Service\) v. British Columbia \(Information and Privacy Commissioner\), \(2012\)*](#), Bracken J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm.

[137] Prospective or future negotiations could be included within this exemption, if they are foreseeable. It may be applied even though negotiations have not yet started at the time of the access to information request, including when there has not been any direct contact with the other party or their agent. However, a vague possibility of future negotiations is not sufficient. There must be a reasonable fact-based expectation that the future negotiations will take place.

[138] In its submission, Education said:

Page 6240 contains statements related to students withdrawing from a school. This information is exempt from release pursuant to subsection 19(1)(c) of FOIP, as it results in a financial loss to the school. Funding from government is directly based on the number of students in the school, and children withdrawing from a school is a financial loss to the school.

[139] Education had also provided arguments as to how subsection 19(1)(c)(iii) of FOIP applied to page 755 of Batch 11. However, Education released the portion of page 755 of Batch 11 that was redacted pursuant to subsection 19(1)(c) of FOIP to the Applicant on August 22, 2024, and so I am not considering its reliance on subsection 19(1)(c) of FOIP to this page.

[140] Based on a review of the pages to which Education applied subsection 19(1)(c)(iii) of FOIP, including page 6240 of Batch 26, there is no apparent negotiations that are occurring or any foreseeable prospective or future negotiations. Therefore, I find that Education did not properly apply subsection 19(1)(c)(iii) of FOIP to page 759 of Batch 11 and pages 5509 to 5513, 5598, 6240, 6597 and 6610 of Batch 26.

10. Did Education properly apply subsection 19(1)(d) of FOIP?

[141] Education applied subsection 19(1)(d) of FOIP to page 759 of Batch 11, pages 5643 to 5653, and pages 5714 to 5724 of Batch 26.

[142] Subsection 19(1)(d) of FOIP provides:

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

...

(d) a statement of a financial account relating to a third party with respect to the provision of routine services from a government institution;

[143] My office uses the following two-part test to determine if subsection 19(1)(d) of FOIP applies:

1. Is the record a statement of a financial account relating to a third party with respect to the provision of routine services?
2. Is the statement from a government institution?

(*Guide to FOIP*, Ch. 4, pp. 231-232)

[144] Pages 231 to 232 of *Guide to FOIP*, Ch. 4, provide definitions for the following terms:

- A “statement” is a formal written or oral account, setting down facts, a document setting out the items of debit and credit between two parties.
- A “statement of account” is a report issued periodically (usually monthly) by a creditor to a customer, providing certain information on the customer’s account,

including the amounts billed, credits given and the balance due; a document setting out the items of debit and credit between two parties.

- An “accounting” means a detailed statement of the debits and credits between parties to a contract or to a fiduciary relationship; a reckoning of monetary dealings.
- An “account” means a record of financial expenditure and receipts; a bill taking the form of such a record.
- “Financial” means of or pertaining to revenue or money matters.
- “Relating 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 provision of routine services.
- “With respect to” are words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters.
- “Routine” means a regular course of procedure; an unvarying performance of certain acts; regular or unvarying procedure or performance.
- “Services” means labour performed in the interest or under the direction of others; the performance of some useful act or series of acts for the benefit of another, usually for a fee; an intangible commodity in the form of human effort, such as labour, skill or advice.

[145] In its submission, Education said:

Pages 5643-5653 are statements of account for multiple independent schools. The information related to LCA is subject to exemption pursuant to subsection 19(1)(d), as it is a statement of account for the provision of services (the provision of funding, at the direction of Cabinet) from a government institution (the Ministry)... Pages 5714-5724 contain similar redactions, and 19(1)(d) would apply to those pages as well.

[146] Page 759 of Batch 11, as described earlier, contains a contingency funding report. It describes funding provided by Education to Legacy Christian Academy. This does not qualify as a statement of a financial account.

[147] Based on a review by my office, pages 5643 to 5653 and pages 5714 to 5724 of Batch 26 are spreadsheets of payments made by Education to independent schools. Such spreadsheets do not qualify as a statement of account.

[148] The first part of the two-part test is not met. I find that Education did not properly apply subsection 19(1)(d) of FOIP to page 759 of Batch 11, pages 5643 to 5653, and pages 5714 to 5724 of Batch 26.

11. Did Education properly apply subsection 18(1)(b) of FOIP?

[149] Education applied subsection 18(1)(b) of FOIP to pages 756 to 757 of Batch 11. Specifically, Education redacted one column entitled “Supplier Num” and another column entitled “Supplier Site” from a spreadsheet that appears to be an accounting document.

[150] 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 a right of use; and

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

[151] My office uses the following three-part test to determine if subsection 18(1)(b) of FOIP applies:

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. 171-173)

[152] Earlier, in my analysis of subsection 19(1)(b) of FOIP, I had already provided definitions of financial and technical information. Pages 171 to 173 of *Guide to FOIP*, Ch. 4, provide the additional definitions:

- “Commercial information” means information relating to the buying, selling or exchange of merchandise or services. This includes third party associations, past history, references and insurance policies and pricing structures, market research, business plans and customer records.
- “Scientific information” is information exhibiting the principles or methods of science. The information could include designs for a product and testing procedures or methodologies. It is information belonging to an organized field of knowledge in the natural, biological, or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information.
- “Proprietary” means of, relating to or holding as property.
- “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”.
- “Owner” means someone who has the right to possess, use and convey something; a person in whom one or more interests are vested.
- “Right of use” means a legal, equitable or moral title or claim to the use of property, or authority to use.
- “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.
- “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.

[153] In its submission, Education said:

Pages 756 and 757 contain redactions of the supplier number and site from the Government of Saskatchewan financial payment system pursuant to 18(1)(b) of FOIP. The supplier number and site show how the Government of Saskatchewan financial payment system allocates numbers to suppliers and could reasonably release technical information in which the Government of Saskatchewan has a proprietary interest and right of use and as it is a financial payment system, it could reasonably have monetary value.

[154] Based on a review of pages 756 to 757 of Batch 11, the information does not qualify as financial, commercial, scientific or technical information. Further, the redacted information is the supplier number and supplier site assigned to Legacy Christian Academy in the Government of Saskatchewan's accounts payable system. The supplier number and supplier site is information that is useful to the Government of Saskatchewan in using its own accounts payable system. However, it is not information useful to other organizations. Education asserted that the Government of Saskatchewan has a "proprietary interest" in the supplier number and supplier site. In my office's [Review Report 301-2023](#) at paragraphs [55] and [56], I explained the purpose of subsection 18(1)(b) of FOIP:

[55] However, the question is whether SaskPower has demonstrated a proprietary interest in such information that would have monetary value for SaskPower. In my office's [Review Report 132-2023](#) concerning the Saskatchewan Health Authority, I said the following at paragraph [26] about subsection 17(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act*, which is an equivalent provision:

[26] Ontario's Freedom of Information and Protection of Privacy Act subsection 18(1)(a) is similar to Saskatchewan's, but instead of proprietary interest or right of use, it uses the phrase "that belongs to the Government of Ontario or an institution." In Ontario Information and Privacy Commissioner Office's (IPC) Order MO-1746, the phrase "belongs to" was found to mean "ownership" which makes it relevant for Saskatchewan's subsection 17(1)(b) of LA FOIP. In Order MO-1746, the adjudicator stated the following:

The Assistant Commissioner has thus determined that the term "belongs to" refers to "ownership" by an institution, and that the concept of "ownership of information" requires more than the right to simply possess, use or dispose of information, or control access to the physical record in which the information is contained. **For information to "belong to" an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense – such as copyright, trademark, patent or industrial design – or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party.**

Examples of the latter type of information may include trade secrets, business to business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information (Guide to LA FOIP, Ch 4, pp. 139-140).

[56] **Subsection 18(1)(b) of FOIP is intended to protect a government institution's competitiveness in the marketplace in the same way a private corporation's competitiveness would be protected.** You might have a tech company, for example, invest in research and development to build a particular technology that it can then patent and market and monetize. The tech company then has a proprietary use of (or interest in) the technology it developed that helps it be competitive in the marketplace and make money. SaskPower has not demonstrated that this is the type of relationship that exists in this matter, and so has not met the second and third parts of the test. I find, therefore, that SaskPower did not properly apply subsection 18(1)(b) of FOIP. I will now consider its reliance on subsection 18(1)(d) of FOIP.

[Emphasis added]

[155] Education has merely asserted that the Government of Saskatchewan has proprietary interest in the supplier number and supplier site assigned to Legacy Christian Academy in its accounts payable system, but it has not explained how it has a proprietary interest in the information. I find that Education did not properly apply subsection 18(1)(b) of FOIP to pages 756 to 757 of Batch 11.

12. Did Education properly apply subsection 18(1)(d) of FOIP?

[156] Education applied subsection 18(1)(d) of FOIP to pages 6702, 6703 and 6704 of Batch 28. Specifically, Education applied subsection 18(1)(d) of FOIP to information about a standing offer on personal protective equipment.

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

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

...

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

[158] My office uses the following two-part test to determine if subsection 18(1)(d) of FOIP applies:

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

(*Guide to FOIP*, Ch. 4, pp. 180-181)

[159] Earlier in my analysis of subsection 19(1)(c)(iii) of FOIP, I define the terms “negotiation” and “interfere”.

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

[161] In its submission, Education said:

Pages 6702-6704 are related to suppliers that could be contracted with to provide personal protective equipment during the pandemic. This information was compiled by the Government of Saskatchewan for the use of government institutions and stakeholders such as school divisions and registered independent schools. This information was redacted pursuant to subsection 18(1)(d), as it reveals details of the fixed costs that had been negotiated. Releasing this information could reasonably interfere with future contract negotiations, as contractors/vendors may not want their costs made public. It could also reasonably interfere with the Government of Saskatchewan’s ability to negotiate future costs. At the time of the negotiations, there was a global pandemic which caused supply chain issues globally. As the world has recovered from the pandemic in the past two years, supply chain issues have continued to decrease in severity. The fixed costs at the time of the pandemic may have changed significantly due to the decrease in supply chain issues, and the inflation being felt around the world. It is possible that some suppliers have had significant changes to their fixed costs, and revealing these pandemic related fixed costs may harm future contract negotiations. Finally, for future Government of Saskatchewan negotiations, give the limited availability of personal protective equipment at the time, the costs

associated with these items may have been agreed upon at a much higher rate than what the Government of Saskatchewan would normally agree to outside of a global pandemic. Public safety was paramount. However, now that the immediate danger has passed, having these fixed costs a matter of public record could negatively impact future contract negotiations – the need for personal protective equipment did not disappear when the pandemic receded – many government institutions still require personal protective equipment on a daily basis.

[162] Based on a review of the records, and as noted by Education in its submission, the standing offer on PPE had already been negotiated. Education asserted that the release of the fixed costs that were negotiated during the recent pandemic may harm future contract negotiations, given that “some suppliers have had significant changes to their fixed costs”. Revealing the fixed costs negotiated during the pandemic does not beholden the Government of Saskatchewan to agree to the same fixed costs in the future. Also, revealing the fixed costs that were negotiated during the pandemic does not reveal any strategy used by the Government of Saskatchewan that would hinder or interfere with future negotiations. I find that Education did not properly apply subsection 18(1)(d) of FOIP to pages 6702, 6703 and 6704 of Batch 28.

13. Did Education properly apply subsection 17(1)(a) of FOIP?

[163] Education applied subsection 17(1)(a) of FOIP to the following:

- Pages 552, 631, 634 to 636, 638, 639, 641, 670, 671, 675, 678 to 682, 685, 686, 693, 694, 697, 701, 704, 708, 712 and 715 of Batch 10.
- Pages 2400 and 2401 of Batch 18.
- Pages 5308 and 5309 of Batch 25.
- Pages 5434 to 5442, 5475 to 5478, 5491, 5814, 6125 to 6127, 6132 to 6134, 6141 to 6143, 6270 to 6272, 6274 and 6275 of Batch 26.
- Pages 6788 to 6793 of Batch 28.
- Page 6835 of Batch 29.

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

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

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

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

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

(*Guide to FOIP*, Ch. 4, pp. 128-131)

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

[166] Pages 128 to 130 of the *Guide to FOIP*, Ch. 4, provide the following definitions:

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

[167] In its submission, Education said:

Pages 631, 634-636, and 638-641 provide advice regarding edits to a response to an interview request from the CBC. Pages 685 and 686 reflect advice an employee received during a visit to Saskatoon, Prince Albert and Melfort.

Page 671 provides advice or policy options for potential trustees or administrators for the Independent School Intervention Strategy.

Page 670 contains a recommendation for the Independent School Intervention Strategy.

On pages 2400 and 2401 is analysis and advice regarding funding amounts. The employees discuss the actual funding amount received compared to the amounts provided for in the Order in Council. The amounts have been disclosed but the analysis and advice on these pages have been properly withheld.

Pages 5299, 5303, 5306, 5308 and 5309 reflect proposed responses to media inquires (i.e. advice or proposal) and analyses from various employees around the suggestion. These emails are internal to the Ministry.

Draft letters are found on pages 5415, 5544-5546, and 5814). Drafts and redrafts of advice that inform the end result, even if the content of a draft is not included in the final version falls within the scope of this exemption as was found in *John Doe v Ontario (Finance)*, 2014 SCC 36 at paragraph 50.

Pages 5434 to 5449 are the priority action plan proposals. This information was fully redacted pursuant to subsections 17(1)(a) and (b). The information contained within these documents are proposals, but the intent is for consultation and deliberation between the ministry and stakeholders.

Pages 5475 to 5478 list the objectives of the Provincial Education Council and the Implementation Team. The objectives were advice, recommendations and a proposal for what the final objectives should be. The record was created to inform consultations and deliberations with stakeholders, which would result in a final document.

Page 5491 contains an opinion regarding assessments and what a future state could look like. This information has been withheld as advice pursuant to this exemption.

Pages 6270-6275 are emails between LCA and the ministry related to an expression of interest and questions that LCA had. The information within these emails is subject to exemption pursuant to subsection 17(1)(a) as these are proposals created for and by a government institution.

Pages 6788-6793 are an email and a draft paper put forward to provide policy options for the Deputy Minister and the Minister to consider. It was created by a government employee specifically for that purpose. The release of this document would indicate the options that were considered prior to a final decision being made. Therefore, this information is subject to exemption pursuant to 17(1)(a) of FOIP.

Page 6835 contains a redaction, pursuant to subsection 17(1)(a) of FOIP. The information contained on this page is a recommendation from the Executive Director of the Programs Branch to the registered independent schools on COVID testing options.

[168] I note that in its submission, Education asserted it had applied subsection 17(1)(a) of FOIP to certain pages, such as pages 5299, 5303 and 5306. However, Education had not claimed subsection 17(1)(a) of FOIP on these pages when it responded to the Applicant. Subsection 17(1)(a) of FOIP is a discretionary exemption. Per section 2-4 of my office's [*Rules of Procedure*](#), my office does not consider discretionary exemptions not raised in the head's decision. As such, I will not consider subsection 17(1)(a) of FOIP to pages to which Education had not claimed the exemption when it responded to the Applicant.

[169] In Batch 10, I find that portions of pages 635, 636, 638, 639, 678, 679, 681 and 682 contain proposed responses to media inquiries. Further, portions of pages 670 and 671 contain a recommendation. Further, pages 670 and 671 contain a recommendation in a briefing note. I will consider the second part of the test on these pages.

[170] In Batch 26, I find that a portion of page 5491 contains advice by an Education employee to a principal at a school. Further, pages 6125 to 6127, 6132 to 6134, and 6141 to 6143 contain recommended responses to private individuals. I will consider the second part of the test on these pages.

[171] In Batch 28, I find that portions of pages 6790 and 6791 contain policy options. Further, pages 6792 and 6793 contain analysis of funding to schools. I will consider the second part of the test on these pages.

[172] However, on the remaining pages to which Education applied subsection 17(1)(a) of FOIP, I do not find that they contain advice, proposals, recommendations, analyses or policy options. For example, in the following pages, Education applied subsection 17(1)(a) of FOIP but I have found that the information does not qualify as advice, proposals, recommendations, analyses or policy options:

- Batch 10
 - Pages 552, 675, 693, 694, 697, 701, 704, 708, 712 and 715 - contain factual information.
 - Page 631 - contains an email where an Education employee seeks factual information from other Education employees.
 - Page 634 - is an email where a Media Relations Officer at Executive Council provides direction to an Education employee.
 - Page 641 – An Education employee says what they will do next.
 - Page 680 – Internal email exchange where Education employees ask about and provides information about policy about curriculum.
 - Pages 685 and 686 – contains summaries of annual inspections of qualified independent schools.
- Batch 18
 - Pages 5308 and 5309 - contain an explanation on the breakdown of a payment made to historical high schools and qualified independent schools.
- Batch 25
 - Pages 5308 and 5309 - contain additions by an executive director to a response to a media inquiry prepared by an Education employee. Additions made by a superior is not advice, proposals, recommendations, analyses or policy options to the employee.

- Batch 26
 - Page 5415 - contains a draft of a letter by Education to Legacy Christian Academy. In my office's [Review Report 141-2023](#), I cited paragraph 75 of [Order F2016-016](#) by Alberta's Office of the Information and Privacy Commissioner (AB IPC), which provides that a draft in and of itself does not transform the draft into advice, proposals, recommendations, analyses, policy options, consultations or deliberations. The information must have that character to begin with. Similarly, then, the draft letter at page 5415 is not advice, proposals, recommendations, analyses, or policy options simply because it is the draft version of a letter. On review of page 5415, the contents do not contain anything with the character of advice, proposals, recommendations, analyses, policy options, consultations or deliberations.
 - Pages 5434 to 5442 - contain an update by the Curriculum Review Committee.
 - Pages 5475 to 5478 - contain the objectives outlined in a table of the Provincial Education Council and Provincial Education Plan Implementation Team.
 - Pages 5814 - contains a draft of a letter by an Education employee to Legacy Christian Academy. A draft of a letter itself is not advice, proposal, recommendation, analyses or policy options.
 - Page 6270 - contains an email exchange where an auditor seeks clarification and Education provides clarification.
 - Pages 6271 and 6274 - contain emails where an Education employee provides direction or instruction to Legacy Christian Academy.
 - Pages 6272 and 6275 - contain emails where Legacy Christian Academy seeks direction or instruction from Education.
- Batch 28
 - Page 6788 - contains the opinion of a director at Education.
 - Page 6789 - contains the first page of a briefing note, which contains factual information.
- Batch 29
 - Page 6835 contains an email by an executive director at Education, which provides direction or instruction to schools.

[173] I find that Education did not properly apply subsection 17(1)(a) of FOIP to the pages described in the preceding paragraph.

[174] I will consider if pages 635, 636, 638 to 671, 678, 679, 681 and 682 of Batch 10, pages 5491, 6125 to 6127, 6132 to 6134, and 6141 to 6143 of Batch 26, and pages 6792 and 6793 of Batch 28 meet the second part of the two-part test.

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

[175] Pages 131 and 132 of the *Guide to FOIP*, Ch. 4, provide that the advice, proposals, recommendations, analyses, and/or policy options can be developed by a government institution or for a government institution including one not relying on the exemption. This is supported by the use of “a government institution” and not “the government institution” in the provision. Further, “developed by or for” means the advice, proposals, recommendations, analyses, and/or policy options must have been created either: 1) within the government institution, or 2) outside the government institution but for a government institution and at its request (for example, by a service provider or stakeholder).

[176] As described earlier, pages 635, 636, 638, 639, 678, 679, 681 and 682 of Batch 10 contain proposed responses to media inquiries. The proposed responses were developed by a Senior Media Relations Consultant at Education. Therefore, the second part of the two-part test is met and I find that Education properly applied subsection 17(1)(a) of FOIP to these pages.

[177] Pages 670 and 671 of Batch 10 contain a recommendation in a briefing note developed by an Education employee. Therefore, the second part of the two-part test is met and I find that Education properly applied subsection 17(1)(a) of FOIP to these pages.

[178] A portion of page 5491 of Batch 26 contains advice by a Program Manager at Education to a qualified independent school. Further, pages 6125 to 6127, 6132 to 6134, and 6141 to 6143 contain recommended responses developed by a Correspondence Consultant at

Education. Therefore, the second part of the two-part is met and I find that Education properly applied subsection 17(1)(a) of FOIP to these pages.

[179] A portion of page 6790 and page 6791 of Batch 28 contains policy options developed by a director at Education. Further, pages 6792 and 6793 contains analyses of funding to schools by the director at Education. Therefore, the second part of the two-part test is met and I find that Education properly applied subsection 17(1)(a) of FOIP to these pages.

14. Did Education properly apply subsection 17(1)(b) of FOIP?

[180] Education applied subsection 17(1)(b) of FOIP to the following pages:

- Pages 631, 634 to 636, 638, 639, 641, 678 to 682, 685 and 686 of Batch 10.
- Pages 735 and 754 of Batch 11, and
- Pages 5434 to 5442, 5475 to 5478, 5544 to 5546, 6135 and 6193 of Batch 26.

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

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

...

(b) consultations or deliberations involving:

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

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

1. Does the record contain consultations or deliberations?

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

(*Guide to FOIP*, Ch. 4, pp. 136-138)

[183] Pages 136 to 138 of my office's *Guide to FOIP*, Ch. 4, provide the following definitions:

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

[184] In past reports, I cited [Order F2023-13](#) by Alberta's Office of the Information and Privacy Commissioner (AB IPC) that speak to subsections 24(1)(a) and (b) of Alberta's *Freedom of Information and Protection of Privacy Act* (AB FOIP). Subsection 24(1)(a) and (b) of AB FOIP is similar to subsections 17(1)(a) and (b) of FOIP. In this case, I am citing the Order to clarify what a consultation and deliberation are for the purposes of subsection 17(1)(b) of FOIP:

[para 146] I agree with the interpretation Commissioner Clark assigned to the terms “consultation” and “deliberation” generally. However, as I stated in Order F2012-10, section 24(1)(b) differs from section 24(1)(a) in that section. 24(1)(a) is intended to protect communications developed for a public body by an advisor, while section **24(1)(b) protects communications involving decision makers. That this is so is**

supported by the use of the word deliberation: only a person charged with making a decision can be said to deliberate that decision. Moreover, “consultation” typically refers to the act of seeking advice regarding an action one is considering taking, but not to giving advice in relation to it. Information that is the subject of section 24(1)(a) may be voluntarily or spontaneously provided to a decision maker for the decision maker’s use because it is the responsibility of an employee to provide information of this kind; however, such information cannot be described as a “consultation” or a “deliberation”. Put simply, section 24(1)(a) is concerned with the situation where advice is given, **section 24(1)(b) is concerned with the situation where advice is sought or considered.**

[Emphasis added]

[185] Subsection 17(1)(b) of FOIP deals with the protection of the decision-making process. There needs to be a decision and a decision-maker. If government officials or employees are involved in an advisory role in the decision-making process, then their roles need to be clearly understood. A government institution needs to lay out all these elements.

[186] In its submission, Education said:

Page 735 contain [sic] a consultation involving Ministry employees and involves background information that is relevant for the Ministry to know. On page 754, there is a deliberation between Ministry employees regarding a situation that will require a decision. Both of these documents are subject to 17(1)(b).

Pages 5299, 5303, 5306, 5308 and 5309 reflect proposed responses to media inquires [sic] (i.e. advice or proposal) and analyses from various employees around the suggestion. These emails are internal to the Ministry.

Pages 5434 to 5449 are the priority action plan proposals. This information was fully redacted pursuant to subsections 17(1)(a) and (b). The information contained within these documents are proposals, but the intent is for consultation and deliberation between the ministry and stakeholders.

Pages 5475 to 5478 list the objectives of the Provincial Education Council and the Implementation Team. The objectives were advice, recommendations and a proposal for what the final objectives should be. The record was created to inform consultations and deliberations with stakeholders, which would result in a final document. This was shared with the recipients for the purpose of an update, but also to invite consultation on the final objectives. While that is not explicitly stated in the email on page 5433, the Ministry invites comments and consultation from stakeholders regularly, and the stakeholders proactively provide said feedback on a regular basis. These stakeholders have been involved with the ministry for an extensive period of time, and are aware of the fact that they can provide feedback where they deem necessary.

- [187] I note that in its submission, Education asserted that it applied subsection 17(1)(b) of FOIP to certain pages, such as pages 5299, 5303, 5306, 5308 and 5309 of Batch 25. However, Education had not claimed subsection 17(1)(b) of FOIP on these pages when it responded to the Applicant. Subsection 17(1)(b) of FOIP is a discretionary exemption. Similar to what I have done in my analysis of subsection 17(1)(a) of FOIP, I will not consider subsection 17(1)(b) of FOIP to the pages to which Education had not claimed the exemption when it had responded to the Applicant, pursuant to section 2-4 of my office's [*Rules of Procedure*](#).
- [188] Based on a review of the pages to which Education applied subsection 17(1)(b) of FOIP, my office noted that there is only one instance in which a consultation appears. Page 6193 of Batch 26 contains an internal email among Education employees. The first two sentences of the email timestamped 10:50 a.m. were redacted. The first sentence summarizes a consultation and the advice provided. The consultation involves Education employees. Therefore, I find that Education properly applied subsection 17(1)(b) of FOIP to this first sentence of the email timestamped 10:50 a.m.
- [189] However, my office found no other instance in which the redacted content qualified as a consultation or deliberation. The redacted contents did not include the seeking of views of officers or employees of a government institution regarding the appropriateness of a particular proposal or suggested action (consultation), nor did the redacted contents include any discussions of reasons for or against an action or discussion conducted with a view towards making a decision (deliberation). In Batch 10, for example, I had already found subsection 17(1)(a) of FOIP applies to some of the redacted content to which Education also claimed subsection 17(1)(b) of FOIP. However, for the remaining content, I found that the information did not qualify as a consultation or deliberation. For example, pages 685 and 686 is a summary of an Education employee's annual inspection of schools. The summary is not a consultation or deliberation.
- [190] In Batch 11, Education applied subsection 17(1)(b) of FOIP to one sentence on page 735 and to another sentence on page 754. The sentences are not consultations or deliberations where advice was sought, or a decision was being deliberated.

[191] In Batch 26, Education applied subsection 17(1)(b) of FOIP to pages 5434 to 5442, 5475 to 5478, 5544 to 5546 and 6135 and 6193. Pages 5434 to 5442 are updates from the curriculum review committee. Updates do not qualify as consultations or deliberations. Pages 5475 to 5478 is table of the Provincial Education Council and Provincial Education Plan Implementation Team where Education applied subsection 17(1)(b) of FOIP to the objectives that appear in the table. The objectives do not qualify as a consultation or deliberation. Pages 5544 to 5546 are a draft of a letter from Education to a private individual. Nothing in the draft of a letter qualifies as a consultation or deliberation. Page 6135 is an internal Education email where one sentence is redacted. The one sentence contains instruction, which does not qualify as a consultation or deliberation.

[192] I find that Education did not properly apply subsection 17(1)(b) of FOIP to:

- Pages 631, 634 to 636, 638, 639, 641, 678 to 682, 685 and 686 of Batch 10,
- Pages 735 and 754 of Batch 11, and
- Pages 5434 to 5442, 5475 to 5478, 5544 to 5546 and 6135 of Batch 26.

15. Did Education properly apply subsection 16(1) of FOIP?

[193] Education applied subsection 16(1) of FOIP to the following:

- Page 552 of Batch 10.
- Pages 767 to 770, 772 to 775 to 780, 795 and 797 of Batch 12.

[194] Subsection 16(1) of FOIP provides:

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).

[195] Page 94 of that *Guide to FOIP*, Ch. 4, provides that subsection 16(1) of FOIP is a mandatory class-based provision. Subsections 16(1)(a) through (d) of FOIP are not an exhaustive list. Therefore, even if none of the subsections are found to apply, the introductory wording of subsection 16(1) of FOIP must still be considered. In other words, is the information a confidence of Executive Council?

[196] Page 100 of the *Guide to FOIP*, Ch. 4 provides the following definitions:

- “Cabinet confidences” are generally defined as, in the broadest sense, the political secrets of Ministers individually and collectively, the disclosure of which would make it very difficult for the government to speak in unison before Parliament and the public.
- “Including” means that the list of information that follows is not complete (non-exhaustive). The examples in the provision are the types of information that could be presumed to disclose a confidence of the Executive Council (Cabinet).

[197] In its submission, Education said:

Page 552 is an Agency Update Form. This form is included as part of the package that proceeds to Cabinet. The form includes personal information to help inform Cabinet about the individual who is proposed to be appointed. The form indicates the legal authority for the appointment, the name of the agency and some background information of the agency (including its address). The form also indicates who the appointee would represent, if applicable. As this document was created for Cabinet, it falls within one of the examples of Cabinet privilege (ss. 16(1)(a)).

The Ministry acknowledges that the entire Cabinet package seems to be missing. Normally, the package would include an Order in Council and background of the Order in Council, which includes an explanation of the board, the history, who is on the board, remuneration requirements and a Fact Sheet. Most of these records appear to be missing. The Ministry will be conducting another search for these records because the Agency Update Form was the only record received.

Pages 767 and 768 summarizes the changes that have been made to a communication strategy in the CDI attached to the email. The CDI is intended for Cabinet and therefore the information in the CDI or information summarizing information in the CDI and the reasons behind it (i.e. how the Cabinet document changes as it is developed within the Ministry) is also protected by Cabinet privilege.

On pages 769, 770, 774, 777 to 780, 795 and 797, the information withheld discloses what item is headed to Cabinet and the topic to be decided upon. The information on these pages also outlined what needs to be updated or changed in the Cabinet Decision Item. The preparation work to a Cabinet document is covered by the exemption as is the specific issue Cabinet is being asked to decide on. On page 32, there is a discussion around timing. The timing of when an item will proceed to Cabinet is protected because it could reveal confidential aspects of the decision-making process, potentially influencing outcomes, compromising strategic positions, or undermining the principle of collective responsibility. It can also lead to speculation around the government's plans or priorities before they are officially announced. The Ministry appreciates that these timelines have since passed but subsection 16(1) is a mandatory exemption, which means once found to apply, it must be applied.

The information withheld based on this exemption on pages 772, 775, and the attachment found on page 773 formed the basis of the CDI. This information was then used to draft the CDI for Cabinet.

[198] Page 552 of Batch 10 contains an Agency Data Update Form. Based on Education's submission, it is a record presented to Cabinet. I find Education properly applied subsection 16(1) of FOIP to page 552 of Batch 10.

[199] Further, pages 767 and 770 of Batch 12 are emails, while page 773 is an attachment to an email. Portions of pages 767 and 770 of Batch 12 describe contents of a Cabinet Decision Item. Therefore, I find that Education properly applied subsection 16(1) of FOIP to portions of pages 767 and 770 of Batch 12. Similarly, page 773 of Batch 12 is a record prepared for Cabinet. Therefore, I find that Education properly applied subsection 16(1) of FOIP to page 773 of Batch 12.

[200] However, for the remaining pages to which Education applied subsection 16(1) of FOIP, I find that they do not contain a cabinet confidence. Pages 768, 769, 772, 774, 775, 777 to 780, 795 and 797 of Batch 12 merely refer to a Cabinet Decision Item but do not contain the substance of the Cabinet Decision Item. Therefore, I find that Education did not properly apply subsection 16(1) of FOIP to pages 768, 769, 772, 774, 775, 777 to 780, 795 and 797 of Batch 12.

[201] I will address Education's acknowledgement that the entire Cabinet package related to page 552 of Batch 10 seems to be missing when I undertake my analysis of Education's search efforts later in this Report.

16. Did Education properly apply subsection 15(1)(c) of FOIP?

[202] Education applied subsection 15(1)(c) of FOIP to pages 685 and 686 of Batch 10. Specifically, Education applied subsection 15(1)(c) of FOIP to portions of an email by the Superintendent of Programs summarizing the annual inspections they had completed at various schools. The subject line, which was disclosed to the Applicant, was "School Visits and annual inspections".

[203] Subsection 15(1)(c) of FOIP provides:

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

...

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

[204] My office uses the following two-part test to determine if subsection 15(1)(c) applies:

1. Does the government institution's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
 - a. Could the release of the information interfere with a lawful investigation?

b. Could the release disclose information with respect to a lawful investigation?

(*Guide to FOIP*, Ch. 4, pp. 53-54)

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

[205] A "lawful investigation" is an investigation that is authorized or required and permitted by law. The government institution should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future (*Guide to FOIP*, Ch. 4, p. 53).

[206] In its submission, Education said:

The Ministry submits that the investigation was permitted by section 21 of *The Registered Independent School Regulations* and it was also a law enforcement matter (because it was an inspection). The Ministry submits that it has demonstrated that the first part of the test for both subsections 15(1)(c) and (k).

The second part of the test requires the Ministry to establish that releasing the information could disclose information with respect to an open or closed investigation or law enforcement matter. The Ministry submits that releasing the information would disclose information with respect to closed investigation or law enforcement matter.

Pages 685 and 686 contain information that was gathered during an inspection conducted by the Ministry.

[207] In my office's [Review Report 030-2020, 050-2020](#), I had found that an inspection or inquiry under *The Northern Municipalities Act* qualifies as an investigation for the purposes of subsection 15(1)(c) of FOIP. This was because the person appointed to conduct the inquiry was provided powers set out in *The Public Inquiries Act, 2013*. I had found that *The Public Inquiries Act, 2013* provides powers that are consistent with those of an investigation. I had said:

[100] *The Public Inquiries Act, 2013* provides powers that are consistent with those of an "investigation". Sections 11, 12, 13 and 14 of the *Public Inquiries Act, 2013* give powers to compel evidence, power to inspect, power to search with a warrant and evidentiary privileges.

[208] Further, in my office's [Review Report 161-2023](#), I had found that an inquiry pursuant to section 88 of *The Police Act, 1990* qualifies as a lawful investigation for the purposes of subsection 15(1)(c) of FOIP.

[209] In this case, I am considering whether an inspection under section 358 of *The Education Act, 1995* and *The Registered Independent Schools Regulations* qualifies as an investigation for the purposes of subsection 15(1)(c) of FOIP.

[210] Section 358 of *The Education Act, 1995* provides:

358(1) Subject to the regulations, the operator of a registered independent school, or of an educational institution that provides educational services to pupils in courses of instruction prescribed pursuant to this Act, shall provide information to the ministry in the form and at any time that the minister may require with respect to the pupils, teachers, curriculum, facilities and equipment of that registered independent school or other educational institution.

(2) Subject to the regulations, the operator of every registered independent school or of an educational institution mentioned in subsection (1) is obligated to allow any inspection that the minister considers necessary.

[211] In its submission, Education had cited section 21 of *The Registered Independent Schools Regulations*, which deals with the supervision of independent schools. However, sections 23 and 24 of *The Registered Independent Schools Regulations* provide as follows:

23(1) The minister shall cause all registered independent schools, other than associate schools, to be inspected.

(2) The minister may appoint, designate, employ or approve as inspectors of registered independent schools only persons who:

(a) hold a Master of Education degree;

(b) hold a valid Professional A Teacher's Certificate issued pursuant to *The Registered Teachers Act*; and

(c) have a minimum of 2 years of school administration experience.

(3) Inspection of a registered independent school by the ministry:

(a) includes:

(i) examining and inspecting the financial condition or the administrative condition of the school or any other matter relating to the management, administration or operation of the school;

(ii) checking compliance with the Act, these regulations and the criteria for registration on an ongoing and collaborative basis with the school;

(iii) observing any aspect of the educational activities and educational operations in the school to protect the societal interest of educating the pupils in the school;

(iv) an appreciation and recognition of the distinct philosophical orientation of each registered independent school;

(v) reviewing the school's application of and adherence to *The Registered Independent Schools Policy and Procedure Manual* published by the ministry, as amended from time to time;

(v.1) in the case of an approved online learning provider, reviewing the school's application of and adherence to the *Quality Assurance Framework for K-12 Online Learning* published by the ministry, as amended from time to time;

(vi) reviewing pupil and teacher records;

(vii) meeting with pupils, parents, guardians, teachers, school administrators, the director, the principal and any other staff of the school; and

(viii) meeting with the board of the registered independent school;

(b) may include non-directive and unobtrusive supervision of the educational operations of the school.

(4) Inspection of a registered independent school by the ministry does not include inspection of the school's responsibility for:

(a) the recruitment and dismissal of independent school teachers; or

(b) the selection of the school's programs and courses.

24 In accordance with section 358 of the Act and these regulations, every registered independent school, other than an associate school, shall:

(a) permit inspection by the ministry, at all reasonable times, of:

(i) the school's facilities;

(ii) the conduct of the school's educational activities and educational operations; and

(iii) all records in the possession or under the control of the registered independent school that relate to the activities and functioning of the registered independent school;

(a.1) on the written request of the minister and in the manner required by the minister, submit to the minister any records, reports and other information required to be maintained by *The Registered Independent Schools Policy and Procedure Manual* published by the ministry, as amended from time to time;

(a.2) in the case of a registered independent school that is an approved online learning provider, on the written request of the minister and in the manner required by the minister, submit to the minister any records, reports and other information required to be maintained by the *Quality Assurance Framework for K-12 Online Learning* published by the ministry, as amended from time to time;

(b) submit an annual return, on the form provided by the minister, within the period required by the minister; and

(c) promptly provide to the minister copies of any records or any information that:

(i) are requested by the minister; and

(ii) relate to the activities and functioning of the registered independent school.

[212] Based on sections 23 and 24 of *The Registered Independent Schools Regulations*, the ministry appears to have similar powers as a commissioner under *The Public Inquiries Act, 2013* in the course of conducting an inspection. This includes inspecting a school's facilities and requiring schools to promptly provide any records or information requested by the minister.

[213] Therefore, I find that Education's activity qualifies as a "lawful investigation" under *The Registered Independent Schools Regulations*.

2. Does one of the following exist?

a. Could the release of the information interfere with a lawful investigation?

b. Could the release disclose information with respect to a lawful investigation?

- [214] To meet the second part of the test, it is only necessary for the government institution to demonstrate that either the release of the information could interfere with a lawful investigation, or the release of the information could disclose information with respect to a lawful investigation.
- [215] As quoted earlier, Education submitted that releasing the redacted information would disclose information with respect to a closed investigation or law enforcement matter.
- [216] “With respect to” are words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters (*Guide to FOIP*, Ch. 4, p. 54).
- [217] Section 15 of FOIP uses the word “could” versus “could reasonably be expected to” as seen in other provisions of FOIP. The threshold for “could” is somewhat lower than a reasonable expectation. The requirement for “could” is simply that the release of the information “could” have the specified result. There would still have to be a basis for asserting the outcome could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to FOIP*, Ch. 4, p. 55).
- [218] Based on the portions of pages 685 and 686 that Education applied subsection 15(1)(c) of FOIP, I find that the release of those particular portions would disclose information about the inspections conducted by Education.
- [219] I find that Education properly applied subsection 15(1)(c) of FOIP to pages 685 and 686 of Batch 10.
- [220] Since Education applied subsection 15(1)(k) of FOIP to the same portions to which it applied subsection 15(1)(c) of FOIP, there is no need for me to consider subsection 15(1)(k) of FOIP.

17. Did Education properly apply subsection 27(1) of HIPA?

[221] Education applied subsection 27(1) of HIPA to the following:

- Pages 597, 598 and 698 of Batch 10,
- Page 3872, 3885, 3886, 3898, 3899, 3904 and 3905 of Batch 20, and
- Page 6321 of Batch 26

[222] Subsection 27(1) of HIPA provides:

27(1) A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.

[223] In their submission, the Applicant said:

With respect to pages 3872, 3885, 3886, 3898, 3899, 3904 and 3905 the pages are in a range from 3865 to 3912 which was fully withheld by the Ministry. Accordingly, we are unable to confirm whether the referenced pages contain information as to the physical health of an individual. The Ministry has redacted the records in full, without stating that all information on the pages is personal health information withheld pursuant to section 29(1) of the Act and section 27(1) of HIPA.

[224] Earlier in this Report, I noted that in Batch 10, portions of pages 597, 598 and 698 contain information about the physical health of a staff member at a school. I also stated that in Batch 20, portions of pages 3872, 3885, 3886, 3898, 3899, 3904 and 3905 contain information about the physical or mental health of students. Finally, I stated that batch 26, page 6321 contains information about the physical health of an employee. This is personal health information as defined by subsection 2(1)(m)(i) of HIPA. As such, I find that Education properly applied subsection 27(1) of HIPA to pages 597, 598 and 698 of Batch 10, pages 3872, 3885, 3886, 3898, 3899, 3904 and 3905 of Batch 20, and pages 6321 of Batch 26.

[225] I note that Education identified the page range of 3865 to 3912 of Batch 20 as containing personal health information. In the preceding paragraph, I have already found that pages 3885, 3886, 3898, 3899, 3904 and 3905 (which is within the page range of 3865 to 3912 of Batch 20) contain personal health information as defined by subsection 2(1)(m)(i) of

HIPA. However, within the identified page range, I also find that page 3872 of Batch 20 contains personal health information. I find that Education has properly applied subsection 27(1) of HIPA to page 3872 of Batch 20.

[226] The remainder of the information within the page range of 3865 to 3912 is personal information under section 29 of FOIP, which I have considered earlier in this Report.

18. Is there information in the records at issue that is not responsive to the Applicant's access to information request?

[227] Education identified the following pages (or portions of pages) as not responsive to the Applicant's access request:

- Pages 3926 to 3939, 3942 to 3958, 3962 to 3963, 3966 to 3971, 3975 to 3976, 3979 to 3984, 3988 to 3992, 3995 to 4002, 4006, 4010 to 4014, 4018 to 4019, 4022 to 4029, 4033 to 4034, 4037 to 4042, 4046 to 4050, 4053 to 4059, 4063 to 4064, 4067 to 4073, 4076 to 4082, 4086 to 4087, 4091 to 4092, 4095 to 4110, 4114 to 4115, 4118 to 4124, 4127 to 4130, 4133 to 4140, 4143 to 4145, 4148 to 4155, 4158 to 4164, 4167 to 4174, 4177 to 4183, 4186 to 4192, 4195 to 4197, 4200 to 4206, 4209 to 4211, 4214 to 4220, 4223 to 4225, 4228 to 4237, 4240 to 4242, 4245 to 4254, 4257 to 4263, 4266 to 4270, 4273 to 4278, 4281 to 4288, 4291 to 4293, 4296 to 4303, 4306 to 4308, 4311 to 4319, 4322 to 4324, 4327 to 4335, 4339 to 4340, 4343 to 4349, 4352 to 4363, 4366 to 4414, 4417 to 4539, 4542 to 4544, 4547, 4561, 4564 to 4576, 4579 to 4591, 4594 to 4602, 4605 to 4621, 4624 to 4637, 4640 to 4664, 4667 to 4692, 4695 to 4707, 4710 to 4721, 4724 to 4736, 4739 to 4751, 4754 to 4770, 4773 to 4788, 4791 to 4807, 4810 to 4824, 4827 to 4841, 4844 to 4858, 4861 to 4880, 4883 to 4895, 4898 to 4912, 4915 to 4925, 4928 to 4946, 4949 to 4967, 4970 to 4982, 4985 to 4994, 4997 to 5011, 5014 to 5025, 5028 to 5047, 5050 to 5070, 5073 to 5075 of Batch 22.
- Pages 5088, and 5096 to 5100 of Batch 23.
- Pages 5251, 5253, 5256, 5257, 5294, 5295 and 5296 of Batch 24.
- Pages 5298, 5299, 5300, 5304, 5305, 5306 and 5307 of Batch 25.
- Pages 5408 to 5414, 5416 to 5426, 5432, 5500 to 5503, 5561 to 5577, 5626, 5633 to 5654, 5662 to 5724, 5727, 5762 to 5767, 5815 to 5842, 6144 to 6146, 6161 to 6189, 6195 to 6196, 6201, 6211 to 6212, 6255, 6260 to 6261, 6279, 6281, 6283 to 6288, 6290 to 6294, 6296, 6320, 6332 to 6342, 6348 to 6350, 6352, 6376, 6378 to

6384, 6399 to 6402, 6406 to 6411, 6496, 6500 to 6502, 6514, 6518, 6521, 6554, 6556, 6559 to 6560 of Batch 26.

[228] When a government institution receives an access to information request, it must determine what 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*, Chapter 3: "Access to Records", updated May 5, 2023 [*Guide to FOIP*, Ch. 3], pp. 26-27).

[229] When determining what information is responsive, consider the following:

- The request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.
- A government institution can remove information as not responsive only if the applicant has requested specific information, such as the applicant's own personal information.
- The government institution may treat portions of a record as not responsive if they are clearly separate and distinct and entirely unrelated to the access request. However, use it sparingly and only where necessary.
- If it is just as easy to release the information as it is to claim not responsive, the information should be released (i.e., releasing the information will not involve time consuming consultations nor considerable time weighing discretionary exemptions).
- The purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If it is unclear what the applicant wants, a government institution should contact the applicant for clarification. Generally, ambiguity in the request should be resolved in the applicant's favour.

(*Guide to FOIP*, Ch. 3, pp. 26-27)

[230] In its submission, Education said:

In this circumstance, the Ministry redacted portions of the record that are clearly separate and distinct and entirely unrelated to the access request. An applicant has an obligation, under s. 6(b) of FOIP, to specify the subject matter of the record(s) they are seeking. In this circumstance, the Applicant specifically sought information relating

LCA. The information withheld as non-responsive is funding information provided to other third parties (pages 3924 to 5075), or spreadsheets and emails containing information related to other schools (pages 5096 to 5100, 5251, 5253, 5256, 5257, 5294 to 5296, 5298-5300, 5304-5307, 5432, 5500-5503, 5561-5577, 5626, 5633-5653, 5662-5724, 5727, 5762-5767, 5815-5842, 6144-6146, 6161-6189, 6194-6196, 6201, 6212, 6260, 6261, 6279, 6281, 6283-6294, 6296, 6320, 6332-6342, 6348-6350, 6352, 6376, 6378-6384, 6399-6402, 6406-6410, 6496, 6500-6502, 6514, 6518, 6521, 6554, 6556, 6559, 6560, 6618-6620, 6638, 6639, 6642, 6643, 6652, 6653, 6696-6699) and draft letters to other schools (5409-5414, 5416-5426, and 5762-5767).

- [231] Also, Education cited [*Hennessey v. Eastern Regional Integrated Health Authority, 2012 NLTD\(G\) 20*](#), where the Supreme Court of Newfoundland and Labrador Trial Division (General) found certain records to be non-responsive and “therefore exempt from disclosure.” Also, Education cited paragraph [10] of [*Ontario \(Attorney General\) v. Ontario \(Information and Privacy Commissioner\), 2007 CanLII 65615 \(ON SCDC\)*](#), where the Ontario Superior Court of Justice Division Court noted that in [*PO-2548*](#), Ontario’s Office of the Information and Privacy Commissioner upheld Ontario’s Ministry of Attorney General’s decision to deny access to records because the information was deemed non-responsive.
- [232] Batch 22 contains several Multi-Informational Database Applications (MIDAS) Government of Saskatchewan Payables Account Analysis Reports (MIDAS Report), which lists payments made by the Government of Saskatchewan to suppliers. Education released information about payments made to Legacy Christian Academy but redacted the remainder of the reports (payments made to organizations that are not Legacy Christian Academy) and marked the information as “not responsive”.
- [233] In Batch 23, Education marked information as not responsive in records that contains enrollment and payment information to qualified independent schools and historical high schools.
- [234] In Batch 24, Education marked information as not responsive in records that contain enrollment and payment information to qualified independent schools and historical high schools and information about the number of home-based students in school divisions.

- [235] In Batch 25, Education marked information as not responsive in a consolidated statement of operating grant revenues and expenses for qualified independent schools, and in an email containing estimated funding amounts for associate schools, qualified independent schools and historical high schools.
- [236] In Batch 26, Education marked information in inspection letters to schools (other than Legacy Christian Academy) as not responsive. It also marked information in a MIDAS Report.
- [237] In Batches 23 to 26, my office noted that the information that Education marked as not responsive is indeed not responsive to the Applicant's access request. The Applicant requested records related to Legacy Christian Academy and not to other organizations.
- [238] However, as noted at pages 26 and 27 my office's *Guide to FOIP*, Ch. 3, if it is just as easy to release the information as it is to claim the information as not responsive, then the information should be released. An example is at pages 5299 and 5300 of Batch 25. An Education employee has proposed a response to a media inquiry. The proposed response includes information about estimated funding amounts for associate schools, qualified independent schools and historical high schools – which Education marked as not responsive. In information that was released to the Applicant, the Executive Director of the Programs Branch approved the response. Therefore, the information marked as not responsive was likely released to the media already. Since the information has likely been released, then Education should just release the information to the Applicant as well.
- [239] In my blog, [“What About the Non-Responsive Record?”](#), I said it is a waste of time to sever information that is not responsive and the unnecessary severing causes applicants to be suspicious that something is hidden as follows:

In other situations, a record may have responsive and non-responsive information in it. The public body is obliged to provide the applicant with the responsive information (subject to exemptions), and it has to decide what to do with the non-responsive information in that same record. **Again, I suggest best practice is to provide the non-responsive information to the applicant (subject to exemptions). Alternatively, the public body might choose to sever the non-responsive information, but that strikes**

me as a waste of time. Unnecessary severing causes applicants to be suspicious that something is being hidden. An applicant could submit a second access request for the severed non-responsive portions and the public body would have to provide it (subject to exemptions). So, this blog is written just to encourage public bodies to release non-responsive portions of records where an exemption does not apply.

[Emphasis added]

[240] In this case, it appears that the severing of information and marking them as not responsive was unnecessary. In fact, marking records as not responsive when it was just as easy to just release the records may have contributed to the delays experienced by the Applicant, as discussed in my office's [Review Report 247-2022](#). I recommend that Education release the information it marked as not responsive to the Applicant subject to any exemptions found to apply.

19. Did Education conduct a reasonable search to locate records?

[241] My office reviews a government institution's efforts to search for records when it responds to an Applicant's access request by indicating that records do not exist. The focus of a search review by my office 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 (*Guide to FOIP*, Ch. 3 at pp. 13-14).

[242] Applicants must establish the existence of a reasonable suspicion that a government institution is withholding a record or has not undertaken an adequate search for a record (*Guide to FOIP*, Ch. 3, p. 13). In this case, the Applicant informed my office that there is a "dramatic difference in the volume of records prior to and after approximately 2011". My office asked Education to speak to this in its submission to my office, in addition to describing its efforts to search for records responsive to the Applicant's access request.

[243] When a government institution receives a notice of a review from my office requesting details of its search efforts, some or all of the following can be included in the government institutions' submission (not exhaustive):

- 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 Using Affidavits in a Review with the IPC.

(Guide to FOIP, Ch 3, pp. 14-15)

[244] In its submission, Education said:

The initial search occurred between August 16, 2022 and October 21, 2022, using the Responsive Records Search Checklist from the IPC website. The search was conducted by a Research Officer, formerly in Legislative Services and Privacy (**LSP**), who had moved to another branch. This employee was temporarily on loan to LSP to assist in conducting the search. This employee, in their role in LSP, was responsible for records management for the unit and for access to information requests. Their experience included providing advice and guidance to branches on conducting adequate searches for records in response to access requests, and had routinely conducted these searches on behalf of the unit. This employee was responsible for this work for approximately three years.

The search terms used were Legacy, Christian Centre, Thuringer, and Wiggins. Electronic, email, paper and records storage records were searched to locate records responsive to this request. Boxes were recalled from records storage and scanned.

Between November 2023 and January 2024, additional searches of records sent to storage were conducted. The employees responsible for the additional searches were the person in charge of records management for the Ministry, and the second was an employee of LSP. The records management employee has been with the Ministry for approximately three years, and has been responsible for records management for Education for that entire time. They are well versed in the transfers that are at records centre and conduct searches for records on a regular basis. The LSP employee was also well versed in conducting searches. They ... have experience determining the responsiveness of records related to requests. No additional records were located because of that search.

On March 28, 2024, a letter was sent from the Director of LSP to the Applicant and advised that additional searches had been conducted and no records from 1982 to 1988 had been located (**Appendix A**). It was also communicated at that time that while the Director of LSP is certainly no expert on registered independent schools, that it

appeared that private schools were not registered with the Department of Education (as it was called at the time) until 1989.

During the drafting of this submission, the Ministry noticed that some records seemed to be missing and is in the process of conducting a further search for those records. If located, these records would fall within the exemption provided for in subsection 16(1) because the documents are part of a package that proceeded to Cabinet.

[245] While Education’s submission provides a description of its efforts to search for responsive records, it does not address the Applicant’s assertion that there is a “dramatic difference in the volume of records prior to and after approximately 2011.”

[246] My office reviewed Batches 7 to 32 and noted that only Batches 31 and 32 contained any records that dated prior to 2011. As described earlier in this Report in my analysis of subsection 29(1) of FOIP, Batches 31 and 32 contain records such as applications for Letters of Eligibility and teacher certificates, as well as copies of the Letters of Eligibility and teacher certificates. Examples of other information these two batches contain are inspection reports, annual returns (which is a [form](#) required to be filled out by registered independent schools), statistical reports filled out by the principal and a form entitled “Teacher’s Yearly Report on Qualifications, Salary and Experience”. Batch 31 appears to contain records dating from 2000 to 2013 while Batch 32 appears to contain records dating from 1989 to 2000. The nature of the records in Batch 31 and 32 appear to be different in nature than the records in Batches 7 to 30. This could be because the number of records in Batches 7 to 30 total 6972 pages and contain records from 2011 to 2022, while Batches 31 to 32 total 1296 pages of records and contain considerably older records. I agree with the Applicant that there is a dramatic difference in the volume of records prior to and after approximately 2011.

[247] Since my office is only considering Batches 7 to 32, and not the first six batches, it could be assumed that perhaps a significant number of pages that are dated prior to 2011 were provided to the Applicant in Batches 1 to 6, which are not being considered in this Report. However, at paragraphs 6, 9, 10 and 12 in my office’s [Review Report 247-2022](#), I noted the following:

- Batch 1 was 47 pages of records for the period 2011 to 2022.
- Batch 2 was 198 pages of records for the period 2010 to 2022.
- Batch 3 was 113 pages of records for the period 2012 to 2022.
- Batch 4 was 170 pages of records for the period 2011 to 2022.
- Batch 5 was 46 pages of records for the period 2015 to 2022.
- Batch 6 was 180 pages of records for the period 2011 to 2022.

[248] There were no records dated prior to 2011 that were provided to the Applicant in the first six batches.

[249] I note that Education provided an explanation to the Applicant in a letter dated March 28, 2024 as to why it did not have records from 1982 to 1988. Education said:

I can also advise that when the Ministry processed the last package of scanned documents for your request, we realized that there were no documents that pre-date 1989. My staff conducted a secondary review of documents in storage, and no additional records were located. Therefore, I can advise that the Ministry has no records from 1982 to 1988.

It is my understanding (although I am certainly no expert) that private schools were not registered with the then Department of Education until 1989. This may help explain why the Ministry does not have any records from 1982 to 1988.

[250] However, I note that Education has not provided any explanation as to why the volume of records it located from 1989 to 2011 is sparse compared to the records Education has from 2011 and onwards. For example, one possible explanation is that due to their age, Education may have destroyed such records in accordance with records retention and destruction schedules. Another possible explanation is that the smaller number of records is a reflection of the time when records were only handwritten, were created by typewriter, or when email was not widely used, which would result in a smaller number of records. However, Education has not provided my office with evidence that records from 1989 to 2011 may have been destroyed pursuant to records retention and destruction schedules. Nor have they

provided any explanation as to how records from prior to 2011 were organized and stored and how Education searched for them.

[251] Based on the information provided to my office, I find that Education has not demonstrated it has made a reasonable effort to search for records dating from 1989 to 2011. I recommend that Education conduct another search for records dating from 1989 to 2011 that are responsive to the Applicant's access request within 30 days of issuance of this Report.

[252] In addition, in its addendum to its submission, Education noted that it had identified an attachment in an email dated November 10, 2011 in Batch 12 that was not provided to the Applicant. The attachment was entitled "All Schools-Programs All Students by School by Grade – internal use only – FINAL Nov 1 2011.xls". However, Educations said the document was password-protected and the document could not be recovered:

Finally, during the review to determine duplicate records, it was noted that an attachment to page 791 is missing. In an attempt to access this record, it was discovered that the record is password protected. The email on page 791 notes that the information within the spreadsheet is an internal document and should not be distributed to outside agencies in order to protect the privacy of the children listed on the enrolment report, and therefore would have likely been subject to exemption pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act*. Efforts have been made to find the password.

However, as the email is from 2011, the employee who created the spreadsheet has since left government, as have two of the recipients. The final employee is still employed within the ministry, but she does not recall the password due to the passage of time. Additional attempts have been made within the branch where the document was sent to determine if a hard copy of the spreadsheet exists, or if anyone currently working within the branch can find the password. All attempts to access this spreadsheet have been unsuccessful and the ministry has no ability to recover this document.

[253] While Education located the record, Education is unable to process it as part of its response to the access request because it is inaccessible. Education's attempts to recover the password demonstrates it made reasonable effort to recover the document. I recommend that, if Education agrees to my recommendation to conduct another search for records from 1989 to 2011, that Education ensure its search for records include searching for a non-password protected version of the record. I also recommend that Education ensure its

record-keeping policies ensure that its records are stored in such a way that the records are retrievable.

[254] Regarding Education's mention in its submission (quoted earlier) that it determined some records were missing, I recommend that Education follow through with its search for records that it determined were missing. I recommend that Education release the records to the Applicant, subject to any exemptions it determines may apply, within 30 days of issuance of this Report.

20. Did Education properly withhold records that it considered duplicates?

[255] In Education's letter dated August 16, 2023 to the Applicant (which enclosed Batch 12), Education said:

You will observe the Legacy information is found within these documents alongside other qualified independent schools' information. As a number of the attachments have been previously released to you, they are not included again.

[256] Education said the same thing to the Applicant in two letters dated November 2, 2023 (which enclosed Batch 19 and Batch 20).

[257] In the course of my office's review, Education identified 5 pages that it removed from Batch 12. In its addendum to its submission, Education explained:

In a comparison of pages 1 through 5 of the attached Duplicate Records Batch 12, the ministry has been able to confirm the following:

1. The missing record should have been attached to page 766. The attachment name is "IS Master List (In progress) 2010-11.xls".
2. The missing record is identical to the attachment to pages 809 and 810; however, the file name for this record is "IS Master List (In progress) 2011-12.xls".
3. Page 1 of the Duplicate Records Batch 12 is identical to pages 808 and 812.
4. Page 2 of the Duplicate Records Batch 12 is identical to page 813.
5. Page 3 of the Duplicate Records Batch 12 is identical to page 814.
6. Page 4 of the Duplicate Records Batch 12 is identical to pages 811 and 815.
7. Page 5 of the Duplicate Records Batch 12 is identical to page 816.

[258] Education released these 5 pages, in full, to the Applicant in the course of my office's review.

[259] Then, Education identified 21 pages that were removed from Batch 19. In its addendum to its submission, Education said:

In a comparison of pages 1 through 25 [sic] of the attached Duplicate Records Batch 19, the ministry has been able to determine the following:

1. Pages 1 through 3 of the Duplicate Records Batch 19 are identical to the content on page 811. It appears that a different print version was created, but the information on these pages is the same.
2. Page 6 of the Duplicate Records Batch 19 is identical to page 804.
3. Page 7 of the Duplicate Records Batch 19 is identical to page 805. Pages 18 through 20 are also identical. However, it does appear that a different print version was created. The information on these pages is identical to that on page 805.
4. Page 8 of the Duplicate Records Batch 19 is identical to page 806.
5. Pages 9 and 10 of the Duplicate Records Batch 19 are substantially similar to page 802. Some of the information on pages 9 and 10 appears to be updated, and the print size has changed.
6. Pages 11 and 12 of the Duplicate Records Batch 19 are substantially similar to page 803. The difference between these records is that Nipawin Christian School notes grades K to 12 on page 803, and #REF on page 11 and World Revival Preparatory School (SAICA) notes JK to 12 on page 803 and %REF on page 11. In addition, it appears that the print size has changed.
7. Pages 13 through 17 of the Duplicate Records Batch 19 are identical to the content on page 804. It appears that a different print version was created, but the information on these pages is the same.
8. Page 21 of the Duplicate Records Batch 19 is similar to page 816. Some of the information has been updated on page 21, and the records are not identical.

While some of the pages are not identical, given the size of this file, it is not unreasonable that an employee thought the records were identical when they were not. However, this was an error on the part of the ministry, and the records were not identical, and as such, pages 9 through 12 and 21 will be released to the Applicant, with the applicable redactions. Please note, the arguments made for the exemptions on pages

802, 803 and 816 apply to pages 9 through 12 and 21 of the Duplicate Records Batch 19.

[260] Education released the 21 pages from Batch 19 to the Applicant but it redacted portions of these pages pursuant to subsection 29(1) of FOIP.

[261] Finally, Education identified one page that was removed from Batch 20. In its addendum to its submission, Education said:

In a comparison of page 1 of the attached Duplicate Records Batch 20, the ministry has been able to confirm the following:

1. Page 1 of Duplicate Records Batch 20 is substantially similar to page 814. However, it appears that the information on page 1 of Duplicate Records Batch 20 has been updated, and the record is not identical.

While this page is not identical, given the size of this file, it is not unreasonable that an employee thought the records were identical when they were not. However, this was an error on the part of the ministry, and the record was not identical, and as such, page 1 will be released to the Applicant, with the applicable redactions. Please note, the arguments made for the exemptions on page 814 apply to page 1 of the Duplicate Records Batch 20.

[262] Education released the one page from Batch 20 to the Applicant but it redacted portions of the page pursuant to subsection 29(1) of FOIP.

[263] Earlier, in my analysis of subsection 29(1) of FOIP, I found that Education had redacted information from Duplicate Pages – Batch 19 and Duplicate Pages – Batch 20 that I found to not qualify as “personal information” as defined by subsection 24(1) of FOIP. I recommend that Education release the information it redacted from Duplicate Pages – Batch 19 and Duplicate Pages – Batch 20 to the Applicant within 30 days of the issuance of this Report.

[264] Subsection 5.1(1) of FOIP requires government institutions to respond to access requests openly, accurately and completely. To respond to an access request completely means to provide the duplicate records to the Applicant, subject to whatever exemptions are found to apply. However, if the government institution is going to leave out duplicate records,

then a part of its duty to assist is to provide an applicant with an explanation for doing so. For example, if pages are exact duplicates and there will be a cost to the applicant to provide those duplicates (e.g., reproduction costs), then the government institution should provide that explanation to the applicant. The applicant, for their part, may insist on receiving the duplicates (See [Review Report 301-2023](#) at paragraphs [111] and [112]).

[265] I note that Education has taken steps to correct its error in removing pages that were similar but not identical to other pages already provided to the Applicant. However, in the future, if Education intends to remove duplicate records, I recommend that Education contact the applicant first to determine if the applicant wants them removed. If the applicant does not indicate they wish for duplicates to be removed, then Education should include the duplicates, subject to any exemptions that may apply, in the processing of the access request.

IV FINDINGS

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

[267] I find that Education properly applied subsection 29(1) of FOIP to information about students such as their names, grades, assessments, addresses and descriptions of students.

[268] I find that Education properly applied subsection 29(1) of FOIP to images of passports, birth certificates, marriages licenses, and name change certificates.

[269] I find that Education properly applied subsection 29(1) of FOIP to private individuals' names and contact information who wrote to the Minister of Education with their concerns.

[270] I find that Education properly applied subsection 29(1) of FOIP to the home and/or mailing addresses of teachers.

[271] I find that Education properly applied subsection 29(1) of FOIP to information about why an employee leaving their employment with an independent school.

- [272] I find that Education improperly applied subsection 29(1) of FOIP to information that is business card information or work product information.
- [273] I find that Education improperly applied subsection 29(1) of FOIP to the Letters of Eligibility and teacher certificates that appear in Batches 31 and 32.
- [274] I find that teacher certificate numbers and Educator ID numbers to qualify as personal information pursuant to subsection 24(1)(d) of FOIP.
- [275] I find that Education properly applied subsection 29(1) of FOIP to teacher certificate numbers and Educator ID numbers.
- [276] I find that Education properly applied subsection 29(1) of FOIP to personal information that was submitted to Education to support an application for the Letters of Eligibility or teacher certificates, which are records that appear in Batches 31 and 32.
- [277] I find that Education made a *prima facie* case that subsection 22(a) of FOIP applies to pages 38, 839, 840, 842, 843 and 844 of Batch 13, and page 6195 of Batch 26.
- [278] I find that Education did not properly apply subsection 22(a) of FOIP to page 5582 of Batch 26.
- [279] I find that Education did not properly apply subsection 22(b) of FOIP to page 5582 of Batch 26.
- [280] I find that Education did not properly apply subsection 22(c) of FOIP to page 5582 of Batch 26.
- [281] I find that Education properly applied subsection 19(1)(b) of FOIP to page 5558 of Batch 26.

[282] I find that Education did not properly apply subsection 19(1)(b) of FOIP to page 759 of Batch 11, page 5598 of Batch 26, pages 6911 and 6912 of Batch 29, and page 7021 of Batch 31.

[283] I find that Education did not properly apply subsection 19(1)(c)(i) of FOIP to page 759 of Batch 11 and pages 5509 to 5513, 5598, 6240, 6270, 6597 and 6610 of Batch 26.

[284] I find that Education has not properly applied subsection 19(1)(c)(ii) of FOIP to page 759 of Batch 11 and pages 5509 to 5513, 5598, 6240, 6597 and 6610 of Batch 26.

[285] I find that Education did not properly apply subsection 19(1)(c)(iii) of FOIP to page 759 of Batch 11 and pages 5509 to 5513, 5598, 6240, 6597 and 6610 of Batch 26.

[286] I find that Education did not properly apply subsection 19(1)(d) of FOIP to page 759 of Batch 11, pages 5643 to 5653, and pages 5714 to 5724 of Batch 26. .

[287] I find that Education did not properly apply subsection 18(1)(b) of FOIP to pages 756 to 757 of Batch 11.

[288] I find that Education did not properly apply subsection 18(1)(d) of FOIP to pages 6702, 6703 and 6704 of Batch 28.

[289] I find that Education did not properly apply subsection 17(1)(a) of FOIP to:

- pages 552, 631, 634, 641, 675, 680, 685, 686 693, 694, 697, 701, 704, 708, 712 and 715 of Batch 10,
- page 2400 and 2401 of Batch 18,
- pages 5308 and 5309 of Batch 25,
- pages 5415, 5434 to 5442, 5475 to 5478, 5814, 6270, 6271, 6272, 6274 and 6275 of Batch 26,
- pages 6788 and 6789 of Batch 28, and

- page 6835 of Batch 29.

[290] I find that Education properly applied subsection 17(1)(a) of FOIP to:

- portions of pages 635, 636, 638, 639, 670, 671, 678, 679, 681 and 682 of Batch 10,
- portions of pages 5491, 6125 to 6127, 6132 to 6134, and 6141 to 6143 of Batch 26, and
- pages 6790, 6791, 6792 and 6793 of Batch 28.

[291] I find that Education properly applied subsection 17(1)(b) of FOIP to this first sentence of the email timestamped 10:50am.

[292] I find that Education did not properly apply subsection 17(1)(b) of FOIP to:

- Pages 631, 634, 635, 636, 638, 639, 641, 678, 679, 680, 681, 682, 685 and 686 of Batch 10,
- Pages 735 and 754 of Batch 11, and
- Pages 5434, 5435, 5436, 5437, 5438, 5439, 5440, 5441, 5442, 5475, 5476, 5477, 5478, 5544, 5545, 5546 and 6135 of Batch 26.

[293] I find that Education properly applied subsection 16(1) of FOIP to portions of pages 767 and 770 of Batch 12.

[294] I find that Education properly applied subsection 16(1) of FOIP to page 773 of Batch 12.

[295] I find that Education did not properly apply subsection 16(1) of FOIP to pages 768, 769, 772, 774, 775, 777, 778, 779, 780, 795 and 797 of Batch 12.

[296] I find that Education properly applied subsection 15(1)(c) of FOIP.

[297] I find that Education properly applied subsection 27(1) of HIPA to pages 597, 598 and 698 of Batch 10, pages 3872, 3885, 3886, 3898, 3899, 3904 and 3905 of Batch 20, and pages 6321 of Batch 26.

[298] I find that Education has properly applied subsection 27(1) of HIPA to page 3872 of Batch 20.

[299] I find that Education has made efforts to locate records responsive to the Applicant's access request; however, Education has not demonstrated it has made a reasonable effort to search for records dating from 1989 to 2011.

[300] I find that the information that Education marked as non-responsive in Batches 23, 24, 25 and 26 is indeed not responsive to the Applicant's access request.

V RECOMMENDATIONS

[301] I recommend that Education release the information it marked as not responsive to the Applicant subject to any exemptions found to apply within 30 days of issuance of this Report.

[302] I recommend that Education conduct another search for records dating from 1989 to 2011 that are responsive to the Applicant's access request within 30 days of issuance of this Report.

[303] I recommend that, if Education agrees to my recommendation to conduct another search for records from 1989 to 2011, that Education ensure its search for records include searching for a non-password protected version of the attachment to the email dated November 10, 2011 in Batch 12.

[304] I recommend that Education ensure its record-keeping policies ensure that its records are stored in such a way that the records are retrievable.

[305] Regarding Education's mention in its submission (quoted earlier) that it determined some records were missing, I recommend that Education follow through with its search for records that it determined were missing. I recommend that Education release the records to the

Applicant, subject to any exemptions found to apply, within 30 days of issuance of this Report.

[306] I recommend that Education release the information it redacted from Duplicate Pages – Batch 19 and Duplicate Pages – Batch 20, subject to any exemptions that may apply, to the Applicant within 30 days of issuance of this Report.

[307] In the future, if Education intends to remove duplicate records, I recommend that Education contact the applicant first to determine if the applicant wants them removed. If the applicant does not indicate they wish for duplicates to be removed, then Education should include the duplicates, subject to any exemptions that may apply, in the processing of the access request.

[308] Enclosed in the copy of this Report sent by my office to Education is a copy of the records at issue that my office has marked what should be withheld. I recommend that Education release the portions of the records at issue that are not red-lined to the Applicant within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 18th day of September, 2024.

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