



REVIEW REPORT 139-2021, 203-2021

Ministry of Social Services

November 25, 2022

Summary:

The Applicant submitted an access to information request to the Ministry of Social Services (Social Services). Social Services notified the Applicant it was extending its response time by an additional 30 days pursuant to section 12(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Social Services failed to respond to the Applicant within the extended timeline, so the Commissioner found that Social Services did not comply with section 12 of FOIP. Social Services released portions of the responsive record, but withheld other portions pursuant to subsections 15(1)(m), 17(1)(a), 17(1)(b), 18(1)(b), 19(1)(c), 29(1) of FOIP and subsection 27(1) of *The Health Information Protection Act* (HIPA). The Applicant requested a review of Social Services' decision to withhold portions of the record. The Commissioner recommended Social Services review why it was not able to respond to the Applicant within the legislated timeframe and determine if it needs to revisit its policies and procedures, or if it has adequate resources. The Commissioner also found that subsections 17(1)(a), 17(1)(b), 29(1) of FOIP and subsection 27(1) of HIPA were appropriately applied in some portions of the record, but not others. The Commissioner recommended that the portions of the record it was found that the exemptions do not apply be released.

I BACKGROUND

[1] On February 18, 2021, the Ministry of Social Services (Social Services) received an access to information request from the Applicant for the time period November 1, 2020 to January 31, 2021:

1. All information, emails, written communications, logged and documented telephone calls pertaining to SWAP/RH specifically BETWEEN all Government of Saskatchewan officials, Ministry of Health officials, Ministry of Mental Health and

Additions officials including but not limited to [specified individuals] and/or Future Quest Consulting.

- [2] On March 22, 2021, Social Services emailed a letter to the Applicant advising it was extending the 30-day response period an additional 30 days pursuant to subsection 12(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The letter noted the response deadline would be extended from March 22, 2021 to April 20, 2021.
- [3] On May 20, 2021, the Applicant submitted a request for review to my office as they had not received a response from Social Services. The Applicant objected to the need for Social Services to apply an extension pursuant to section 12(1)(b) of FOIP.
- [4] On May 25, 2021, my office followed up with Social Services inquiring when the Applicant should anticipate receiving a response to their request. On June 9, 2021, Social Services advised that responses were being finalized and would be “released shortly”. However, it was unable to provide a specific date.
- [5] On July 6, 2021, my office followed up with Social Services on the status of the response for the Applicant. On the same day, Social Services responded advising the file was being finalized, but there was not a date for the release. On July 21, 2021, my office followed up with Social Services again on the status of the response and inquired on an estimated timeline for the response. On July 27, 2021, Social Services responded that it did not have an estimated date to issue a response. On August 5, 2021, Social Services issued its response to the Applicant. On November 16, 2021, Social Services also released some additional portions of records that it had previously released under other access requests that it had withheld in this file.
- [6] On August 9, 2021, my office followed up with the Applicant to confirm they had received the response from Social Services.
- [7] On August 16, 2021, the Applicant emailed my office to confirm it had received a Social Services’ response and requested my office to review if Social Services met the legislated

timelines to respond to their access to information request, and Social Services’ need for an extension pursuant to subsection 12(1)(b) of FOIP. Additionally, the Applicant requested my office review Social Services’ decision to withhold portions of the record pursuant to subsections 18(1)(b), 18(1)(d), 19(1)(c), 29(1) of FOIP and subsection 27(1) of *The Health Information Protection Act (HIPA)*.

[8] On August 26, 2021, my office notified the Applicant and Social Services of my intention to undertake a review.

[9] On May 16, 2022, Social Services provided my office with its submission. The Third Party provided my office with its submission on October 12, 2021. The Applicant did not provide a submission to my office.

II RECORDS AT ISSUE

[10] Social Services withheld 74 pages of records in full or in part as follows:

Record Number	Page Numbers	Description	Withheld in full or in part	Exemptions claimed
1	1	Email	Withheld in part	17(1)(b) and 19(1)(c) of FOIP
3	3	Email	Withheld in part	29(1) of FOIP
4	4 to 22	Attachment 1 to Record 3: Raising Hope community concerns	Withheld in full	17(1)(b) and 19(1)(c) of FOIP
5	23	Attachment 2 to Record 3: concerns related to a resident	Withheld in full	17(1)(b) and 19(1)(c) of FOIP
6	24 to 29	Attachment 3 to Record 3: staff concerns	Withheld in full	17(1)(b) and 19(1)(c) of FOIP
7	30	Email	Withheld in part	17(1)(b) and 19(1)(c) of FOIP

Record Number	Page Numbers	Description	Withheld in full or in part	Exemptions claimed
8	31	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) and 29(1) of FOIP
9	37	Letter	Withheld in part	29(1) of FOIP
10	38 and 39	Email thread	Withheld in part	17(1)(b), 19(1)(c) and 29(1) of FOIP
11	42 and 43	Email thread	Withheld in part	29(1) of FOIP
12	44	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) and 29(1) of FOIP
13	45	Email	Withheld in part	17(1)(a), 17(1)(b) and 19(1)(c) of FOIP
14	47	Email	Withheld in part	29(1) of FOIP
17	50	Attachment to Record 16: meeting notes	Withheld in part	17(1)(b) and 19(1)(c) of FOIP
18	52 and 53	Email thread	Withheld in part	17(1)(b) and 19(1)(c) of FOIP
19	54	Email thread	Withheld in part	29(1) of FOIP
20	55	Attachment to Record 19: draft response	Withheld in full	17(1)(a), 17(1)(b) and 19(1)(c) of FOIP
21	56	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) and 29(1) of FOIP
22	57	Email thread	Withheld in part	29(1) of FOIP
23	59 to 61	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) and 29(1) of FOIP
24	63 and 64	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) and 29(1) of FOIP
25	65 and 66	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) and 29(1) of FOIP
26	67 and 68	Email thread	Withheld in part	17(1)(a), 17(1)(b) and 19(1)(c) of FOIP
27	70	Email thread	Withheld in part	17(1)(b) and 19(1)(c) of FOIP
28	71	Email thread	Withheld in part	19(1)(c) and 29(1) of FOIP; 27(1) of HIPA
29	73	Email thread	Withheld in part	19(1)(c) and 29(1) of FOIP; 27(1) of HIPA
31	77	Email thread	Withheld in part	29(1) of FOIP

Record Number	Page Numbers	Description	Withheld in full or in part	Exemptions claimed
33	80	Email	Withheld in part	29(1) of FOIP
34	81	Email	Withheld in part	29(1) of FOIP
35	82	Email	Withheld in part	29(1) of FOIP
38	86	Email	Withheld in part	29(1) of FOIP
39	87	Email	Withheld in part	29(1) of FOIP
40	88 and 89	Meeting invite email	Withheld in part	15(1)(m), 18(1)(b) and 29(1) of FOIP
41	90	Email thread	Withheld in part	17(1)(b), 19(1)(c) and 29(1) of FOIP
42	91	Email thread	Withheld in part	17(1)(b), 19(1)(c) and 29(1) of FOIP
43	93 and 94	Email thread	Withheld in part	17(1)(b), 19(1)(c) and 29(1) of FOIP
44	96 to 98	Email thread	Withheld in part	17(1)(b), 19(1)(c) and 29(1) of FOIP
45	99 and 100	Email thread	Withheld in part	17(1)(b), 19(1)(c) and 29(1) of FOIP

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] Social Services is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

[12] SWAP is a “third party” as defined by subsection 2(1)(j) of FOIP.

[13] Social Services claimed that subsection 27(1) of HIPA applies to portions of the records. HIPA applies when three elements are present: 1) “personal health information” 2) a “trustee” and 3) the trustee has custody or control of the personal health information.

[14] Social Services applied subsection 27(1) of HIPA to portions of pages 71 and 73. The information withheld on these pages relates to a medical procedure and is the same email thread as I considered on pages 9 and 11 in my office’s Review Report 140-2021, 186-2021. As I found in that report, I find that these portions of the record qualify as personal

health information of an individual as defined by subsections 2(m)(i) and (ii) of HIPA, which provides:

2 In this Act:

...

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

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

(ii) information with respect to any health service provided to the individual;

[15] Social Services also qualifies as a “trustee” as defined by subsection 2(t)(i) of HIPA. With respect to the third element, in my office’s [Review Report 047-2022](#), I stated that “custody” is the physical possession of a record by a trustee with a measure of control. “Control” connotes authority, meaning the trustee has the authority to manage the records, including restricting access to it. In this matter, the records are in the custody of Social Services. As Social Services has custody of the personal health information at issue, I find that HIPA applies, and I also have jurisdiction under HIPA to conduct this review.

2. Did Social Services comply with section 12 of FOIP?

[16] Section 7(2) of FOIP requires that a government institution respond to an applicant within 30 calendar days of receiving an access to information request, unless the response deadline was extended pursuant to section 12 of FOIP. Section 7(2) of FOIP provides as follows:

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

[17] Section 12 of FOIP is clear that a government institution can extend the initial 30-day response deadline for a maximum of 30 more days. This means 60 days in total. However, this is only in limited circumstances, which are outlined in section 12(1) of FOIP (*Guide to FOIP*, Chapter 3: “Access to Records”, updated: June 29, 2021, at page 72 (*Guide to FOIP*, Ch. 3)).

[18] Social Services advised the Applicant it was relying on section 12(1)(b) of FOIP to extend its deadline to respond. Section 12 of FOIP provides as follows:

12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

...

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period;

...

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

[19] My office's [Review Report 152-2020](#) provides the following regarding the calculation of time:

[11] ...In terms of calculating the due date, *The Legislation Act* establishes general rules that govern the interpretation of all statutory instruments in the province. Section 2-28 of *The Legislation Act* provides guidance on the computation of time and can be applied to the 30 day calculation as follows:

- The first day the access request is received is excluded in the calculation of time;
- If the due date falls on a holiday, the time is extended to the next day that is not a holiday;
- If the due date falls on a weekend, the time is extended to the next day the office is open; and
- As LA FOIP [and FOIP] expresses the time in a number of days, this is interpreted as 30 calendar days, not business days.

[20] Section 12(2) of FOIP states that a notice of an extension must be provided to an applicant within the first 30 days after the government institution receives an access to information request. Social Services received the Applicant's access to information request on February 18, 2021, and was required to provide notice of an extension to the Applicant within 30 days, or by March 20, 2021. Since that day was a Saturday, Social Services had until March 22, 2021, to provide the Applicant with any notice of extension.

[21] On March 22, 2021, Social Services extended its time to respond pursuant to section 12(1)(b) of FOIP, so it provided this notice of extension within the period it was allowed to do so. I note that best practice would be for a government institution to provide such notice as soon as it is able, rather than waiting until the due date to do so.

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

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

[23] Social Services did not respond to the Applicant until August 5, 2021, which was 168 days after the Applicant submitted their request. This was well beyond the time it needed to do so. As such, Social Services did not comply with section 12(3) of FOIP, so there is no need for me to consider its reasons for providing an extension pursuant to section 12(1)(b) of FOIP. I find, then, Social Services did not comply with section 12 of FOIP.

[24] My office has recommended Social Services amend its policies and/or procedures for the processing of access to information requests in my office's [Review Report 137-2021](#), [Review Report 142-2021, 193-2021](#) and [Review Report 141-2021, 192-2021](#). I again remind Social Services of its obligation to process access to information requests as required by FOIP. I recommend Social Services review why it was not able to do so in this matter to determine if it needs to revisit its policies and procedures, or if it has adequate resources.

3. Did Social Services properly apply subsection 27(1) of HIPA?

[25] Subsection 27(1) of HIPA provides as follows:

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.

[26] As noted earlier, Social Services applied subsection 27(1) of HIPA to portions of pages 71 and 73. The information withheld on these pages relates to a medical procedure and is the same email thread as I considered on pages 9 and 11 of Review Report 140-2021, 186-2021. As I found in that report, I have already found these portions of the record qualify as personal health information of an individual as defined by subsections 2(m)(i) and (ii) of HIPA.

[27] As subsection 27(1) of HIPA is a mandatory exemption and the individuals have not consented to the disclosure of the information, I find that Social Services properly applied subsection 27(1) of HIPA as I have noted in the preceding paragraph. Social Services had also applied subsection 29(1) of FOIP to this information; however, as I have found subsection 27(1) of HIPA to apply, there is no need to consider subsection 29(1) of FOIP to this portion of the record. See Appendix A for details.

4. Did Social Services properly apply section 29(1) of FOIP?

[28] Section 29(1) of FOIP provides as follows:

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.

[29] Subsection 29(1) of FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 30, 2021, p. 281).

[30] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 24 of FOIP (*Guide to FOIP*, Ch. 4, p. 281).

[31] Subsection 29(1) of FOIP requires that a government institution shall not disclose personal information without consent unless a specific circumstance exists. The type of information that is considered personal information is described in subsection 24(1) of FOIP; the list is non-exhaustive. To determine if information is personal information, it must: 1) be about an identifiable individual, and 2) be personal in nature. Section 24(1) of FOIP provides 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;
- (c) **Repealed.** 1999, c.H-0.021, s.66.
- (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; or

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

Page 3

[32] On page 3 of the record, Social Services withheld two pieces of information in the email header: the email address of the SWAP Board Chairperson in the email recipients and the name of a Raising Hope client in the file names of the attachments.

[33] Releasing the name of the Raising Hope client in the file names would reveal the fact that the individual was a client needing services, which would be personal information pursuant to subsection 24(1)(k)(i) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

[34] The SWAP Chairperson appears to use the email address in a business capacity. In its submission, Social Services indicated:

There are many instances where individuals' email addresses, phone numbers and physical addresses were redacted. Email addresses are specific to individuals with technology ensuring no two individuals are assigned the same email address. 24(1)(e) identifies addresses and phone numbers are considered personal information regardless of whether they relate to a person's home or business.

[35] As I have noted in many past reports, the business contact information of an individual is not considered to be personal information (e.g., [Review Report 115-2021](#), [Review Report 369-2021](#)). As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 31, 37, 38, 39, 42, 43, 44, 57, 59, 60, 61 and 77

[36] The portions of the email communications withheld pursuant to subsection 29(1) of FOIP on pages 31, 38, 39, 42, 43, 44, 57 and 77 and the portion of an email attachment on page

37, that were withheld pursuant to subsection 29(1) of FOIP, are from email communications with the Applicant and the email attachment was prepared by the Applicant.

- [37] My office's [Review Report 337-2021](#) at paragraph [17] discusses that, "withholding personal information from someone who has knowledge of the information or who supplied it would constitute an absurd result". The recommendation in that report was that such information should be released to the person who supplied it. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 44

- [38] On page 44, Social Services withheld the email address of an individual in the email recipients. Social Services indicated that the individual attached to the email address is an advisory committee member. I previously noted in this Report, as in many past reports, that business card information, including personal email addresses used in a business context, are not personal information. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 47

- [39] Social Services has withheld the name of an individual in the subject line of the email, as well as the name, phone number and email address of the individual in the body of the email on page 47 of this record. Social Services submission indicates that the withheld information is "name and contact information for individual." The submission does not indicate if the contact information is personal or business contact information and there is no other information in the email to provide any context about the contact information. An Internet search indicates this individual is affiliated with a university, but their phone number and email address appear to be personal (i.e., nothing on the Internet suggests it's used in a business context). As such, the information qualifies as personal information

pursuant to subsections 24(1)(e) and (k)(i) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 52 and 53

[40] Pages 52 and 53 are an email thread containing three emails related to a CBC News inquiry, as indicated by the portion of the email released to the Applicant. In the initial email, Social Services withheld the name, email address, position and telephone number of the CBC employee. From a review of the record it is clear the CBC employee is operating in a business capacity. Their position and contact information when used in a business context is not personal information. In the two other emails in the email thread, Social Services also withheld the email address of the same advisory committee member discussed on page 44. I have stated previously, the SWAP advisory committee member appears to use their email address in a business capacity. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 54

[41] The email address of the same advisory committee member discussed on page 44 found in the two email headers on page 54 of the record were withheld. As the information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 56

[42] The email addresses of the SWAP Board Chairperson and the same advisory committee member discussed on page 44 were withheld from the email headers on page 56 of this record. As the information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 63 and 65

[43] The email address of the same advisory committee member discussed on page 44 found appears in the some of the email headers on pages 63 and 65 of the record. As the information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 71

[44] On page 71 of this record, the portion of the email headers on page 71 that was withheld includes the email address for the Chair of the Board and the name and email address of the advisory committee member. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to it. See Appendix A for details.

Page 73

[45] On page 73, the portion of the email headers on page 73 that were withheld include the email address for the Chair of the Board and the name and email address of the advisory committee member. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to it. See Appendix A for details.

Pages 80, 81, 82, 86, 87, 88 and 89

[46] On pages 80, 81, 82, 86, 87, 88 and 89 of this record, Social Services withheld the email address of the SWAP Board Chairperson from the email headers on these pages. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 90, 91, 93, 94, 96, 97, 98, 99 and 100

[47] Social Services withheld information from the body of the email communications on some portions these pages of the record. The email threads on these pages are in response to an email from Social Services inquiring about publicly announcing the name of the individual hired to conduct the review of SWAP. Social Services submission described the withheld content in these emails as “information about consultant hired to complete review of SWAP.”

[48] As discussed in my office’s [Review Report 210-2017](#), the definition of work product is as follows:

While the paragraphs describing each individual’s credentials would qualify as personal information, their names, titles and roles in the project would qualify as work product. Work product is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. This is not considered personal information.

[49] The information withheld related to the review that will be conducted and would be considered work product. As such, it would not qualify as personal information. I find, therefore, Social Services did not properly apply subsection 29(1) of FOIP to this information. As Social Services also applied subsections 17(1)(b) and 19(1)(c) of FOIP to these same portions of the record, I will consider the application of these exemptions later in this Report.

Page 91, 93, 94, 96, 97 and 99

[50] On pages 91, 93, 94, 96, 97 and 99, email address of the same advisory committee member discussed on page 44 found in some of the email headers these pages of the record were withheld. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

5. Did Social Services properly apply subsection 15(1)(m) of FOIP?

[51] Social Services did not identify this exemption in its section 7 response to the Applicant, but raised the application of subsections 15(1)(m) and 18(1)(b) of FOIP to this information in its submission. In the future, I will not consider additional exemptions not raised in the section 7 letter, but because this was raised before September 1, 2022, I will consider it in this Report.

[52] Social Services applied subsection 15(1)(m) of FOIP to information regarding accessing the virtual Microsoft Teams meeting found in emails on pages 88 and 89.

[53] Subsection 15(1)(m) of FOIP provides as follows:

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

...

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

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

[55] “Including” means that the list of information that follows is incomplete (non-exhaustive). The examples in the provision are the type of information that could be presumed to qualify as “security arrangements” (*Guide to FOIP*, Ch. 4, p. 89).

[56] 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 the assertion. If it

is fanciful or exceedingly remote, the exemption should not be invoked. For this provision to apply there must be objective grounds for believing that disclosing the information could reveal security methods employed to protect particular vehicles, buildings, other structures or systems (*Guide to FOIP*, Ch. 4, p. 90).

[57] The following two-part test can be applied. However, only one of the questions needs to be answered in the affirmative for the exemption to apply. There may be circumstances where both questions apply and can be answered in the affirmative:

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

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

[58] “Reveal” means to make known; cause or allow to be seen. (*Guide to FOIP*, Ch. 4, p. 90)

[59] “Security” means a state of safety or physical integrity. The security of a building includes the safety of its inhabitants or occupants when they are present in it. Examples of information relating to security include methods of transporting or collecting cash in a transit system, plans for security systems in a building, patrol timetables or patterns for security personnel, and the access control mechanisms and configuration of a computer system (*Guide to FOIP*, Ch. 4, p. 90).

[60] “Method” means a mode of organizing, operating, or performing something (*Guide to FOIP*, Ch. 4, p. 90).

[61] “Other structures or systems” includes computer and communication systems. An example of a communication system could be radio communication systems such as two-way radios (*Guide to FOIP*, Ch. 4, p. 90).

[62] Social Services submission provides as follows:

Saskatchewan Builds and Procurement has confirmed the link remains active even once the meeting is complete. This creates a potential security risk if applicants are permitted to navigate the site themselves.

The Ministry recognizes that records that are part of Teams meetings are subject to FOIPPA and its exemptions and, if responsive to an access request, would be part of the responsive records. However, it is quite another matter to permit an applicant to navigate the site through the Teams link, which could not only pose a security risk but also potentially allow an applicant to gain access to records that have not been redacted for exemptions and personal information.

[63] In its submission, Social Services' does not specify what specifically the Applicant can access with the Teams link or with the other information in question. Also, Social Services can share such links and information either internally or externally and may not be aware of what those individuals do with the information, so the question is what security risk is posed? Social Services has not sufficiently argued or provided evidence to support its claim that the alleged harm could occur to support that this exemption would apply. As such, the test is not met, and I find that Social Services did not properly apply subsection 15(1)(m) of FOIP. I will still, however, consider Social Services' application of subsection 18(1)(b) of FOIP to this information.

6. Did Social Services properly apply section 18(1)(b) of FOIP?

[64] Social Services applied subsection 18(1)(b) of FOIP to information regarding accessing the virtual Microsoft Teams meeting found in emails on pages 88 and 89.

[65] Subsection 18(1)(b) of FOIP provides as follows:

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;

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

[67] My office applies the following three-part test when considering the application of subsection 18(1)(b) of FOIP:

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

(*Guide to FOIP*, Ch. 4, pp. 164 - 166)

[68] Social Services submission provides:

For the first step of the test, the information is technical in nature. The exemption on these pages relates to technical links for connecting into Microsoft Teams (Teams) meetings, which the ministry uses to conduct virtual meetings internally and with external parties. Teams is a communication system used by the provincial government to facilitate virtual meetings.

[69] “Technical information” is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge, which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information (*Guide to FOIP*, Ch. 4, p. 165).

[70] The withheld information is login information for a Microsoft Teams meeting, a link to join the meeting, a telephone number and code to access the meeting. The information is not describing any “subject, craft or technique”, and does not involve information prepared by a professional in the field that describes the construction, operation or maintenance of a structure, process, equipment or thing. If it does, Social Services has not sufficiently argued how. As such, I find that the first part of the test is not met, and that Social Services has not properly applied subsection 18(1)(b) of FOIP to this information. See Appendix A for details.

7. Did Social Services properly apply section 17(1)(b) of FOIP?

[71] Subsection 17(1)(b) of FOIP provides as follows:

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

...

(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;

[72] Subsection 17(1)(b) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a government institution, a member of the Executive Council or the staff of a member of the Executive Council (*Guide to FOIP*, Ch. 4, p. 131).

[73] The provision is intended to allow persons having the responsibility to make decisions to freely discuss the issues before them to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public (*Guide to FOIP*, Ch. 4, p. 131).

[74] My office applies the following two-part test when considering the application of subsection 17(1)(b) of FOIP:

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. 132 – 133)

[75] Social Services stated this portion of the records contains consultations. “Consultation” means: the action of consulting or taking counsel together: deliberation, conference; a conference in which the parties consult and deliberate (*Guide to FOIP*, Ch. 4, p. 132).

[76] A consultation can occur when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation (*Guide to FOIP*, Ch. 4, p. 132).

[77] Social Services’ submission provided:

... ministry staff were involved in all the consultations. These consultations occurred through a combination of emails, phone calls and video meetings, therefore the outcome of the consultations is not always readily apparent in an email string. In other words, the emails identified here are a portion of the consultation process, but do not capture the full scope of the consultations that occurred. Release of the records showing any portion of these consultations would harm the trust and damage the communication between the ministry and SWAP.

Page 1

[78] Social Services withheld a portion of a sentence in the email on page 1 of the record. The withheld portions discusses the purpose of a call that is being arranged in the email. Social

Services' submission indicates this is the first part of a consultation that would have continued, likely by telephone, and other documents indicate that an action was taken related to the purpose of the phone call. This email simply indicates the purpose of a call, but does not contain any information that would qualify as a consultations. As such, the first part of the test is not met and I find Social Services did not properly apply subsection 17(1)(b) of FOIP to it.

- [79] Social Services had also applied subsection 19(1)(c) of FOIP to this information, but later indicated it was no longer claiming this exemption to the information withheld on this page of the record. As it does not appear the third party has dropped its objection to release this information, I will still consider the application of subsection 19(1)(c) of FOIP to this information later in this Report.

Pages 4 to 29

- [80] Pages 4 to 29 of the record were withheld in full. Social Services described these pages of the record as email attachments regarding concerns it had received from individuals. Social Services' submission indicated:

The attachments were created by individuals outside of the ministry and SWAP. CFP provided them to SWAP as part of an on-going consultation with SWAP related to the identified concerns and potential steps to address them. Consultations included discussions on the following matters:

Pages 4-20 cover a range of concerns with program delivery, resident specific case management, and HR issues.

Pages 21-22 contain specific resident case management concerns

Page 23 is a copy of a CBC article, with additional information added at the bottom of the page regarding a [person] who was charged in [a crime]...

Page 24-29 document written by [Social Services] CFP worker regarding Raising Hope case management concerns.

- [81] The email that the records are attached to does not provide any context for the sharing of these documents. While Social Services indicated that these records are part of ongoing

consultations, it is not clear on the face of the record how or if these records are part of any consultations. As such, the first part of the test is not met, and I do not find Social Services properly applied subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 30

[82] A portion of the body of the email on page 30 was withheld pursuant to subsection 17(1)(b) of FOIP. It appears the Social Services' employee is explaining the reason for requesting the documentation referred to in the previous paragraph of the email. This does not appear to be a consultation about the request; instead, it appears the employee is providing information regarding the reason for the request. As such, the first part of the test is not met, and I do not find Social Services properly applied subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 31

[83] The first redaction on this page is an email discussing email communications with the Applicant found in this email thread. In the email, it appears a member of the SWAP advisory committee emailed a Social Services employee seeking guidance on how to manage the communication received. The SWAP advisory committee member provides an opinion on the matter and seeks guidance from Social Services on how to proceed.

[84] From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of the reasons for or against an action. The email simply provides an opinion on what was received and asks Social Services to take a specified action. This would not qualify as consultations and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 38

[85] The first redaction on this page is an email discussing email communications with the Applicant found in this email thread. In the email, it appears a member of the SWAP advisory committee emailed a Social Services employee seeking guidance on how to manage the communication received. The SWAP advisory committee member provides an opinion on the matter and seeks guidance from Social Services on how to proceed. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. The email simply provides an opinion on what was received and requests guidance, which would not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 44

[86] Page 44 includes an email chain, with subsection 17(1)(b) applied to the first email. In the email, it appears a member of the SWAP advisory committee emailed a Social Services employee providing an opinion on an email they had received. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. The email simply provides an opinion on what was received and requests guidance, which would not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsections 17(1)(a) and 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Page 45

[87] Page 45 is an email from Social Services to a SWAP advisory committee member. The majority of the body of the email was withheld. Social Services' submission described this

page of the record as “consulting on potential media messaging for SWAP’s consideration, as well as making suggestions regarding the use and dissemination of the information.” From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The email simply provides an opinion and offers guidance, which would not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsections 17(1)(a) and 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Page 50

[88] Page 50 includes handwritten notes that Social Services described in their submission as notes of Social Services’ Executive Director regarding proposed board discussions. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. The notes describe possible actions or information required, which does not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 52

[89] Page 52 includes an email chain. Social Services applied subsection 17(1)(b) to the email at the top of the page, which is between SWAP advisory committee members, a SWAP employee and a Social Services employee. The majority of the body of the email was withheld. Social Services’ submission described this information as consultations between the email recipients regarding the media inquiry in the initial email of the email thread. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It

does not appear that the email solicits any sort of back-and-forth interaction on the matter. The email includes a request for someone to do something, and an opinion on the matter at hand, which would not qualify as consultations. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but as the third party has not dropped its refusal to release the information, I will still consider this information under subsection 19(1)(c) of FOIP later on in this Report.

Page 55

[90] Page 55 is an attachment to email between Social Services' employees, SWAP employees and advisory committee members. The attachment is described in Social Services' submission as "draft reply to media request". The email thread that this record is attached to is an initial email from SWAP is seeking feedback on a prepared statement. The response in the second email is from a Social Services employee regarding a review of the statement and advising of a change made to the prepared statement that was reviewed.

[91] From a review of the withheld information, it appears SWAP was engaging others, including employees from Social Services, regarding their views on the appropriateness of the suggested statement it wanted to release. SWAP prepared the statement for Social Services. This record, then, would qualify as a consultation involving an employee of a government institution, which meets the first and second parts of the test. As such, I find that Social Services properly applied subsection 17(1)(b) of FOIP. As I find subsection 17(1)(b) of FOIP applies to this information, I have no need to consider Social Service's application of subsections 17(1)(a) and 19(1)(c) of FOIP to the same information. See Appendix A for details.

Page 56

[92] Page 56 is an email chain. Social Services applied subsection 17(1)(b) of FOIP to the top email, which is between a Social Services employee, a SWAP employee, two advisory committee members and the board chairperson. From a review of the withheld information,

it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The email appears to address the inquiry from Social Services' initial email and discusses timing for a full response, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsections 17(1)(a) and 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Page 59

- [93] Page 59 contains an email thread between a Social Services' employee and an advisory committee member. Most of the body of the email where Social Services applied subsection 17(1)(b) of FOIP was withheld. The email includes a discussion on how to handle a matter. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The email appears to address the inquiry from Social Services' initial email and discusses timing for a full response, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release. I will also review Social Service's application of subsection 17(1)(a) of FOIP to this information.

Pages 63 and 64 & Pages 65 and 66

- [94] Social Services withheld the body of the emails in the email threads on pages 63 to 64 and page 65 to 66 pursuant to subsection 17(1)(b) of FOIP. Social Services' submission described the information as, "information regarding a press release issued by SWAP, the position of the organization regarding the review, as well as summarizing verbal

consultations.” The emails involve the SWAP advisory committee member updating Social Services on a matter.

- [95] Social Services’ responses simply indicate that they will speak by phone and does not offer a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsections 17(1)(a) and 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Pages 67 and 68

- [96] The email thread on pages 67 and 68 contains two emails between Social Services and an advisory committee member. The top email on page 68 is the same email as the email on page 45. The second email on page 67 is a continuation on the first email. As described earlier, these emails relate to “consulting on potential media messaging and recommendation on dissemination of information.” From a review of the withheld portions of the emails, they do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third-party does not agree with its release. I will also review Social Services’ application of subsection 17(1)(a) to this information.

Page 70

- [97] Page 70 contains an email thread between an advisory committee member and Social Services. There are two emails in the thread; one sentence is redacted from the bottom email, and most of the body of the top email has been withheld. From a review of the withheld portions of the emails, they do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not

met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third-party does not agree with its release. I will also review Social Services' application of subsection 17(1)(a) to this information.

Pages 71 and 73

[98] Pages 71 and 73 include an email thread between Social Services, SWAP, the board chair person and advisory committee members. One sentence in the second paragraph of the top email, which is the same email on pages 71 and 73, has been withheld pursuant to subsection 17(1)(b) of FOIP. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The content of the email includes opinions on a comment made in another email, which would not qualify as consultations and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 90

[99] Page 90 is an email thread with two emails between Social Services and SWAP. I had also considered the application of subsection 29(1) of FOIP to this portion of the record and found it did not apply. Social Services withheld the content of the top email, which contains a response. From a review, the withheld portions of the emails do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not met. Rather, the email just contains a statement of belief about something. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third-party does not agree with its release.

Pages 91 and 92

[100] Pages 91 and 92 contain an email thread with two emails. I had also considered the application of subsection 29(1) of FOIP to this portion of the record and found it did not apply. The top email, which is a response to the bottom one, is from an advisory committee member to Social Services, SWAP and another advisory committee member. This email is about a response to any inquiry. Most of the body of the email was withheld. From a review, the withheld portions of the emails do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action. The email simply outlines steps or actions that have occurred to date, which is not a consultation, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. I will still, however, review it under subsection 19(1)(c) of FOIP later on in this Report.

Pages 93 to 95

[101] Pages 93 to 95 contains an email thread with five emails. I had also considered the application of subsection 29(1) of FOIP to this portion of the record and found it did not apply. The email on page 94 is the same email as page 91 of this record. Page 93 has two other emails which include a response to an email communication. As noted previously in this Report, I have already found that the portion of the email thread withheld on page 94 does not qualify for exemption under subsection 17(1)(b) of FOIP. For the portions of the email on page 93, Social Services appears to be seeking information regarding the review and the advisory committee member provide a response. This information appears to be factual in nature and would not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. I will still, however, review it under subsection 19(1)(c) of FOIP later on in this Report.

Pages 96 to 100

[102] Pages 96 to 100 are email threads that include the same emails found on pages 93 and 94 of the record. I had also considered the application of subsection 29(1) of FOIP to this portion of the record and found it did not apply. As Social Services withheld the same information in these emails, the same analysis I applied to pages 93 and 94 apply to these emails. As the first part of the test is not met, I find that Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. I will still, however, review it under subsection 19(1)(c) of FOIP later in this Report.

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

[103] Subsection 17(1)(a) of FOIP provides as follows:

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

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

[104] Subsection 17(1)(a) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council (*Guide to FOIP*, Ch. 4, p. 123).

[105] My office applies the following two-part test when considering the application of subsection 17(1)(a) of FOIP:

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. 124 – 126)

[106] Social Services' submission provided:

... the emails identified contain analysis, advice and/or proposals. The first part of the test has therefore been met.

With respect to the second part of the test, in all of the emails for which s. 17(1)(a) has been claimed, the analysis, advice and proposals were developed either by the ministry for SWAP and/or the ministry, or by SWAP for the ministry. Therefore, the second part of the test has been met.

[107] "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 (*Guide to FOIP*, Ch. 4, p. 124).

[108] A "proposal" is something offered for consideration or acceptance (*Guide to FOIP*, Ch. 4, p. 125).

[109] "Analyses" is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements (*Guide to FOIP*, Ch. 4, p. 125).

Page 31

[110] This page involves an email thread with two emails. The first redaction on bottom email discusses email communications. In the top email, it appears a member of the SWAP advisory committee member provides an opinion on the matter and seeks guidance from Social Services on how to proceed. Based on a review of the record, the withheld

information would not qualify as analysis, advice and/or proposals. As such, I do not find that subsection 17(1)(a) of FOIP applies. See Appendix A for details. I will still, however, review it under subsection 19(1)(c) of FOIP later in this Report.

Page 44

[111] This page contains an email chain. Social Services applied subsection 17(1)(a) of FOIP to portions of the top email. In the email, it appears a member of the SWAP advisory committee emailed a Social Services employee providing an opinion on the matter. The email simply provides an opinion on what was received and would not qualify as analysis, advice and/or proposals. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(a) of FOIP to this information. I will still, however, consider 19(1)(c) of FOIP on this information later in this Report.

Page 45

[112] Page 45 is an email from Social Services to a SWAP advisory committee member. Most of the body of the email was withheld. Social Services' submission described this page of the record as "consulting on potential media messaging for SWAP's consideration, as well as making suggestions regarding the use and dissemination of the information." Upon review, the information in the email qualifies as advice related to items to be included in a statement, which meets the first part of the test. The information in the email was developed by SWAP for Social Services, and so was developed by or for Social Services, which meets the second part of the test. As such, I find Social Services properly applied subsection 17(1)(a) of FOIP to this information. I have no need to review Social Services application of subsection 19(1)(c) of FOIP to this information. See Appendix A for details.

Page 56

[113] Page 56 contains an email exchange between Social Services, a SWAP employee, two advisory committee members and the board chairperson. Social Services withheld the information in the body of the top email. The email appears to address an inquiry from

Social Services. This information would not qualify as analysis, advice and/or proposals. and so the first part of the test is not met. As such, I find that Social Services did not properly apply subsection 17(1)(a) of FOIP. As Social Services applied subsection 19(1)(c) of FOIP to this information, I will consider it under that exemption later in this Report.

Page 59

[114] Page 59 contains an email thread with two emails between Social Services and an advisory committee member. Social Services withheld most of the of the body of the top email pursuant to subsection 17(1)(a) of FOIP. The email includes a discussion on how to handle a matter. Social Services inquires if it can provide a particular service and provides opinions on a matter. I am not persuaded that this email contains analysis, advice and/or proposals, and so the first part of the test is not met. As such, I find that Social Services did not properly apply subsection 17(1)(a) of FOIP to this information. As Social Services applied subsection 19(1)(c) of FOIP to this information, I will consider it under that exemption later in this Report.

Pages 63 and 64 & Pages 65 and 66

[115] I previously discussed these two email threads in my discussion on subsection 17(1)(b) of FOIP. Social Services' submission described the information as "information regarding a press release issued by SWAP, the position of the organization regarding the review, as well as summarizing verbal consultations." The emails involve the SWAP advisory committee member updating Social Services on a matter. The withheld portions contain an opinion on certain interactions as well as actions for Social Services. I am not persuaded that there is analysis, advice and/or proposals involved, and so the first part of the test is not met. As such, I find that Social Services did not properly apply subsection 17(1)(a) of FOIP. As Social Services applied subsection 19(1)(c) of FOIP to this information, I will consider it under that exemption later in this Report.

Pages 67 and 68

[116] I previously considered the email threads on pages 67 and 68 in my analysis of subsection 17(1)(b) of FOIP. The email threads contain two emails between Social Services and an advisory committee member. The first email on page 68 is the same email as the email on page 45. The second email on page 67 is a continuation on the first email. As described earlier, these emails relate to “consulting on potential media messaging and recommendation on dissemination of information.” From a review of the emails, I am satisfied that the information qualifies as advice, which meets the first part of the test. As the advice was provided by Social Services, it was developed by Social Services for SWAP, which meets the second part of the test. As such, I find Social Service properly applied subsection 17(1)(a) of FOIP to this information. As I find subsection 17(1)(a) of FOIP applies, I have no need to consider Social Services’ application of subsection 19(1)(c) of FOIP to this same information. See Appendix A for details.

9. Did Social Services properly apply section 19(1)(c) of FOIP?

[117] Section 19(1)(c) of FOIP provides as follows:

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;

(ii) prejudice the competitive position of; or

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

a third party;

[118] Subsection 19(1)(c) of FOIP is a mandatory, harm-based provision. It permits refusal of access in situations where disclosure could reasonably be expected to result in the harms outlined at subclauses (i), (ii) and (iii). Government institutions and third parties should not

assume that the harms are self-evident. The harm must be described in a precise and specific way to support the application of the provision (*Guide to FOIP*, Ch. 4, pp. 209 - 210).

[119] “Could reasonably be expected to” means there must be a reasonable expectation that disclosure could result in an undue benefit or loss to a person. The Supreme Court of Canada set out the standard of proof for harms-based provisions as follows:

This Court in *Merck Frosst* adopted the “reasonable expectation of probable harm” formulation and it should be used wherever the “could reasonably be expected to” language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and “inherent probabilities or improbabilities or the seriousness of the allegations or consequences”...

(*Guide to FOIP*, Ch. 4, p. 188)

[120] My office applies the following tests to determine if subsections 19(1)(c)(i), (ii) or (iii) of FOIP applies:

19(1)(c)(i)

The following two-part test can be applied:

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

For this exemption to apply there must be objective grounds for believing that disclosing the information could result in loss or gain to a third party measure in monetary terms (e.g., loss of revenue).

(*Guide to FOIP*, Ch. 4, p. 211)

19(1)(c)(ii)

The following two-part test can be applied:

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, p. 216)

19(1)(c)(iii)

The following two-part test can be applied:

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

Government institutions and third parties should not assume that the harm is self-evident. The harm must be described in a precise and specific way to support the application of the provision.

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

[121] Social Services' submission provided:

Although the tests in the Guide to FOIP are set out separately for clauses (i)(ii) and (iii), they need to be considered together, because the Courts have acknowledged the interrelationship between them.

Although s. 19(1)(c)(iii) was not applicable in *Canadian Bank Note Ltd v Saskatchewan Government Insurance*, the Saskatchewan Court of Queen's Bench considered s. 19(1)(c)(i) and (ii) and noted, at paragraph 50, that "there is a close interrelationship between the notion of 'prejudice' to the competitive position of a third party, the criteria set out in s. 19(1)(c)(ii), and resultant financial loss or gain set out in ss. 19(1)(c)(i)." Most importantly, the Court said that "[i]f an opponent to disclosure establishes prejudice to its competitive position, it is likely or at least it 'could reasonably be expected to result in financial loss' to it."

The Saskatchewan Court of Queen's Bench also referred to the Supreme Court of Canada case of *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3:

It is sufficient for a third party to show that disclosure could reasonably be expected to result in any one of a financial loss or gain or in prejudice to the third party's competitive position. In other words, it is not necessary for the third party to show that the "prejudice" to his or her competitive position also results in "harm" ...

In view of these statements of the Supreme Court of Canada and the Saskatchewan Court of Queen's Bench, it is submitted that the tests for s. 19(1)(c)(i)(ii) and (iii)

cannot be considered in isolation, as one affects the other. Therefore, the ministry is applying the test as reframed above.

The Ministry submits that both (a) and (c) of the reframed test apply. With respect to (a) there is a very real potential for loss of funding for SWAP programs, as described below, or for interference with the negotiations of SWAP and its various funders, as well as pending internal decisions.

With respect to (b), “negotiation” is defined in the IPC Guide to FOIP Chapter 4:

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

This definition reflects the relationship between SWAP and its funders when it negotiates funding agreements. SWAP is a non-profit corporation and relies upon various sources of funding for its survival.

The Ministry is one of SWAP’s funders. Child and Family Program (CFP) Community Services unit is responsible for the direct relationship with SWAP, related to the specific services identified in the ministry’s agreement with SWAP. They are responsible for ensuring CBOs providing services for children and families are meeting the requirements detailed in the agreement. Staff from this unit have been in regular communication with SWAP over the past several months to address the concerns previously mentioned. While most concerns do not fall within the scope of the Agreement, CFP has been working with SWAP to identify steps for addressing the concerns and limiting disruption to the services identified in the Agreement. This is also a form of negotiation. Release of information, without SWAP consent, would harm the trust and damage the communication between the ministry and SWAP, and could affect the resolution of these concerns.

[122] Exemption from disclosure should not be granted based on fear of harm that is fanciful, imaginary or contrived. Such fears of harm are not reasonable because they are not based on reason...the words “could reasonably be expected” “refer to an expectation for which real and substantial grounds exist when looked at objectively”. Some relevant questions that may assist are:

- What kind of harm is expected from disclosure?
- How will the loss or gain specifically occur?

- How much money is involved?
- Will the loss or gain affect the financial performance of the third party? How? To what degree?
- How old is the information? If the information is not current, why would disclosure still adversely affect the third party?
- Has similar information about the third party been made public in the past? If so, what was the impact? Was the impact quantifiable (e.g., lost sales or revenues)?
- Is information of this nature available about competitors of the third party?
- Are there examples in other businesses where disclosure of similar information led to material financial loss or gain? If so, describe and quantify the financial loss or gain. Why is the situation parallel to that of this third party?
- What actions could the third party take to counteract potential financial loss or gain knowing the information would be disclosed?

(*Guide to FOIP*, Ch. 4, pp. 223 and 224)

[123] Social Services provided detail regarding the potential harm that it did not want used in the Report; however, it did not provide sufficient detail or evidence to support the claim. The third party also provided arguments about why this exemption should apply, but also did not provide sufficient detail or evidence to support its claims. In my office's Review Report 205-2019, 255-2019, I stated the following about evidence at paragraphs [130] to [132] of that report:

[130] Evidence is the material that parties must submit in reviews/investigations to establish the facts on which they are relying. Arguments are the reasons why a party thinks that the evidence shows certain facts to be true, or why the Commissioner should interpret the law in a particular way, so as to make the decision that the party wants the Commissioner to make.

[131] Parties may not succeed in a review if they do not provide evidence to support their arguments. If the success of an argument depends on underlying facts, providing the argument alone is not sufficient. Examples of evidence include affidavits, expert reports, news articles, meeting minutes, policy documents or contracts. In a review, the records at issue are treated as evidence. Although news articles are not generally thought of as reliable evidence, they may be relevant in cases such as where a party is trying to demonstrate that something is publicly available, or where personal information has been disclosed without authority.

[132] It would not be sufficient to provide my office with records and leave it up to my office to draw from the records the facts on which the decisions will be based. In addition, it would not be sufficient to simply state “access is denied because of section 18.” It is up to the local authority to ‘make the case’ that a particular exemption applies. That means presenting reasons why the exemption is appropriate for the part of the record that has been withheld. This is usually done in the form of written representations, commonly called a submission.

[124] The standard here is “could reasonably be expected to”, which is higher than just a mere possibility. There must be an objective basis supported by facts or evidence that the alleged harm is more than probable. While Social Services has alleged a potential outcome if the information was released, it did not provide evidence to support the outcome is more than probable.

[125] Social Services applied subsection 19(1)(c) of FOIP to pages 1, 4 to 31, 38, 44, 50, 52, 56, 59, 63 to 66, 70, 71, 73, 90 to 94, and 96 to 100 of the record. However, based on a lack of supporting evidence, I am not persuaded that the release of these page of the record would result in any harm outlined by Social Services or the third party.

[126] As this is a mandatory exemption, I also considered the application of 19(1)(c) of FOIP to these pages based on the face of the record. Examples of the type of information on these pages include emails discussing a variety of matters involving SWAP or its advisory committee members, the providing of opinions on matters, and the recording of concerns raised with SWAP. I am not able to tell if within this information is evidence of financial gain or loss, prejudice to a competitive process, or of contractual or other negotiations, or of any harm that may result from release of the information. As such, I find that Social Services did not properly apply subsection 19(1)(c) of FOIP. See Appendix A for details.

[127] I add that because I found Social Services did not properly apply subsections 17(1)(b) and 19(1)(c) of FOIP to pages 4 to 29, which Social Services withheld in full, I need to consider any information within these pages that may contain personal information. As subsection 29(1) of FOIP is a mandatory exemption, I need to consider if it applies.

[128] The records on pages 4 to 22 contain a variety of issues relating to employment concerns, workplace issues, and concerns involving residents, including examples of specific incidents. There are some instances where an employee is named in relation to the concerns raised about their interaction with the individual that submitted the concerns. Not all individuals referred to are named; however, it is possible that individuals could be identified if the information was released to the Applicant. Some examples include employee relations issues on page 5, specific examples of incidents involving residents and staff on pages 10 to 17 (although not specifically named), and a variety of details about named staff and residents on page 21 that are personal in nature. None of this information is about the Applicant. As such, I find that the information qualifies as personal information pursuant to subsections 24(1)(b) and 24(1)(k)(i) of FOIP and that subsection 29(1) of FOIP would apply. See Appendix A for details.

[129] Page 23 includes notes related to an individual named in a news article, but not the news article itself. The release of this page of the record would reveal personal information about an identifiable individual. The page also includes personal health information about a person related to their medical condition. The information would qualify as personal information pursuant to subsections 24(1)(b), 24(1)(k)(i) of FOIP and personal health information pursuant to subsection 2(m)(i) of HIPA. As such, subsection 29(1) of FOIP and 27(1) of HIPA would apply. See Appendix A for details.

[130] Pages 24 to 29 of the record outline a variety of concerns that name a number of individuals. The information relates to human resource issues and residents. The information would qualify as personal information pursuant to subsections 24(1)(b) and 24(1)(k)(i) of FOIP. As such, subsection 29(1) of FOIP would apply. See Appendix A for details.

IV FINDINGS

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

[132] I find that Social Services did not comply with section 12 of FOIP.

[133] I find that Social Services properly applied subsections 17(1)(a), 17(1)(b) and 29(1) of FOIP and subsection 27(1) of HIPA to some portions of the record, but not others. See Appendix A for details.

[134] I find that Social Services did not properly apply subsections 15(1)(m), 18(1)(b) and 19(1)(c) of FOIP to the record. See Appendix A for details.

V RECOMMENDATIONS

[135] I recommend Social Services review why it was not able to respond to the Applicant within the legislative timeframe and determine if it needs to revisit its policies and procedures, or if it has adequate resources.

[136] I recommend Social Services continue to withhold the portions of the record where subsections 17(1)(a), 17(1)(b) and 29(1) of FOIP and subsection 27(1) of HIPA were found to apply. See Appendix A for details.

[137] I recommend that Social Services release the portions of the record where I have not found any exemptions apply within 30 days of issuance of this Report. See Appendix A for details.

Dated at Regina, in the Province of Saskatchewan, this 25th day of November, 2022.

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

Appendix A

Record Number	Page numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
1	1	17(1)(b) and 19(1)(c)	No	Release
3	3	29(1)	Yes – to the name of the client in the subject line	Withhold the name of the client in the subject line. Release the email address in the email header.
4	4 to 22	17(1)(b) and 19(1)(c)	Yes – subsection 29(1) of FOIP applies	Withhold
5	23	17(1)(b) and 19(1)(c)	Yes – 29(1) of FOIP and 27(1) of HIPA applies	Withhold
6	24 to 29	17(1)(b) and 19(1)(c)	Yes – 29(1) of FOIP applies	Withhold
7	30	17(1)(b) and 19(1)(c)	No	Release
8	31	17(1)(a), 17(1)(b), 19(1)(c) and 29(1)	No	Release
9	37	29(1)	No	Release
10	38 and 39	17(1)(b), 19(1)(c) and 29(1)	No	Release
11	42 and 43	29(1)	No	Release
12	44	17(1)(a), 17(1)(b), 19(1)(c) and 29(1)	No	Release
13	45	17(1)(a), 17(1)(b) and 19(1)(c)	Yes – 17(1)(a) of FOIP applies	Withhold
14	47	29(1)	Yes	Withhold
17	50	17(1)(b) and 19(1)(c)	No	Release
18	52 and 53	17(1)(b) and 19(1)(c)	No	Release
19	54	29(1)	No	Release
20	55	17(1)(a), 17(1)(b) and 19(1)(c)	Yes – 17(1)(b) applies	Withhold
21	56	17(1)(a), 17(1)(b), 19(1)(c) and 29(1)	No	Release
22	57	29(1)	No	Release

Record Number	Page numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
23	59 to 61	17(1)(a), 17(1)(b), 19(1)(c) and 29(1)	No	Release
24	63 and 64	17(1)(a), 17(1)(b), 19(1)(c) and 29(1)	No	Release
25	65 and 66	17(1)(a), 17(1)(b), 19(1)(c) and 29(1)	No	Release
26	67 and 68	17(1)(a), 17(1)(b) and 19(1)(c)	Yes – 17(1)(a) of FOIP applies	Withhold
27	70	17(1)(b) and 19(1)(c)	No	Release
28	71	19(1)(c) and 29(1) of FOIP; 27(1) of HIPA	Yes – 27(1) of HIPA applies to the fifth redaction	Withhold the fifth redaction. Release the remaining information.
29	73	19(1)(c) and 29(1) of FOIP; 27(1) of HIPA	Yes – 27(1) of HIPA applies to the fifth redaction	Withhold the fifth redaction. Release the remaining information.
31	77	29(1)	No	Release
33	80	29(1)	No	Release
34	81	29(1)	No	Release
35	82	29(1)	No	Release
38	86	29(1)	No	Release
39	87	29(1)	No	Release
40	88 and 89	15(1)(m), 18(1)(b) and 29(1)	No	Release
41	90	17(1)(b), 19(1)(c) and 29(1)	No	Release
42	91	17(1)(b), 19(1)(c) and 29(1)	No	Release
43	93 and 94	17(1)(b), 19(1)(c) and 29(1)	No	Release
44	96 to 98	17(1)(b), 19(1)(c) and 29(1)	No	Release
45	99 and 100	17(1)(b), 19(1)(c) and 29(1)	No	Release