



## **REVIEW REPORT 141-2023**

### **Saskatchewan Housing Corporation**

**October 19, 2023**

#### **Summary:**

The Applicant submitted an access to information request to the Saskatchewan Housing Corporation (SHC). Thirty-six days after receiving the access request, SHC issued a fee estimate. The Applicant paid the deposit, so SHC continued to process the access request. However, SHC took 116 days in total to respond to the Applicant's access request. Further, it refused the Applicant access to records pursuant to subsections 16(1)(a), 17(1)(a), (b), (c), (e), 18(1)(d), (e), 19(1)(b), (c), 22(b), (c), and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the Commissioner. The Commissioner found that SHC did not comply with section 7 of FOIP and, because of its excessive delays in responding, he recommended that it refund the Applicant any fees they paid. He found that SHC properly applied some of the exemptions in some cases, but he also found that SHC did not demonstrate it properly applied exemptions in other cases. The Commissioner made a number of recommendations, including that SHC ensure it issues fee estimates within the first 10 days of receiving an access request and that it responds to access requests within legislated timelines. The Commissioner summarized his findings and recommendations regarding the records in the Appendix to this Report, and recommended that SHC release any records within 30 days of the issuance of this Report.

#### **I BACKGROUND**

[1] On January 19, 2023, the Applicant submitted the following access to information request to the Saskatchewan Housing Corporation (SHC):

My request relates to all activities around the creation of the STC (Saskatoon Tribal Council) Wellness Centre in Fairhaven, Saskatoon. I wish to access all reports, correspondence and information (including any discussions or dialogues) on this process starting from May 2022 to December 2022. This request includes, but is not

limited to, information from any City of Saskatoon entity including Police and Fire Services, Saskatoon Mayor Clark, Saskatoon Councillor Kirton, Chief Arcand, or the Saskatoon Tribal Council. This information should include anything relates to a generic shelter or wellness centre regardless if the later chosen STC name was attributed earlier on or not.

[2] On the same day, SHC acknowledged receipt of the access request.

[3] Then, on February 6, 2023, SHC sent an email to the Applicant. SHC had clarified the Applicant's access request and summarized it as follows:

Thank you for the conversation today regarding your access to information request.

In order to narrow the scope and the estimate of fees, you have requested the time period of the search to be changed to June 2022 to October 2022. You clarified that you would like records that indicate:

- How the wellness centre was created and who was involved
- The request for land purchase
- Where and when the City of Saskatoon was involved in the wellness centre
- What the building is zoned for, especially regarding number of beds and type of facility

[4] On February 7, 2023, the Applicant responded to the SHC by saying, "let's start with that and see how big your cost number is please."

[5] On February 24, 2023, SHC provided the Applicant with a fee estimate.

[6] On February 28, 2023, the Applicant responded and said they wished to proceed and indicated that they mailed a cheque for the deposit.

[7] On March 6, 2023, SHC received the Applicant's cheque.

[8] On March 17, 2023, SHC sent a letter to the Applicant indicating that it was extending the time period by an additional 30 days pursuant to subsection 12(1)(b) of FOIP.

[9] On April 10, 2023, SHC sent another letter to the Applicant indicating that the remainder of the fees were due.

[10] On April 18, 2023, SHC received the Applicant's cheque for the remaining fees.

[11] On April 25, 2023, after having paid the remainder of the fees, the Applicant emailed SHC to ask where the records were.

[12] On April 26, 2023, SHC responded as follows:

Thanks for your email.

We have received the full fee and are processing the records you requested. They will be sent to you as soon as possible.

[13] On the same day, the Applicant responded by expressing confusion over having not received the records yet.

[14] On April 28, 2023, SHC responded:

I'm sorry for the delay. Unfortunately, the approval process is not yet completed.

[15] In a letter dated May 25, 2023, SHC responded to the Applicant's access request. SHC provided the Applicant access to 205 pages of records, which were partially redacted. SHC also indicated it was withholding 137 pages of records in full from the Applicant. It cited subsections 16(1)(a), 17(1)(a), (b), (c), (e), 18(1)(d), (e), 19(1)(b), (c), 22(b), (c), and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as its reasons for withholding portions of the records (in full or in part). In its letter, SHC acknowledged it exceeded the legislated response time and apologized.

[16] On May 29, 2023, the Applicant requested a review by my office.

[17] On July 4, 2023, my office notified SHC, the Applicant, and a third party (Saskatoon Tribal Council (STC)) that my office was undertaking a review.

[18] Then, in the course of my office's review on September 7, 2023, SHC released an additional 287 pages of records, some of which were redacted.

[19] On October 10, 2023, my office received a submission from SHC.

[20] My office did not receive submissions from the Applicant or STC.

## **II RECORDS AT ISSUE**

[21] At issue are 629 pages of records. SHC divided the responsive records into three sets. The first set is 205 pages of records that were provided to the Applicant in full or in part. I will refer to these records as the "Set 1 Records".

[22] The second set is 137 pages of records which SHC withheld in full from the Applicant. I will refer to these records as the "Set 2 Records".

[23] The third set is 287 pages of records, which SHC provided to the Applicant in the course of my office's review. The records were provided to the Applicant in full or in part. I will refer to these records as the "Set 3 Records".

[24] Based on the submission provided to my office, I note that SHC had raised subsections 15(1)(m), 18(1)(b) and 22(a) of FOIP (in addition to the exemptions it cited in its May 25, 2023 letter to the Applicant) as a discretionary exemption it is relying on to withhold portions of the records at issue. Pursuant to subsection 2-4(3) of my office's *Rules of Procedure*, I will not consider discretionary exemptions not included in the government institution's decision under FOIP (section 7 response) unless there are exceptional circumstances. Based on the materials before me in this review, there are no exceptional circumstances that would warrant the consideration of subsection 22(a) of FOIP. Therefore, I will not consider these exemptions in this review.

[25] I also note that SHC indicated in its submission it no longer is relying on subsection 17(1)(e) of FOIP to refuse access to records. Therefore, I am not considering that exemption in this review.

[26] SHC also identified 170 pages of records it regarded as “non-responsive” to the access request. These 170 pages are within the time period of June 2022 to October 2022.

[27] Finally, SHC identified 1751 pages of records it regarded as “non-responsive” to the access request as they did not fall within the time period of June 2022 to October 2022.

[28] The records, the exemptions SHC applied to them, my findings and recommendations are outlined in the Appendix of this Report.

### **III DISCUSSION OF THE ISSUES**

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

[29] As I have found in my office’s [Review Report 180-2019](#) at paragraph [7], SHC qualifies as a government institution pursuant to subsection 2(1)(d)(ii)(A) of FOIP and subsection 3(a) and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). SHC also qualifies as a “trustee” pursuant to subsection 2(1)(t)(i) of *The Health Information Protection Act* (HIPA). Therefore, I find that I have jurisdiction to conduct this review.

[30] STC is a third party pursuant to subsection 2(1)(j) of FOIP.

#### **2. Did SHC comply with section 7 of FOIP?**

[31] As noted in the background of this Report, SHC acknowledged receipt of the Applicant’s access request on January 19, 2023. In its submission, SHC described how it identified records responsive the Applicant’s access request:

The request was initially received on Thursday January 19, 2023. Records & Privacy contacted the applicant the same day to acknowledge receipt of the request. On Tuesday January 24, 2023, Records & Privacy had a meeting with SHC to discuss the request and the search for responsive records. On the same day, Records & Privacy formally requested responsive records from SHC. On Friday January 27, Records & Privacy connected with SHC staff who were searching for responsive records to ensure they understood that the request was for all correspondence and information on the establishment of the wellness centre, even if it was not called the wellness centre at the time the record was created. **SHC sent responsive records between Friday January 27 and Thursday February 2.**

[Emphasis added]

- [32] On February 6 and 7, 2023, SHC clarified and narrowed the access request with the Applicant.
- [33] Then, on February 24, 2023, SHC issued a fee estimate to the Applicant, thirty-six days after receiving the access request.
- [34] On March 6, 2023, SHC received the Applicant's deposit.
- [35] On March 17, 2023 (47 days after receiving the Applicant's access request), SHC sent a letter to the Applicant indicating it was extending the time to respond to the Applicant's access request pursuant to subsection 12(1)(b) of FOIP.
- [36] On May 25, 2023, SHC responded to the Applicant's access request, which is 116 days after receiving the Applicant's access request.
- [37] Then, on September 7, 2023, SHC sent an additional 287 pages of heavily redacted records to the Applicant, which is 221 days after receiving the Applicant's access request.
- [38] Subsection 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 12 of FOIP allows for government institutions to extend the 30-day time period for a reasonable period not exceeding 30 days in limited circumstances. In total, government institutions would have

60 days in total to respond to access requests (*Guide to FOIP*, Chapter 3: “Access to Records”, Updated 5 May 2023 [*Guide to FOIP*, Ch. 3], p. 97).

[39] While SHC sent a letter dated March 17, 2023 indicating it was extending the time period by an additional 30 days pursuant to subsection 12(1)(b) of FOIP, it did so too late. In fact, it issued its fee estimate too late. In past reports, I have recommended that government institutions issue fee estimates within the first 10 days of an access request being received so there is still time to process the request once a deposit is received (*Guide to FOIP*, Ch. 3, p. 73). In this case, SHC issued the fee estimate 36 days after receiving the Applicant’s access request.

[40] In its submission, SHC explained that the “clock restarted on February 7 when the applicant confirmed the narrowed scope” of the access request. Nothing in FOIP allows for the clock to “restart”. I note that subsections 6(3) and 6(4) of FOIP provides that if the head of a government institution is unable to identify the record requested, then the head may request additional details. Once the record is identified, then the access request is deemed to be made:

**6(3) Where the head is unable to identify the record requested**, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.

(4) Where additional details are invited to be supplied pursuant to subsection (3), **the application is deemed to be made when the record is identified**.

[Emphasis added]

[41] As quoted from its submission earlier, SHC identified responsive records between January 27 and February 2, 2023. Therefore, subsections 6(3) and 6(4) of FOIP are not invoked.

[42] I find that SHC did not comply with section 7 of FOIP.

[43] As I have recommended in past Reports (such as [Review Report 326-2017 to 332-2017](#) and [Review Report 231-2016 to 233-2016](#)) that government institutions refund fees due to

excessive delays. Given the excessive delay in this case, I recommend that SHC refund the fees paid to the Applicant due to the excessive delay in responding to their access request.

[44] I recommend that SHC ensure it does the following:

- Issue fee estimates within the first 10 days of receiving an access request;
- Should the Applicant wish to do so, clarify and/or narrow the access request after the fee estimate is issued. Clarifying and/or narrowing the access request at this stage of processing the access request is beneficial to the government institution since the 30-day clock is paused.
- If it is extending the time period to respond to the access request by an additional 30 days pursuant to subsection 12(1) of FOIP, that it do so within the first 30 days of receiving the access request; and
- Respond to access requests within the legislated timeline. This would include ensuring its “approval process” is completed within the legislated timeline.

### 3. Did SHC properly apply subsection 16(1)(a) of FOIP?

[45] SHC applied subsection 16(1)(a) of FOIP to portions of pages 67, 68, 77, 141, 142, 143, and 193 of the Set 1 Records. It also applied subsection 16(1)(a) of FOIP to all of pages 1 to 33 of the Set 2 Records.

[46] Subsection 16(1)(a) 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;

[47] “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 (*Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access”, Updated April 30, 2021 [*Guide to FOIP*, Ch. 4], p. 96).



[48] The word “including” set out in subsection 16(1) means the list of the information that follows is non-exhaustive. The examples in the provision are the types of information that could be presumed to disclose a confidence of Executive Council (Cabinet) (*Guide to FOIP*, Ch. 4, p. 97).

[49] To determine if subsection 16(1)(a) of FOIP applies, my office uses the following two-part test:

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

(*Guide to FOIP*, Ch. 4, pp. 97-99)

[50] Pages 97 to 100 of Chapter 4 of my office’s *Guide to FOIP* provides 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 public body must make a decision for future action.
- A “recommendation” is a specific piece of advice about what to do, especially when given officially; a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.
- A “proposal” is something offered for consideration or acceptance.

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

[51] Pages 1 to 33 of the Set 2 Records contain Cabinet Decision Items that contains advice, analyses, policy options and a recommendation, which were presented to a committee of the Executive Council. Namely, Treasury Board. Therefore, I find that SHC properly applied subsection 16(1)(a) of FOIP to pages 1 to 33 of the Set 2 Records.

[52] Based on a review of the Set 1 Records, the portions of pages 77, 142 and 193 to which SHC applied subsection 16(1)(a) of FOIP contains content that reflect the substance of the Cabinet Decision Items in the Set 2 Records. Therefore, I find that SHC has properly applied subsection 16(1)(a) of FOIP to portions of pages 77, 142 and 193 of the Set 1 Records.

[53] However, pages 67, 68, 141 and 143 of the Set 1 Records do not contain advice, proposals, recommendations, analyses or policy options. Pages 67 and 68 are cover emails that says a Cabinet Decision Item is attached to the emails. However, the cover emails do not contain the substance of the Cabinet Decision Items. The portions of pages 141 and 143 to which SHC applied subsection 16(1)(a) mentions Cabinet. However, the contents do not qualify

as advice, proposals, recommendations, analyses or policy options. As such, the first part of the two-part test is not met. I find that SHC has not demonstrated that subsection 16(1)(a) of FOIP applies to pages 67, 68 141 and 143 of the Set 1 Records.

[54] My findings and recommendations are set out in the Appendix.

#### **4. Did SHC properly apply subsection 17(1)(a) of FOIP?**

[55] SHC applied subsection 17(1)(a) of FOIP to pages 70, 123, 138, 169 to 172, 174 to 175, and 191 of the Set 1 Records and to pages 116 to 118 and 133 to 134 of the Set 2 Records.

[56] 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;

[57] 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. 124-126)*

[58] Earlier, I provided the definitions for advice, proposals, recommendations, analyses or policy options. I also provided the definition of Executive Council.

[59] The phrase “developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the government institution,

or 2) outside the government institution but for the government institution and at its request (for example, by a service provider or stakeholder) (*Guide to FOIP*, Ch. 4, p. 126).

- [60] Pages 169 to 172 and 174 to 175 are email threads between employees of the Ministry of Social Services. When considering these pages, I note that SHC applied subsections 17(1)(a) and (b) of FOIP to the contents of the emails. I note that subsection 24(1)(a) and (b) of Alberta's *Freedom of Information and Protection of Privacy Act* (AB FOIP) are similar to subsections 17(1)(a) and (b) of FOIP. An adjudicator from Alberta's Office of the Information and Privacy Commissioner (AB IPC) distinguished subsection 24(1)(a) of AB FOIP from subsection 24(1)(b) in [Order F2013-13](#) as follows:

[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 the 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]

- [61] Based on a review of the email threads at pages 169 to 172 and 174 to 175, some of the emails qualified as advice or proposals provided by an employee of the government institution to another employee of the government institution with decision-making ability. Therefore, I find that SHC properly applied subsection 17(1)(a) of FOIP to emails in the email threads found on pages 169 to 172 and 174 to 175. My findings are set out in the Appendix.

[62] However, based on a review of the portions of pages 70, 123, 138 and 191 of the Set 1 Records and pages 116 to 118 and 133 to 134 of the Set 2 Records to which subsection 17(1)(a) of FOIP was applied, I find that these portions do not contain advice, proposals, recommendations, analyses and/or policy options. For example, the portion of page 70 of the Set 1 Records is an email where the Assistant Deputy Ministry is indicating what the next steps are. Such information does not qualify as advice, proposals, recommendations, analyses, and/or policy options. Further, the portion of page 123 of the Set 1 Records to which SHC applied subsection 17(1)(a) of FOIP appears to identify an issue. Identifying an issue is not advice, proposals, recommendations, analyses, and/or policy options. Further, pages 116 to 118 of the Set 2 Records are handwritten notes. Based on a review, it is difficult to decipher what content is the advice, proposal, recommendations, analyses, and/or policy options. I find that SHC has not demonstrated that it properly applied subsection 17(1)(a) of FOIP to pages 70, 123, 138 and 191 of the Set 1 Records and pages 116 to 118 and 133 to 134 of the Set 2 Records. My findings and recommendations are set out in the Appendix.

**5. Did SHC properly apply subsection 17(1)(b) of FOIP?**

[63] SHC applied subsection 17(1)(b) of FOIP to portions of pages 3 to 11, 69, 71, 77, 80 to 81, 118 to 119, 120 to 127, 130 to 132, 134, 141, 144 to 145, 151, 157, 163, 164, 168 to 172, 174 to 175, 186, 190 to 192, 198 to 199, 203 to 204 of the Set 1 Records. Also, SHC applied the exemption to pages 34 to 40, 43 to 112, and 125 to 137 of the Set 2 Records. Finally, SHC applied the exemption to pages 7, 9, 11, 13, 16 to 17, 21, 40, 43 to 45, 53, 55 to 59, 67 to 236, 241 to 242, 245 to 250, 258 to 261, 263, 265 to 266, 269 to 272, and 275 to 276 of the Set 3 Records.

[64] 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;

[65] 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. 132-133)

[66] Pages 132 to 134 of Chapter 4 of my office's *Guide to FOIP* provides 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.

- “The staff of a member of the Executive Council”: The phrase includes the staff in a Minister’s office, such as Chief of Staff, Administrative Assistants and Ministerial Assistants. It also includes the staff of the Office of the Executive Council.

[67] Earlier, I quoted the AB IPC’s [Order F2013-13](#) that explains the difference between subsections 24(1)(a) and 24(1)(b) of AB FOIP. Those two subsections are very similar to subsections 17(1)(a) and (b) of FOIP. For the purpose of my analysis of subsection 17(1)(b) of FOIP, a consultation is where a decision-maker is seeking advice but is not the advice itself. Further, only a person charged with making a decision can be said to deliberate that decision. Therefore, in my review of the records, I considered the authors of the records – were they seeking advice or were they deliberating a decision?

[68] Based on a review, portions of pages 6 to 8, 131 to 132, 170 to 172, and 174 to 175 of the Set 1 Records appear to contain consultations and/or deliberations. For example, the email thread at pages 170 and 172 of the Set 1 Records involves a director seeking advice or a proposal from a manager (a consultation). The manager proposes wording (on which I found subsection 17(1)(a) of FOIP to apply). The director responds and requests additional advice or proposals (a consultation). Therefore, I find that SHC properly applied subsection 17(1)(b) of FOIP to portions of pages 6 to 8, 131 to 132, 170 to 172, and 174 to 175 of the Set 1 Records.

[69] However, the majority of the pages to which SHC applied subsection 17(1)(b) of FOIP do not contain consultations or deliberations. For example, pages 118 and 119 of the Set 1 Records are handwritten notes. It’s unclear who the author of the notes is, and my office cannot decipher if the notes meet the definitions “consultations” or “deliberations”.

[70] Further, records in the Set 2 Records to which SHC applied subsection 17(1)(b) of FOIP are drafts of documents, such as the draft of Change of Terms/Conditions, draft of a letter, drafts of a news release, and draft of a lease agreement. In its submission, SHC said “Consultation on the content of the final document was ongoing” or “Consultation on the content of the document was ongoing”. Paragraph 75 of AB IPC’s [Order F2016-016](#) explains that draft versions of records does not transform the contents into consultations or deliberations:

[para 75] There is no evidence that the letter reflects the deliberations of the councillor as to what the letter should say. As I noted in Order F2013-17, **the fact that a draft (assuming the letter is a draft and not the final version) may differ from a final version of does not transform the information in the draft into advice, proposals, recommendations, analyses, policy options, consultations or deliberations: information must have that character to begin with.** I acknowledge that the differences between a draft version and a final version may allow a reader to determine what was changed and to speculate about the reasons for the changes. However, it does not follow from this possibility that any changes that were made are the result of information subject to section 24(1)(a) or (b), or that such information would be revealed by disclosing the draft version.

[Emphasis added]

[71] Draft documents themselves must still contain consultations or deliberations as defined earlier in order for the first part of the test to be met. Based on a review, the contents of the draft documents do not contain consultations or deliberations.

[72] Finally, SHC applied subsection 17(1)(b) of FOIP to several pages of the Set 3 Records. However, the contents to which it applied the exemption do not qualify as consultations or deliberations. For example, at page 40 is an email from a Manager from SHC wherein they provide information to the Saskatchewan Housing Authority. Providing information does not qualify as a “consultation” nor does it qualify as a “deliberation”. Further, SHC applied subsection 17(1)(b) to pages 68 to 236 of the Set 3 Records. In its submission, SHC described these pages as “consultation documents”. Based on a review of the records, though, pages 68 to 236 do not contain consultations where the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal.

[73] Therefore, I find that SHC has not demonstrated that it properly applied subsection 17(1)(b) of FOIP in the majority of the cases where it applied the exemption. My findings and recommendations are set out in the Appendix.

## 6. Did SHC properly apply subsection 17(1)(c) of FOIP?



[74] SHC applied subsection 17(1)(c) of FOIP to pages 69, 71 to 72, 75, 77, 80, 84, 96, 108, 118 to 119, 121 to 123, 128, 130 to 132, 134, 138 to 142, 144 to 145, 151, 157, 160 to 161, 163 to 164, 168 to 172, 174 to 176, 186, 197 to 199, and 203 to 204 of the Set 1 Records. Also, it applied the exemption to pages 34 to 39, 43 to 112, 116 to 117, 119 to 123, and 125 to 137 of the Set 2 Records. Finally, it applied the exemption to pages 3, 5, 7, and 269 to 272 of the Set 3 Records.

[75] Subsection 17(1)(c) of FOIP provides:

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

...

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

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

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

(*Guide to FOIP*, Ch. 4, pp. 137-138)

[77] Pages 137 to 139 of Chapter 4 of my office's *Guide to FOIP* provides the following definitions:

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

- A “procedure” is an established or official way of doing something; a series of actions conducted in a certain order or manner.
- “Criteria” are standards, rules, or tests on which a judgement or decision can be based or compared; a reference point against which other things can be evaluated.
- “Instructions” are directions or orders.
- A “consideration” is a careful thought; a fact taken into account when making a decision. Thus, a record identifying the facts and circumstances connected to positions, plans, procedures, criteria or instructions could also fall within the scope of this provision.
- “Relate to” should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as “substantial connection”) for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. “Relating to” requires some connection between the information and the negotiations.
- “Developed” means to start to exist, experience or possess.
- “For the purpose of” means intention; the immediate or initial purpose of something.
- “On behalf of” means “for the benefit of”. A person does something “on behalf of” another, when he or she does the thing in the interest of, or as a representative of, the other person.
- A “negotiation” is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation”. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion.

[78] Based on a review, pages 69, 71, 130, 134, 138, 140 to 142, 144 to 145, 163, and 198 to 199 of the Set 1 Records, pages 43 to 44, 119 to 122 of the Set 2 Records, and page 7 of the Set 3 Records appear to contain positions or considerations that relate to the negotiations of a purchase agreement, lease, and/or occupancy agreements, and that such positions or considerations were developed by or on behalf of the SHC. I find that SHC properly applied subsection 17(1)(c) of FOIP to pages 69, 71, 130, 134, 138, 140 to 142,

144 to 145, 163, and 198 to 199 of the Set 1 Records, pages 43 to 44, 119 to 122 of the Set 2 Records, and page 7 of the Set 3 Records.

[79] However, SHC also applied the exemption to other pages to which I find do not contain positions, plans, procedures, criteria, instructions or considerations that relate to negotiations. For example, it applied subsection 17(1)(c) of FOIP to dollar amounts that appear on pages 84, 96, and 108 of the Set 1 Records. SHC offered the following arguments for why it redacted the dollar amounts on each of the following pages as follows:

- Page 84 – “Assignment and assumption of purchase agreement. The amount of the initial deposit was redacted as that information would impact SHC’s ability to negotiate future building purchases.”
- Page 96 – “The amount of the initial deposit and building price was redacted as that information would impact SHC’s ability to negotiate future building purchases.”
- Page 108 – “The amount of the cheque for the purchase of the building.”

[80] Dollar amounts do not equate to positions, plans, procedures, criteria, instructions or considerations related to negotiations. The first part of the test is not met for these pages. I should also note that information such as the amount paid for the purchase of the building would be released in Public Accounts documents in accordance with *The Financial Administration Act, 1993*. Therefore, there is no basis for withholding such information.

[81] Further, I note that SHC applied subsection 17(1)(c) of FOIP to draft versions of documents in the Set 2 Records. For example, pages 57 to 90 is a draft version of the lease agreement. SHC said:

This agreement is considered a plan for the purpose of contractual or other negotiations because it is still draft [sic]. The final version of this agreement was released on 12-44 of released [sic].

[82] The fact that a document is in draft form does not mean it is a “plan” that can be withheld under the exemption, and that once finalized it is no longer a “plan” and the exemption no longer applies. The contents of the document must still contain positions, plans,

procedures, criteria, instructions or considerations that relate to negotiations in order for the first part of the test to be met.

[83] Therefore, I find that SHC has not demonstrated that it properly applied subsection 17(1)(c) of FOIP in some cases. My findings and recommendations are set out in the Appendix.

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

[84] SHC applied subsection 18(1)(d) of FOIP to pages 15, 59, 69, 71 to 72, 75, 77, 80, 84, 96, 108, 118 to 119, 121 to 123, 128, 130 to 132, 134, 138 to 142, 144 to 145, 151 to 153, 157, 160 to 161, 163 to 164, 168 to 172, 174 to 176, 186, 197 to 199, and 203 to 204 of the Set 1 Records. It also applied the exemption to pages 34 to 39, 43 to 112, 116 to 117, 119 to 122, 125 to 137 of the Set 2 Records. Finally, SHC applied the exemption to pages 3, 5, 7, 9, 40, 43 to 45, 53, 245 to 250, 258 to 261, 263, 265 to 266, 269 to 272, and 275 to 276 of the Set 3 Records.

[85] 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;

[86] 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. 174-175)*

- [87] Earlier in this Report, I defined the term “negotiation”. Page 175 of Chapter 4 of my office’s *Guide to FOIP* defines the term “interfere” as “to hinder or hamper”.
- [88] Prospective or future negotiations could be included within this exemption, as long as 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 (*Guide to FOIP*, Ch. 4, 174).
- [89] 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, 174).
- [90] In its submission, SHC identified that the negotiations at issue are between SHC, STC and the City of Saskatoon. However, it asserted that the release of information would interfere with “other negotiations with organizations related to shelters”. It said:
- As previously stated, the negotiations include SHC, STC and the City of Saskatoon. SHC and MSS provide funding to Community Based Organizations and agencies that deliver services to vulnerable Saskatchewan citizens. Negotiations with these agencies are ongoing and release of information about a particular agency could interfere with other negotiations with organizations related to shelters.
- [91] I note that the Government of Saskatchewan issued a [news release dated October 28, 2022](#) regarding SHC leasing a building to the STC. Therefore, it appears that negotiations have concluded. Subsection 18(1)(d) of FOIP generally does not apply to negotiations that have concluded. Further, SHC argues that the release of the information “could interfere with other negotiations with organizations related to shelters.” However, SHC has not identified what negotiations it is referring to. A vague possibility of future negotiations is not sufficient. There must be a reasonable fact-based expectation that the future negotiations will take place. I find that SHC has not demonstrated that it properly applied subsection 18(1)(d) of FOIP. My findings and recommendations are set out in the Appendix.

**8. Did SHC properly apply subsection 18(1)(e) of FOIP?**

[92] SHC applied subsection 18(1)(e) of FOIP to pages 3 to 11, and 126 to 127 of the Set 1 Records. It also applied the exemption to pages 55 to 59 of the Set 3 Records. SHC did not apply the exemption to the Set 2 Records.

[93] Subsection 18(1)(e) of FOIP provides:

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

...

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

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

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

*(Guide to FOIP, Ch. 4, pp. 178-180)*

[95] Earlier in this Report, I provided the definitions for key terms such as positions, plans, procedures, criteria, instructions, considerations, and negotiations.

[96] In its submission, SHC said the following:

The redactions made under this exemption on pages 3-5 and 6-8 include plans for purchasing the building that were discussed in an email chain. The email chain also included particulars of the purchase and the positions of STC and the previous building owners.

As noted on page 178 of the IPC Guide to FOIP, examples of the type of information that could be covered by the ss. 18(1)(e) exemption are the various positions developed by a government institution's negotiators in relation to labour, financial and commercial contracts. Pages 9-11 and 126-127 include considerations related to negotiating the terms of purchasing the building. With respect to the second part of the test, the plans and positions outlined above were developed for the purpose of negotiating the terms and purchase price of the building by employees of the ministry.

[97] Based on a review, I agree with SHC that pages 3 to 5, 10 to 11, and 126 to 127 of the Set 1 Records and pages 55 to 59 of the Set 3 Records contain plans developed for the purpose of negotiating the purchase of a building by SHC. Therefore, I find that SHC properly applied subsection 18(1)(e) of FOIP to pages 3 to 5, 10 to 11, and 126 to 127 of the Set 1 Records and pages 55 to 59 of the Set 3 Records.

[98] I should note that I have already found that subsection 17(1)(b) of FOIP applies to pages 6 to 8 so I do not need to consider whether subsection 18(1)(e) of FOIP applies to these pages.

## **9. Did SHC properly apply subsection 19(1)(b) of FOIP?**

[99] SHC applied subsection 19(1)(b) of FOIP to pages 69, 74, 83, 108, 123, 134, and 197 to 198 of the Set 1 Records. It applied the exemption to page 41 of the Set 2 Records.

[100] 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;

[101] 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. 198-202)

[102] Pages 198 to 203 of Chapter 4 of my office's *Guide to FOIP* provides 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.
- “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.
- “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.
- “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.

- “Supplied” means provided or furnished.
- “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.

[103] In its submission, SHC asserted that the information applied subsection 19(1)(b) of FOIP to qualifies as “financial information”. However, it did not offer any arguments as to how such information was supplied by a third party to a government institution (the second part of the three-part test) and how the information was supplied in confidence (the third part of the three-part test).

[104] SHC applied subsection 19(1)(b) of FOIP to portions of records that reference dollar values or an image of cheque (or information that can be found on a cheque such as account, transit and branch number). For example, SHC applied subsection 19(1)(b) of FOIP to portions of pages 74 and 83 to redact the value of a deposit amount in an agreement between SHC and STC. However, the contents of a contract involving a government institution and a third party will not normally qualify as having been supplied by a third party. The provisions of a contract, in general, have been treated as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party (*Guide to FOIP*, Ch. 4, pp. 200-201). As such, the value of a deposit amount on pages 74 and 83 of the Set

1 Records was mutually generated and not supplied. Therefore, I find that SHC has not demonstrated that it properly applied subsection 19(1)(b) of FOIP to such information.

[105] Page 108 is a letter by SHC to a credit union. It contains the account, transit, and branch number of a trust account. Since the letter is by SHC to a credit union, the information was not supplied by a third party to SHC. Therefore, I find that SHC has not demonstrated that it properly applied subsection 19(1)(b) of FOIP to page 108 of the Set 1 Records. Similarly, page 41 of the Set 2 Records is an image of a cheque. However, on the face of the record, I cannot determine if the information on the cheque was supplied by a third party and if the information was supplied in confidence. Its submission merely says that page 41 of the Set 2 Records is a scan of a void cheque that was enclosed with the letter on page 108 of the Set 1 Records. Therefore, I find that SHC did not demonstrate that it properly applied subsection 19(1)(b) of FOIP to page 41 of the Set 2 records.

[106] My findings and recommendations are set out in the Appendix.

#### **10. Did SHC properly apply subsection 19(1)(c) of FOIP?**

[107] SHC applied subsection 19(1)(c) of FOIP to pages 15, 59, and 69 of the Set 1 Records. It also applied the exemption to pages 68 to 236 of the Set 3 Records. It did not apply the exemption to the Set 2 Records.

[108] Subsection 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;

[109] SHC did not specify precisely which subsection of 19(1)(c) of FOIP it was claiming. Therefore, I must consider all three subsections and determine if subsection 19(1)(c) of FOIP applies.

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

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

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

[111] 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, p. 216)*

[112] 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 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. 221-222)*

[113] Pages 211 to 222 of Chapter 4 of my office's *Guide to FOIP* provides the following definitions:

- “Financial loss or gain” must be monetary, have a monetary equivalent, or value (e.g. loss of revenue or loss of corporate reputation).
- “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 or not that competitor currently competes for the same market share.
- “Could reasonably be expected to” means there must be a reasonable expectation that disclosure could result in the harm.

[114] Earlier in this Report, I defined the term “negotiations”.

[115] The Supreme Court of Canada, in [Ontario \(Community Safety and Correctional Services\) v. Ontario \(Information and Privacy Commissioner\)](#), [2014] 1 SCR 674, 2014 SCC 31, 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”...

[Emphasis added]

(*Guide to FOIP*, Ch. 4, pp. 211-212)

[116] 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 BCSC 875, Bracken J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm (*Guide to FOIP*, Ch. 4, p. 212).

[117] In its submission, SHC cited paragraphs 50, 54 and 55 of [\*Canadian Bank Note Ltd v Saskatchewan Government Insurance, 2016 SKQB 362\*](#) (which cites [\*Merck Frosst Canada Ltd. v Canada \(Health\), 2012 SCC 3\*](#)) as its basis for believing the test that should be used to determine if subsection 19(1)(c) of FOIP applies as follows:

In view of these statements of the Supreme Court of Canada and the Saskatchewan Court of King’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. The Ministry proposes reframing the test as follows:

Could disclosure of the record **reasonably be expected** to result in one of the following:

- (a) a financial loss or gain to a third party;
- (b) prejudice to the competitive position of a third party; or
- (c) interference with the contractual negotiations of a third party?

[Emphasis added]

[118] Below are quotes from SHC’s submission as to why subsection 19(1)(c) of FOIP applies to the pages to which it applied the exemption in the Set 1 Records:

- **Page 15** – “Signed Lease Agreement – includes the rent that STC will pay to SHC for the building. This is redacted as it could result in a financial loss or gain for other Community Based Organizations (CBO) who SHC negotiates with.”
- **Page 59** – “Signed Agreement for Services – redactions are in Appendix A: Agency Budget. Releasing budget and funding information of one CBO impacts the SHC’s ability to negotiate with other CBOs.”
- **Page 69** – “Email thread – indicates that STC is working with the federal government on funding for building repairs. This could impact their ability to negotiate for this and future funding.”

[119] SHC merely asserts there could be harm but does not demonstrate the harm “could reasonably be expected”. SHC has not met its own test much less meeting the tests used by my office.

[120] Similarly, for the pages 68 to 236 of the Set 3 Records, SHC argued that “Releasing documents held in confidence damages the relationship SHC has with STC and damages ongoing contractual negotiations for services.” Again, SHC has merely asserted that a harm could occur but has not demonstrated that the harm “could reasonably be expected” to result. In order to demonstrate that harm “could reasonably be expected,” it would need to identify what “ongoing contractual negotiations” it is referencing and how the disclosure would damage such negotiations. It has not done so.

[121] I find that SHC has not demonstrated that it properly applied subsection 19(1)(c) of FOIP. My findings and recommendations are set out in the Appendix.

#### **11. Did SHC properly apply subsection 22(b) of FOIP?**

[122] SHC applied subsection 22(b) of FOIP to a portion of page 197 of the Set 1 Records. It also applied the exemption to pages 264 to 265 of the Set 3 Records. It did not apply the exemption to the Set 2 Records.

[123] 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;

[124] 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?

[125] Pages 278 to 279 of Chapter 4 of my office’s *Guide to FOIP* 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.
- “In relation to” has been found to have a similar meaning as “in respect of”.
- “Legal advice” includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.
- Legal service includes any law-related service performed by a person engaged by a government institution and who is licensed to practice law.

[126] The redacted portion of page 197 of the Set 1 Records and pages 264 to 265 of the Set 3 Records appears to be a quote of a clause suggested by legal counsel for the Ministry of Social Services to be added to a contract. Therefore, the suggested clause is prepared by or for legal counsel for a government institution. Further, the quote was prepared in relation to a matter involving the provision of advice by legal counsel. Therefore, on the face of the record, I find that SHC properly applied subsection 22(b) of FOIP on page 197 of the Set 1 Records and pages 264 to 265 of the Set 3 Records. See the Appendix for my findings and recommendations.

## **12. Did SHC properly apply subsection 22(c) of FOIP?**

[127] SHC applied subsection 22(c) of FOIP to page 135 of the Set 1 Records. It also applied the exemption to page 115 of the Set 2 Records. Finally, it applied the exemption to pages 237 to 238 and 241 and 242 of the Set 3 Records.

[128] Subsection 22(c) of FOIP provides as follows:

**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.

[129] 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, p. 280)

[130] Page 280 of Chapter 4 of my office's *Guide to FOIP* provides the following definitions:

- "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.
- "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.

[131] Earlier in this Report, I defined the terms "legal advice" and "legal service". As well, I defined the phrase "in relation to".

[132] The portion of page 135 of the Set 1 Records that SHC applied subsection 22(c) of FOIP is an email between a director at SHC and SHC's legal counsel. In the email, the director sent attachments to legal counsel and sought legal counsel's opinion on the best way to proceed. The email qualifies as "correspondence". Further, the seeking of legal counsel's opinion means that the correspondence relates to a matter that involves the provision of legal advice or legal services by legal counsel. Therefore, on the face of the record, I find that SHC properly applied subsection 22(c) of FOIP to page 135 of the Set 1 Records. See the Appendix for my findings and recommendations.



[133] Page 115 of the Set 2 Records and pages 237 to 238 of the Set 3 Records are emails exchanged between two directors at SHC and SHC's legal counsel. It involves the review of clauses of an agreement. The email exchanges qualify as "correspondence". Further, the review of the clauses of an agreement means that the correspondence relates to a matter that involves the provision of legal advice or legal services by legal counsel. Therefore, on the face of the record, I find that SHC properly applied subsection 22(c) of FOIP to page 115 of the Set 2 Records and pages 237 to 238 of the Set 3 Records.

[134] Pages 241 to 242 of the Set 3 records are emails exchanged between managers and directors at SHC and SHC's legal counsel regarding the amendment of an agreement. The email exchanges qualify as "correspondence". Further, the discussion regarding the agreement relates to a matter that involves the provision of legal advice or legal services by legal counsel. Therefore, on the face of the record, I find that SHC properly applied subsection 22(c) of FOIP to pages 241 to 242 of the Set 3 Records.

**13. Did SHC properly apply subsection 29(1) of FOIP?**

[135] SHC applies subsection 29(1) of FOIP to pages 71 to 74, 83, 86 to 96, 98 to 111, 114, 117 to 120, 122, 126 to 129, 131 to 141, 144, 151, 155, 158 to 159, 161 to 163, 165 to 166, 176 to 178, 183 to 184, 186 to 189, 193, 195 to 198, 200 to 201, 204 of the Set 1 Records. It also applied the exemption to pages 34 to 37, 43, 45 to 56, 125 to 130 of the Set 2 Records. Finally, it applied the exemption to pages 7, 9, 23 to 25, 27 to 28, 30, 32 to 39, 42 to 43, 49 to 52, 60 to 62, 64 to 66, 237 to 240, 243 to 244, 251, 253, 256, 264, 267, 273 to 274, 279 to 280, and 286 of the Set 3 Records.

[136] 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.

[137] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains to, 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).

[138] 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. To qualify as personal information as defined by subsection 24(1) of FOIP, the information must: 1) be about an identifiable individual; and 2) be personal in nature. Information is about an “identifiable individual” if the individual can be identified from the information (e.g., their name is provided) or if the information, when combined with information otherwise available, could reasonably allow the individual to be identified. To be “personal in nature” means the information provides something identifiable about the individual (*Guide to FOIP*, Ch. 6, pp. 32-33).

[139] Pages 35 to 37 of Chapter 6 of my office’s *Guide to FOIP* provides examples of information that my office has found not to qualify as “personal information”, including the following:

- 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.
- Business card information is the type of information found on a business card (name, job title, work address, work telephone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. This is considered “business contact information” and not personal information.

[140] The rationale for a distinction between personal information and information that relates to a person in their professional or official capacity preserves the integrity of the regime that establishes the public’s right of access and government’s disclosure obligations. Without this distinction, the routine disclosure of information by government would be greatly

impeded. For example, withholding all recorded information relating to the activities of public servants or other individuals in their professional or official capacities impedes FOIP's overarching goal of creating accountability and transparency over government activities. Further, not differentiating between information that is personal in nature and information that relates to a person's professional capacity would frustrate the purpose of FOIP, namely that information under the possession or control of a government institution should be made available to the public (unless subject to a limited and specific exemption) (*Guide to FOIP*, Ch. 6, p. 37).

[141] Based on a review of the portions of the records to which SHC applied subsection 29(1) of FOIP, I find that the information does not qualify as "personal information" as defined by subsection 24(1) of FOIP. The information that SHC redacted are names and email addresses of individuals in their professional capacities.

[142] I find that SHC did not properly apply subsection 29(1) of FOIP. See the Appendix for my findings and recommendations.

#### **14. Did SHC properly apply subsection 27(1) of HIPA?**

[143] SHC did not cite subsection 27(1) of HIPA as a reason for refusing the Applicant access to records in its original response letter dated May 25, 2023. However, it raised the exemption when it provided the Applicant additional records on September 7, 2023. Since subsection 27(1) of HIPA is a mandatory exemption, I am considering it in this review.

[144] SHC applied subsection 27(1) of HIPA to page 237 of the Set 3 Records.

[145] Subsection 4(3) of HIPA provides that HIPA, and not FOIP, applies to personal health information in the custody or control of a trustee. That subsection states:

*4(3) Except where otherwise provided, The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act do not apply to personal health information in the custody or control of a trustee.*

[146] 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.

[147] “Personal health information” is described in subsection 2(1)(m) of HIPA 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;
- (ii) information with respect to any health service provided to the individual;
- (iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;
- (iv) information that is collected:
  - (A) in the course of providing health services to the individual; or
  - (B) incidentally to the provision of health services to the individual; or
- (v) registration information;

[148] Based on a review of the content withheld pursuant to subsection 27(1) of HIPA on page 237 of the Set 3 Records, I find that the information qualifies as “personal health information” as defined by subsection 2(1)(m)(i) of HIPA. It is about the physical health of an individual. I find that SHC properly applied subsection 27(1) of HIPA to page 237 of the Set 3 Records.

**15. Are the records identified as “non-responsive” by SHC indeed non-responsive to the Applicant’s access request?**

[149] As noted earlier, SHC identified 170 pages of records it regarded as “non-responsive” to the access request.

[150] Then, SHC identified 1751 pages of records it regarded as “non-responsive” as they do not fall within the time period of June 2022 to October 2022.

[151] When determining what information is responsive, a government institution should 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*, Chapter 3: “Access to Records”, Updated May 5, 2023 [*Guide to FOIP*, Ch. 3], pp. 26-27)

[152] First, I will consider the 170 pages of records that SHC regards as “non-responsive”. Then, I will consider the 1751 pages of records.

[153] In its Index of Records, SHC noted that the 170 pages of records are “unrelated to how the wellness centre came to be”. Below are some quotes from SHC’s Index of Records of what the records are about:

- Quote for the work required for the building to open. This is unrelated to how the wellness centre came to be.
- Email thread regarding a request from Minister Carolyn Bennett (federal minister of mental health and addictions and associate minister of health) to connect with STC Tribal Chief Mark Arcand to discuss STC's work and possible federal funding. This is unrelated to how the wellness centre came to be.
- Income Assistance staff notes regarding operational issues at Saskatchewan shelters, especially the issues around closure of Lighthouse beds. This is unrelated to how the wellness centre came to be.
- Email thread regarding approval from Treasury Board on reallocating funds for the renovation of the building. This is unrelated to how the wellness centre came to be.
- ISC land title and mineral title information - This is unrelated to how the wellness centre came to be.
- This email is unrelated to how the wellness centre came to be as it is about releasing keys and installing extinguishers.
- This email is unrelated to how the wellness centre came to be as it is about releasing keys to the building when SHC took possession.
- This email is unrelated to how the wellness centre came to be as it is about if there are extra smoke alarms within the SHA that can be used for this building.
- This email is unrelated to how the wellness centre came to be as it is about the phases of renovation work that are required for the building.
- This email is unrelated to how the wellness centre came to be as it is about the timelines of renovation work required for the building and architect drawings.
- This email is unrelated to how the wellness centre came to be as it is about the building permit for the renovation work required for the building.
- Not related to the request as this email thread is about creating an operational business unit (BU) and program to code the expenses to.
- Not relevant to the request as this thread is regarding how the construction on the building will be funded.
- This email is unrelated to how the wellness centre came to be as it is about the funding for the pre-occupancy construction required on the building.

- This email is unrelated to how the wellness centre came to be as it is about the electrical drawings for the construction required for the building.
- This general bulletin is to assist building owners and managers to prepare effective and useful Fire Safety Plans. This is not relevant to the request of how the STC Wellness centre came to be.

[154] I note that the Applicant had submitted an access request on January 19, 2023 and clarified it on February 6, 2023. Both the original and clarified request regard the creation of the STC Wellness Centre. Based on a review of these 170 pages, they appear to be about work at the initial stages of getting the STC Wellness Centre up and running (such as construction or renovation work).

[155] It is unknown what the Applicant meant by the word “creation” in their original access request. Or what was meant by “How the wellness centre was created...” in the clarified access request.

[156] SHC’s submission did not say that SHC clarified with the Applicant what they meant by the word “creation”. In its submission, SHC said:

On pages 9-13 of the index of records, there is an explanation of how each record is unrelated to the revised request. Many of these records relate to operational emails regarding reallocating funding to cover renovation costs for the building, details on the renovations and construction requirements, discussions on beds previously provided by other shelters, sourcing smoke alarms and picking up keys to the buildings. These records were provided by the business unit in error as they are not related to the request.

[157] These 170 pages of records appear to fall within the time period clarified by the Applicant so the Applicant potentially could have been interested in these 170 pages of records. They are not necessarily separate and distinct and entirely unrelated to the Applicant’s access request. I find that there is a possibility that these 170 pages are responsive to the Applicant’s access request. I recommend that SHC contact the Applicant to determine if they are interested in these records. If so, then I recommend that the SHC release these 170 pages to the Applicant, within 30 days of issuance of this Report, subject to any exemptions found to apply.

[158] Regarding the 1751 pages of records created outside the time period of June 2022 and October 2022, my office has reviewed these pages and confirmed they are non-responsive to the access request. I recommend that the SHC take no further action regarding the 1751 pages of records.

#### **IV FINDINGS**

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

[160] I find that SHC did not comply with section 7 of FOIP.

[161] I find that SHC properly applied subsection 16(1)(a) of FOIP to pages 77, 142 and 193 of the Set 1 Records and to pages 1 to 33 of the Set 2 Records.

[162] I find that SHC has not demonstrated that it properly applied subsection 16(1)(a) of FOIP to pages 67, 68, 141 and 143 of the Set 1 Records.

[163] I find that SHC properly applied subsection 17(1)(a) of FOIP to email threads found on pages 169 to 172 and 174 to 175.

[164] I find that SHC has not demonstrated that it properly applied subsection 17(1)(a) of FOIP to pages 70, 123, 138 and 191 of the Set 1 Records and pages 116 to 118 and 133 to 134 of the Set 2 Records.

[165] I find that SHC properly applied subsection 17(1)(b) of FOIP to pages 6 to 8, 131 to 132, 170 to 172, and 174 to 175.

[166] I find that SHC has not demonstrated how subsection 17(1)(b) of FOIP applies to the majority of the pages to which it applied the exemption.



- [167] I find that SHC properly applied subsection 17(1)(c) of FOIP to pages 69, 71, 130, 134, 138, 140 to 142, 144 to 145, 163, and 198 to 199 of the Set 1 Records, pages 43 to 44, 119 to 122 of the Set 2 Records, and page 7 of the Set 3 Records.
- [168] I find that SHC has not demonstrated it properly applied subsection 17(1)(c) of FOIP in some cases.
- [169] I find that the SHC has not demonstrated that it properly applied subsection 18(1)(d) of FOIP.
- [170] I find that SHC properly applied subsection 18(1)(e) of FOIP to pages 3 to 5, 10 to 11, and 126 to 127 of the Set 1 Records and pages 55 to 59 of the Set 3 Records.
- [171] I find that SHC has not demonstrated that it properly applied subsection 19(1)(b) of FOIP.
- [172] I find that SHC has not demonstrated that it properly applied subsection 19(1)(c) of FOIP.
- [173] I find that SHC properly applied subsection 22(b) of FOIP on page 197 of the Set 1 Records and pages 264 to 265 of the Set 3 Records.
- [174] I find that SHC properly applied subsection 22(c) of FOIP to page 135 of the Set 1 Records, page 115 of the Set 2 Records, and pages 237 to 238 and pages 241 to 242 of the Set 3 Records.
- [175] I find that SHC did not demonstrate it properly applied subsection 29(1) of FOIP.
- [176] I find that SHC properly applied subsection 27(1) of HIPA to page 237 of the Set 3 Records.
- [177] I find that there is a possibility that these 170 pages that fall within the time period of June 2022 and October 2022 are responsive to the Applicant's access request.

[178] I find that the 1751 pages that fall outside the time period of June 2022 and October 2022 are non-responsive to the Applicant's access request.

## V RECOMMENDATIONS

[179] Within 30 days of the issuance of this Report, I recommend that SHC refund the fees paid to the Applicant due to the excessive delay in responding to their access request.

[180] I recommend that SHC ensure it does the following:

- issue fee estimates within the first 10 days of receiving an access request;
- Should the Applicant wish to do so, clarify and/or narrow the access request after the fee estimate is issued. Clarifying and/or narrowing the access request at this stage of processing the access request is beneficial to the government institution since the 30-day clock is paused;
- If it is extending the time period to respond to the access request by an additional 30 days pursuant to subsection 12(1) of FOIP, that it do so within the first 30 days of receiving the access request; and
- Respond to access requests within the legislated timeline. This would include ensuring its “approval process” is completed within the legislated timeline.

[181] I recommend that SHC follow the recommendations set out in the Appendix and that it release any records within 30 days of the issuance of this Report.

[182] Within 30 days of the issuance of this Report, I recommend that SHC contact the Applicant to determine if they are interested in the 170 pages that fall within the time period of June 2022 and October 2022. If so, then I recommend that the SHC release these 170 pages to the Applicant subject to any exemptions found to apply.

[183] I recommend that the SHC take no further action regarding the 1751 pages of records that were created outside of the time period of June 2022 and October 2022.

Dated at Regina, in the Province of Saskatchewan, this 19th day of October, 2023.

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

**Set 1 – Records provided in part to the Applicant**

<b>Page</b>	<b>Exemptions applied by SHC</b>	<b>IPC Findings</b>	<b>IPC Recommendations</b>
1-2	Released		
3	18(1)(e), 17(1)(b), (e) of FOIP	18(1)(e) of FOIP applies to the content in the table but not the sentence that precedes the table.  Neither 17(1)(b) nor (e) of FOIP applies.	Continue to withhold the contents of the table pursuant to subsection 18(1)(e) of FOIP.  Release remainder.
4 to 5	18(1)(e), 17(1)(b), (e) of FOIP	18(1)(e) of FOIP applies to the content of the table.	Continue to withhold the contents of the table pursuant to subsection 18(1)(e) of FOIP.
6 to 8	18(1)(e), 17(1)(b), (e) of FOIP	17(1)(b) of FOIP applies to the redacted contents.	Continue to withhold the contents pursuant to 17(1)(b) of FOIP.
9	18(1)(e), 17(1)(b), (e) of FOIP	None of the applied exemptions apply.	Release.
10 to 11	18(1)(e), 17(1)(b), (e) of FOIP	18(1)(e) of FOIP applies to the content of the table.	Continue to withhold the contents of the table pursuant to subsection 18(1)(e) of FOIP.
15	19(1)(c), 18(1)(d) of FOIP	None of the applied exemptions apply.	Release.
59	19(1)(c), 18(1)(d) of FOIP	None of the applied exemptions apply.	Release.
67	16(1)(a) of FOIP	16(1)(a) of FOIP does not apply.	Release.
68	16(1)(a) of FOIP	16(1)(a) of FOIP does not apply.	Release.
69	19(1)(b), (c), 18(1)(d), 17(1)(b), (c) of FOIP	19(1)(b) and (c) of FOIP do not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
70	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
71	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.
72	29(1), 18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.

73	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
74	29(1), 19(1)(b) of FOIP	None of the applied exemptions apply.	Release.
75	18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.
76	Released		
77	18(1)(d), 17(1)(b), (c), 16(1)(a) of FOIP	16(1)(a) of FOIP applies.	Continue to withhold.
78 to 79	Released		
80	18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
81	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
82	Released		
83	29(1), 19(1)(b) of FOIP	None of the applied exemptions apply.	Release.
84	18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.
85	Released		
86 to 95	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
96	29(1), 18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.
97	Released		
98 to 107	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
108	29(1), 19(1)(b), 18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.
109 to 111	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
112 to 113	Released		
114	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
115 to 116	Released		
117	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
118	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
119	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
120	29(1), 17(1)(b) of FOIP	None of the applied exemptions apply.	Release.
121	18(1)(d), 17(1)(b), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.

122	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
123	19(1)(b), 18(1)(d), 17(1)(a), (b), (c) of FOIP	None of the applied exemptions apply.	Release.
124 to 125	Released		
126	29(1), 18(1)(e), 17(1)(b), (e) of FOIP.	18(1)(e) of FOIP applies to the content in the table.	Continue to withhold the content in the table pursuant to 18(1)(e) of FOIP.
127	29(1), 18(1)(e), 17(1)(b) of FOIP	29(1) of FOIP does not apply.  18(1)(e) of FOIP applies to the content in the table.	Release the name withheld pursuant to 29(1) of FOIP.  Continue to withhold the content in the table pursuant to 18(1)(e) of FOIP.
128	29(1), 18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.
129	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
130	18(1)(d), 17(1)(b), (c) of FOIP	17(1)(c) of FOIP applies.  18(1)(d) of FOIP does not apply.	Continue to withhold the content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
131 to 132	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	17(1)(b) of FOIP applies to content of email timestamped 11:14AM.	Continue to withhold contents of email timestamped 11:14AM.  Release remainder.
133	Released		
134	29(1), 19(1)(b), 18(1)(d), 17(1)(b), 17(1)(c) of FOIP	29(1) of FOIP does not apply.  19(1)(b) of FOIP does not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
135	29(1), 22(c)	29(1) of FOIP does not apply.  22(c) of FOIP applies to content of email at top of the page.	Release content withheld pursuant to 29(1) of FOIP.  Continue to withhold contents of email at top

			of the page pursuant to 22(c) of FOIP.
136 to 137	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
138	29(1), 18(1)(d), 17(1)(a), (c) of FOIP.	29(1) of FOIP does not apply.  17(1)(a) of FOIP does not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
139	29(1), 18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.
140	29(1), 18(1)(d), 17(1)(c) of FOIP	29(1) of FOIP does not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
141	29(1), 18(1)(d), 17(1)(b), 17(1)(c), 16(1)(a) of FOIP.	29(1) of FOIP does not apply.  17(1)(c) of FOIP applies.  16(1)(a) of FOIP does not apply.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
142	18(1)(d), 17(1)(c), 16(1)(a).	16(1)(a) of FOIP applies to contents in email timestamped 8:31 am.  17(1)(c) of FOIP applies.	Continue to withhold contents of email timestamped 8:31 am.  Continue to withhold contents redacted pursuant to 17(1)(c) of FOIP.
143	16(1)(a) of FOIP	None of the applied exemptions apply.	Release.
144	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	29(1) of FOIP does not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
145	18(1)(d), 17(1)(b), (c) of FOIP	17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.
146 to 150	Release		

151	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
152 to 153	18(1)(d) of FOIP	18(1)(d) of FOIP does not apply.	Release.
154	Released		
155	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
156	Released		
157	18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
158	29(1)	None of the applied exemptions apply.	Release.
159	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
160	18(1)(d), 17(1)(c)	18(1)(d) and 17(1)(c) of FOIP does not apply.	Release remainder.
161	29(1), 18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.
162	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
163	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	29(1) of FOIP does not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
164	18(1)(d), 17(1)(b), (c) of FOIP	17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.
165	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
166	Released		
167	Released		
168	18(1)(d), 17(b), (c) of FOIP	None of the applied exemptions apply.	Release.
169	18(1)(d), 17(1)(a), (b), (c) of FOIP	17(1)(a) of FOIP applies to email timestamped 11:23am.	Continue to withhold redacted contents pursuant to 17(1)(a) of FOIP.
170	18(1)(d), 17(1)(a), (b), (c) of FOIP	17(1)(a) of FOIP applies to the email timestamped 3:43pm.  17(1)(b) of FOIP applies to emails	Continue to withhold redacted contents pursuant to 17(1)(a) and (b) of FOIP.



		timestamped 4:01pm and 3:54pm.	
171	18(1)(d), 17(1)(a), (b), (c) of FOIP	17(1)(b) of FOIP applies.	Continue to withhold redacted contents pursuant to 17(1)(b) of FOIP.
172	18(1)(d), 17(1)(a), (b), (c) of FOIP	17(1)(b) of FOIP applies.	Continue to withhold redacted contents pursuant to 17(1)(a) of FOIP.
173	Released		
174	18(1)(d), 17(1)(a), (b), (c) of FOIP	17(1)(a) of FOIP applies to emails timestamped 10:39am (top of the page) and 3:43pm.  17(1)(b) of FOIP applies to emails timestamped 4:01pm and 3:54pm.	Continue to withhold redacted contents pursuant to 17(1)(a) and (b) of FOIP.
175	18(1)(d), 17(1)(a), (b), (c) of FOIP	17(1)(a) of FOIP applies to the email timestamped 3:43pm (top of the page).  17(1)(b) of FOIP applies to email timestamped 1:40pm.	Continue to withhold redacted contents pursuant to 17(1)(a) and (b) of FOIP.
176	29(1), 18(1)(d), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.
177	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
178	Released		
179 to 182	Released		
183	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
184	Released		
185	Released		
186	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
187 to 189	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
190	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply	Release.

191	17(1)(a), (b) of FOIP	17(1)(b) of FOIP does not apply	Release.
192	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply	Release.
193	29(1), 16(1)(a) of FOIP	29(1) of FOIP does not apply.  16(1)(a) of FOIP applies to redacted contents in email timestamped 8:31am.	Continue to withhold redacted contents in email timestamped 8:31am.  Release remainder.
194	Released		
195 to 196	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
197	29(1), 19(1)(b), 18(1)(d), 17(1)(c), 22(b) of FOIP	22(b) of FOIP applies to second bullet in email timestamped 8:49am.  Remaining exemptions do not apply.	Continue to withhold second bullet in email timestamped 8:49am.  Release remainder.
198	29(1), 19(1)(b), 18(1)(d), 17(1)(b), 17(1)(c) of FOIP.	29(1) of FOIP does not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
199	18(1)(d), 17(1)(b), (c) of FOIP	17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release.
200	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
201	29(1), 18(1)(b), 15(1)(m) of FOIP	Neither 18(1)(b) nor 15(1)(m) of FOIP were raised in the section 7 response so they are not considered in this review.  29(1) of FOIP does not apply.	Release.
202	Released		
203	18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.

204	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
205	Released.		

**Set 2 – Records withheld in their entirety from the Applicant**

<b>Page</b>	<b>Exemptions applied by SHC</b>	<b>IPC Findings</b>	<b>IPC Recommendations</b>
1 to 33	16(1)(a) of FOIP	16(1)(a) of FOIP applies	Continue to withhold pages 1 to 33.
34 to 37	29(1), 18(1)(d), 17(1)(b), (c) of FOIP.	None of the applied exemptions apply.	Release.
38 to 39	18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
40	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
41	19(1)(b) of FOIP	19(1)(b) of FOIP does not apply.	Release.
42	18(1)(b) of FOIP	18(1)(b) of FOIP was not cited in the section 7 response so it is not considered in this review.	Release.
43	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	29(1) of FOIP does not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
44	18(1)(d), 17(1)(b), (c) of FOIP	17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.
45 to 56	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
57 to 112	18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
113 to 114	18(1)(b) of FOIP	18(1)(b) of FOIP was not cited in the section 7 response so it is not considered in this review.	Release.
115	22(c) of FOIP	22(c) of FOIP applies	Continue to withhold pursuant to 22(c) of FOIP.
116 to 117	18(1)(d), 17(1)(a), (c) of FOIP	None of the applied exemptions apply.	Release.
118	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
119	18(1)(d), 17(1)(c) of FOIP	17(1)(c) of FOIP applies to the three	Continue to withhold the three points made at the bottom of the page

		points made at the bottom of the page.  Neither 18(1)(d) nor 17(1)(c) of FOIP applies to the top two-thirds of the page.	pursuant to 17(1)(c) of FOIP.  Release remainder.
120 to 122	18(1)(d), 17(1)(c) of FOIP	17(1)(c) of FOIP applies.	Continue to withhold the redacted contents pursuant to 17(1)(c) of FOIP.
123	22(a) of FOIP	22(a) of FOIP was not cited in the section 7 response so it is not considered in this review.	Release.
124	22(a) of FOIP	22(a) of FOIP was not cited in the section 7 response so it is not considered in this review.	Release
125 to 128	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
129	18(1)(d), 17(1)(c) of FOIP		
130	29(1), 18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
131 to 132	18(1)(d), 17(1)(b), (c) of FOIP	None of the applied exemptions apply.	Release.
133 to 134	18(1)(d), 17(1)(a), 17(1)(b), 17(1)(c) of FOIP	17(1)(b) of FOIP applies.	Continue to withhold pursuant to 17(1)(b) of FOIP.
135 to 137	18(1)(d), 17(1)(b), 17(1)(c) of FOIP	None of the applied exemptions apply.	Release.

**Set 3 – Records provided in part to the Applicant**

<b>Page</b>	<b>Exemptions applied by SHC</b>	<b>IPC Findings</b>	<b>IPC Recommendations</b>
1 to 2	Released		
3	18(1)(d), 17(1)(c) of FOIP	None of the exemptions apply.	Release.
4	Released		
5	18(1)(d), 17(1)(c) of FOIP	None of the exemptions apply.	Release.
6	Released		
7	29(1), 18(1)(d), 17(1)(b), 17(1)(c) of FOIP	29(1) of FOIP does not apply.  17(1)(c) of FOIP applies.	Continue to withhold content redacted pursuant to 17(1)(c) of FOIP.  Release remainder.
8	Released		
9	29(1), 18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
10	Released		
11	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
12	Released		
13	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
14 to 15	Released		
16 to 17	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
18 to 20	Released		
21	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
22	Released		
23 to 25	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
26			
27 to 29	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
30	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
31	Released		
32 to 39	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
40	18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
41	Released		

42	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
43	29(1), 18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
44 to 45	18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
46 to 48	Released		
49 to 52	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
53	18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
54	Released		
55 to 59	18(1)(e), 17(1)(b) of FOIP	18(1)(e) of FOIP applies.	Continue to withhold the redacted contents pursuant to 18(1)(e) of FOIP.
60	29(1), 18(1)(d), 17(1)(b), 17(1)(c) of FOIP	None of the exemptions apply.	Release.
61 to 62	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
63	Released		
64 to 66	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
67	Released		
68 to 236	19(1)(c), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
237	29(1), 22(c) of FOIP; 27(1) of HIPA	22(c) of FOIP applies. 27(1) of HIPA applies.	Continue to withhold redacted contents pursuant to 22(c) of FOIP and 27(1) of HIPA.
238	29(1), 22(c) of FOIP	22(c) of FOIP applies.	Continue to withhold redacted contents pursuant to 22(c) of FOIP.
239 to 240	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
241 to 242	22(c), 17(1)(b) of FOIP	22(c) of FOIP applies.	Continue to withhold redacted contents pursuant to 22(c) of FOIP.
243 to 244	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
245 to 250	18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.

251	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
252	Released		
253	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
254 to 255	Released		
256	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
257	Released		
258 to 261	18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
262	Released		
263	18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
264	29(1), 22(b) of FOIP	29(1) of FOIP does not apply.  22(b) of FOIP applies.	Continue to withhold content redacted pursuant to 22(b) of FOIP.  Release remainder.
265	29(1), 22(b), 18(1)(d), 17(1)(b) of FOIP	22(b) of FOIP applies.  No other exemptions apply.	Continue to withhold content redacted pursuant to 22(b) of FOIP.  Release remainder.
266	18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
267	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
268	Released		
269 to 272	18(1)(d), 17(1)(b), 17(1)(c) of FOIP	None of the exemptions apply.	Release.
273 to 274	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
275 to 276	18(1)(d), 17(1)(b) of FOIP	None of the exemptions apply.	Release.
277	Released		
278	22(a) of FOIP	22(a) of FOIP was not cited in the section 7 response so it is not considered in this review.	Release.
279	29(1), 22(a) of FOIP	29(1) of FOIP does not apply.  22(a) of FOIP was not cited in the	Release.



		section 7 response so it is not considered in this review.	
280	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
281 to 285	Released		
286	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
287	Released		