



REVIEW REPORT 164-2021

Ministry of Corrections, Policing and Public Safety

August 29, 2022

Summary:

The Applicant submitted an access to information request to the Ministry of Corrections, Policing and Public Safety (Corrections). One month after receiving the access request, Corrections indicated to the Applicant that it was extending the 30-day response period legislated in section 7(2) of *The Freedom of Information and Protection of Privacy Act* (FOIP) by an additional 30 days pursuant to sections 12(1)(a)(i) and (ii) of FOIP. When the Applicant had not received a response after the additional 30 days, the Applicant appealed to the Commissioner. Soon after, the Applicant received a response from Corrections. Corrections indicated it was releasing some of the records to the Applicant, but it was withholding other records, in part or in full, pursuant to sections 15(1)(b)(i), 15(1)(c), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b)(i), 29(1) and 31(2) of FOIP. The Applicant requested that the Commissioner review the time extension and the exemptions applied by Corrections. The Commissioner made a number of findings, including that section 15(1)(c) of FOIP applied to many of the records, but he found that Corrections did not properly apply other exemptions such as sections 15(1)(k) and (d) of FOIP. He also found that Corrections properly applied sections 17(1)(a), and 17(1)(b)(i) of FOIP in some instances. He also found that sections 29(1) of FOIP and section 27(1) of *The Health Information Protection Act* applied to some of the information in the records. Finally, he found that Corrections exceeded the time period required by section 12(3) of FOIP to respond to the Applicant's access request. The Commissioner outlined his findings and recommendations in the Appendix of the Report.

I BACKGROUND

- [1] On April 26, 2021, the Ministry of Corrections, Policing and Public Safety (Corrections) received the following access to information request:

All information gathered, emails, documents, any records. All information shared or obtained by the following: Peter Gee Investigative Services, Cathrine [sic] Brooks Investigative Services, Jessica Forrester Investigative Services, Dale Larsen Deputy Minister, Heather Scriver Assistant Deputy Director, Mark McFadyen Executive Director, Julien Hulet Director, Darrell Olbrich Deputy Director Operations, Mike Oltean Director A/Personnel, and Danae Ackles A/Deputy Director [sic] Standards and Communication, Public Health Manager Kathy Lloyd, RN Priyanka Mahajan, Public Health Official [sic] Jesse Andrews, Tracy Public Health Official, Kelvin Koo SHA Inspector, Kim Skinner RPCC Nurse Manager, Tracy Rolles PSC, Andrea Labash Corrections Officer RPCC.

- [2] The Applicant, a former employee of Corrections, specified the time period of November 2020 to April 2021 for their access to information request.
- [3] In a letter dated May 26, 2021 to the Applicant, Corrections indicated it was extending the 30-day response period legislated in section 7(2) of FOIP by an additional 30 days pursuant to sections 12(1)(a)(i) and (ii) of FOIP.
- [4] On June 28, 2022, the Applicant still had not received a response from Corrections. Therefore, on that day, the Applicant requested a review by my office.
- [5] In a letter dated June 29, 2021, Corrections responded to the Applicant. Corrections' letter indicated it would be releasing some of the records to the Applicant and that it was withholding other records, in part or in full, pursuant to sections 15(1)(b)(i), 15(1)(c), 15(1)(i), 15(1)(k), 17(1)(a), 17(1)(b)(i), 29(1), and 31(2) of FOIP.
- [6] On June 30, 2021, the Applicant requested that my office review both the time extension and the exemptions applied by Corrections.
- [7] On July 12, 2022, my office notified both Corrections and the Applicant that it would be undertaking a review.
- [8] In the course of my office's review, Corrections provided my office with a copy of the records at issue and its submission. Corrections raised section 15(1)(d) of FOIP as a reason for withholding portions of the records from the Applicant. Corrections added it was no

longer relying on section 15(1)(i) of FOIP. Further, Corrections indicated it was also relying on section 27(1), 38(1)(b), and (f) of *The Health Information Protection Act* (HIPA) to withhold portions of the records.

II RECORDS AT ISSUE

[9] At issue are 1265 pages of records. Corrections divided the records into five batches: Batch A contains 81 pages, Batch B contains 331 pages, Batch C contains 554 pages, Batch D contains 289 pages, and Batch E contains 9 pages.

[10] The Appendix to this Report breaks down the exemptions Corrections applied to each page of the records at issue. It also provides my office's findings and recommendations.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] Corrections is a "government institution" pursuant to section 2(1)(d)(i) of FOIP. Therefore, I find that I have jurisdiction under FOIP to conduct this review.

[12] Corrections also indicated that HIPA is involved. HIPA is engaged when three elements are present: 1) personal health information, 2) a trustee, and 3) the personal health information is in the custody or control of the trustee. The records to which Corrections applied exemptions from HIPA are similar to "Record 1" discussed in my office's [Review Report 177-2021](#). In that report, I determined all three elements were present. Similarly, in this case, I find that all three elements are present. That is, Corrections is a trustee as defined by section 2(t)(i) of HIPA and it has custody or control over the personal health information in the records at issue. I find that HIPA is engaged and that I have jurisdiction under HIPA to conduct this review.

2. Did Corrections properly apply section 15(1)(c) of FOIP?

[13] Corrections applied section 15(1)(c) of FOIP to the following pages:

- Pages 1, 3 to 6, 10, 15, 19 to 55, 57 to 65, 68 to 81 of Batch A.
- Pages 5 to 33, 35, 37 to 39, 41 to 43, 45, 48, 55 to 58, 60 to 70, 72 to 111, 113 to 114, 116 to 119, 121 to 123, 125 to 131, 133 to 135, 140 to 141, 145 to 154, 157 to 161, 167 to 168, 171 to 177, 179, 181 to 183, 185 to 188, 190 to 191, 198 to 200, 202, 204, 206 to 211, 213 to 214, 219, 221, 223 to 228, 230 to 231, 233 to 234, 236 to 241, 243 to 247, 250, 252 to 256, 258 to 261, 164, 266, 268, 272 to 274, 176, 179, 281 to 284, 298 to 301, 303 to 304, 308 to 310, 312, 313, 315, 318, 321, 327, 328 of Batch B.
- Pages 1 to 9, 235 to 256, 258 to 293, 295 to 356, 359 to 371, 373 to 500, 502 to 538, 540 to 554 of Batch C.
- Pages 1 to 126, 128 to 137, 139 to 143, 145 to 146, 148 to 189, 191 to 193, 195, 198 to 241, 243 to 288 of Batch D.
- Pages 2, 4 to 5 of Batch E.

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

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

...

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

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

1. Does Correction's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
 - a. Could the release of the information interfere with a lawful investigation?
 - b. Could the release of the information disclose information with respect to a lawful investigation?

(*Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 30, 2021 [*Guide to FOIP*, Ch. 4], p. 52-53).

[16] The following is an analysis of the two-part test for section 15(1)(c) of FOIP.

1. Does Correction's activity qualify as a "lawful investigation"?

[17] A "lawful investigation" is an investigation that is authorized or required and permitted by law. When a government relies on section 15(1)(c) of FOIP, it should be able to identify the legislation under which the investigation is occurring (or occurred). The investigation can be concluded, active and ongoing, or be occurring in the future (*Guide to FOIP*, Ch. 4, p. 52).

[18] In its submission, Corrections indicated that section 105(1)(d) of *The Correctional Services Act, 2012* authorized it to undertake an investigation to determine whether an employee (the Applicant) had breached the Code of Professional Conduct (Code). Section 105(1)(d) of *The Correctional Services Act, 2012* provides:

105(1) The head of corrections may:

...

(d) investigate any incident or matter to which this Act applies.

[19] Section 9 of *The Correctional Services Act, 2012* provides that the head of Corrections may establish a Code for employees:

9(1) The head of corrections may establish:

(a) a code of professional conduct for all staff members; or

(b) one or more codes of professional conduct for different classes of staff members.

(2) Every staff member shall comply with the code of professional conduct that is applicable to that staff member.

[20] In its submission, Corrections said the following:

The Code of Professional Conduct is attached as Appendix H. This Code was in place at the time of the investigation. The relevant sections of the Code are stated below:

Respect and Integrity

...

3. Act at all times in a manner that will bear the closest public scrutiny: an obligation that is not fully discharged by simply acting within the law.

One Team

...

18. Conduct themselves in a professional manner that reflects positively on the Ministry of Corrections, Policing and Public Safety and the Saskatchewan Public Service generally.

Employee Expectations:

1. Responsible Discharge of Duties:

The values of excellence, innovation and accountability are demonstrated by:

...

8. Providing accurate oral and/or written statements or entry in any official document or record pertaining to their official duties as an employee of Corrections and Policing.

[21] In its submission, Corrections explained that it was investigating whether the Applicant, as an employee of Corrections, had breached a public health order as well as the Code. Breaching a public health order would be contrary to compliance with the Code. It asserted that section 105(1)(d) of *The Correctional Services Act, 2012* authorized such an investigation. Based on a review, the substance of many of the records to which Correction applied section 15(1)(c) of FOIP is clearly regarding an investigation pursuant to section 105(1)(d) of *The Correctional Services Act, 2012*. I find that the first part of the test is met.

2. Does one of the following exist?

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

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

[22] In its submission, Corrections asserted that the release of the records to which it applied section 15(1)(c) of FOIP could disclose information with respect to a lawful investigation.

[23] The phrase “with respect to” are words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters (*Guide to FOIP*, Ch. 4, p. 53).

- [24] Section 15 of FOIP uses the word “could” instead of “could reasonably be expected to” as seen in other provisions of FOIP. The threshold for “could” is somewhat lower than a reasonable expectation. The requirement for “could” is simply that the release of the information “could” have the specified results. There would still have to be a basis for asserting the outcome could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to FOIP*, Ch. 4, p. 53).
- [25] Based on a review, the release of many of the records to which Corrections applied section 15(1)(c) of FOIP would disclose information with respect to Correction’s lawful investigation. This includes a memo that outlines the terms of reference of the investigation, emails where the investigator is arranging for interviews, the investigator’s handwritten notes, transcriptions of interviews, and drafts of the investigation report. I find that the second part of the two-part test has been met.
- [26] Based on the preceding, I find that Corrections properly applied section 15(1)(c) of FOIP to many of the records. My findings are set out in the Appendix.
- [27] I should note there are records to which Corrections applied section 15(1)(c) of FOIP that I found section 15(1)(c) to not apply. For example, records that were not related to the investigation but were about the termination of, or grievances filed by, the Applicant. The first part of the two-part test is not met for such records. Therefore, I find Corrections did not properly apply section 15(1)(c) of FOIP to these records. My findings are set out in the Appendix. I will consider these records in my analysis of other exemptions later in this Report.
- [28] Finally, in the past, I have said it is an absurd result to withhold information from an applicant who supplied information or who already has knowledge of the information that the applicant supplied ([Review Report 215-2020](#) at paragraph [32]). Pages 373 to 451 of Batch C is a transcription of an interview of the Applicant. Since the Applicant was present at the interview, I find that it would be an absurd result to withhold the transcript of the

interview from the Applicant. I recommend that Corrections release pages 373 to 451 of Batch C to the Applicant.

3. Did Corrections properly apply section 15(1)(k) of FOIP?

[29] Where Corrections had applied section 15(1)(c) of FOIP, it had also applied section 15(1)(k) of FOIP. Since I have already found section 15(1)(c) of FOIP applies to many of the records, I will only consider whether section 15(1)(k) of FOIP applies to the records to which I found that section 15(1)(c) of FOIP did not apply. These pages are:

- Pages 10 to 15, 59 to 64, 70 to 75 of Batch A.
- Pages 5 to 26, 30, 37 to 38, 41 to 43, 45, 48, 55 to 58, 60 to 69, 110 to 111, 113 to 114, 116 to 119, 121 to 123, 125 to 131, 133 to 135, 140 to 141, 145 to 154, 157 to 161, 172 to 173, 181 to 182, 206, 219, 221, 223 to 227, 233, 239 to 240, 250, 252 to 256, 258 to 261, 264, 266, 268, 272 to 274, 276, 279, 281 to 284, 298 to 301, 303 to 304, 309 to 310, 312 to 313, 315, 318, 321, 327 to 328 of Batch B.
- Pages 240 to 242, 244 to 246 of Batch C.
- Pages 2 and 4 of Batch E.

[30] Section 15(1)(k) of FOIP provides:

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

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[31] My office uses the following two-part test to determine if section 15(1)(k) of FOIP applies:

1. Is there a law enforcement matter involved?
2. Does one of the following exist?
 - a. Could the release of information interfere with a law enforcement matter?
 - b. Could the release of information with respect to a law enforcement matter?

(*Guide to FOIP*, Ch. 4, p. 76-78)

[32] The following is my analysis to determine if the two-part test is met.

1. Is there a law enforcement matter involved?

[33] “Law enforcement” includes policing, which refers to the activities of police services, and includes criminal intelligence operations. This means activities carried out under the authority of a statute regarding the maintenance of public order, detection and prevention of crime or the enforcement of law. Law enforcement can also include investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment (*Guide to FOIP*, Ch. 4, at pp. 74 to 75).

[34] “Matter” should be given its plain and ordinary meaning. It does not necessarily have to apply to some specific ongoing investigation or proceeding (*Guide to FOIP*, Ch. 4, p. 75).

[35] In its submission, Corrections asserted that the Ministry’s “inspection” pursuant to section 105(1)(d) of *The Correctional Services Act, 2012* qualifies as a “law enforcement matter”. As I have said already, “law enforcement” can also include investigations under the authority of an enactment which lead to or could lead to a penalty or sanction being imposed under that enactment. In my analysis of Correction’s application of section 15(1)(c) of FOIP, I had found that Correction’s activity qualified as a lawful investigation pursuant to section 105(1)(d) of *The Correctional Services Act, 2012*. Based on a review of *The Correctional Services Act, 2012*, I note that section 112 of *The Correctional Services Act, 2012* provides for the offences and penalties for failure for compliance:

112(1) No person shall fail to comply with any provision of this Act or the regulations.

(2) A person who fails to comply with a provision of this Act, other than section 92, or the regulations is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000, to imprisonment for not more than six months or to both.

[36] Based on a review of the records, Corrections' investigation pursuant to section 105(1)(d) of *The Correctional Services Act, 2012* did not lead to a penalty or sanction being imposed under that enactment. As such, a law enforcement matter was not involved. I find that the first part of the two-part test is not met. Since I found that the first part of the test is not met, there is no need to consider the second part of the test. I find that Corrections has not properly applied section 15(1)(k) of FOIP to the records listed at paragraph [29].

4. Did Corrections properly apply section 15(1)(d) of FOIP?

[37] Corrections applied section 15(1)(d) of FOIP to records to which it had also applied section 15(1)(c) of FOIP. There was no instance in which Corrections applied section 15(1)(d) of FOIP without citing section 15(1)(c) of FOIP. Since I have already found section 15(1)(c) of FOIP applies to many of the records, I will only consider whether section 15(1)(d) of FOIP applies to the records to which I found that section 15(1)(c) of FOIP did not apply. These pages are:

- Pages 10 to 15, 59 to 64, 70 to 75 of Batch A.
- Pages 38, 45, 48, 55 to 58, 60 to 69, 110 to 111, 113 to 114, 116 to 119, 121 to 123, 125 to 131, 133 to 135, 140 to 141, 145 to 154, 157 to 161, 181 to 182, 206, 219, 221, 223 to 227, 233, 239 to 240, 250, 252 to 256, 258 to 261, 264, 266, 268, 272 to 274, 276, 279, 281 to 284, 298 to 301, 303 to 304, 309 to 310, 312 to 313, 315, 318, 321, 327 to 328 of Batch B.
- Pages 240 to 242, 244 to 246 of Batch C.

[38] Section 15(1)(d) of FOIP provides:

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

...

(d) be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal proceedings;

[39] My office uses the following two-part test to determine if section 15(1)(d) of FOIP applies:

1. Do the proceedings qualify as existing or anticipated legal proceedings?

2. Could disclosure of the records be injurious to the government institution in the conduct of the legal proceedings?

(Guide to FOIP, Ch. 4, p. 55)

[40] The following is my analysis to determine if section 15(1)(d) of FOIP applies.

1. Do the proceedings qualify as existing or anticipated legal proceedings?

[41] “Legal proceedings” are any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration. It includes proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgement of a court or a ruling by a tribunal. Legal proceedings include all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of a remedy. Labour grievances qualify as “legal proceedings” for statutory purposes” *(Guide to FOIP, Ch. 4, p. 55)*.

[42] In its submission, Corrections indicated there is an existing labour relations issue; namely, a grievance. Corrections provided my office with a copy of the letter and grievance form submitted by a Labour Relations Officer at Saskatchewan Government and General Employees’ Union (SGEU) to Corrections that details the grievance. This letter was to support its assertion that a grievance exists. Corrections indicated that the grievance has moved to arbitration.

[43] In past reports, such as my office’s [Review Report 166-2018](#) at paragraph [38] and [Review Report LA-2014-004](#) at paragraph [13], I found grievances headed towards arbitration qualify as “legal proceedings”.

[44] Based on this, a legal proceeding exists. Therefore, the first part of the two-part test is met.

2. Could the disclosure of the records be injurious to the government institution in the conduct of the legal proceedings?

- [45] There must be objective grounds for believing that disclosing the information could result in injury. As I have already said, section 15 of FOIP uses the word “could” instead of “could reasonably be expected to” as seen in other provisions of FOIP. However, there still needs to be a basis for asserting the outcome could occur (*Guide to FOIP*, Ch. 4, p. 55).
- [46] “Injury” implies damage or detriment. The exemption is designed to protect the government institution from harm in its existing or anticipated legal proceedings. In order for the release of a record to be injurious to the government institution “in the context of existing or anticipated legal proceedings”, the government institution would need to be a party to such proceedings. The government institution should describe the harm in detail to support the application of the provision. Government institutions should not assume that the harm is self-evident on the face of the records (*Guide to FOIP*, Ch. 4, p. 55-56).
- [47] In the following paragraphs, I will discuss three categories of records: 1) records related to the lawful investigation discussed in my analysis of section 15(1)(c) of FOIP; 2) pages 219 to 222, 223 to 224, and 252 to 253 of Batch B; and 3) remainder of the records to which Corrections applied section 15(1)(d) of FOIP.
- [48] For the first category of records, Corrections indicated in its submission that it applied section 15(1)(d) of FOIP to all the information that it also applied sections 15(1)(c) and (k) of FOIP. It asserted that the release of the records related to the lawful investigation would adversely affect it in the arbitration process. Since I have found that section 15(1)(c) of FOIP applies to records related to the lawful investigation, then I do not have to consider whether section 15(1)(d) of FOIP applies to those same records.
- [49] For the second category of records, Corrections asserted that section 15(1)(d) of FOIP applies to pages 219 to 222, 223 to 224, and 252 to 253 of Batch B. It had applied section 15(1)(c) and (k) of FOIP to these records, but I have found Corrections did not properly apply sections 15(1)(c) nor 15(1)(k) of FOIP. Its argument for why section 15(1)(d) of FOIP applies is as follows:

In addition to these records, records 93 [pages 219 to 222], 94 [pages 223 to 224], and 114 [pages 252 to 253] have also been exempted on the basis of clause 15(1)(d). These records contain email exchanges between Ministry officials, the Public Service Commission's Human Resource Business Partner, and SGEU representatives regarding the grievance submitted by the Applicant. The emails also include the Ministry's response to the grievance and its position. As in the previous paragraph, the grievance is directly related to the discussions around it. Further, some of these records outline the Ministry's position. As such, it is possible the release of the records would adversely affect the Ministry's position in the arbitration.

[50] Based on a review of pages 219 to 222, 223 to 224, and 252 to 253 of Batch B, I note that they contain email threads and attachments. I find that pages 219, 224 and 253 contain some emails where the Applicant was a recipient. It is an absurd result to withhold these emails from the Applicant. I find Corrections has not properly applied section 15(1)(d) of FOIP to emails where the applicant was a recipient on pages 219, 224, and 253.

[51] Further, the email attachment on page 221 contains a letter in which the Applicant was carbon copied. It is an absurd result to withhold this letter from the Applicant. I find that Corrections has not properly applied section 15(1)(d) of FOIP to page 221.

[52] Finally, I note that Correction's submission asserted that pages 219 to 222, 223 to 224 and 252 to 253 include Corrections' response to the Applicant's grievance and Corrections' "position". However, based on a review, it appears that there is a discussion regarding the status and progression of the status of the grievance process but not the grievance itself. I do not find that these redacted emails "outline the Ministry's position" as asserted by Corrections. I find that Corrections has not demonstrated how the release of the redacted portions on pages 219 to 222, 223 to 224 and 252 to 253 would be injurious to Corrections in the conduct of the legal proceedings.

[53] For the third category of records, Corrections did not provide any arguments as to how the disclosure of these records could be injurious to it in the conduct of legal proceedings. These pages are:

- Pages 38, 45, 48, 55 to 58, 60 to 69, 110 to 111, 113 to 114, 116 to 119, 121 to 123, 125 to 131, 133 to 135, 140 to 141, 145 to 154, 157 to 161, 181 to 182, 206, 225 to

227, 233, 239 to 240, 250, 254 to 256, 258 to 261, 264, 266, 268, 272 to 274, 276, 279, 281 to 284, 298 to 301, 303 to 304, 309 to 310, 312 to 313, 315, 318, 321, 327 to 328 of Batch B.

- Pages 240 to 242, 244 to 246 (empty forms) of Batch C.

[54] Based on a review, my office cannot determine how the release of the above pages could be injurious to Corrections in the conduct of legal proceedings. For example, pages 272 to 274, 276, 279, 281 to 284 of Batch B appear to be about the setting up of a meeting. Further, pages 244 to 246 of Batch C are blank pages of a form. Based on the redacted content on these pages, my office cannot determine how the release of these pages could be injurious to Corrections in the conduct of legal proceedings.

[55] Since the second part of the two-part test is not met, I find that Corrections has not properly applied section 15(1)(d) of FOIP to the pages set out at paragraph [37].

5. Did Corrections properly apply section 17(1)(a) of FOIP?

[56] Corrections applied section 17(1)(a) of FOIP to records to which it also applied section 15(1)(c) of FOIP. Since I have found that section 15(1)(c) of FOIP applies to many of the records, I will only consider whether section 17(1)(a) of FOIP applies to the following pages:

- Pages 10 to 15, 59, 62 to 64, and 70 of Batch A.
- Pages 38, 55 to 57, 58 to 69, 110, 116 to 119, 121 to 123, 126 to 131, 133 to 134, 135 to 140, 145 to 151, 153 to 154, 157 to 161, 181 to 182, 206, 233, 239 to 240, 250, 252 to 253, 259 to 261, 264, 266, 268, 272 to 274, 276, 279, 281 to 284, 298 to 301, 303, 304, 309 to 310, 312 to 313, 315, 317, 318, 320, 321, 327, 328 of Batch B.
- Page 241 of Batch C.

[57] Before I proceed, I will deal with pages 59 and 70 of Batch A and pages 64 to 67, 117 to 119, 122, 126 to 128, 130 to 131, 133 to 134, 150 to 151, 153 to 154 of Batch B in my analysis of section 17(1)(b)(i) of FOIP and not in my analysis of section 17(1)(a) of FOIP.

[58] Section 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;

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

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
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, p. 124)

[60] Below is my analysis to determine if both parts of the two-part test are met:

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

[61] “Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The “pros and cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a government institution must decide for future action (*Guide to FOIP, Ch. 4, p. 124*).

[62] A “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that

one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation (*Guide to FOIP*, Ch. 4, p. 125).

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

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

[65] “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 (*Guide to FOIP*, Ch. 4, p. 125).

[66] In its submission, Corrections asserted it applied section 17(1)(a) of FOIP to two types of records at issue: 1) draft documents and 2) records related to the investigation. Since I have already found that section 15(1)(c) of FOIP applies to records related to the investigation, I do not need to consider that category of records in this analysis. I will consider the first type of record at issue – draft documents. I also note that Corrections applied section 17(1)(a) of FOIP to other records such as bodies of emails that were not necessarily about the lawful investigation (for example, pages 63 to 64 of Batch A, pages 145 to 148 of Batch B and pages 157 to 161 of Batch B). I will consider these types of records in my analysis of section 17(1)(a) of FOIP.

i. Draft documents

[67] In its submission, Corrections indicated it applied section 17(1)(a) of FOIP to draft documents. However, it did not describe how such information would qualify as advice, recommendations, proposals, analyses or policy options. It merely stated:

The Ministry has applied clause 17(1)(a) of FOIP to draft documents. These include notices of termination, termination letters, draft terms of reference, draft investigation reports (both full investigation reports and executive summaries).

[68] In my office's [Review Report 017-2018](#), I found that a letter in draft form would not automatically meet the first part of the two-part test for section 17(1)(a) of FOIP. The draft letter must still contain advice, recommendations, proposals, analyses or policy options in order to meet the first part of the test:

[32] The Ministry communicated that this draft letter was created by a WSA official intended to be sent to the project proponent. This draft document was never approved, issued or communicated to the proponent or the public. The Ministry was consulted in the wording of the letter. An e-mail sending the letter to the Ministry has been released to the Applicant in full and indicates that the Ministry and WSA would be discussing its content.

[33] The Ministry submitted that the document contains “draft messaging” discussed between government officials. **Upon review of the letter, I do not agree that the content of the letter qualifies as advice. It provides instructions to the project proponent as to how to proceed with a project. The draft messaging does not explain why or why not the letter should be reworded or sent. As such, it does not meet the first part of the test.**

[Emphasis added]

[69] Similar to my approach in Review Report 017-2018, draft documents must still contain advice, recommendations, proposals, analyses or policy options in order for the first part of the test to be met.

[70] Pages 62 and 63 of Batch B are examples of a draft letter with track changes that contains “recommendations”. In [Review Report 216-2017](#), I found that edits to a Microsoft Word document through the “track changes” feature qualified as “recommendations”. Similarly, in these records the edits made through the “track changes” feature in the draft letter on

pages 62 and 63 of Batch B qualify as “recommendations”, which meets the first part of the test.

[71] Similarly, the second last paragraph in the body of the email timestamped 1:45pm on pages 58 and 60 of Batch B contains a suggestion for a change in a draft letter. Such a suggestion also qualifies as a “recommendation”.

[72] However, pages 10 to 15 of Batch A contain a copy of a draft letter. These pages do not contain any edits, comments, or suggestions. Based on a review of these pages, they do not contain any advice, recommendations, proposals, analyses, or policy options, and so do not meet the first part of the test. As such, the first part of the two-part test is not met for pages 10 to 15 of Batch A.

ii. Other records

[73] Corrections applied section 17(1)(a) of FOIP to other records including pages 63 to 64 of Batch A, and pages 145 to 148 and 157 to 161 of Batch B, which are not necessarily about the lawful investigation, but were also not draft documents. For example, pages 63 to 64 of Batch A is a two-page briefing note for the Deputy Ministry of Corrections. With the exception of the recommendation that appears on pages 64, I find that the contents of these pages provide background and factual information. Therefore, the first part of the two-part test is only met for the recommendation that appears on page 64, but not for the remaining contents on pages 63 and 64 of Batch A. My findings and recommendations regarding these pages are in the Appendix.

[74] Pages 145 to 148 and 157 to 161 of Batch B are email exchanges between Corrections and the Chief Steward at the Regina Correctional Centre (RCC). The bodies of the emails exchanged were redacted. However, based on a review, the contents of these emails do not contain advice, recommendations, proposals, analyses or policy options. I find, therefore, that the first part of the test is not met for these pages. Similarly, there are other emails to which Corrections applied section 17(1)(a) of FOIP, but they do not contain advice, recommendations, proposals, analyses or policy options. For example, pages 259 to 261,

264, 266, 268, 272 to 274, 276, 279, 281 to 284 are emails regarding arranging for a meeting with the Applicant. Arrangements for a meeting do not qualify as advice, recommendations, proposals, analyses or policy options. For my comprehensive findings, please refer to the Appendix.

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?

[75] “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).

[76] For information to be developed by or for a government institution, the person developing the information should be an official, officer or employee of the government institution, be contracted to perform services, be specifically engaged in an advisory role (even if not paid), or otherwise have a sufficient connection to the government institution (*Guide to FOIP*, Ch. 4, p. 127).

[77] In order to be “developed by or for” the government institution, the advice, proposals, recommendations, analyses and/or policy options should: i) be either sought, be expected, or be part of the responsibility of the person who prepared the record; and ii) be prepared for the purpose of doing something, for example, taking an action or making a decision; and iii) involve or be intended for someone who can take or implement the action (*Guide to FOIP*, Ch. 4, p. 127).

[78] Earlier in this Report, I found that the first part of the test was met for the following pages:

- The track changes on pages 62 and 63 of Batch B.
- The second last paragraph in the body of the email timestamped 1:45pm on pages 58 and 60 of Batch B.

- The recommendation that appears in the briefing note on page 64 of Batch A.

[79] Regarding the track changes on pages 62 and 63 of Batch B, they were recommendations by an employee of Corrections for a Human Resources Business Partner at the Public Service Commission (PSC). As such, the recommendations were developed by or for a government institution, which meets the second part of the test.

[80] Regarding the second last paragraph in the body of the email time stamped 1:45pm on pages 58 and 60 of Batch B, it contained a recommendation by the Human Resources Business Partner at PSC to Corrections. As such, the recommendation was developed by or for a government institution, which meets the second part of the test.

[81] Regarding the recommendation that appears in the briefing note on page 64 of Batch A, it was a recommendation by the Human Resources Service Team at PSC to the Deputy Ministry of Corrections. As such, it was a recommendation developed by or for a government institution, which meets the second part of the test.

[82] Based on the above, I find that Corrections properly applied section 17(1)(a) of FOIP to the three instances listed at paragraph [78] of this Report. My findings and recommendations are in the Appendix.

6. Did Corrections properly apply section 17(1)(b)(i) of FOIP?

[83] Corrections applied section 17(1)(b)(i) of FOIP to records to which it also applied sections 15(1)(c) and 17(1)(a) of FOIP. Since I have already found sections 15(1)(c) and 17(1)(a) of FOIP applied to many of the records, I only need to consider if Corrections properly applied section 17(1)(b)(i) of FOIP to the following pages:

- Pages 59 to 61, 70 to 75 of Batch A
- Page 38, 41 to 42, 45, 48, 61, 64 to 68, 110 to 111, 113 to 114, 116 to 119, 121 to 123, 125 to 131, 133 to 135, 140 to 141, 146 to 154, 157 to 158, 160 to 161, 206, 219, 223, 225 to 227, 240, 254 to 261 to 264, 266, 268, 272 to 274, 276, 279, 281 to 284, 315, 317 to 318, 320, 321, 327 to 328 of Batch B.

- Pages 6 to 7 of Batch E.

[84] Before I proceed, I note that I will consider pages 41 to 42 in my analysis of section 27(1) of HIPA later in this report.

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

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

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

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

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

[87] The following is an analysis to determine if the two-part test is met.

1. Does the record contain consultations or deliberations?

[88] “Consultation” means the action of consulting or taking counsel together, or a deliberation or 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. (*Guide to FOIP*, Ch. 4, p. 132).

- [89] “Deliberation” means the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over). It can also include a careful consideration with a view to a decision, and the consideration and discussions of the reasons for and against a measure by a number of councillors (*Guide to FOIP*, Ch. 4, p. 132).
- [90] In its submission, Corrections identified three types of records to which it applied section 17(1)(b)(i) of FOIP: 1) records regarding the lawful investigation; 2) records regarding the termination of the Applicant and grievance matters; and 3) records related to contact tracing. Regarding the first category of records, I have already found that section 15(1)(c) of FOIP applies to them. Regarding the third category of records, I will deal with those in my analysis of section 27(1) of HIPA and section 29(1) of FOIP. Therefore, I will only consider the second category of records in my analysis of section 17(1)(b) of FOIP in the following paragraphs.
- [91] Corrections claims pages 38, 45 and 48 contain consultations or deliberations. Page 38 is a discussion about completing a task. Page 45 is a meeting invitation. Page 48 is an email exchange regarding completing a particular task. Based on a review of these pages, they do not contain consultations or deliberations.
- [92] Corrections also claims the following pages contain consultations or deliberations: pages 59 to 61, 70 to 71, 74 of Batch A, and page 64 to 66, 117 to 119, 122, 125, 127 to 128, 130 to 131, 133, 150 to 151, 153 to 154 of Batch B. These pages are email exchanges among Corrections employees that contains reasons for and against termination of the Applicant. I find that such emails qualify as “consultations”. I will consider these pages in the second part of the test. However, I note that pages 64 and 117 contains an email timestamped 2:20pm that contains the decision. The decision itself does not qualify as part of the “consultation” or “deliberation”.
- [93] Corrections also claims the following pages contain consultations or deliberations: pages 38, 45, 48, 61, 68, 110 to 111, 113 to 114, 135, 140 to 141, 146 to 148, 152, 157 to 158, 160 to 161, 206, 223, 225 to 226, 240, 254, 259 to 261, 264, 266, 268, 272 to 274, 276,

- 279, 281 to 284, 315, 317 to 318, 320, 321, 327 to 328 of Batch B, and pages 6 to 7 of Batch E.
- [94] Pages 38 are email exchanges between Corrections employees. The contents of the email do not contain consultations or deliberations. Page 45 is a meeting invitation which does not contain consultations or deliberations. Page 48 is an email exchange between Corrections and PSC employees regarding a task being completed. It does not contain consultations or deliberations. Page 61 of Batch B is a cover email for a draft of a letter. The contents of the email do not contain consultations or deliberations.
- [95] Pages 68, 110 to 111, 113 to 114, 135, 140 to 141, 206, 225 to 226, 240, 254, 259 to 261, 264, 266, 268, 272 to 274, 276, 279, 281 to 284 of Batch B contains emails that asks if a certain task has been completed or provides the status of a matter. Such emails do not qualify as consultations or deliberations.
- [96] Other emails, such as pages 146 to 148, 157 to 158, 160 to 161, as described earlier in this report, are email exchanges between Corrections and the Chief Steward at the RCC. Based on a review, the contents do not qualify as consultations or deliberations.
- [97] Page 223 is an email exchange between SGEU and Corrections regarding a grievance matter. The contents of the emails are about the status and progress of the grievance process. The contents do not qualify as consultations or deliberations.
- [98] Pages 315, 317 to 318, 320, 321 are email exchanges between the Ministry of Justice and Corrections. The contents of the email are regarding the reporting of COVID-19 transmission in the workplace. The contents do not qualify as consultations or deliberations.
- [99] Pages 327 to 328 are email exchanges between PSC and Corrections. PSC sends the draft letter to Corrections for review. The contents of the emails do not qualify as consultations or deliberations.

[100] Pages 6 and 7 of Batch E are internal email exchanges of Corrections employees regarding the status of a weekly update. The contents of the emails do not qualify as consultations or deliberations.

[101] Since the first part of the test is not met for the records I described at paragraphs [94] to [100] of this Report, I find Corrections has not properly applied section 17(1)(b)(i) of FOIP to pages 38, 45, 48, 61, 68, 110 to 111, 113 to 114, 135, 140 to 141, 146 to 148, 152, 157 to 158, 160 to 161, 206, 223, 225 to 226, 240, 254, 259 to 261, 264, 266, 268, 272 to 274, 276, 279, 281 to 284, 315, 317 to 318, 320, 321, 327 to 328 of Batch B, and pages 6 to 7 of Batch E.

[102] Next, I will consider if the second part of the two-part test is met for pages set out at paragraph [92].

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

[103] I will consider if the second part of the two-part test is met for pages 59 to 60, 70 to 71, 74 of Batch A, and pages 64 to 66, 117 to 119, 122, 125, 127 to 128, 130 to 131, 133, 150 to 151, 153 to 154 of Batch B.

[104] “Involving” means including. “Officers or employees of a government institution” means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution (*Guide to FOIP*, Ch. 4, p. 133).

[105] Based on a review, I am satisfied the consultations on pages 59 to 60, 70 to 71, 74 of Batch A, and pages 64 to 66, 117 to 119, 122, 125, 127 to 128, 130 to 131, 133, 150, 153 to 154 of Batch B involve employees of government institutions, namely Corrections and PSC.

[106] I find, therefore, that Corrections properly applied section 17(1)(b)(i) of FOIP to pages 59 to 60, 70 to 71, 74 of Batch A, and pages 64 to 66, 117 to 119, 122, 125, 127 to 128, 130

to 131, 133, 150, 153 to 154 of Batch B, with the exception of the email timestamped 2:20pm on pages 64 and 117 of Batch B, as I have noted earlier in this Report.

7. Did Corrections properly apply section 29(1) of FOIP?

[107] Corrections applied section 29(1) of FOIP to pages 5 to 26, 116, 172 to 173, 218, 227, 251, 255 to 257, 296 of Batch B and pages 2 and 4 of Batch E. Corrections also applied section 29(1) of FOIP to page 30 of Batch B. I will consider page 30 of Batch B in my analysis of sections 27(1) and 38(1) of HIPA. Finally, Correction had also applied section 29(1) of FOIP to other pages; however, I have already found that section 15(1)(c) of FOIP applied to those pages. Therefore, there is no need to consider those pages here.

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

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

[109] Section 29(1) of FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 24 of FOIP (*Guide to FOIP*, Ch. 4, p. 281).

[110] Pages 5 to 26 and 172 to 173 of Batch B contains contact tracing lists. These lists are made up of individuals' names and telephone numbers. Corrections applied section 29(1) of FOIP to only the telephone numbers. In its submission, Corrections asserted such information qualifies as personal information as defined by sections 24(1)(e) and (k) of FOIP:

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

...

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

...

(k) the name of the individual where:

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

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

[111] In my office's [Review Report 177-2021](#), I considered Corrections' application of section 29(1) of FOIP to similar records. In that report, I found that section 29(1) of FOIP applied to the telephone numbers. Similarly, I find the telephone numbers on pages 5 to 26 of Batch B qualify as personal information as defined by section 24(1)(e) of FOIP. I find, therefore, Corrections properly applied section 29(1) of FOIP to the telephone numbers that appear on pages 5 to 26 of Batch B.

[112] Pages 116, 218, 227, 251, 255 to 257, 296 of Batch B and pages 2 and 4 of Batch E contains information about other employees, such as availability for work shifts, or they contain information regarding inmates. Such information qualifies as personal information as defined by section 24(1)(b) of FOIP:

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

...

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

[113] I find Corrections properly applied section 29(1) of FOIP to the redacted information on pages 116, 218, 227, 251, 255 to 257, 296 of Batch B and pages 2 and 4 of Batch E.

8. Did Corrections properly apply sections 27(1) and 38(1)(b) of HIPA?

[114] Corrections applied sections 27(1) and 38(1)(b) of HIPA to pages 5 to 26, 30, 42 to 43, 172 to 173 of Batch B. It applied sections 38(1)(b) and (f) of HIPA to other pages, but I have

already found that section 15(1)(c) of FOIP applied to those pages so there is no need to also consider those pages under section 38(1)(b) of HIPA.

[115] Sections 27(1) and 38(1)(b) of HIPA provide:

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.

...

38(1) Subject to subsection (2), a trustee may refuse to grant an applicant access to his or her personal health information if:

...

(b) disclosure of the information would reveal personal health information about another person who has not expressly consented to the disclosure;

[116] As I had explained in Review Report 177-2021, section 38(1) of HIPA contemplates when a trustee can deny access to an individual's own personal health information. Section 38(1) of HIPA, then, has no application to this information.

[117] Since we are considering the COVID-19 positive status or contact status of individuals other than the Applicant, I must consider this information pursuant to section 27(1) of HIPA, which is a mandatory provision.

[118] As described earlier, pages 5 to 26 of Batch B contain contact tracing lists. Corrections applied sections 27(1) and 38(1)(b) of HIPA to the names of the individuals. As mentioned earlier, I considered similar records in Review Report 177-2021. In that report, I found that section 27(1) of HIPA applies to the names of the individuals that appear on the contact tracing lists. Similarly, in this case, I find that section 27(1) of HIPA applies to the names of the individuals that appear on pages 5 to 26 of Batch B. I recommend that Corrections continue to withhold the names of the individuals that appears on pages 5 to 26 of Batch B pursuant to section 27(1) of HIPA.

[119] Page 30 of Batch B is a table of employees at the RCC who tested positive. The table includes the first and last name of the individuals, date of birth, health services number,

date of onset of symptoms, date that the case was reported to Public Health, date of end of isolation, a case number, and a “Staff role or duties” column. All but the “Staff role or duties” column qualify as personal health information as defined by sections 2(m)(i) and (v) of HIPA, which provides:

2 In this Act:

...

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

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

...

(v) registration information;

...

(q) **“registration information”** means information about an individual that is collected for the purpose of registering the individual for the provision of health services, and includes the individual’s health services number and any other number assigned to the individual as part of a system of unique identifying numbers that is prescribed in the regulations;

[120] Therefore, I find that section 27(1) of HIPA applies to all of page 30 of Batch B except for the “Staff role or duties” column. I recommend that Corrections continue to withhold all of page 30 of Batch B pursuant to section 27(1) of HIPA except for the “Staff role or duties” column. I recommend that Corrections release the “Staff role or duties” column.

[121] Page 41 of Batch B contains the name of an employee of Corrections that was identified as a close contact. Pages 42 to 43 and 172 to 173 of Batch B contains a list of names of individuals who have been identified as close contacts. I find that section 27(1) of HIPA applies to the names of individuals that appear on pages 41, 42 to 43, and 172 to 173 of Batch B. I recommend that Corrections continue to withhold the names of the individuals that appear on pages 41, 42 to 43, and 172 to 173 of Batch B pursuant to section 27(1) of HIPA. However, Correction should release the remainder of the records. For example, it should release the header of the email time stamped 3:40pm on page 41.

9. Did Corrections satisfy the criteria set out in section 12 of FOIP?

[122] Corrections decided to extend the 30-day response deadline by an additional 30 days pursuant to section 12(1) of FOIP. Section 12 of FOIP provides:

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

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records; or

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the government institution;

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

(c) where a third party notice is required to be given pursuant to subsection 34(1).

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

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

[123] Corrections received the Applicant's access request on April 26, 2021. It provided a notice of extension to the Applicant in a letter dated May 26, 2021. This was within the 30 days required by section 12(2) of FOIP. This means Corrections had until June 25, 2021 to provide its section 7 response to the Applicant. On June 25, 2021, Corrections sent an email to the Applicant indicating it was still processing the access request, but that it was in the "final stages". I note that Corrections issued a letter dated June 29, 2021 as its section 7 response to the Applicant. This was not within the time required by section 12(3) of FOIP. I find that Corrections exceeded the time period required by section 12(3) of FOIP by four days. If Corrections extends the time to respond by 30 days pursuant to section 12(1), I recommend it follow its obligations to provide its response pursuant to section 12(3) of FOIP.

[124] In my office's [Review Report 322-2021, 030-2022](#) at paragraph [29], I said that I will not consider if a government institution has complied with section 12(1) and (2) of FOIP if it has not complied with section 12(3) of FOIP. Similarly, since I found that Corrections did not comply with section 12(3) of FOIP, then it is not necessary for me to determine whether Corrections complied with section 12(1)(a)(i) of FOIP.

IV FINDINGS

[125] I find that I have jurisdiction under FOIP to conduct this review.

[126] I find that I have jurisdiction under HIPA to conduct this review.

[127] I find that Corrections properly applied section 15(1)(c) of FOIP to many of the records but not to all the records to which Corrections applied the exemption. Refer to the Appendix for my findings.

[128] I find that it would be an absurd result to withhold the transcript of the interview on pages 373 to 451 of Batch C from the Applicant.

[129] I find that Corrections has not properly applied section 15(1)(k) of FOIP to the records listed at paragraph [29].

[130] I find that Corrections has not properly applied section 15(1)(d) of FOIP to the pages set out at paragraph [37].

[131] I find that Corrections properly applied section 17(1)(a) of FOIP to the three instances listed at paragraph [78] of this Report.

[132] I find that section 17(1)(b)(i) of FOIP applies to pages 59 to 60, 70 to 71, 74 of Batch A, and pages 64 to 66, 117 to 119, 122, 125, 127 to 128, 130 to 131, 133, 150, 153 to 154 of Batch B, with the exception of the email timestamped 2:20pm on pages 64 and 117 of Batch B.

[133] I find that section 29(1) of FOIP applies to the redacted information on pages 116, 218, 227, 251, 255 to 257, 296 of Batch B and pages 2 and 4 of Batch E.

[134] I find that section 27(1) of HIPA applies to the names of the individuals that appear on pages 5 to 26.

[135] I find that section 27(1) of HIPA applies to all of page 30 of Batch B except for the “Staff role or duties” column.

[136] I find that section 27(1) of HIPA applies to the names of individuals that appear on pages 41, 42 to 43, and 172 to 173 of Batch B.

[137] I find that Corrections exceeded the time period required by section 12(3) of FOIP by four days.

V RECOMMENDATIONS

[138] If Corrections extends the time to respond by 30 days pursuant to section 12(1), I recommend it follow its obligations to provide its response pursuant to section 12(3) of FOIP.

[139] I recommend that Corrections follow the recommendations set out in the Appendix.

Dated at Regina, in the Province of Saskatchewan, this 29th day of August, 2022.

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

Appendix

Batch	Page #	Exemption(s) applied by Corrections	IPC Findings	IPC Recommendations
A	1 to 6	15(1)(c), (d), (k); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
A	10 to 15	15(1)(c), (d), (k); 17(1)(a) of FOIP.	No exemptions apply.	Release.
A	19 to 55	15(1)(c), (d), (k) and 29(1) of FOIP; 38(1) of HIPA; non-responsive	15(1)(c) of FOIP applies.	Release.
A	57 to 58	15(1)(c), (d), (k); 17(1)(a), (b)(i) of FOIP.	17(1)(b)(i) of FOIP applies.	Continue to withhold.
A	59	15(1)(c), (d), (k); 17(1)(a); 17(1)(b)(i); 31(2) of FOIP.	17(1)(b)(i) of FOIP applies.	Continue to withhold.
A	60 to 61	15(1)(c), (d), (k); 17(1)(b)(i); 31(2) of FOIP.	17(1)(b)(i) of FOIP applies.	Continue to withhold.
A	62 to 63	15(1)(c), (d), (k); 17(1)(a) of FOIP.	No exemptions apply	Release.
A	64	15(1)(c), (d), (k); 17(1)(a) of FOIP.	17(1)(a) of FOIP applies to the recommendation but not remaining information.	Continue to withhold the recommendation but release the remainder of the page.
A	65	15(1)(c), (d), (k); 17(1)(a) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
A	68 to 69	15(1)(c), (d), (k); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
A	70 to 72	15(1)(c), (d), (k); 17(1)(a), (b)(i); 31(2) of FOIP.	17(1)(b) of FOIP applies.	Continue to withhold.
A	73	15(1)(c), (d), (k); 17(1) (b)(i) of FOIP.	No exemptions apply.	Release.

A	74 to 75	15(1)(c), (d), (k); 17(1)(a), (b)(i); 31(2) of FOIP.	17(1)(b) of FOIP applies.	Continue to withhold.
A	76 to 81	15(1)(c), (d), (k); 17(1)(a) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	5 to 26	15(1)(c), (d), (k); 29(1) of FOIP; 38(1) of HIPA.	27(1) of HIPA applies to the names; 29(1) of FOIP applies to the phone numbers.	Continue to withhold.
B	27 to 29	15(1)(c), (k), (d), (e); 17(1)(a), (b)(i) of FOIP; 38(1) of HIPA; non-responsive.	15(1)(c) of FOIP applies.	Continue to withhold .
B	30	15(1)(c), (k), 29(1) of FOIP; 38(1) of HIPA.	27(1) of HIPA applies to all information except for "Staff role or duties" column.	Continue to withhold entire page except release "Staff role or duties" column.
B	31 to 33	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i), 29(1) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	35	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	37 to 38	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i) of FOIP.	No exemptions apply.	Release.
B	39	15(1)(c), (k); 17(1)(a) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	41	15(1)(c), (k); 17(1)(b)(i); 29(1) of FOIP; 38(1)(b) of HIPA; non- responsive	27(1) of HIPA applies to some of the page.	Release header of email time stamped 3:40pm (From, Sent, To, Subject); Withhold name of individual in body of email per 27(1) of HIPA in email time stamped 3:40pm;

				<p>Release remainder of the email body timestamped 3:40pm;</p> <p>Withhold name of third party individual in body of email time stamped 4:37pm pursuant to 27(1) of HIPA;</p> <p>Release remainder of email time stamped 4:37pm.</p>
B	42 to 43	15(1)(c), (k); 17(1)(b)(i); 29(1) of FOIP; 38(1)(b) of HIPA; non-responsive.	<p>27(1) of HIPA applies to the names of the individuals.</p> <p>29(1) of FOIP applies to telephone numbers.</p>	<p>Withhold names of individuals pursuant to should be 27(1) of HIPA;</p> <p>Withhold phone numbers pursuant to 29(1) of FOIP;</p> <p>Release remainder.</p>
B	45	15(1)(c), (d), (k); 17(1)(b)(i) of FOIP.	No exemptions apply.	Release.
B	48	15(1)(c), (d), (k); 17(1)(b)(i) of FOIP.	No exemptions apply.	Release.
B	55 to 57	15(1)(c), (d), (k); 17(1)(a) of FOIP.	No exemptions apply.	Release.
B	58	15(1)(c), (d), (k); 17(1)(a), (b)(i) of FOIP.	17(1)(a) of FOIP applies to some of the record.	<p>Release email time stamped 12:25pm;</p> <p>Release body of email of email time stamped 1:45pm except for second last paragraph.</p> <p>Withhold second last paragraph pursuant to 17(1)(a).</p>
B	60	15(1)(c), (d), (k); 17(1)(a), (b)(i) of FOIP.	17(1)(a) of FOIP applies to some of the record.	<p>Release email time stamped 12:25pm;</p> <p>Release body of email of email time stamped 1:45pm except for second last paragraph.</p>

				Withhold second last paragraph pursuant to 17(1)(a).
B	61	15(1)(c), (d), (k); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	62 to 63	15(1)(c), (d), (k); 17(1)(a) of FOIP.	17(1)(a) of FOIP applies to track changes.	Withhold the track changes pursuant to 17(1)(a). Release remainder.
B	64 to 67	15(1)(c), (d), (k); 17(1)(a), (b)(i); 31(2) of FOIP.	17(1)(b)(i) of FOIP applies except for the email timestamped 2:20pm on page 64.	Continue to withhold except for the email timestamped 2:20pm. Release the email timestamped 2:20pm.
B	68	15(1)(c), (d), (k); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	69	15(1)(c), (k); 17(1)(a) of FOIP.	No exemptions apply.	Release.
B	70	15(1)(c), (k), (d); 17(1)(a); 29(1) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	72 to 109	15(1)(c), (k), (d); 29(1) of FOIP; 38(1) of HIPA; non-responsive	15(1)(c) of FOIP applies.	Continue to withhold.
B	110 to 111	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	113 to 114	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	116	15(1)(c), (k), (d); 17(1)(a), (b)(i); 29(1) of FOIP.; non-responsive	29(1) of FOIP applies.	Continue to withhold third-party individual's personal information pursuant to 29(1).
B	117	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	118 to 119	15(1)(c), (k), (d); 17(1)(a), (b)(i); 31(2) of FOIP.	17(1)(b)(i) of FOIP applies.	Continue to withhold.
B	121	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.

B	122 to 123	15(1)(c), (k), (d); 17(1)(a), (b)(i); 31(2) of FOIP.	17(1)(b)(i) of FOIP applies.	Continue to withhold.
B	125 to 131	15(1)(c), (k), (d); 17(1)(a), (b)(i); 31(2) of FOIP.	17(1)(b)(i) of FOIP applies.	Continue to withhold.
B	133 to 134	15(1)(c), (k), (d); 17(1)(a), (b)(i); 31(2) of FOIP.	17(1)(b)(i) applies.	Continue to withhold.
B	135	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	140 to 141	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	145 to 149	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	150 to 151	15(1)(c), (k), (d); 17(1)(a), (b)(i); 31(2) of FOIP.	17(1)(b)(i) of FOIP applies.	Continue to withhold.
B	152	15(1)(c), (k), (d); 17(1)(b)(i) of FOIP.	No exemptions apply.	Release.
B	153 to 154	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	17(1)(b)(i) of FOIP applies.	Continue to withhold.
B	157 to 161	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	167 to 168	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	171	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP; 38(1) of HIPA; non responsive.	15(1)(c) of FOIP applies. 27(1) of HIPA applies to names of individuals. 29(1) of FOIP applies to phone numbers.	Continue to withhold.
B	172 to 173	15(1)(c), (k), (d); 29(1) of FOIP; 38(1) of HIPA.	27(1) of HIPA applies to names of individuals.	Continue to withhold.

			29(1) of FOIP applies to phone numbers.	
B	174 to 177	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	179	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	181 to 182	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release.
B	183	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	185 to 188	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i); 29(1) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	190 to 191	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	193 to 194	15(1)(c), (k), (d); 17(1)(a) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	198 to 200	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i); 29(1) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	202	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	204	15(1)(c), (k), (d); 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	206	15(1)(c), (k), (d); 17(1)(b)(i) of FOIP.	No exemptions apply.	Release.
B	207 to 211	15(1)(c), (k), (d); 17(1)(a), 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	213 to 214	15(1)(c), (k), (d); 17(1)(a),	15(1)(c) of FOIP applies.	Continue to withhold.

		17(1)(b)(i) of FOIP.		
B	218	29(1) of FOIP.	29(1) of FOIP applies.	Continue to withhold.
B	219	15(1)(c), (k), (d); 17(1)(b)(i) of FOIP.	17(1)(b)(i) of FOIP applies to the email timestamped 8:31am but not the other two emails.	Withhold the email timestamped 8:31am but release the remaining two emails.
B	221	15(1)(c), (k), (d) of FOIP.	No exemptions apply.	Release.
B	223 to 226	15(1)(c), (k), (d); 17(1)(b)(i) of FOIP.	No exemptions apply.	Release.
B	227	15(1)(c), (k), (d); 17(1)(b)(i); 29(1) of FOIP; non-responsive	29(1) of FOIP applies to information about employees other than the Applicant.	Release emails timestamped 12:37pm and 12:40pm; Withhold remaining redactions pursuant to 29(1) of FOIP.
B	228	15(1)(c), (k), (d); 17(1)(b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	230 to 231	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	233	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release.
B	234	15(1)(c), (k), (d); 17(1)(a) of FOIP.	15(1)(c) of FOIP applies	Continue to withhold.
B	236 to 238	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	239 to 240	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	241	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	243 to 247	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
B	250	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release.

B	251	29(1) of FOIP.	29(1) of FOIP applies.	Continue to withhold.
B	252 to 253	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release.
B	254	15(1)(c), (k), (d); 17(1)(b)(i) of FOIP.	No exemptions apply.	Release.
B	255 to 256	15(1)(c), (k), (d); 17(1)(b)(i); 29(1) of FOIP; non-responsive	29(1) of FOIP applies to information about employees other than the Applicant.	Release emails timestamped 12:37pm and 12:40pm; Withhold remaining redactions pursuant to 29(1) of FOIP.
B	257	17(1)(b)(i); 29(1) of FOIP; non-responsive.	29(1) of FOIP applies.	Continue to withhold.
B	258 to 261	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	264	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	266	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	268	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	272 to 274	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	276	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	279	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	281 to 284	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	296	29(1) of FOIP.	29(1) of FOIP applies.	Continue to withhold.
B	298 to 301	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release.

B	303 to 304	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release.
B	308	15(1)(c), (k), (d) of FOIP.	15(1)(c) of FOIP.	Continue to withhold.
B	309 to 310	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release.
B	312 to 313	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release.
B	315	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	317	17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	318	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	320	17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	321	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
B	327	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	No exemptions apply.	Release.
C	1 to 9	15(1)(c), (k), (d) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
C	235 to 239	15(1)(c), (k), (d); 29(1) of FOIP.; 38(1) of HIPA	15(1)(c) of FOIP applies.	Continue to withhold.
C	240 to 242	15(1)(c), (k), (d); 17(1)(a) of FOIP.	No exemptions apply.	Release
C	243	15(1)(c), (k), (d) of FOIP.	15(1)(c) of FOIP.	Continue to withhold.
C	244 to 246	15(1)(c), (k), (d) of FOIP.	No exemptions apply.	Release.
C	247 to 256	15(1)(c), (k), (d) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
C	258 to 293	15(1)(c), (k), (d); 29(1) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
C	295 to 356	15(1)(c), (k), (d); 29(1) of FOIP; 38(1) of HIPA.	15(1)(c) of FOIP applies.	Continue to withhold.
C	359 to 371	15(1)(c), (k), (d) of FOIP; 38(1) of HIPA.	15(1)(c) of FOIP applies.	Continue to withhold.

C	373 to 451	15(1)(c), (k), (d) of FOIP; 38(1) of HIPA	It is an absurd result to withhold.	Release.
C	452 to 500	15(1)(c), (k), (d); 29(1) of FOIP; 38(1) of HIPA	15(1)(c) of FOIP applies.	Continue to withhold.
C	502 to 538	15(1)(c), (k), (d); 29(1) of FOIP; 38(1) of HIPA	15(1)(c) of FOIP applies.	Continue to withhold.
C	540 to 554	15(1)(c), (k), (d); 17(1)(a), (b)(i); 29(1) of FOIP; 38(1) of HIPA.	15(1)(c) of FOIP applies.	Continue to withhold.
D	1 to 126	15(1)(c), (k), (d); 17(1)(a), (b)(i); 29(1) of FOIP; 38(1) of HIPA	15(1)(c) of FOIP applies.	Continue to withhold.
D	128 to 137	15(1)(c), (k), (d); 17(1)(a), (b)(i); 29(1) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
D	139 to 143	15(1)(c), (k), (d); 17(1)(a) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
D	145 to 146	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
D	148 to 189	15(1)(c), (k), (d); 17(1)(a), (b)(i); 29(1) of FOIP; 38(1) of HIPA.	15(1)(c) of FOIP applies.	Continue to withhold.
D	191 to 193	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
D	195	15(1)(c), (k), (d); 17(1)(a), (b)(i) of FOIP.	15(1)(c) of FOIP applies.	Continue to withhold.
D	198 to 241	15(1)(c), (k), (d); 17(1)(a), (b)(i); 29(1) of FOIP; 38(1) of HIPA.	15(1)(c) of FOIP applies.	Continue to withhold.
D	243 to 288	15(1)(c), (k), (d); 17(1)(a), (b)(i); 29(1) of FOIP; 38(1) of HIPA	15(1)(c) of FOIP applies.	Continue to withhold.
E	2	15(1)(c), (k); 29 of FOIP; non-responsive	29(1) of FOIP applies.	Continue to withhold.

E	4	15(1)(c), (k); 29 of FOIP; non-responsive	29(1) of FOIP applies.	Continue to withhold.
E	5	15(1)(c), (k); 29 of FOIP; non-responsive	15(1)(c) of FOIP applies.	Continue to withhold.
E	6 to 7	17(1)(b)(i) of FOIP.	No exemptions apply.	Release.