



REVIEW REPORT 171-2023

Ministry of Environment

November 9, 2023

Summary:

GFL Environment Inc. (GFL), a third party, requested that the Commissioner review the Ministry of Environment's (Environment) decision to disclose records in response to an access to information request. GFL claimed that the records were exempt pursuant to subsections 19(1)(a), (b) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that Environment did not comply with sections 7 and 12 of FOIP. He also found that the records at issue were not exempt pursuant to subsections 19(1)(a), (b) or (c) of FOIP. The Commissioner recommended that Environment release the records to the Applicant, subject to any information that was withheld pursuant to subsection 29(1) of FOIP, within 30 days of issuance of this Report. He also recommended that, within 30 days of issuance of this Report, Environment review and make any necessary amendments to its policies and procedures for processing access to information requests that involve time extensions and third parties to ensure compliance with section 12 of FOIP.

I BACKGROUND

- [1] This review involves a claim by a third party, GFL Environment Inc. (GFL), that the Ministry of Environment (Environment) did not properly apply subsections 19(1)(a), (b) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to a request for access to information to which it received third party notice pursuant to section 34 of FOIP.

- [2] Environment received an access to information request from the Applicant on March 29, 2023. The Applicant sought access to the following information about an identified property: “All environmental records pertaining to the specified locations attached.”
- [3] The request included the following additional information describing the records:
- all records pertaining to spills, industrial facilities, hazardous waste storage tanks or warehouses, hazardous waste information prepared by GFL, sewage works, land-farms, intensive livestock operation, water treatment plant, quarry, drilling/groundwater projects, and landfills located within the following legal land descriptions. Records may include applications, operating permits, storage tank registrations, violations, orders, complaints, spills, environmental assessment reports, borehole logs, groundwater wells, audits, inspections, and/or correspondence regarding all the above.
- [4] As the process followed by Environment when responding to the access to information request is at issue in this Report, I will set out the details below.
- [5] On April 27, 2023, Environment notified the Applicant that it was extending the time to respond to the access to information request by an additional 30 days pursuant to subsection 12(1)(a)(ii) of FOIP.
- [6] On May 31, 2023, Environment advised the Applicant that it had given notice to GFL pursuant to subsection 34(1) of FOIP seeking GFL’s representations on whether the information could be released. It added that GFL had 20 days to provide its representations as to whether the information requested was exempt pursuant to subsection 19(1) of FOIP. It also stated that once GFL responded to the notice, Environment would make a decision regarding access to the records. Further, Environment stated that the timeline for responding had been extended for another 30 days pursuant to subsection 12(1)(c) of FOIP to June 29, 2023.
- [7] Also on May 31, 2023, Environment wrote to GFL advising it of the request and its intention to release the records. The letter also invited GFL to provide its representations as to why access should not be given by June 20, 2023. As required by subsection 7(3) of FOIP, Environment’s letter also advised GFL of its right to request a review by my office.

- [8] GFL did not provide Environment with any representations on why access to the records should not be given.
- [9] On June 28, 2023, Environment wrote to the Applicant advising that it had not received any representations from GFL. It advised the Applicant that the records would be released, but information that was exempt pursuant to subsections 29(1) of FOIP would be withheld. It also stated that the Applicant had 20 days to file a request for a review of this decision with my office.
- [10] Also on June 28, 2023, Environment sent a letter to GFL advising that it had decided to release the information at issue to the Applicant but for the information that was exempt pursuant to subsection 29(1) of FOIP. It advised GFL that it had 20 days to file a request for a review of this decision with my office.
- [11] On July 18, 2023, my office received a request for a review from GFL. My office wrote to Environment to advise it of the request for review and ask that it not release any records until the review was complete.
- [12] On August 2, 2023, my office notified Environment, the Applicant and GFL that my office was undertaking a review.
- [13] The Applicant provided a submission on August 8, 2023. Environment provided a submission on October 5, 2023.
- [14] GFL provided my office with a submission on October 2, 2023.
- [15] Subsequently, my office sent a series of questions to GFL. GFL decided not to respond to the questions.

II RECORDS AT ISSUE

- [16] In this review, GFL objected to the release of the records described in the Index of Records attached as Appendix A.
- [17] The records referred to as Bundle One are a 37-page soil sampling report and attachments. Bundle Two is comprised of 171 pages of emails, letters, “load slips”, reports, reviews and certificates of analysis.
- [18] Environment decided to withhold portions of Bundles One and Two pursuant to subsection 29(1) of FOIP. Those withheld portions are not at issue here as the Applicant did not also request a review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [19] Environment qualifies as a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. GFL is a “third party” as defined in subsection 2(1)(j) of FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did Environment comply with sections 7 and 12 of FOIP?

- [20] In its notices of the review, my office stated that it would be considering if Environment’s two notices of extension of time complied with section 12 of FOIP.
- [21] Subsection 7(2) of FOIP provides that within 30 calendar days of receiving an access to information request, the government institution must provide a response to the applicant. That provision states, in part:

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

[22] *The Legislation Act* (LA) establishes rules that govern the interpretation of all statutory instruments in the province. Section 2-28 of the LA prescribes how timelines in FOIP are calculated. When section 2-28 of the LA is applied to the 30-day time period for responding to an access to information request, the time is calculated as follows:

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

(*Guide to FOIP*, Chapter 3, “Access to Records”, Updated: May 5, 2023, [*Guide to FOIP*, Ch. 3] at p. 50)

[23] Section 12 of FOIP provides as follows:

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

(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.

[24] Section 12 of FOIP provides that a government institution can extend the initial 30-day response deadline for a maximum of 30 more days. This means 60 days in total. However, this is only in limited circumstances, which are outlined in subsection 12(1) of FOIP (*Guide to FOIP*, Ch. 3, p.97).

[25] I will begin my analysis with the requirements set out in subsection 12(2) of FOIP.

Subsection 12(2) of FOIP

[26] Environment provided two notices of extension to the Applicant. It sent the first notice to the Applicant on April 27, 2023, and the second notice on May 31, 2023.

[27] Subsection 12(2) of FOIP provides that where a government institution wants to extend the response time, it must give notice of the extension to the applicant within the first 30 days following receipt of the access to information request. If a government institution does not give notice within the 30-days, it is no longer able to request an extension and its lack of response constitutes a “deemed refusal” pursuant to subsection 7(5) of FOIP (*Guide to FOIP*, Ch. 3, p. 108).

[28] Applying section 2-28 of the LA, the 30-day deadline for providing a notice of extension of time in this case fell on April 28, 2023. Therefore, Environment sent its first notice of extension within the 30-day deadline in compliance with subsection 12(2) of FOIP.

[29] Environment sent its second notice of extension outside the 30-day deadline, so I will not consider if that notice was compliant with section 12 of FOIP.

[30] I note that subsection 12(1) of FOIP only permits extensions of time “for a period not exceeding 30 days.” Therefore, the fact that it sent its second extension too late is not the only issue of concern here. The effect of Environment’s second extension was to extend the time for responding by 60 days in total. If valid, Environment would have had 90 days to respond to the request. As noted above, an extension of time for more than 30 days is not permissible pursuant to subsection 12(1) of FOIP.

Subsection 12(3) of FOIP

[31] I now turn to consider if Environment complied with subsection 12(3) of FOIP.

[32] Subsection 12(3) of FOIP provides that following an extension, the government institution must provide its section 7 decision to the applicant within the extended 30-day deadline (*Guide to FOIP*, Ch. 3, p. 109).

[33] To comply with subsection 12(3) of FOIP in this case, Environment should have provided its section 7 decision to the Applicant by May 29, 2023. However, Environment responded to the Applicant on June 28, 2023 – well outside the extended deadline. Therefore, I find that Environment did not comply with subsection 12(3) of FOIP.

[34] Environment's failure to respond to the Applicant by May 29, 2023 was a breach of subsection 12(3) of FOIP. Consequently, from May 29, 2023 onwards, Environment was in a deemed refusal position.

[35] Given my finding that Environment failed to comply with subsection 12(3) of FOIP, it is not necessary for me to consider if it was permitted to extend the time pursuant to subsection 12(1) of FOIP.

[36] For these reasons, I find that Environment did not comply with sections 7 and 12 of FOIP.

[37] I recommend that, within 30 days of issuance of this Report, Environment review and amend, if necessary, its policies and procedures for processing access to information requests that involve time extensions and third parties.

3. Does subsection 19(1)(a) of FOIP apply to the responsive records?

[38] As noted above, in this review, GFL objects to Environment's decision to disclose the records at issue to the Applicant. It asserted that the records are exempt pursuant to the mandatory exemptions in subsections 19(1)(a), (b) and (c) of FOIP.

[39] Section 19 of FOIP is a mandatory, class-based and harm-based provision, meaning, it contains both class and harm-based exemptions. The provision is intended to protect the business interests of third parties and to ensure that government institutions are able to maintain the confidentiality necessary to effectively carry on business with the private sector (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, Updated April 30, 2021, [*Guide to FOIP*, Ch. 4], p. 193).

[40] Environment’s submission did not specifically address the application of subsection 19(1) of FOIP. It stated that in the absence of representations from GFL, it could not determine that there was “third party information” in the records. It added that GFL has received third-party notices from Environment in the past and that the process and what is required of it is not new. It explained that it gave notice to GFL:

... [out of] an abundance of caution to allow GFL the opportunity to provide representations as to why access to the record or part of the record should not be given. The Ministry’s letter to the GFL indicated that there may be third-party information in the records (please see Appendix A), which aligns with the low threshold requirement for notice established in *Merck Frosst*. GFL failed to provide the Ministry with representations in response to this notice. Therefore, without any representations, the Ministry could not determine that there was third party information contained in the record.

[41] I now turn to consider if the information in the records is exempt pursuant to subsection 19(1)(a) of FOIP which states:

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

(a) trade secrets of a third party;

[42] Subsection 19(1)(a) of FOIP applies to a third party’s “trade secrets.” My office defines “trade secret” as information, including a plan or process, tool, mechanism or compound, which possesses each of the four following characteristics:

(i) the information must be secret in an absolute or relative sense (is known only by one or a relatively small number of people);

(ii) the possessor of the information must demonstrate he/she has acted with the intention to treat the information as secret;

iii) the information must be capable of industrial or commercial application; and

iv) the possessor must have an interest (e.g., an economic interest) worthy of legal protection.

(*Guide to FOIP*, Ch. 4, pp. 195-196)

[43] The test for determining a trade secret has been derived from the SCC decision in *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012 SCC 3 \(Can LII\)](#) (Merk Frosst). The types of information that might qualify as trade secrets include the chemical composition of a product and the manufacturing processes used. However, not every process or test would qualify, particularly when the process or test is common in a particular industry.

[44] GFL asserted that the information qualified as a trade secret because it related to information about its technology, business strategy and operations that is not otherwise accessible to the public. It asserted that the information included detailed information about its operations including soil samples and related data. When asked by my office to identify the portions of the records that qualify as trade secrets, GFL declined to provide the information.

[45] The Applicant does not agree that the information at issue is proprietary in nature. It explained that it requires the information to understand what work was done on the sites by GFL.

[46] Based on a review of Bundle One, I note that it is a 37-page letter from another organization (subcontractor) to GFL. It sets out the background to the request for services, describes the nature of the work it did and reports on the results.

[47] The letter includes the kinds of information that one normally finds in a letter such as the date, addressee, sender and subject line. It includes a general introduction and statements regarding limitations of liability. This information does not describe a plan or process, tool, mechanism or compound and would not qualify as a trade secret.

[48] Additional information is in the letter and attachments such as a description of the services provided, work orders and certificates of analysis of soil samples, and records related to the soil sampling and testing process. The work, including sampling and testing was done by the subcontractor and others for GFL. The records do not reveal a plan or process, tool, mechanism or compound that would qualify as a trade secret.

[49] Also, attached to the letter are a series of photographs depicting the two locations where the soil samples were taken, site plans, location of buildings on site, photographs of soil stockpiles at the sites, and photographs showing the progress over three months of remedial work at the two sites. These photographs do not reveal any information that could qualify as trade secrets.

[50] Bundle Two includes seven emails whose headers, footers, and subject lines would not qualify as trade secrets between Environment and GFL. Bundle Two also includes approximately 116 pages of GFL “load slips” dated in 2020 and 2021. The load slips include information such as the weight of the truck and their contents, the license number of the vehicle and the place of delivery. This is not the type of information that would qualify as a trade secret. Bundle Two also includes records relating to soil sampling and soil testing that do not reveal a plan or process, tool, mechanism or compound.

[51] GFL did not explain to my office or to Environment how the information possessed the four characteristics required to qualify as a trade secret. Given the limited information provided by GFL and the fact that the records, on their face, do not appear to reveal information that would qualify as a trade secret, I find that subsection 19(1)(a) of FOIP does not apply.

[52] As GFL also claimed that the information was exempt pursuant to subsections 19(1)(b) and (c) of FOIP, I must consider if those exemptions apply before I make a recommendation.

4. Does subsection 19(1)(b) of FOIP apply to the records?

[53] 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;

[54] My office uses the following three-part test to determine if this exemption 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. 198-209)

[55] All three parts of the test must be met for the exemption to apply.

[56] I will consider each part of the test in turn.

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

[57] GFL asserted that the records reveal financial, commercial, technical or labour relations information. However, it did not explain how the information in the records qualifies as financial, technical or labour relations information. Its submission appears to focus on the claim that the information is commercial information. For example, it asserted that the records include information relating to its operations, including soil samples and related data, and commercial information such as its business strategy and operations. It added that the records were supplied to Environment in confidence implicitly or explicitly. It stated:

The records contain detailed information about the nature of GFL's commercial operations, including specific information about GFL's former stockpiles. The records were provided to the Ministry in order to satisfy the Ministry's concerns about the materials found in those stockpiles. GFL's expectation was that the information it supplied to the Ministry would remain confidential given that they involve commercially sensitive information about GFL's business.

- [58] “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 (*Guide to FOIP*, Ch. 4, p. 198).
- [59] “Commercial information” is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records (*Guide to FOIP*, Ch. 4, p. 198).
- [60] “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 (*Guide to FOIP*, Ch. 4, pp. 198-199).
- [61] “Technical information” is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information (*Guide to FOIP*, Ch. 4, p. 199).
- [62] “Labour relations information” is information that relates to the management of personnel by a person or organization, whether 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 (*Guide to FOIP*, Ch. 4, p. 199).

[63] GFL did not explain how the information in the records qualifies as technical, financial or labour relations information. Having reviewed the records, and in the absence of an explanation, I find that the records do not contain information that would qualify as financial or labour relations information.

[64] However, based on a review of the records, it appears that portions, but not all, appear to contain information that would qualify as commercial information. This includes information in Bundles One and Two relating to its arrangements with subcontractors. The records of services performed by the subcontractors for GFL would also qualify as commercial information.

[65] The records also appear to include technical and scientific information, such as the results and protocols for soil sample analyses. In arriving at this conclusion, I note that sampling protocols and procedures were found to be scientific information in my office's Review Report [057-2022](#). In addition, information directly related to soil testing and analysis conducted by an engineering firm was found to qualify as technical information in my office's Review Report [F-2014-006](#).

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

[66] "Supplied" means provided or furnished (*Guide to FOIP*, Ch. 4, p. 200).

[67] Based on a review of the records, I am satisfied that Bundle One contains information provided by GFL to Environment.

[68] However, Bundle Two includes email correspondence sent by Environment to GFL. One email appears on page 6. The portions of the emails on pages 7, 8, 9 that use black and green text were email messages also sent by Environment to GFL. Therefore, I find that

GFL did not provide this information to Environment and the second part of the test has not been met for these pages and portions of pages.

[69] GFL provided the remaining information in Bundle Two to Environment.

3) *Was the information supplied in confidence implicitly or explicitly?*

[70] The information must have been supplied in confidence either implicitly or explicitly. “Implicitly” means that confidentiality is understood, even though there is no actual agreement or statement of confidentiality. “Explicitly” means confidentiality has been clearly stated, such as through documentary evidence showing the information was supplied with the understanding the government institution would keep it confidential. In order for subsection 19(1)(b) of FOIP to apply, it must be shown that both parties intended the information to be held in confidence at the time the information was supplied. (*Guide to FOIP*, Ch. 4, p. 202).

[71] The expectation of confidentiality must be reasonable and must have an objective basis. Whether the information is confidential will depend upon its content, its purposes, and the circumstances in which it was compiled or communicated (*Guide to FOIP*, Ch. 4, p. 202).

[72] Simply labelling documents as “confidential” does not, on its own, make the documents confidential (i.e., confidentiality stamps or standard automatic confidentiality statements at the end of emails). It is just one factor that my office considers when determining whether the information was explicitly supplied in confidence. Such notes are largely format and platitudes (*Guide to FOIP*, Ch. 4, p. 205).

[73] GFL claimed that it provided the information in confidence. It stated that GFL’s “expectation was that the information it supplied [...] would remain confidential” given that the records involve commercially sensitive information about its business.

[74] Environment’s submission did not address this issue.

[75] I note that none of the records at issue include statements to suggest that they were provided in confidence by GFL, other than the standard confidentiality statement that appears in many email records.

[76] Nor is there anything in the records including the email communications between Environment and GFL that supports the claim that both parties intended the information to be held in confidence at the time it was provided. As noted above, when asked to identify the specific portions of the records that GFL claimed were subject to the exemptions, it declined to do so.

[77] In my office's Review Reports [043-2015](#), [057-2022](#), [204-2022](#) and [171-2022](#), I found that the "compulsory supply" of information, or information required by statute, will not ordinarily qualify as confidential unless the relevant legislation establishes confidentiality. Therefore, I must consider if Environment required that GFL provide the information and if there was a legislative requirement that it be held in confidence.

[78] In response to questions posed by my office, Environment stated that GFL "was required to complete confirmatory sampling" and provide other information to it under *The Environmental Management and Protection Act, 2010* (EMPA). According to Environment, the information was required because GFL violated subsection 8(1) of EMPA. It added that in these circumstances, subsection 13(1) of the EMPA gave Environment the authority to direct GFL to do the sampling and provide the results and other information.

[79] Subsection 8(1) of the EMPA provides:

8(1) No person shall discharge or allow the discharge of a substance into the environment in an amount, concentration or level or at a rate of release that may cause or is causing an adverse effect unless otherwise expressly authorized pursuant to:

(a) this Act or the regulations;

(b) any other Act, Act of the Parliament of Canada or the regulations made pursuant to any other Act or Act of the Parliament of Canada;

(c) any approval, permit, licence or order issued or made pursuant to:

(i) this Act or the regulations; or

(ii) any other Act, Act of the Parliament of Canada or the regulations made pursuant to any other Act or Act of the Parliament of Canada;

(d) the code; or

(e) an accepted environmental protection plan.

[80] Subsection 13(1) of the EMPA provides:

13(1) The minister may require a person who is or may be a person responsible to conduct a site assessment if the minister reasonably believes that a site may be an environmentally impacted site.

[81] Subsection 83(1) of the EMPA is also relevant here. It states:

83(1) Subject to subsections (3) to (11), all applications, information, data, test results, reports, returns and records and responses to a direction of the minister submitted to the minister pursuant to this Act, the regulations, the code or an accepted environmental protection plan are deemed to be public information.

[Emphasis added]

[82] Subsections 83(3) to (11) of the EMPA set out a process where a person can submit a written request to have all, or any part of the information submitted to Environment be kept confidential for a prescribed amount of time. Environment may or may not approve the written request.

[83] GFL did not provide any information to my office to suggest that it engaged in the process set out in subsections 83(3) to (11) of the EMPA, nor did it suggest that Environment approved such a request.

[84] As noted above, Environment asserted that the information at issue was provided pursuant to a requirement under subsection 13(1) of the EMPA. This is consistent with the information set out in the records. For this reason, I find that GFL was required or

compelled to provide the information at issue to Environment. Therefore, given all of the circumstances outlined above, I find that the information was not supplied in confidence.

[85] In addition, I note that subsection 83(1) of the EMPA provides that reports submitted pursuant to that act are deemed to be public information.

[86] For all these reasons, I find that GFL has not established that the information was supplied explicitly or implicitly in confidence to Environment. Therefore, the third part of the test has not been met. As all three parts of the test must be satisfied, I find that subsection 19(1)(b) of FOIP does not apply to the records.

[87] I will address GFL's claim that subsection 19(1)(c) of FOIP applies before I make a recommendation regarding the records at issue.

5. Does subsection 19(1)(c) of FOIP apply to the records?

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

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

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

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

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

a third party;

[89] GFL asserted that disclosure could result in harm, but it did not specify which subclause of subsection 19(1)(c) of FOIP it was relying on, nor did it identify the portions of the records for which this claim was made.

[90] GFL's submission appears to address the application of subsection 19(1)(c)(ii) of FOIP only. It asserted:

The release of the records would significantly prejudice GFL's competitive position in the market. The disclosure of these records would provide GFL's competitors with valuable information about the nature of GFL's ongoing business, including GFL's storage capabilities. If competitors have access to information about GFL's planned future projects GFL will clearly be harmed because its competitors will have an opportunity to react and accordingly adjust their own plans. There is a public interest in maintaining privacy over business operations and commercial strategy records that are provided to the Ministry for the purposes of meeting a company's obligations under environmental permits.

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

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

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

[92] "Financial loss or gain" must be monetary, have a monetary equivalent, or value (e.g., loss of revenue or loss of corporate reputation) *(Guide to FOIP, Ch. 4, p. 211)*.

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

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

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

[94] 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)

[95] I will consider the possible application of subsections 19(1)(c)(i) and (iii) of FOIP first.

[96] Regarding Bundle One, most of the information in these records is information of the subcontractor, general information found in all correspondence such as the addressee, sender, and subject matter of the letter, information about the circumstances surrounding the purpose of the work and the services provided by the subcontractors. GFL has not explained how release of the information could reasonably be expected to result in financial loss or gain to GFL. I find that subsection 19(1)(c)(i) of FOIP does not apply to Bundle One.

[97] Regarding Bundle Two, some of the records, such as the load slips may reveal information about GFL's use of storage sites in one instance. However, it is not apparent how or why release of this information could reasonably be expected to result in financial loss or gain to GFL. Therefore, I find that subsection 19(1)(c)(i) of FOIP does not apply to Bundle Two.

[98] Regarding subsection 19(1)(c)(iii) of FOIP, GFL has not provided any information or evidence about contractual or other negotiations that are occurring. Nor has it provided information or evidence about how release would interfere with contractual or other negotiations. Therefore, I find that subsection 19(1)(c)(iii) of FOIP does not apply to Bundles One or Two.

[99] Regarding subsection 19(1)(c)(ii) of FOIP, GFL did not provide my office with any evidence or explanation as to its competitive business environment, and the impact of the release of these records on its competitive position. Nor is it apparent from a review of the records what the nature of the prejudice to GFL's competitive position is and how release could reasonably be expected to result in the prejudice. The records and GFL's submission are not sufficient to support a finding that the exemption applies. Therefore, I find that subsection 19(1)(c)(ii) of FOIP does not apply to the records.

[100] I recommend that Environment release the responsive records, subject to any information that it withheld pursuant to subsection 29(1) of FOIP, to the Applicant, within 30 days of issuance of this Report.

IV FINDINGS

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

[102] I find that Environment did not comply with sections 7 and 12 of FOIP.

[103] I find that subsections 19(1)(a), (b) and (c) of FOIP do not apply to the records.

V RECOMMENDATIONS

[104] I recommend that, within 30 days of issuance of this Report, Environment review and amend, if necessary, its policies and procedures for processing access to information requests that involve time extensions and third parties.

[105] I recommend that Environment release the responsive records, subject to any information that it withheld pursuant to subsection 29(1) of FOIP, to the Applicant, within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 9th day of November 2023.

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

Appendix A

| Bundle One Page No. | FOIP Exemption Applied | Description |
|----------------------------|-------------------------------|---|
| 1-2 | 29(1) | Soil Sampling Report |
| 6 | 29(1) | Soil Sampling Report |
| 15-22 | 29(1) | Attachments to Soil Sampling Report |
| 24 | 29(1) | Attachments to Soil Sampling Report |
| 28-31 | 29(1) | Attachments to Soil Sampling Report |
| 35-36 | 29(1) | Attachments to Soil sampling Report |
| Bundle Two Page No. | FOIP Exemption Applied | Description |
| 1-2 | 29(1) | Email and letter |
| 4-7 | 29(1) | Emails and letters |
| 10-47 | 29(1) | GFL Load Slips |
| 49-50 | 29(1) | GFL Load Slips |
| 52-79 | 29(1) | GFL Load Slips |
| 82-83 | 29(1) | Emails |
| 86-106 | 29(1) | GFL Load Slips |
| 114 | 29(1) | GFL Load Slips |
| 117 | 29(1) | Sample of Analysis Report |
| 121-125 | 29(1) | Analysis and Certificate of Analysis |
| 129-158 | 29(1) | GFL Load Slips, Emails, Certificate of Analysis |
| 166-170 | 29(1) | Review, Analysis, Quality Assurance, Method Summary, Chain of Custody |