Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 220-2020

Ministry of Justice and Attorney General

May 27, 2022

Summary: The Ministry of Justice and Attorney General (Justice) received an access to information request from the Applicant. Justice provided the Applicant with access to two pages of records in full, while denying the Applicant access to the remaining 215 pages pursuant to sections 15(1)(c), (k), (k.2), (m), 22(b), (c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant sought a review from the Commissioner stating that he had been refused access to all or part of the record. The Commissioner undertook a review pursuant to FOIP. The Commissioner found that sections 15(1)(k.2) and (m) of FOIP applied, but found that Justice did not show that section 15(1)(c) and (k) of FOIP applied to pages 30 to 39, 41 to 45 and 47. The Commissioner also did not find that section 29(1) of FOIP applied to the names on pages 31, 41, 43 and 46 of the record. The Commissioner recommended that Justice release the sections severed subject to sections 15(1)(c) and (k) of FOIP on pages 30 to 39, 41 to 43 and 47 along with the names severed on pages 31, 41, 43 and 46.. The Commissioner recommended Justice withhold the portions of pages 44 and 45 severed pursuant to section 15(1)(m) of FOIP and withhold the remaining sections of the record severed pursuant to section 15(1)(k.2) of FOIP.

I BACKGROUND

[1] On July 8, 2020, the Ministry of Justice and Attorney General (Justice) received the following access to information request from the Applicant:

> On October 16, 2019 sheriff [employee name] assaulted me while removing me from the Queen's Bench courthouse. I was subsequently charged with mischief.

> During arrest I told SPS I had audio of the incident and can prove there were 2.8 seconds between him saying “leave” and sound of a struggle. SPS's opinion was that 2.8 seconds is enough time to ensure a command is understood and there's nothing preventing leaving, such as the sheriff blocking the exit and my property in the next room.
>
> The corrupt prosecutor and court used remand to coerce a guilty plea while conspiring with Legal Aid to prevent me from viewing the evidence against me.
>
> Per LAFOIP [FOIP] I request of Court Services Branch SKQB, SPS and the crown prosecutor all records relating to this incident.

[2] On August 7, 2020, Justice sent a letter to the Applicant indicating that the due date for a response would be extended by up to 30 additional days.

[3] On September 8, 2020, the Applicant received a response from Justice. In its response, Justice provided access to portions of the records and indicated it was withholding some records in full or in part pursuant to sections 15(1)(c), (k), (k.2), (m), 22(b), (c), and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[4] On September 10, 2020, the Applicant submitted a request for review to my office indicating that they had been refused access to all or part of the record.

[5] On September 10, 2020, my office provided notification to both the Applicant and to Justice of my intention to undertake a review.

II RECORDS AT ISSUE

[6] Prior to the access to information request, there was an incident at the courthouse which led to criminal charges being laid against the Applicant. The access to information request was in relation to this incident. The 217-page record contains handwritten notes, emails, case management forms, incident reports, police reports and other similar documents. Justice released pages 26 and 40 in full, and provided partial release of pages 42, 44, 45 and 46. Justice applied exemptions to those portions (citing sections 29(1), 15(1)(c), (k), and (m) of FOIP) as its authority to withhold some information on the pages. It denied

access, in full, to the rest of the 217 pages applying exemptions to those portions, (citing sections 15(1)(c), (k), (k.2), (m), 22(b), (c) and 29(1) of FOIP).

[7] Justice applied section 15(1)(k.2) to a majority of the record, so I will address that first.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] Justice qualifies as a "government institution" pursuant to section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did Justice properly apply section 15(1)(k.2) of FOIP?

[9] Justice applied section 15(1)(k.2) of FOIP to the entirety of pages 1 to 25, 27 to 29, and 48 to 217. Section 15(1)(k.2) of FOIP provides:

> **15**(1) A head may refuse to give access to a record, the release of which could:
>
> ...
> (k.2) reveal any information relating to or used in the exercise of prosecutorial discretion;

[10] Section 15(1)(k.2) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reveal any information relating to or used in the exercise of prosecutorial discretion.

[11] The following three-part test can be applied:

1. Was the prosecutorial discretion exercised in matters within the prosecutor's authority concerning the prosecution of offences?
2. Is the information related to or was it used in the exercise of the discretion?
3. Could disclosure reveal this information?

(*Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 30, 2021 [*Guide to FOIP*, Ch. 4], pp. 80-84)

1. Was the prosecutorial discretion exercised in matters within the prosecutor's authority concerning the prosecution of offences?

[12] Exercise of "prosecutorial discretion" is not defined in FOIP. However, where a legislative instrument [such as FOIP] uses a legal term of art, it is generally presumed that the term is used in its correct legal sense.

[13] Prosecutorial discretion was defined in *Krieger v. Law Society of Alberta (2002)* as follows:

> Without being exhaustive, we believe the core elements of prosecutorial discretion encompass the following: (a) the discretion whether to bring the prosecution of a charge laid by police; (b) the discretion to enter a stay of proceedings in either a private or public prosecution, as codified in the [*Criminal Code*], ss. 579 and 579.1; (c) the discretion to accept a guilty plea to a lesser charge; (d) the discretion to withdraw from criminal proceedings altogether: [*R. v. Osborne (1975)*]; and (e) the discretion to take control of a private prosecution: [*R. v. Osiowy (1989)*]. While there are other discretionary decisions, these are the core of the delegated sovereign authority peculiar to the office of the Attorney General.

[14] "Exercise" means to make use of; to put into action; to execute (*Guide to FOIP*, Ch. 4, p. 82).

[15] The exercise of prosecutorial discretion may be with respect to offences under the *Criminal Code* and any other enactment of Canada for which the Attorney General for Saskatchewan may initiate and conduct a prosecution.

[16] Public Prosecutors prosecute offences on behalf of Justice. The record contains documents from the prosecutors evaluating the criminal case. The prosecutors exercising the discretion in this case are prosecutors employed by Justice. Therefore, they have the authority to have exercised prosecutorial discretion in this case and the first part of the test is met.

2. Is the information related to or was it used in the exercise of the discretion?

[17] "Relating to" should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as "substantial connection") for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. "*Relating to*" requires some connection between the information and the exercise of prosecutorial discretion (*Guide to FOIP*, Ch. 4, p. 83).

[18] In the submission to my office, Justice stated the following:

> The Ministry has applied clause 15(1)(k.2) to documents that contain notes of the prosecutor, memorandum, emails, documents that prosecutors have used to analyze the strength of the case, and investigation records of the Saskatoon Police Service. As mentioned in relation to clause 22(b), the transfer of a police investigation file to the Crown Prosecutor is done for a specific purpose: supporting the prosecution of offenders and ensuring all relevant evidence is made available to both Crown and defence counsel.
>
> As these records are relating to or were used in the exercise of prosecutorial discretion, they are exempt from disclosure pursuant to clause 15(1)(k.2) of FOIP.

[19] The records appear to be documents used by the prosecutors in the prosecution of the Applicant. Therefore, the records would also have been used in the exercise of discretion as to whether to prosecute or not. As such, I find that the second part of the test is met.

3. Could disclosure reveal this information?

[20] "Reveal" means to make known; cause or allow to be seen (*Guide to FOIP*, Ch. 4, p. 84).

[21] There are also many smaller decisions regarding the "nature and extent" of a prosecution. For example, there are decisions to request and review information, conduct particular legal research, or obtain the views of others. Disclosure of this kind of information may reveal the grounds on which the larger prosecutorial decisions are based.

[22] When there is a review by my office, the government institution is invited to provide a submission (arguments). The government institution should describe how and why

disclosure of the information in question could result in the release of information related to or used in the exercise of prosecutorial discretion.

[23] As above, this section uses the word "could" versus "could reasonably be expected to". Here as well, there still has to be a basis for the assertion. If it is fanciful or exceedingly remote, the exemption should not be invoked. For this provision to apply there must be objective grounds for believing that disclosing the information could reveal information related to or used in the exercise of prosecutorial discretion (*Guide to FOIP*, Ch. 4, p. 83).

[24] Pages 8 and 9, and pages 19 to 29 appear to be handwritten notes from the prosecutor. Page 12 is a "Crown Prosecutors Information Sheet". Pages 50 to 217 all appear to be documents from the Saskatoon Police Service (SPS) outlining the past history of the Applicant. The information requested by the Applicant relates directly to the charges laid against the Applicant. Therefore, if the records were released, they would reveal information that was used in the exercise of prosecutorial discretion. As such, the third part of the test is met.

[25] As all three parts of the test are met, I find that Justice properly applied section 15(1)(k.2) of FOIP to pages 1 to 25, 27 to 29, and 48 to 217. Therefore, I do not need to consider the application of sections 15(1)(c), (k), (m), 22(b), (c) or 29(1) of FOIP for these pages. As the exemptions that Justice applied subject to 22(b) and (c) of FOIP were only applied to pages that have already properly had section 15(1)(k.2) of FOIP applied, there is no need to consider the application of section 22(b) or (c) of FOIP in this Report.

[26] This leaves only pages 30 to 39 and pages 41 to 47 to review. I will address the application of section 15(1)(c) of FOIP on pages 30 to 39, 41 to 45 and 47 next. I will then review the application of section 15(1)(k) of FOIP to these same pages. Following that, I will review the application of section 29(1) of FOIP to pages 31, 41, 43 and 46. Finally, I will review the application of section 15(1)(m) of FOIP to pages 44 and 45.

3. Did Justice properly apply section 15(1)(c) of FOIP?

[27] Justice applied section 15(1)(c) of FOIP to the entirety of pages 30 to 39, 41 to 45 and 47.

[28] Section 15(1)(c) of FOIP provides as follows:

> **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;

[29] Section 15(1)(c) of FOIP is a discretionary class-based and harm-based exemption. Meaning it contains both a class and harm-based component. It permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation. My office applies the following two-part test to determine if section 15(1)(c) of FOIP applies:

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

(*Guide to FOIP*, Ch. 4, pp. 51-54)

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

[30] A "lawful investigation" is an investigation that is authorized or required and permitted by law (*Guide to FOIP*, Ch. 4, p. 52). In order to meet this part of the two-part test, the government institution should identify the legislation under which the investigation is occurring.

[31] In its submission to my office, Justice stated the following:

> Deputy Sheriffs provide security services as assigned within the Courts of Saskatchewan to ensure a safe and secure environment for all users of court facilities.

This includes secure [sic] the operation of detention areas within court facilities, conducting perimeter screening in accordance with *The Court Security Act*, the maintenance of good order in all areas of court facilities, and the assessment and management of threats to courts and court participants. The duties performed by the Deputy Sheriffs of Court Security are an integral component of the administration of the court and in achieving the goals and objectives of the Court Services Branch.

As Peace Officers, Deputy Sheriffs operate under the *Criminal Code of Canada*, *The Court Officials Act, 2012,* and *The Court Security Act*.

Deputy Sheriffs provide and maintain a safe and secure setting for all persons within a court location, including security in the courtroom and holding cells. The investigation at issue is one that is authorized and permitted by law. The Deputy Sheriffs' notes capture the events that proceeded the Applicant being removed from the court house. The notes are with respect to an investigation pertaining to the enforcement of *The Court Security Act*. Deputy Sheriffs' powers are listed in section 3 of *The Court Security Act*. For our purposes, clause 3(2)(d) of *The Court Security Act* provides:

3(2) In addition to his or her powers pursuant to subsection (1), a sheriff may refuse an individual entry to, or evict an individual from, a court facility if one or more of the following circumstances exist:

…
(d) the sheriff has reasonable grounds to believe that the individual:

(i) is a threat to the safety of the court facility or the safety of any of its occupants;

(ii) may disrupt court proceedings; or

(iii) may disrupt operations within the court facility.

In the event of an incident in a court house, the Commissionaire reports any incidents to the on-site Deputy Sheriff, who then would take responsibility for responding [to] the incident and reporting the incident through the chain of command for any follow up that would be necessary. The Commissionaires responsibility starts with the requirement to report to the on-site Deputy Sheriff and ends with providing a written report of the incident, if necessary. Please see the Saskatoon Post Orders for the Commissionaires (Appendix A). The Commissionaires' report forms part of any investigation completed by the Deputy Sheriffs.

The Saskatoon Police officers operate under the *Criminal Code of Canada* and were investigating various offences as is noted in their Police Reports.

The investigations and corresponding records are authorized and permitted by law and thus subject to the exemption provided in clause 15(1)(c) of FOIP.

> …
> Clause 15(1)(c) has been applied to the notes of Deputy Sheriffs, an incident report created by a Commissionaire and Deputy Sheriffs, the correspondence in relation to the incident reports and police reports. The incident reports prepared by both the Commissionaire and the Deputy Sheriffs formed part of the material that the police included in their investigation. As an example, the record found on page 47 is later found in the police report on page 61. Clause 15(1)(c) has also been applied to investigation reports prepared by the Saskatoon Police Service and forwarded to Public Prosecutions.

[32] Justice has not been specific when it comes to what lawful investigation was being conducted, by who and under what section of legislation the investigation(s) was authorized. In its submission, it made reference to the *Court Securities Act*, but this appears to be justification as to the authority of the security services at the courthouse to remove the Applicant from the property. This section does not mention any authority to investigate. Justice asserts that the Deputy Sheriffs provide a safe and secure setting, including providing security, but in the next sentence states that the investigation at issue is one authorized and permitted by law. Providing security services is not the same thing as conducting a lawful investigation. Justice says that the Deputy Sheriffs operate under the *Criminal Code of Canada*, *The Court Officials Act, 2012*, and *The Court Security Act*, but failed to cite the authority under which they may investigate, or even that the Deputy Sheriffs were the ones conducting the investigation for which this exemption was applied.

[33] No where in the submission did Justice explicitly state what section of which piece of legislation was being utilized to investigate, nor which organization was doing the investigating. Section 61 of FOIP provides:

> **61** In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[34] Section 61 of FOIP places the burden of proof on Justice to demonstrate section 15(1)(c) of FOIP applies. In this case, it has not demonstrated that there was a lawful investigation, one that is authorized or required and permitted. While there was a criminal component to this matter, suggesting that there may have been an investigation undertaken by someone

regarding these matters, Justice has not been clear who this individual was, and under what authority they undertook this investigation. In the submission, Justice appears to have presupposed that the authority was present, and that the authority to carry out a lawful investigation was apparent. It was not.

[35] As Justice has not met the burden of proof, I do not find that there was a lawful investigation, and therefore, the first part of the test is not met. As all parts of the test must be met, there is no need to go further.

[36] I find that Justice has not demonstrated that section 15(1)(c) of FOIP applies to pages 30 to 39, 41 to 45 and 47. However, Justice also applied section 15(1)(k) of FOIP to these same pages, so I will consider the application of that exemption next.

4. Did Justice properly apply section 15(1)(k) of FOIP?

[37] Justice applied section 15(1)(k) of FOIP to pages 30 to 39, 41 to 45 and 47.

[38] Section 15(1)(k) of FOIP provides as follows:

> **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;

[39] Section 15(1)(k) of FOIP is a discretionary exemption that contains both a class and harm based component. It permits refusal of access in situations where release of a record could interfere with a law enforcement matter or disclose information respecting a law enforcement matter (*Guide to FOIP*, Ch. 4, p. 75).

[40] The following two-part test can be applied:

1. Is there a law enforcement matter involved?

2. Does one of the following exist?

    a) Could release of information interfere with a law enforcement matter?

    b) Could release disclose information with respect to a law enforcement matter?

1. Is there a law enforcement matter involved?

[41] The *Guide to FOIP* provides as follows:

> Law enforcement includes:
>
> a) policing, including criminal intelligence operations, or
>
> > Policing refers to the activities of police services. 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.
> >
> > Criminal intelligence is information relating to a person or group of persons compiled by law enforcement to anticipate, prevent or monitor possible criminal activity. Intelligence-gathering is sometimes a separate activity from the conduct of specific investigations. Intelligence may be used for future investigations, for activities aimed at preventing the commission of an offence, or to ensure the security of individuals or organizations.
>
> b) 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.
>
> > Investigation has been defined, in general, as a systematic process of examination, inquiry and observations.
> >
> > Inspection has been defined, in general, as a careful examination.
> >
> > Legal proceeding has been defined, in general, as any proceeding authorized by law and instituted in a court or tribunal to acquire a right or to enforce a remedy.
> >
> > Penalty or sanction means a punishment or penalty used to enforce obedience to law. It can include a fine, imprisonment, revocation of a license, an order to cease an activity, or expulsion from an educational institution.
> >
> > Matter should be given its plain and ordinary meaning. It does not necessarily always have to apply to some specific on-going investigation or proceeding.

> The law enforcement matter does not have to be active and ongoing in order to qualify.
>
> It is not limited to law enforcement matters involving the government institution.

(*Guide to FOIP*, Ch. 4, pp. 75 -77).

[42] As with its arguments for section 15(1)(c) of FOIP above, Justice appears to have assumed that the existence of a law enforcement matter was obvious. However, it did not cite what the law enforcement matter was in its submission to my office. Presumably it relates to the charging of the Applicant, however, Justice has not made this explicit in its submission. In addition, it is not clear whether the severed information would interfere with the law enforcement matter, or whether it would disclose information with respect to a law enforcement matter. In its submission, Justice asserted:

> The court found that "law enforcement matter" included a policing matter. In the point in dispute in that case, the court concluded that it included a database that was created, maintained and used by the police as part of its mandate. Thus, "law enforcement matter" did not have to refer to a matter that was ongoing.
>
> …
> The Ministry submits that the Saskatoon Police Service records fall within the narrower definition of policing matter but agrees that the definition of law enforcement matter is broader than a policing matter.
>
> The Ministry submits that the notes from the Deputy Sheriffs also fall within the definition of law enforcement matter. The Deputy Sheriffs, as is stated in paragraphs 61 to 63, were acting under the authority of *The Court Security Act* to maintain public order, which resulted in the removal of the Applicant from the Court of Queen's Bench. The Commissionaires report, as discussed at paragraph 64, was a necessary part of documenting what had occurred in order to support the enforcement of the law.
>
> …
> It is the submission of the Ministry that the records in this case fall within the class test as it pertains to law enforcement matters conducted by the Deputy Sheriffs and the Saskatoon police service.

[43] Pages 30 to 39, 41 to 45 and 47 appear to be handwritten notes and emails which are documents that could form part of a police report and may well be matters relating to a policing matter, but this has not been demonstrated. The SPS records which Justice cited

are found on pages that this Report has already concluded were correctly severed. Justice has not provided any information how pages 30 to 39, 41 to 45 and 47 were part of a law enforcement matter. Justice cited *The Criminal Code of Canada, The Court Officials Act, 2012,* and *The Court Security Act,* and have mentioned potential investigations or interactions between court security services, Deputy Sheriffs and the SPS, but have not been clear what the law enforcement matter was.

[44] It could be presumed, as charges were laid in this case, that there was a law enforcement matter involving the SPS. However, my office does not operate on presumptions. Instead, the existence of a law enforcement matter must be demonstrated. Even if my office accepted that there was a law enforcement matter, Justice did not provide justification as to how, or if, pages 30 to 39, 41 to 45 and 47 related to a law enforcement matter. My office does not need to consider this further, as the first part of the test has not been met.

[45] I find that Justice has not demonstrated that section 15(1)(k) of FOIP applies to pages 30 to 39, 41 to 45 and 47. Portions of pages 44 and 45 were severed by Justice citing section 15(1)(m) of FOIP and will also be addressed later in this Report. In addition, portions of pages 31, 41, 43 and 46 were severed subject to section 29(1) of FOIP and will be addressed next.

5. Did Justice appropriately apply section 29(1) of FOIP?

[46] Justice severed a name on the handwritten note on page 31. This name appears to be the name of a judge at the court. In addition, Justice severed the name of a member of the security team at the courthouse on pages 41, 43 and 46 claiming exemption under section 29(1) of FOIP which provides:

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

[47] For section 29(1) of FOIP to apply, the information in question must first constitute "personal information" of someone other than the Applicant pursuant to section 24(1) of FOIP. Section 24(1) of FOIP defines what constitutes personal information.

[48] Justice does not appear to have provided any justification as to why the name of a judge on page 31 should be severed. The arguments provided in the submission focus entirely on the employee's name on pages 41, 43, and 46. As Justice has not provided any justification as to why the name of the judge should be severed, I recommend releasing it as a name by itself is not personal information.

[49] The severed information citing section 29(1) of FOIP on pages 41, 43 and 46 is the name of a member of the security team who was working and was involved in the incident for which the charges were laid. My office has held that a name by itself does not constitute personal information unless the name itself reveals something of a personal nature about the individual.

[50] In Review Report 186-2019, my office also found that business card information would not be considered personal information, as follows:

> [26] Business card information is the type of information found on a business card (name, job title, work address, work phone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. Further, in Review Report 149-2019, 191-209 [sic], I noted that business card information does not qualify as personal information when found with work product. Work product is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. Work product is also not considered personal information.

[51] Reporting what happened in the case of an incident appears to be part of the duties of the security team at the courthouse. The record does not appear to show any other information about these individuals, and the redacted names are found on what appears to be work product.

[52] Nothing else in the 217-page record appears to provide any additional information about this individual. This person was working at the courthouse at the time of the incident and was involved in the incident. As a name by itself does not constitute personal information unless disclosure of the name itself would reveal personal information about the individual, and that has not been demonstrated, I do not find that section 29(1) of FOIP applies in this case. I recommend the release of the name severed on pages 41, 43 and 46.

[53] The only remaining pages left to be considered are the handwritten notes at pages 44 and 45. Justice applied section 15(1)(m) of FOIP to portions of these pages. I will consider that next.

6. Did Justice properly apply section 15(1)(m) of FOIP?

[54] Pages 44 and 45 are handwritten notes which were partially severed. The information withheld pursuant to section 15(1)(m) of FOIP appear to be start and end times of shifts for security staff at the courthouse.

[55] Section 15(1)(m) of FOIP provides:

> **15**(1) A head may refuse to give access to a record, the release of which could:
>
> …
> (m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems

[56] For section 15(1)(m) of FOIP, the following two-part test can be applied. However, only one of the questions needs to be answered in the affirmative for the exemption to apply. There may be circumstances where both questions apply and can be answered in the affirmative:

1. Could release reveal security arrangements (of particular vehicles, buildings, other structures or systems)?

2. Could release reveal security methods employed to protect the particular vehicles, buildings, other structures or systems?

(*Guide to FOIP*, Ch. 4, p. 87)

[57] Section 15 of FOIP uses the word "could" versus "could reasonably be expected to" as seen in other provisions of FOIP. The threshold for "could" is somewhat lower than a reasonable expectation. The requirement for "could" is simply that the release of the information could have the specified result. There would still have to be a basis for the assertion. If it is fanciful or exceedingly remote, the exemption should not be invoked. For this provision to apply there must be objective grounds for believing that disclosing the information could reveal security methods employed to protect particular vehicles, buildings, other structures or systems (*Guide to FOIP*, Ch. 4, p. 90).

[58] Based on the submission provided to my office, Justice appears to be asserting that the first part of the test applies. In its submission Justice stated:

> Clause 15(1)(m) has been applied to the Deputy Sheriff's notes that outline the shift schedule of Deputy Sheriffs, including start and end times and breaks. Understanding the shift schedule of the Deputy Sheriffs reveals the security arrangements of the Court of Queen's Bench building because it reveals the security arrangements of personnel whose job is to provide security to the Court. As such, the portions of the notes that provide information regarding the shift of Deputy Sheriffs are exempt from disclosure pursuant to clause 15(1)(m) of FOIP.

[59] "Reveal" means to make known; cause or allow to be seen (*Guide to FOIP*, Ch. 4, p. 87).

[60] "Security" means a state of safety or physical integrity. The security of a building includes the safety of its inhabitants or occupants when they are present in it. Examples of information relating to security include methods of transporting or collecting cash in a transit system; plans for security systems in a building; patrol timetables or patterns for security personnel; and the access control mechanisms and configuration of a computer system. Security means sufficient security (*Guide to FOIP*, Ch. 4, p. 87).

[61] In my office's Review Report 126-2020, 185-2020, an applicant requested information regarding threat assessments for Sheriffs and Deputy Sheriffs, including a list of recommendations and projected timelines for implementation. In that report at paragraph [41], I found:

> ..,I am satisfied that the information withheld pursuant to subsection 15(1)(m) of FOIP, if disclosed, could reveal security measures in place at the specified court houses in Saskatchewan. This information is intended to protect the building and structures. To some, such information may also identify potential security gaps. As such, I find Justice properly applied subsection 15(1)(m) of FOIP to page 30 and 31 of report 2; I recommend Justice continue to withhold this information pursuant to subsection 15(1)(m) of FOIP.

[62] As with the above, I agree that the start times, end times, and break schedule of security staff of the courthouse in these handwritten notes could reveal security arrangements and could be used to identify potential security gaps. I find that Justice appropriately applied section 15(1)(m) of FOIP to the information on pages 44 and 45. I therefore recommend that Justice continue to withhold this information.

IV FINDINGS

[63] I find that section 15(1)(k.2) of FOIP applies to pages 1 to 25, 27 to 29, and 48 to 217.

[64] I find that Justice has not shown that section 15(1)(c) of FOIP applies to pages 30 to 39, 41 to 45 and 47.

[65] I find that Justice has not shown that section 15(1)(k) of FOIP applies to pages 30 to 39, 41 to 45 and 47.

[66] I find that section 15(1)(m) of FOIP applies to pages 44 and 45.

[67] I find that Justice has not shown that section 29(1) of FOIP applies to the names on pages 31, 41, 43 and 46.

V RECOMMENDATIONS

[68] I recommend Justice release the information on pages 30 to 39, 41 to 43 and 47 severed subject to sections 15(1)(c) and (k) of FOIP.

[69] I recommend Justice withhold the portions of pages 44 and 45 severed pursuant to section 15(1)(m) of FOIP and release the remainder of the pages.

[70] I recommend Justice release the name of the judge on page 31, and the name of the individual on pages 41, 43 and 46.

[71] I recommend that Justice continue to withhold the remaining information.

Dated at Regina, in the Province of Saskatchewan, this 27th day of May, 2022.

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