



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## REVIEW REPORT 220-2021, 235-2021

### Ministry of Health

August 26, 2022

#### Summary:

The Applicant made an access to information request to the Ministry of Health (Health) for particular records related to two long term care facilities in the province. As the Applicant did not receive a response to the request, they requested a review by my office. Through my office's early resolution process, Health responded to the request. However, the Applicant still wished to have a review of the delayed response and the exemptions that Health applied to the record. The Commissioner found that Health was 128 days late in responding to the Applicant's access to information request. The Commissioner recommended that Health take its history of late responses seriously, and address its resource issues to ensure it has adequate resources to help it meet its obligations pursuant to *The Freedom of Information and Protection of Privacy Act*. The Commissioner also recommended Health complete a review of its processes and staffing resources and prepare a report for my office on the results of its review within 90 days of this Report. The Commissioner found that some of the exemptions were properly applied to the record, but others were not. The Commissioner recommended that Health release some portions of the withheld information and continue withholding other portions of the record.

### I BACKGROUND

- [1] On March 1, 2021, the Ministry of Health received an access to information request from the Applicant for the following:

All letters, memos, e-mails and correspondence from the Ministry of Health to the Saskatchewan Health Authority that refer to the monthly fee structure and resident subsidies for residents of Emmanuel Villa Personal Care and Brightwater Senior Living of Capital Crossing. January 1, 2020 to December 31, 2020.

- [2] On March 5, 2021, Health emailed the Applicant an estimate of costs letter and requested a deposit of \$240.00 to continue processing the request. The Applicant mailed the required deposit, and it was received by Health on March 16, 2021. I would like to note that the fee estimate is not subject to this review.
- [3] By letter dated March 18, 2021, Health advised the Applicant that the response time was being extended pursuant to section 12(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as third party notice to the Saskatchewan Health Authority (SHA) was required to be given pursuant to section 34(1) of FOIP. The time extension is not subject to this review.
- [4] On September 8, 2021, the Applicant requested a review by my office. The reason outlined in their request for review form was, “I have been refused access to all or part of the record.” My office contacted the Applicant, and they advised they had not received a response to the March 1, 2021 access to information request.
- [5] Through my office’s early resolution process, Health responded to the Applicant’s request on September 16, 2021. Once the Applicant reviewed the record, they advised my office they also wished to have my office review the exemptions Health applied to the record.
- [6] On September 29, 2021, my office notified the Applicant, Health and a third party identified by Health – the SHA. The reasons for review outlined in the notification email was the delayed response by Health and the exemptions that Health applied to the record. The notification email invited all parties to make a submission to my office. The notification to Health also requested a copy of the responsive record.
- [7] My office received the submission from Health on November 19, 2021, and the record from Health on November 22, 2021. My office did not receive a submission from the Applicant or the SHA.

## **II RECORDS AT ISSUE**

- [8] The record at issue is 49 pages that Health has partially withheld pursuant to sections 13(2), 16(1)(a), 17(1)(a), (b)(i), (c), (g), 18(1)(b), 19(1)(b) and 29(1) of FOIP. In addition, on one of the pages that has been partially withheld, Health has cited the information is not responsive to the request.
- [9] This review will also look at the issue of whether Health responded to the request within the legislated timelines.

## **III DISCUSSION OF THE ISSUES**

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

- [10] Health is a “government institution” pursuant to section 2(1)(d)(i) of FOIP. Therefore, I find I have jurisdiction.

### **2. Did Health respond to the access request within the legislated timelines?**

- [11] Section 7(2) of FOIP requires that a government institution respond to an access to information request within 30 days of receiving the request. Section 7(2) of FOIP provides:

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

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 45.1, and setting out the reason for which the request was disregarded.

[12] The Applicant's access to information request was received by Health on March 1, 2021. Based on this, Health's 30-day time to respond would have been March 31, 2021.

[13] On March 5, 2021, Health emailed an estimate of costs letter to the Applicant and requested a deposit to continue work on the file. The time was suspended, or the clock stopped, until the Applicant provided their deposit. Health received the Applicant's deposit on March 16, 2021, at which time the clock resumed. Since Health provided its fee estimate on March 5, 2021, it used up 4 of its days, leaving it 26 days to respond. Health's new time to respond, then, was April 11, 2021.

[14] There are circumstances in which a response can be extended up to an additional 30 days pursuant to section 12(1) of FOIP. On March 18, 2021, Health advised the Applicant that the 30-day response period was being extended pursuant to section 12(1)(c) of FOIP as third party notice was required in order for Health to process the request. Sections 12(1)(c) and 12(3) of FOIP provide:

**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:

...

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

...

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

[15] The head can extend the response 30 days, which Health did. However, section 12(3) of FOIP requires that the head respond to the request within the 30-day extension period.

[16] As Health's new 30-day time to respond was April 11, 2021, it could extend for 30 days after that, or until May 11, 2021. I note that under FOIP, there are no more opportunities for Health to extend the response time.

[17] However, Health did not respond to the Applicant's request until September 16, 2021 – 128 days past the extension of time deadline. I would also note that Health did not respond to the Applicant's request until after the Applicant requested a review by my office. I find, therefore, Health did not respond to the access to information request within the legislated timelines.

[18] In its submission, Health provided the following reasons for the delay in responding to the request:

The Ministry would like to recognize that as a result of the work from home mandate, and resource challenges due to government response to the COVID-19 pandemic, the Ministry's ability to respond within 30 days was inhibited. In addition to these challenges, the Ministry was processing a large number of requests during this time period and had an employee redeployed to assist SHA in handling contact tracing for COVID-19.

The Ministry of Health failed to meet the timelines for this access to information request. While many factors can be attributed to the multiple delays not only at the time the request was received but throughout the processing. The Ministry acknowledges these factors do not outweigh our obligation both under the law and to the applicant to release access requests within legislative timelines.

The Ministry of Health continues to be committed to processing and releasing access requests as quickly as possible and within legislative timelines.

[19] Excessive delays in responding to access to information requests is not new for Health. In my office's [Review Report 249-2021](#), I stated:

[16] While I acknowledge the pandemic did initially impact the ability of some public bodies to provide services, we are almost two years into the pandemic. I expect by this time a public body would have appropriate processes and technologies in place to be able to respond efficiently and in a timely manner. A public body cannot continually use the pandemic as an excuse for delaying services or responses.

[17] Further, I have stated many times in past reports that public bodies cannot use a lack of resources as an excuse for excessive response times. If Health's access and

privacy unit is short of resources or expects one person to respond to 28 active access to information requests, then it needs to address its resource issues so that the public is not negatively impacted by such lengthy delays. I find it concerning that, over the past several years, my office has continually needed to remind Health of its statutory obligation to meet legislated timelines. My office has done so, for example, in the following Review Reports:

- [Review Report 082-2019, 083-2019](#)
- [Review Report 036-2018](#)
- [Review Report 209-2015 to 213-2015](#)
- [Review Report 063-2015 to 077-2015](#)
- [Review Report 115/2014](#) and
- [Review Report 090-2014](#).

[18] I recommend, then, that Health take its history of late responses seriously, and address its resource issues to ensure it has adequate resources to help it meet its obligations pursuant to FOIP.

[20] At the time Health received this access to information request, the province had been dealing with the pandemic for a year. As I stated in Review Report 249-2021, Health cannot use delays due to Covid as a continued excuse.

[21] Health must take steps to remedy its history of late responses. Being 128 days late in responding to an access to information request is unacceptable. Again, I recommend that Health take its history of late responses seriously and address its resource issues to ensure it has adequate resources to help it meet its obligations pursuant to FOIP.

[22] In my office's [Review Report 322-2021, 030-2022](#), I recommended the following:

[52] I recommend that Health complete a review of its processes and staffing resources and prepare a report for my office on the results of its review within 90 days of this Report.

[23] In response to that recommendation, Health advised my office on July 8, 2022, "the Ministry will consider this recommendation." As of the date of this Report, the 90 days has not passed yet. Therefore, I will repeat that recommendation in this current Report.

**3. Did Health properly apply section 29(1) of FOIP?**

[24] Health applied section 29(1) of FOIP to portions of information found on pages 1, 148, 149 and 176.

[25] Section 29(1) of FOIP provides:

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

[26] Section 29(1) of FOIP requires that a government institution shall not disclose personal information without consent or if a specific circumstance exists. The type of information that is considered personal information is described in section 24(1) of FOIP; however, the list is non-exhaustive. To determine if information is personal information, it must: 1) be about an identifiable individual, and 2) be personal in nature.

[27] In its submission, Health states, in part:

...

Section 29(1) has been applied to pages 1, 148, 149, and 176 where information of an identifiable individual is included in the email correspondence along with other personal information that would reveal the identity of the individual. This section requires a government institution to have the consent of the individual whose personal information is in the record prior to disclosing it. The Ministry did not seek consent to have this individuals [sic] information released, therefore proactively took steps in applying the appropriate exemptions to fulfill its mandatory obligation under 29(1) [of FOIP].

[28] The information that has been withheld on pages 1 and 176 is the personal email address of three individuals. In previous Review Reports, including Review Report 157-2016, I have found personal email addresses qualify as personal information pursuant to sections 24(1)(e) and (k) of FOIP, which provide:

**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.

[29] Therefore, section 29(1) of FOIP applies to this information.

[30] Health has also applied section 29(1) of FOIP to three severances on page 148 and one severance on page 149. The first and second severance on page 148 and the severance on page 149 is related to an owner of a long term care home, including the owner's name. As noted above, in order to qualify as personal information it must be about an identifiable individual and the information must be personal in nature. I can confirm that these two severances are related to an identifiable individual. However, the information is not personal in nature as it relates to a professional endeavor – operation of a long term care home. Therefore, section 29(1) of FOIP does not apply to the first and second severances on page 148 and the severance on page 149.

[31] On the last severance on page 148, the SHA has withheld the work cell number of an SHA employee. I note that Health has released this same number to the Applicant on other pages. The cell phone number is not personal in nature as it is a work issued cell number. The content on the page demonstrates that the owner of the cell number is emailing in their professional capacity. Therefore, section 29(1) of FOIP does not apply to the SHA employee's work cell number on page 148.

[32] I find Health properly applied section 29(1) of FOIP to pages 1 and 176 and recommend it continue to withhold the information on these pages pursuant to section 29(1) of FOIP. I also find Health did not properly apply section 29(1) of FOIP to pages 148 and 149, and recommend it release that information



**4. Did Health properly apply section 17(1)(a) of FOIP?**

[33] Health applied section 17(1)(a) of FOIP to portions of pages 4, 9, 19 to 22, 25, 28, 35, 40, 59, 61, 63, 64, 66, 142, 147, 148, 151 to 160, 162, 163, 165 to 167 and 169 to 172.

[34] 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, proposal, recommendations, analyses or policy options developed by or for a member of the Executive Council;

[35] Section 17(1)(a) of FOIP is a discretionary exemption that permits refusal of access in situations where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 30, 2021 [*Guide to FOIP*, Ch. 4], p. 123).

[36] In order for this exemption to apply, the following two part test must be met:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?

(*Guide to FOIP*, Ch. 4, pp. 124 – 126)

[37] I will now consider each part of the test.

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?*

- [38] “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 (*Guide to FOIP*, Ch. 4, p. 124).
- [39] A “recommendation” is a specific piece of advice about what to do, especially when given officially. In other words, 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 (*Guide to FOIP*, Ch. 4, p. 125).
- [40] A “proposal” is something offered for consideration or acceptance. “Analysis” is the detailed examination of the elements or structure of something. It is the process of separating something into its consistent elements (*Guide to FOIP*, Ch. 4, p. 125).
- [41] “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 (*Guide to FOIP*, Ch. 4, p. 125).
- [42] The second part of this provision is that the advice, proposals, recommendations, analyses and/or policy options must be developed by or for a government institution other than the one relying on the exemption. “Executive Council” means the Executive Council appointed pursuant to *The Executive Government Administration Act* and consists of the Premier and Cabinet Ministers. Executive Council is often referred to as “Cabinet” (*Guide to FOIP*, Ch. 4, p. 126).
- [43] “Developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either within the government institution or outside the government institution but for the government institution and at its request (*Guide to FOIP*, Ch. 4, p. 126).
- [44] The advice, proposals, recommendations, analysis, and/or policy options should:

- Be either sought, be expected, or be part of the responsibility of the person who prepared the record; and
- Be prepared for the purpose of doing something, for example, taking an action or making a decision; and
- Involve or be intended for someone who can take or implement the action.

(*Guide to FOIP*, Ch. 4, p. 127)

[45] In its submission, Health put forth the following arguments for section 17(1)(a) of FOIP:

The exemption was applied to email correspondence as well as briefing notes that provide advice, proposals, recommendations and analyses regarding the requirements surrounding approval and funding process for LTC homes in Regina.

The first part of the IPC's test requires the contents of the records to qualify as advice, proposals, recommendations, analyses or policy options. Section 17(1)(a) was applied to emails and briefing notes that discussed previous fiscal budget as well as provided analysis regarding the requirements and guidelines to be met in the process of acquiring funding for LTC [Long Term Care]. This discussion includes advice from the Ministry and SHA [Saskatchewan Health Authority] employees as well as analysis of previous funding and the effects of the proposed amounts. This advice includes deliberations and proposals of various options by both the Ministry and SHA employees in order for a decision to be made.

In the deliberation process, via email correspondence, advice as well as recommendations were sought and expected from both areas (the Ministry and SHA) who had a common interest in moving forward the proposed LTC negotiations. As these discussions progressed, deliberations regarding budget, forecasts, and projections were outlined in the context of the two LTC homes. These records were created by employees of the SHA in collaboration with Ministry employees to be presented to Ministry Executives and the Minister who expect the creation of such records in the approval or briefing process.

The content of the emails and briefing notes outlined the options for consideration in the decision making process as well as potential obstacles that could reasonably come from choosing a specific direction over the other regarding the proposed funding. The Ministry respectfully submits these deliberations meet the criteria and definition of *proposals* as outlined in the IPC's guide to FOIP.

The briefing notes found on the above outlined pages provide detailed discussions between senior Ministry and SHA employees advocating for and against specific actions to be taken in the process of LTC funding.

Briefing notes are created as part of a formal process to inform government officials on issues or situations. Specifically, briefing notes are created for the purpose of making political, policy, or budgetary decision. Briefing notes often will include recommendations, plans, positions, risks, actions being taken or to take, and analysis on a wide range of matters such as policy, legislation, governance issues, and programs.

The email correspondence and briefing notes where this exemption has been claimed were created for the purpose of briefing presentation to someone (The Minister) who can take or implement the action.

To satisfy the third part of the test, analysis of the records in question revealed that the email correspondence as well as briefing notes were written by Ministry employees as well as the SHA employees.

The recommendations in these briefing notes were intended to drive the Ministry towards a specific action or decision. In addition, this briefing note was submitted to various Executive Directors in the Ministry in order to provide input and direction towards a specific action surrounding the LTC funding requirements. Executive Directors have a key role in providing direction and recommendations for specific projects that affect the Ministry.

- [46] In its submission, Health did not provide my office with arguments as to how the exemption applies to each severance to which it applied section 17(1)(a) of FOIP. 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.

- [47] The burden is not on the applicant to establish that an exemption does not apply. When it is said that a party has the “burden of proof”, what is meant is that one party has a duty in law first to bring forward evidence that a particular fact or situation exists, and then to persuade my office that the evidence meets the necessary standard of proof (*Guide to FOIP*, Chapter 2, “Administration of FOIP”, updated August 7, 2020, p. 40).

- [48] Therefore, if it is not apparent what arguments Health was making for its specific severances, I will conduct the review on the face of the records.

- [49] The information that has been withheld on pages 9, 35 and 40 is analysis in a briefing note that has been prepared by Health officials for the Minister of Health. Furthermore, the

information that has been withheld on pages 22 and 64 is a recommended course of action based upon the facts within the briefing note that was prepared for Health's consideration. In all cases, the advice has been prepared for officials who can take action based on the advice. For example, page 9 is a briefing note with analysis of the situation that has been prepared for the Minister in order to make an informed decision. This information qualifies as being exempt from release pursuant to section 17(1)(a) of FOIP.

[50] Health has severed two blocks of information on pages 153 and 163 – one under the headings of “Assessment” and the other under the headings of “Recommendation”. In its submission, Health did not specifically outline how the information withheld under “Assessment” would qualify for this exemption. Furthermore, it is not clear from a review of the record that the information would qualify for the exemption. Therefore, this information does not qualify under section 17(1)(a) of FOIP. The information that has been withheld under the heading “Recommendation” on pages 153 and 163 is a recommendation that has been put forward in a briefing note that has been developed by the SHA for Health's consideration, so its officials can make a decision based upon the recommendations. As the SHA and Health are collaborating on the funding for the long-term care facilities, I find that the second part of the test is met. Therefore, this qualifies under section 17(1)(a) of FOIP.

[51] The information that has been withheld on pages 4 and 21 is a listing of the status of certain action items, including if items have been completed and an anticipated date for completion. The information that has been withheld on pages 28, 59 and 148 are statements of fact or actions that have already or will be taken. The information withheld on page 61 outlines a timeline for an action to be completed and a statement regarding an action item to occur. The information that has been withheld on page 142 and the second portion of severed information on page 172 outlines the decision that was made based upon a laid out recommendation. This does not qualify as advice, proposals, recommendations, analysis or policy options.

[52] The information that has been withheld on pages 151, 154, 155, 157, 159 and the second severance on page 160 is a specific request that the SHA is looking for approval on from

Health. The information that has been severed on page 156 is a statement of the requirements for the approval being granted. The information that has been severed on page 158 is a statement of the next steps for approval. The information that has been severed under the first severance on page 160 is a statement showing support for or against a recommendation and asks a question. This does not qualify as advice, proposals, recommendations, analysis or policy options.

[53] I find Health properly applied section 17(1)(a) of FOIP to pages 9, 22, 35, 40, 64 and the information found under the “Recommendations” headings of 153 and 163. I recommend Health continue to withhold this information pursuant to section 17(1)(a) of FOIP.

[54] I find Health did not properly apply section 17(1)(a) of FOIP to pages 4, 19, 20, 21, 25, 28, 59, 61, 63, 66, 142, 147, 148, 151, 152, 154 to 160, 162, 165 to 167, 169 to 172 and the information found under the “Assessment” heading on pages 153 and 163.

[55] I recommend Health release the information that it has applied section 17(1)(a) of FOIP found on pages 28, 59, 61, 147, 148, 151 and 154 to 160. However, I must consider the additional exemptions that Health has applied to the information found on pages 4, 19 to 21, 25, 63, 66, 142, 152, 162, 165 to 167, 169 to 172 and the information found under the “Assessment” heading on pages 153 and 163.

## **5. Did Health properly apply section 18(1)(b) of FOIP?**

[56] Health applied section 18(1)(b) of FOIP to portions of pages 19, 20, 22, 24, 25, 31, 32, 64 to 66, 142, 165 to 167 and 169 to 172.

[57] Section 18(1)(b) of FOIP provides:

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

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use; and

(ii) that has monetary value or is reasonably likely to have a monetary value;

[58] In order for this exemption to apply, the following three part test must be met:

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

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

[59] I will now consider each part of the test.

***1. Does the information contain financial, commercial, scientific, technical or other information?***

[60] In its submission, Health has claimed the withheld information contains financial information. Therefore, I do not need to consider the definitions for commercial, scientific, technical or other information.

[61] “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 particular party (*Guide to FOIP*, Ch. 4, p. 164).

[62] In its submission, Health provided my office with the following arguments as to how part one of the test has been satisfied.

Part one of the test requires that the information provide financial information. All briefing notes and email correspondence where this exemptions [sic] is claimed discuss financial information as it relates to LTC funding, whether it is providing deliberations on funding requirement or funding requests as it relates to LTC homes of Emmanuel Villa Personal Care and Brightwater Senior Living of Capital Crossing. In addition, the

deliberations include funding projections and requirements regarding the implementation of the two LTC home projects including outlining budgetary forecasts. In these deliberations, the SHA makes recommendations that involve hiring and the potential funding costs surrounding hiring will have on budget recommendations and the over all [sic] costs of the LTC projects.

[63] The withheld information includes discussions and dollar amounts of budget allocations for Long Term Care (LTC) facilities. For example, the information that has been withheld on page 22 includes the 2019-2020 and 2020-2021 budget allocation for two LTC facilities and payment to vendors. The information withheld on page 142 discusses a specific funding approval, while the information that has been withheld on page 165 requests a breakdown for a specific budget amount.

[64] This is the type of information that has been withheld throughout the record under this provision and it qualifies as financial information. Therefore, the first part of the test has been met. I will now consider the second part of the test.

**2. *Does the government institution have a proprietary interest or a right to use it?***

**3. *Does the information have monetary value for the government institution or is it reasonably likely to?***

[65] The government institution must be able to demonstrate rights to the information. “Proprietary” means, relating to, or holding as property. “Proprietary interest” is the interest held by a property owner together with all appurtenant rights. It signifies simply “interest as an owner” or “legal right title”. “Owner” means someone who has a right to possess, use and convey something. In other words, a person in whom one or more interests are vested. “Right of use” means a legal, equitable, or moral title or claim to the use of property or authority to use (*Guide to FOIP*, Ch. 4, pp. 165-166).

[66] Section 18(1)(a) of Ontario’s *Freedom of Information and Protection of Privacy Act* is similar to Saskatchewan’s, but instead of proprietary interest or right of use, it uses the phrase “that belongs to the Government of Ontario or an institution”. In Ontario Order MO-1746, the phrase “belongs to” was found to mean ownership, making it relevant for Saskatchewan’s section 18(1)(b) of FOIP (*Guide to FOIP*, Ch. 4, pp. 165-166).



[67] In Order MO-1746, the Ontario Adjudicator stated:

The Assistant Commissioner has thus determined that the term “belongs to” refers to “ownership” by an institution, and that the concept of “ownership of information” requires more than the right to simply possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to “belong to” an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense - such as copyright, trademark, patent or industrial design - or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business to business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, there is a quality of confidence about the information, in the sense that it is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the courts will recognize a valid interest in protecting the confidential business information from misappropriation by others ....

*(Guide to FOIP, Ch. 4, p. 166)*

[68] I adopt the analysis of the Ontario Adjudicator.

[69] “Monetary value” requires that the information itself have an intrinsic value. This may be demonstrated by evidence of potential for financial return to the government institution. An example of information that is reasonably likely to have monetary value might include a course developed by a teacher employed by a school board (*Guide to FOIP, Ch. 4, p. 166-167*).

[70] In its submission, Health provided my office with the following arguments related to part two of the test:

Part two of the test seeks affirmation that government has a proprietary interest or a right to use the information. It has been established in part one that the information contained within the briefing notes and email correspondence constitute financial information that has a direct impact on the Ministry and the SHA budget or proposed budgetary actions. This information was created by SHA employees in collaboration with Ministry employees for the purpose of budget projections and approval regarding LTC.

The records where the exemption has been applied includes correspondence between the Ministry and the SHA; the two public bodies have a vested interest in the negotiations and implementation of LTC funding for the project as the Ministry provides funding to the SHA. Furthermore, the Ministry and the SHA have the right to possess and use the information contained in these records as it was drafted specifically for their use in the course of deliberations to arrive at an agreement on the LTC funding project.

[71] As noted above, Health must be able to demonstrate rights to the information. As Health notes, the information has, "... a direct impact on the Ministry and the SHA budget or proposed budgetary actions," and they "... have the right to possess and use the information contained in these records." However, as noted by the Ontario adjudicator, "... the concept of "ownership of information" requires more than the right to simply possess, use or dispose of information."

[72] In my office's [Review Report 201-2020](#), I stated:

[55] From a review of Education's submission ... there are no trademarks, patent or industrial design on the dollar amounts and service descriptions. It appears there is no confidential business information and inherent monetary value in the information to Education ... as such, the second part of the test is not met.

[74] Further, in my office's [Review Report 196-2020](#), I stated:

[26] Highways may "own" the forecast costs to make budgetary decisions, and may consistently treat such information confidentially. Highways has not, however, provided evidence to support the notion that disclosure of the information would somehow deprive it of monetary gain. Rather, it appears Highways' interest in the information would be for the purposes of acquiring goods or services for the public through a competitive process, and not for monetary gain in a commercial sense ....

[75] The Government of Saskatchewan budget process is not proprietary. Nor does it give Health a right of use - every Ministry must prepare a budget. Health does not have ownership - such as a copyright or trademark - of its budget preparation methodologies. Furthermore, Health has not demonstrated in its submission that it holds a proprietary interest or a right of use of the information that would have a monetary value to Health.

[76] Therefore, Health has not met the second and third parts of the test.

[77] I find that Health did not properly apply section 18(1)(b) of FOIP to pages 19, 20, 22, 24, 25, 31, 32, 64 to 66, 142, 165 to 167 and 169 to 172.

[78] I recommend Health release the information that it has applied section 18(1)(b) of FOIP found on pages 19, 20, 22, 25, 32, 64 to 66, 142, 165 to 167 and 169 to 172. However, I must consider the additional exemptions that Health has applied to the information found on pages 24 and 31.

## **6. Did Health properly apply section 16(1)(a) of FOIP?**

[79] Health applied section 16(1)(a) of FOIP to portions of pages 17, 18, 21, 23 to 26, 31, 63, 65 and 66.

[80] Section 16(1) of FOIP is a mandatory, class-based provision. Sections 16(1)(a) through (d) of FOIP are not an exhaustive list. Therefore, even if none of the subsections are found to apply, the introductory wording of section 16(1) must still be considered. In other words, you must consider if the information is a confidence of Executive Council (*Guide to FOIP*, Ch. 4, p. 93). Section 16(1)(a) of FOIP provides:

**16(1)** A head shall refuse to give access to a record that discloses a confidence of Executive Council, including:

(a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees.

[81] To determine if section 16(1)(a) of FOIP applies to the record, the following two-part test can be applied:

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

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

[82] I will now consider the two-part test.

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

[83] I have provided the definitions for advice, proposals, recommendations, analyses and policy options earlier in this Report. Advice, proposals, recommendations, analyses and policy options can be revealed in two ways:

1. The information itself consists of advice, proposals, recommendations, analyses or policy options.
2. The information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice, proposals, recommendations, analyses or policy options.

*(Guide to FOIP, Ch. 4, p. 99)*

[84] Records that contain advice, proposals, recommendations, analyses or policy options developed from sources outside of the Executive Council for presentation to the Executive Council are intended to be covered by the provision. A draft memorandum that was created for the purpose of presenting proposals and recommendations to Cabinet but that was never actually presented to Cabinet remains a confidence. Equally, a memorandum in final form is a confidence even if it has not been presented to Cabinet (*Guide to FOIP*, Ch. 4, pp. 99-100).

[85] I have looked at the definition of “Executive Council” in my above analysis of section 17(1)(a) of FOIP. Cabinet has also been defined as the committee of senior ministers (heading individual provincial government ministries) which acts collectively with the Premier to decide matters of government policy. Also included in the definition is an entity or individual to which the Executive Council or any of its committees has delegated decision-making authority on their behalf (*Guide to FOIP*, Ch. 4, p. 100).

[86] Cabinet establishes the provincial government’s policies and priorities for the province. In order to reach final decisions, ministers must be able to express their views freely during the discussions held in Cabinet. The collective decision-making process has traditionally

been protected by the rule of confidentiality, which upholds the principle of collective responsibility and enables ministers to engage in full and frank discussions necessary for the effective running of a Cabinet (*Guide to FOIP*, Ch. 4, p. 94).

[87] In the broadest sense, “cabinet confidences” are the political secrets of Ministers individually and collectively. If they were to be disclosed, it would make it very difficult for the government to speak in unison before Parliament and the public (*Guide to FOIP*, Ch. 4, p. 96).

[88] In its submission, Health made the following arguments as to how section 16(1)(a) of FOIP applies to the record:

... These records include email correspondence and briefing notes. The pages contain discussions regarding the funding requirements and guidelines of two proposed long term care homes (LTC) ...

Whether the advice, recommendations, and proposals outlined in the email exchanges and briefing notes were presented to Cabinet is unclear. However presentation to Cabinet is not a requirement as outlined in part 2 of the test; the mere creation of records for the purposes outlined above that are for Executive Government and Cabinet proposal is the qualifying factor for this exemption. It is indicated in the correspondence and referenced that funding approval must be routed through Cabinet once finalized at the Executive level. The emails consist of deliberations and briefing notes that indicate the proposed final decisions that may be presented to Cabinet.

It is important to note that the second part of this test outlines that records that contain advice, proposals, recommendation, analyses or policy options developed from sources outside of Executive Council but for the presentation to Executive Council are also covered by this exemption. In addition, the IPC guide to FOIP outlines that draft memorandums that were created for the purpose of presenting proposal and recommendations to Cabinet but are never actually presented to Cabinet remains a confidence ...

[89] The information that has been withheld pursuant to section 16(1)(a) of FOIP are discussions about information that was part of Cabinet Decisions Items (CDI) that were prepared for Cabinet. As noted above, the introductory wording of section 16(1) must be considered under this exemption, and that is the, “...head shall refuse to give access to a record that discloses a confidence of the Executive Council [Cabinet] ...”

[90] In my office's [Review Report 116/2013](#), I stated the following as it relates to CDIs:

[31] A CDI is a decision-making tool used by Cabinet. Based on my review of the records, I am satisfied that these records would have been a part of a CDI. A CDI would qualify as a Cabinet confidence. Therefore, I find that these records are exempt from release pursuant to subsection 16(1) of FOIP.

[91] Based upon a review of the record, I am satisfied that the withheld information formed the CDI for cabinets consideration. Therefore, I find Health properly applied section 16(1)(a) of FOIP to pages 17, 18, 21, 23 to 26, 31, 63, 65 and 66. I recommend Health continue to withhold the information that it has applied to section 16(1)(a) of FOIP found on pages 17, 18, 21, 23 to 26, 31, 63, 65 and 66.

**7. Did Health properly apply section 17(1)(c) of FOIP?**

[92] Health applied section 17(1)(c) of FOIP to portions of pages 21, 59, 63, 152, 153, 162 and 163.

[93] Section 17(1)(c) of FOIP provides:

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

...

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

[94] Section 17(1)(c) of FOIP permits refusal in situations where the release of a record could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of a government institution. It also covers considerations related to the negotiations. Examples of the type of information that could be covered by this exemption are the various positions developed by a government institution's negotiators in relation to labour, financial and commercial contracts (*Guide to FOIP*, Ch. 4, pp. 136-137).

[95] To determine if section 17(1)(c) of FOIP applies to the record, the following two-part test can be applied:

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

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

[96] I will now consider each part of the test.

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

[97] A “position” is a point of view or attitude. An opinion, stand, way of regarding situations or topics and an opinion that is held in opposition to another in an argument or dispute *(Guide to FOIP, Ch. 4, p. 137)*.

[98] A “plan” is a formulated and especially detailed method by which a thing is to be done - a design or scheme. A detailed proposal for doing or achieving something; an intention or decision about what one is going to do *(Guide to FOIP, Ch. 4, p. 137)*.

[99] A “procedure” is an established or official way of doing something; a series of actions conducted in a certain order or manner *(Guide to FOIP, Ch. 4, p. 137)*.

[100] “Criteria” are standards, rules, or tests on which a judgement or decision can be based or compared; a reference point against which other things can be evaluated. “Instructions” are directions or orders *(Guide to FOIP, Ch. 4, p. 137)*.

- [101] Section 17(1)(c) of FOIP extends its protection beyond positions, plans, procedures, criteria or instructions to “considerations that relate to those negotiations”. To qualify, the information must constitute considerations and they must relate to the negotiations (*Guide to FOIP*, Ch. 4, p. 137).
- [102] A “consideration” is a careful thought or a fact taken into account when making a decision. Thus, a record identifying the facts and circumstances connected to positions, plans, procedures, criteria or instructions could also fall within the scope of this provision. “Relate to” should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as “substantial connection”) for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. “Relating to” requires some connection between the information and the negotiations (*Guide to FOIP*, Ch. 4, p. 138).
- [103] “Developed” means to start to exist, experience or possess. Use of the word “developed” suggests the Legislature’s intention was for the provision to include information generated in the process leading up to the contractual or other negotiations (for example, draft versions). Drafts and redrafts of positions, plans, procedures, criteria, instructions or considerations may be protected by the exemption (*Guide to FOIP*, Ch. 4, p. 138).
- [104] “For the purpose of” means intention or the immediate or initial purpose of something. The negotiations can be conducted by the government or on behalf of the government. “On behalf of” means “for the benefit of”. A person does something “on behalf of” another, when they do the thing in the interest of, or as a representative of, the other person. A “negotiation” is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation”. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion. The contractual or other negotiations can be concluded, ongoing or future negotiations (*Guide to FOIP*, Ch. 4, p. 139).



- [105] In its submission, Health provided the following arguments as to how section 17(1)(c) of FOIP applies to the record:

This exemption was applied to pages ... which include briefings notes and email threads. The briefing notes, where this exemption has been claimed, have plans that contain the Ministry's position as well as the SHA's position, plans, and approval criteria as it relates to funding negotiations of LTC. The briefing notes discuss ongoing plans regarding funding requirement, procedures for approval, as well as the criteria that is to be considered or met in the process of the LTC funding project. The deliberations progress by identifying the requirements and parameters of funding as it relates to LTC. Specifically, the briefing notes and email correspondence contain information that is to be considered during the course of implementation and negotiations regarding the two LTC homes seeking approval when presented to Executive Directors of the Ministry, SHA and possibly Cabinet.

Finally, the briefing notes along with the email correspondence provide considerations that both the Ministry and SHA should have in mind during the process of negotiations and development of the plan to provide funding to the two LTC homes.

...

The briefing notes provide a significant amount of background and detailed information on the community based LTC field tests. These tests were developed to evaluate and analyze options for LTC service provision in Regina and surrounding areas.

The records have specific financial information as well as approval process information as it relates to budget and process to send to Cabinet for approval for the LTC field test. This information was used in the deliberation process to provide a strategic negotiation plan to seek approval to obtain funding. Therefore, the content of these records qualify as they meet the criteria outlined in part two as the records were created for contractual or other negotiations.

... The briefing notes as well as the email correspondence involved were created by Ministry employees as well as SHA employees. The Government of Saskatchewan is a government institution as outlined in section 2(d) of FOIP ....

- [106] The information that has been withheld on the seven pages pursuant to section 17(1)(c) of FOIP is quite similar in nature. From a review of the record this information mainly includes the positions, plans and criteria that have been developed by Health or by the SHA for Health in order to complete the negotiations for the LTC facilities. For example, on page 63, the SHA Briefing Note is discussing some final steps and planning is being taken to finalize a certain portion of the negotiations. On page 163, Health has withheld

information that specifically relates to a corrective plan to move forward with completions of the negotiations for the LTC facilities.

[107] Therefore, I find Health properly applied section 17(1)(c) of FOIP to pages 21, 59, 63, 152, 153, 162 and 163. I recommend Health continue to withhold the information that it has applied to section 17(1)(c) of FOIP found on pages 21, 59, 63, 152, 153, 162 and 163.

**8. Did Health properly apply section 13(2) of FOIP?**

[108] Health applied section 13(2) of FOIP to portions of page 4 of the record.

[109] Section 13(2) of FOIP provides:

**13(2)** A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from a local authority as defined in the regulations.

[110] Section 13(2) of FOIP permits refusal of access to information in a record where the information was obtained in confidence, implicitly or explicitly from a local authority. To determine if this exemption applies to the record, the following two-part test can be applied:

1. Was the information obtained from a local authority?
2. Was the information obtained implicitly or explicitly in confidence?

*(Guide to FOIP, Ch. 4, pp. 34-35)*

[111] I will now consider each part of the test.

- 1. Was the information obtained from a local authority?***
- 2. Was the information obtained implicitly or explicitly in confidence?***

[112] In its submission, Health advised that the withheld information was obtained from an employee with the SHA. In past reports, I have stated SHA is a “local authority” pursuant to section 2(f)(xiii) of LA FOIP, as follows:

2 In this Act:

...  
(f) “**local authority**” means:

...  
(xiii) the provincial health authority or an affiliate, as defined in *The Provincial Health Authority Act*;

[113] Furthermore, section 2(2) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations), defines the meaning of “local authority” for the purposes of FOIP:

2(2) For the purposes of these regulations and subsection 13(2) of the Act, “**local authority**” means local authority as defined in *The Local Authority Freedom of Information and Protection of Privacy Act*.

[114] “Information” means facts or knowledge provided or learned as a result of research or study. “Obtained” means to acquire in any way; to get possession of; to procure; or to get a hold of by effort. A government institution could obtain information either intentionally or unintentionally. It can also include information that was received indirectly provided its original source was the local authority. However, to obtain information suggests that the government institution did not create it (*Guide to FOIP*, Ch. 4, pp. 34-35).

[115] Section 13(2) of FOIP uses the term “information contained in a record” rather than “a record” like other exemptions. Therefore, the exemption can include information within a record that was authored by the government institution provided the information at issue was obtained from a local authority (*Guide to FOIP*, Ch. 4, p. 35).

[116] “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the provider of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the government institution and the local authority at the time the information was obtained. 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. 35).

[117] In its submission, Health asserted that the withheld information was provided to Health from the SHA implicitly in confidence.

[118] “Implicitly” means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. Factors to consider when determining whether information was obtained in confidence implicitly include (not exhaustive):

- What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the government institution or the local authority?
- Was the information treated consistently in a manner that indicated a concern for its protection by the government institution and the local authority from the point it was obtained until the present time?
- Is the information available from sources to which the public has access?
- Does the government institution have any internal policies or procedures that speak to how records such as the one in question are to be handled confidentially?
- Was there a mutual understanding that the information would be held in confidence? “Mutual understanding” means that the government institution and the local authority both had the same understanding regarding the confidentiality of the information at the time it was provided. If one party intends the information to be kept confidential but the other does not, the information is not considered to have been obtained in confidence. However, mutual understanding alone is not sufficient. Additional factors must exist.

(*Guide to FOIP*, Ch. 4, pp. 35-36)

[119] The above factors are not a test, but rather guidance on factors to consider. As it is not an exhaustive list, each case will require different supporting arguments. The bare assertion that the information was obtained implicitly in confidence is not sufficient (*Guide to FOIP*, Ch. 4, p. 36).

[120] The withheld information is an email chain sent by an SHA official and the email recipients include an official with Health. In this email, the SHA employee has provided information to the Health official, as such Health has obtained the information. Therefore, the information was obtained by Health from SHA as the local authority.

[121] In its submission, Health asserts that the withheld information was obtained implicitly in confidence from the SHA. Health's submission, in part, asserts:

... The record in question, entails correspondence received from an employee of the SHA, discussing a project that is in the progressive process of approval from several areas; therefore includes discussions and deliberations on the matter to various stakeholders.

The content of the email correspondence, reasonably implies an implicit understanding of confidentiality as it consists of information being shared that may impact the negotiation process as well as reveal the deliberation process of options and recommendations if disclosed. The implicit understanding stems from the exemptions outlined by the SHA in the third party consultation. The contents of the email contain information that is discussed in confidence that may require action or to be brought before Cabinet.

The nature of the discussion as well as the content of information discussed, indicates a concern for its protection; a reasonable person would regard it as confidential. As these discussions progress there is an implied mutual understanding that the information would be held in confidence pending an agreement being reached....

[122] The information that Health has obtained from the SHA includes particular outcomes or next steps that could change pending the outcome of the contract negotiations. There would be an implicit expectation of confidentiality by the SHA, especially given the content of information that has been withheld.

[123] Therefore, I find Health properly applied section 13(2) of FOIP to page 4. I recommend Health continue to withhold the information that it has applied to section 13(2) of FOIP found on page 4.

**9. Is there information in the record that is not responsive to the access to information request?**

- [124] In my office's September 29, 2021 notification email to Health, my office requested a copy of any information that was being withheld as non-responsive to the request. On page 7 of the record, Health has severed one item as non-responsive. The title of this severance reads "Non Responsive – File Path". From a review of severance, I can confirm that what has been severed is the file path of where the particular document has been saved on Health's computer network.
- [125] "Responsive" means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant's request will be considered "not responsive". Section 5.1(1) of FOIP requires government institutions to respond openly, accurately and completely. If a government institution removes information from a responsive record it deems not responsive, it should advise the applicant in its section 7 of FOIP response and explain why (*IPC Guide to FOIP*, Chapter 3, "Access to Records", updated June 29, 2021, p. 12).
- [126] I note that Health's September 21, 2021 response letter to the Applicant did not explain why this information was mark as not responsive.
- [127] I have addressed the issue of file paths with Health in past reports. In my office's [Review Report 196-2019](#), I stated:
- [82] Health withheld file path information from two pages of the record. These file paths are at the end of documents and indicates where in the author's electronic system the document is kept. Health did not address why it marked this part of the record as not responsive in its submission.
- [83] The file paths are part of the records related to the briefing notes. As such, they are responsive to the Applicant's request. This is consistent with my finding in [Review Report 086-2018](#) involving Health (paras. [23]-[24]).
- [84] I recommend that Health release this information to the Applicant.
- [128] The file path is that of a record that is responsive to the request that has, otherwise, been fully released to the Applicant. Therefore, I find that the file path found on page 7 is

responsive to the Applicant's access to information request and should be released to the Applicant. I recommend Health release the file path found on page 7 to the Applicant.

#### **IV FINDINGS**

[129] I find I have jurisdiction.

[130] I find Health was 128 days late in responding to the Applicant's access to information request.

[131] I find Health properly applied section 29(1) of FOIP to pages 1 and 176.

[132] I find Health did not properly apply section 29(1) to pages 148 and 149.

[133] I find Health properly applied section 17(1)(a) of FOIP to pages 9, 22, 35, 40, 64 and the information found under the "Recommendations" headings of 153 and 163.

[134] I find Health did not properly apply section 17(1)(a) of FOIP to pages 4, 19, 20, 21, 25, 28, 59, 61, 63, 66, 142, 147, 148, 151, 152, 154 to 160, 162, 165 to 167, 169 to 172 and the information found under the "Assessment" heading on page 153 and 163.

[135] I find that Health did not properly apply section 18(1)(b) of FOIP to pages 19, 20, 22, 24, 25, 31, 32, 64 to 66, 142, 165 to 167 and 169 to 172.

[136] I find Health properly applied section 16(1)(a) of FOIP to pages 17, 18, 21, 23 to 26, 31, 63, 65 and 66.

[137] I find Health properly applied section 17(1)(c) of FOIP to pages 21, 59, 63, 152, 153, 162 and 163.

[138] I find Health properly applied section 13(2) of FOIP to page 4.

[139] I find that the file path found on page 7 is responsive to the Applicant's access to information request and should be released to the Applicant.

## **V RECOMMENDATIONS**

[140] I recommend that Health take its history of late responses seriously, and address its resource issues to ensure it has adequate resources to help it meet its obligations pursuant to FOIP.

[141] I recommend that Health complete a review of its processes and staffing resources and prepare a report for my office on the results of its review within 90 days of this Report.

[142] I recommend Health continue to withhold the information found on pages 1, 4, 9, 17, 18, 21, 23, 24, 26, 31, 35, 40, 63, 152, 153, 162, 163 and 176.

[143] I recommend Health release the information found on pages 7, 19, 20, 28, 32, 61, 142, 147 to 149, 151, 154 to 160, 165 to 167 and 169 to 172.

[144] I recommend Health continue to withhold the information severed pursuant to section 16(1)(a) of FOIP and release the remaining information found on pages 25, 65 and 66.

[145] I recommend Health release the first severances and withhold the second severances found on pages 22, 59 and 64.

Dated at Regina, in the Province of Saskatchewan, this 26th day of August, 2022.

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