



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 263-2024

Saskatchewan Workers' Compensation Board

March 7, 2025

Summary:

The Applicant submitted an access to information request to the Saskatchewan Workers' Compensation Board (WCB). WCB responded by providing the Applicant access to some records but withheld others, in part and in full, pursuant to subsections 17(1)(a), (b), 22(a), (b), (c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the A/Commissioner. The A/Commissioner found that WCB properly applied subsection 17(1)(a) of FOIP to portions of some of the records. He also found that WCB properly applied subsection 22(c) and 29(1) of FOIP to some of the records. However, he found that WCB did not properly apply subsections 17(1)(b), 22(a) and (b) of FOIP. The A/Commissioners' office prepared a red-lined version of the records outlining where the A/Commissioner found that WCB properly applied exemptions. The A/Commissioner recommended that WCB redact the red-lined portions of the records and release the remainder of the records to the Applicant within 30 days of issuance of this Report.

I BACKGROUND

[1] On September 26, 2024, the Saskatchewan Workers' Compensation Board (WCB) received the following access to information request from the Applicant:

Original request was sent on July 31, 2024, no documents were received for file #[File Number].

1. General Council [sic] stated to submit whole file, that did not happen in a previous request for information. One example of missing documentation are emails from [Name of WCB Accountant] from December 2022. All missing emails not attached, copied and provided to me from the file documents.

2. All typed written and handwritten notes from last receipt of the file to current date.
3. May 16, 2024 - Retirement tribunal decision notes, discussion documentation, all documents forwarded to the Tribunal for review of decisions made.
4. Handwritten notes from in-person meeting with [Name of Appeals Officer] on April 16, 2024. Top page of hand written notes and added notes to bottom of pages underneath the top page of notepad.
5. All Board Services notes, emails and all correspondence regarding this file from Board Services and Board Members and President, [Name of WCB's Chief Executive Officer].
6. All General Council notes and entries pertaining to this file.

In addition to the original request:

7. A copy of all recorded conversations with WCB employees.
8. Reason Codes for redacted documents.

[2] On October 11, 2024, after a telephone conversation with WCB, the Applicant provided clarification on what they were seeking:

- Please include all written correspondence between the dates of September 1, 2022, and October 11, 2024. Written correspondence includes (interoffice/interdepartmental) and external emails, handwritten notes from any meetings known or unknown to me with my name [Applicant's name] and/or my file numbers; [File numbers]; with or with the hyphen with or without the space.
- WCB refused to comply with my file request that was sent on July 31, 2024. None of the attached file information found on file# [File number] was not copied or sent to me from the request that was sent on July 31, 2024. Therefore, I request all information that was attached to the file since the last receipt of file documentation was sent to me to the current date.
- I am requesting all information discussed at the meeting on May 16th, 2024. All documentation that was reviewed in order for the Tribunal Board to reach a decision, all notes, the list of participants present in said Tribunal Meeting, discussion documentation, notes and all documents forwarded for the review for the decision made.

- [3] In a letter dated October 25, 2024, WCB responded to the Applicant. WCB said it was providing access to the Applicant to some of the records but refusing the Applicant access to other records, in part and in full, pursuant to subsections 17(1)(a), (b)(i), (ii), (iii), 22(a), (b), (c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). WCB also indicated it was refusing access to records on the basis that they do not exist.
- [4] On November 1, 2024, the Applicant requested a review by my office.
- [5] Among other issues raised, the Applicant also provided the following list of records they believed to be missing:
- March 31, 2023 – redaction with no codes
- February 1, 2024 – the email response was not included in documents.
- April 8, 2024 – there are no notes from the meeting(s) of the same date.
- April 23, 2024 – 9:33 am– missing response from [Name of WCB Employee]. Removed? - Unknown.
- April 23, 2024 – [Initials of Appeals Officer] – Hand written notes taken at meeting that were not in file – unknown if a search took place.
- May 3, 2024 – six images not supplied. Assumption made that they are the photos attached in the writer’s email, but unable to confirm.
- May 10, 2024 – This calculation never went beyond the first step – see attached (no attachment).
- July 10, 2024 – “Lets Meet” – no meeting notes.
- October 9, 2024 (example given) “Email #1” “Email #2” ... etcetera indicates that all emails were not searched as requested. No deep IT search completed; therefore making it impossible to have all correspondence as requested.
- Memo to File (bolded on right hand side of page) - (from emails) that is totally redacted not in file notes (only one copy submitted in documents).
- [6] In a letter dated December 6, 2024 to my office as well as a letter dated December 10, 2024 to the Applicant, WCB clarified that the following requested records do not exist:

- “Handwritten notes from in person meeting with [Name of Appeals Officer] on April 16, 2024. Top page of handwritten notes and added notes to bottom of pages underneath the top page of notepad.”
- “A copy of all recorded conversations with WCB employees.”
- “Handwritten notes from any meetings known or unknown to me with my name ([Applicant’s name]) and/or my file number(s); [File Number] and/or [File Number]; with or without the hyphen with or without the space.”
- “All information discussed at the meeting on May 16th, 2024.”

[7] Further, in its letter dated December 10, 2024, to the Applicant, WCB addressed each record that the Applicant believed to be missing. Excerpts of WCB’s letter are as follows:

- ...
- February 1, 2024 – the email response was not included in documents.
 - There was no email response. You were contacted by a Fair Practices officer by phone on February 02, 2024. This record fell outside the scope of your request – but it is now being provided to address your immediate concern.
 - Kindly find a record of the phone call attached.
 - April 8, 2024 – there are no notes from the meeting(s) of the same date.
 - There was no formal meeting. Rather [Name of Manager, Appeals] and [Name of Team Leader, Board Services 1] had an informal verbal conversation over Microsoft Teams to discuss the appropriate parties to address each of your appeal issues.
 - Following this discussion, [Name of Team Leader, Board Services 1] contacted you by email regarding your annuity supplement concern. It was also decided that General counsel was best suited to provide you a legal opinion, as reflected in the email thread. No notes or minutes were taken during this process.
 - Kindly find attached the referenced Microsoft Teams invite between the mentioned parties. This record was identified during the investigation of your immediate concern.
- ...
- May 10, 2024 – This calculation never went beyond the first step – see attached (no attachment).
 - The referred attachment is a document confirming that you did not qualify for the stated benefit. This document was previously sent to you by [Name of WCB

Accountant] through an email dated Thursday, December 15, 2022 – and was also included in the responsive records provided to you.

- For clarity and to avoid any misunderstanding, please find the email and its attachment, reattached.
- July 10, 2024 – “Lets Meet” – no meeting notes.
 - No meeting took place on July 10, 2024. If you are referring to an offer by [Name of Team Leader, Board Services 2] to meet in the July 10, 2023, email thread within the records provided, please note that there was no meeting. The directive in the email thread was to refer your file to [Name of Complex Injury Claims Specialist].
 - For clarity and to avoid any misunderstanding, please find attached the correspondence between [Name of Team Leader, Board Services 2] and [Name of Complex Injury Claims Specialist] carrying out this directive.
 - While portions of this record were previously provided to you, additional parts were identified during the investigation of your immediate concern.

...
While noting that some of these records have already been provided to you, the records attached to this letter – as well as those discovered during the investigation of your immediate concerns, are summarized as follows:

...
3. Microsoft Teams meeting invite dated April 08, 2024.

...
5. Microsoft Teams chat from [Name of Manager, Appeals] to [Name of Appeals Officer] dated April 08, 2024, 12:13PM.

[8] WCB enclosed additional records with its letter to the Applicant.

[9] The Applicant indicated to my office that they were not satisfied. Therefore, on December 12, 2024, my office notified both WCB and the Applicant that my office was undertaking a review.

[10] On December 15, 2024, the Applicant provided their submission to my office.

[11] On January 10, 2025, WCB provided my office with a copy of the records at issue.

- [12] On January 31, 2025, WCB provided its submission to my office. On February 27, 2025, WCB provided my office with additional information regarding its search efforts. WCB stated that its submission could not be shared with the Applicant.

II RECORDS AT ISSUE

- [13] There were 1096 pages responsive to the Applicant's access request. The records that were redacted, in full or in part, include emails, attachments, or chat messages between WCB employees. WCB is relying on subsections 17(1)(a), (b)(i), (ii), (iii), 22(a), (b), (c) and 29(1) of FOIP.
- [14] My office has prepared a "redlined" version of the responsive records and has forwarded it to the WCB. On the redlined version of the records, my office outlined the portions of the record where it found that WCB properly applied its exemptions. My recommendation will be that WCB continue to withhold any redlined portions pursuant to whichever exemptions are found to apply, and to release the remainder to the Applicant, if that is the case, within 30 days of the issuance of this Report.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [15] WCB qualifies as a "government institution" pursuant to subsection 2(1)(d)(ii) and section 3 and PART I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I find that I have jurisdiction to conduct this review.

2. Did WCB properly apply subsection 17(1)(a) of FOIP?

- [16] WCB applied subsection 17(1)(a) of FOIP to portions of pages 562 to 563, 565, 567, 568, 571, 572, 575, 578, 579, 593 to 606, 627, 628, 640, 643, 658, 691 to 693, 701, 702, 714 to 719, 740 to 743, 773, 774, 780, 781, 783 to 785, 789 to 791, 796 to 798, 822 to 833, 835, 839, 840, 849, 851 to 859, 863, 877 to 879, 883 to 885, 890 to 892, 913 to 920, 922, 923,

925 to 927, 929 to 932, 969, 976, 977, 980, 981, 983, 993, 996, 997, 1000 to 1002, 1006 to 1008, 1011 to 1013, 1016 to 1018, 1021, 1042, 1051 to 1056, 1059 to 1061, 1077 to 1080, and 1096.

[17] Subsection 17(1)(a) of FOIP provides:

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

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

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

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

(*Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access” updated April 8, 2024 [*Guide to FOIP*, Ch. 4] at pp. 128-131)

[19] Below is an analysis to determine whether the two-part test is met.

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

[20] In its submission, WCB said that the information to which it applied subsection 17(1)(a) of FOIP qualifies as advice, proposals, recommendations and analyses. It said:

The Records contain advice, proposals, recommendations, and analyses. The Records include WCB detailed analyses specific to adjudication of the Applicant’s claim file(s), along with proposed action(s) and recommendation(s) to address the Applicant’s concerns with the same. These portions of the Records constitute advice, proposals, recommendations, and analyses as those terms are defined in the IPC Guide. In particular, the Records include: (i) material that permits the drawing of inferences with respect to the adjudication of the Applicant’s claim file(s), (ii) material that contains

suggestions and advice regarding particular courses of action and Board decisions on the Applicant's claim(s), (iii) proposals and recommendations regarding how to address the Applicant's multiple concerns, and (iv) communications and material the disclosure of which would allow the drawing of accurate inferences with respect to certain suggested courses of action.

...

Courts have confirmed that the "advice of officials" exemption in section 17(1)(a) is intended to apply broadly. For example, in *Britto v University of Saskatchewan*, 2018SKQB 92 at para 83 [*Britto*], the Court confirmed that the intent of section 16(1)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* ("LAFOIP"), which is effectively identical to section 17(1)(a) of FOIP (except it refers to a local authority instead of a government institution), is to capture a myriad of situations which could qualify as "advice" regardless of whether they fall within the specific examples set out in the IPC Guide (for example, regardless of whether there is necessarily "analyses" or "presentation of options for future action"). In this case, the Records involve the development of and seeking and obtaining of advice relating to the adjudication of the Applicant's claim file(s), and proposed action(s) to address the Applicant's multiple concerns, by and from those whose role it is to provide such advice within the meaning of *Britto*.

[Underline and bold in original]

[21] Pages 128 to 130 of the *Guide to FOIP*, Ch. 4, provide the following definitions:

- "Advice" is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The "pros" and "cons" of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a government institution must make a decision for future action.
- A "proposal" is something offered for consideration or acceptance.
- A "recommendation" is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than "advice".
- "Analyses" (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements.

- [22] I take note of WCB’s assertion that subsection 17(1)(a) of FOIP “is to capture a myriad of situations which could qualify as advice” and its reference to [*Britto v. University of Saskatchewan*](#), 2018 SKQB 92 (*Britto*). In *Britto*, Justice Danyliuk comments on subsection 16(1)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), which is the equivalent of subsection 17(1)(a) of FOIP. Justice Danyliuk said:

[81] For example, at page 20 of the IPC Guide s. 16(1)(a) is considered. The Commissioner’s view is that “advice includes the analysis of a situation or issue that may require action and the presentation of options for future action”. Well, sometimes it will include that. But other times it will not. For example, if there are ongoing management discussions about an employee, counsel or someone internally might say “in considering this issue, we should be mindful of the following case”. That is not necessarily “analysis” or “presentation of options for future action”. But in the proper context, would that be advice within s. 16(1)(a)? I think so.

- [23] Since *Britto*, my office has updated the *Guide to FOIP* several times. However, what has not changed is that the information must qualify as advice, proposals, recommendations, analyses or policy options in order for subsection 17(1)(a) of FOIP to apply. In *Britto*, Justice Danyliuk said that subsection 16(1)(a) of LA FOIP does not apply to “purely factual information”:

[76] I agree with Mr. Britto’s counsel when he argues s. 16 cannot apply to the disclosure of “purely factual information”. He cites *Canada (Office of the Information Commissioner) v Canada (Prime Minister)*, 2017 FC 827, wherein there was a challenge over disclosure of the records pertaining to some senators. At paras. 26 and 27 the Federal Court held that such purely factual information does not amount to advice or recommendations, and that even if some of each document was to be redacted the factual portions were to be disclosed.

- [24] When my office reviewed the portions of the records to which WCB applied subsection 17(1)(a) of FOIP, it noted that WCB applied subsection 17(1)(a) of FOIP far too broadly. For example, WCB applied subsection 17(1)(a) of FOIP to information that simply does not qualify as advice, proposals, recommendations, or analyses. For example, page 565 features two emails exchanged between WCB employees. WCB had redacted the bodies of the emails. The first email, timestamped 11:28 a.m., is an email from a Team Leader to an Accountant (both WCB employees). The email includes a greeting, a description about

process, and directions on next steps. The second email, timestamped 2:52 p.m., includes a greeting, a description of the action taken (as directed by the Team Leader in the first email), and an invitation for further discussion. The contents of the email do not qualify as advice, proposals, recommendations, or analyses. Another example is email exchanges on pages 858 and 859. “Board Admin Support” sent a Word document to the Team Leader of Board Services. Then, the Team Leader forwarded the Word document to Board members. WCB redacted the bodies of the emails pursuant to subsection 17(1)(a) of FOIP. However, the contents of the emails do not contain any advice, proposals, recommendations, or analyses. Throughout the pages to which WCB applied subsection 17(1)(a) of FOIP, I found that the information is similar to the information I described in the above examples and that such information does not qualify as advice, proposals, recommendations, or analyses.

- [25] Further, I note that pages 691 to 693, 823, 824, and 853 to 855 contain drafts of a document. WCB did not offer arguments as to how the drafts of the documents qualify as advice, proposals, recommendations, or analyses. Based on a review, none of the contents of the document qualify as advice, proposals, recommendations, or analyses. The Office of the Information and Privacy Commissioner of Alberta (AB IPC) said the following, at paragraph 75 of [Order F2016-16](#):

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

[Emphasis added]

- [26] I have taken the same position as the AB IPC (see [Review Report 141-2023](#) at paragraph [70] and [Review Report 002-2020](#) at paragraph [18]). While pages 691 to 693, 823, 824,

and 853 to 855 contain draft documents, the contents do not qualify as advice, proposals, recommendations, or analyses. Therefore, these pages do not meet the first part part of the test for subsection 17(1)(a) of FOIP. I find that WCB did not properly apply subsection 17(1)(a) of FOIP to pages 691 to 693, 823, 824, and 853 to 855.

[27] However, my office noted portions of the record which qualify as recommendations. For example:

- A duplicate email timestamped 2:29:13 p.m. appears on pages 575, 579, 840, 977, 980 and 983. The email is by a Director and sent to the CEO of WCB. The third paragraph of the email is a suggested course of action. Such information qualifies as a “recommendation”.
- A duplicate email timestamped 2:27:04 p.m. appears on pages 572, 785, 791, 798, 879, 885, 993, 997, 1002, 1008, 1013, 1018 and 1021. The email is from a Director to the CEO. A portion of the second paragraph of the email contains a suggestion on how to proceed. Such information qualifies as a “recommendation”.
- A duplicate email timestamped 4:29 p.m. appears on pages 571, 783, 789, 796, 877, 883, 890, 1000, 1006 and 1011. The email is from a Manager to a Director. The first sentence of the fourth paragraph includes a recommendation of what should be done.
- A duplicate email timestamped 8:32 a.m. appears on pages 594 (begins on 593), 604, 605/606, 658, 715, 717, 719, 836. The email is from a Director to the Chairman. The third and fourth last paragraphs in the email includes recommendations and reasons for the recommendations.

[28] I will consider the above pages to determine if the second part of the two-part test for subsection 17(1)(a) of FOIP is met later. However, before I continue, I note that WCB also applied subsection 17(1)(a) to page 1042, which is a memo to file (I note that WCB also applied subsection 17(1)(b), and 22(a), (b) and (c) of FOIP to this page as well.). Based on a review of this page, the contents do not qualify as advice, proposals, recommendations, or analyses. In fact, the contents appear to be a summary of an interaction between a WCB employee and the Applicant. Therefore, it would be an absurd result to withhold such information from the Applicant, information that includes the Applicant’s own personal information. An absurd result occurs when the record contains information that is within the person’s knowledge because they provided it, the person was present when the

information was provided, or the information is clearly within the person's knowledge (see paragraph [18] of [Review Report 245-2022](#); paragraph [23] of [Review Report 038-2022](#); paragraph [26] of [Review Report 203-2024](#)). I find that it is an absurd result to withhold the contents of page 1042 from the Applicant, so I find no exemption applies. I recommend that WCB release page 1042, in its entirety, to the Applicant within 30 days of issuance of this Report.

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?

[29] Pages 131 and 132 of the *Guide to FOIP*, Ch. 4, provide that the advice, proposals, recommendations, analyses, and/or policy options can be developed by a government institution or for a government institution including one not relying on the exemption. "Developed by or for" means the advice, proposals, recommendations, analyses, and/or policy options must have been created either: 1) within the government institution, or 2) outside the government institution but for a government institution and at its request (for example, by a service provider or stakeholder).

[30] In its submission, WCB said the following:

The advice, recommendations, proposals, and analyses were developed by and for WCB and/or the Minister responsible for WCB. As discussed above, the Records were developed in relation to the adjudication of the Applicant's claim file(s), along with proposed action(s) and recommendation(s) to address the Applicant's concerns. The Records specifically relate to WCB and its statutory mandate and were developed by or for WCB and involved WCB and its staff.

[31] As described earlier, pages 571, 572, 575, 579, 594, 604, 605, 606, 658, 715, 717, 719, 783, 785, 789, 791, 796, 798, 836, 840, 877, 879, 883, 885, 890, 977, 980, 983, 993, 997, 1000, 1002, 1006, 1008, 1011, 1013, 1018 and 1021 contain recommendations. The recommendations were made by a Director to the CEO, by a Director to the Chairman, and by a Manager to a Director. As such, the recommendations were developed by employees of WCB for decision-makers within WCB. Therefore, the second part of the two-part test is met. I find that WCB properly applied subsection 17(1)(a) of FOIP to portions of pages

571, 572, 575, 579, 594, 604, 605, 606, 658, 715, 717, 719, 783, 785, 789, 791, 796, 798, 836, 840, 877, 879, 883, 885, 890, 977, 980, 983, 993, 997, 1000, 1002, 1006, 1008, 1011, 1013, 1018 and 1021. I will indicate these portions that I recommend WCB continue to withhold pursuant to subsection 17(1)(a) of FOIP on the redlined version of the records that my office will provide to WCB.

3. Did WCB properly apply subsection 17(1)(b) of FOIP?

[32] WCB applied subsection 17(1)(b) of FOIP to portions of pages 562, 563, 565, 567 to 568, 571, 572, 575, 578, 579, 593 to 606, 627, 628, 640, 643, 658, 691 to 693, 701, 702, 714 to 719, 740 to 743, 773, 774, 780, 781, 783 to 785, 789 to 791, 796 to 798, 822 to 833, 835, 839 to 840, 849, 851 to 859, 863, 877 to 879, 883 to 885, 890 to 892, 913 to 920, 922, 923, 925 to 927, 929 to 932, 969, 976, 977, 980, 981, 983, 993, 996, 997, 1000 to 1002, 1006 to 1008, 1011 to 1013, 1016 to 1018, 1021, 1042, 1051 to 1056, 1059 to 1061, 1077 to 1080, and 1096.

[33] Subsection 17(1)(b) of FOIP provides:

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

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

(ii) a member of the Executive Council; or

(iii) the staff of a member of the Executive Council;

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

1. Does the record contain consultations or deliberations?

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

(*Guide to FOIP*, Ch. 4, pp. 136-138)

[35] WCB stated the records contain consultations and deliberations. Pages 136 to 138 of my office's *Guide to FOIP*, Ch. 4, provide the following definitions:

- “Consultation” means the action of consulting or taking counsel together: deliberation, conference; a conference in which the parties consult and deliberate. A consultation can occur when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation.
- “Deliberation” means the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision; A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.
- “Involving” means including.
- “Officers or employees of a government institution”: “Employee of a government institution” means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution.

[36] In its submission, WCB said:

The Records include consultations and deliberations. As discussed above, the Records include discussions between WCB personnel relating to the adjudication of the Applicant's claim file(s), and proposed action(s) to address the Applicant's concerns. The Records also include consultations and deliberations regarding the Applicant, his claim file(s) and corresponding financial components of the same. These take various forms, such as back-and-forth email exchanges where one WCB employee or officer consults another on matters related the adjudication of the Applicant's claim file(s), proposed action(s) to address the Applicant's concerns, the development of draft and final WCB Board decisions and documents, commentary on actions, proposed actions and drafts.

Additionally, the records include email correspondence relating to the draft documents and investigation of the Applicant's concerns – including but not limited to his benefits and financial entitlements.

[Underline in original]

[37] WCB explained that consultations and deliberations took on various forms, such as back-and-forth email exchanges and email correspondence on draft documents.

[38] To clarify what the terms “consultations” and “deliberations” mean, I have cited AB IPC's [Order F2013-13](#) in past reports. In the Order, AB IPC speaks to subsections 24(1)(a) and (b) of Alberta's *Freedom of Information and Protection of Privacy Act* (AB FOIP), which is similar to subsections 17(1)(a) and (b) of FOIP:

[para 146] I agree with the interpretation Commissioner Clark assigned to the terms “consultation” and “deliberation” generally. However, as I stated in Order F2012-10, section 24(1)(b) differs from section 24(1)(a) in that section. 24(1)(a) is intended to protect communications developed for a public body by an advisor, while section **24(1)(b) protects communications involving decision makers. That this is so is supported by the use of the word deliberation: only a person charged with making a decision can be said to deliberate that decision. Moreover, “consultation” typically refers to the act of seeking advice regarding an action one is considering taking, but not to giving advice in relation to it.** Information that is the subject of section 24(1)(a) may be voluntarily or spontaneously provided to a decision maker for the decision maker's use because it is the responsibility of an employee to provide information of this kind; however, such information cannot be described as a “consultation” or a “deliberation”. Put simply, section 24(1)(a) is concerned with the situation where advice is given, **section 24(1)(b) is concerned with the situation where advice is sought or considered.**

[Emphasis added]

[39] Certainly, consultations and deliberations can occur in different formats including “back-and-forth email exchanges” and “email correspondence”, as cited by WCB. However, the substance of the emails must still qualify as consultations or deliberations in order for the first part of the two-part test for subsection 17(1)(b) of FOIP to be met.

[40] WCB did not offer any context or arguments as to how specific records, such as email exchanges, contain consultations or deliberations. Therefore, my office reviewed the records to determine if, on the face of the records, the redacted contents qualified as consultations or deliberations.

[41] Based on a review of the records at issue, I find that the substance of the emails do not include the seeking of advice (“consultation”) or include that a decision is being considered (“deliberation”). Certainly, there are recommendations *given* (as I have found in my analysis of subsection 17(1)(a) of FOIP) but the substance of the records at issue do not contain consultations or deliberations. For example:

- Page 562 features two emails. The first email timestamped 7:13 a.m. is from a Director to an Accountant. The Director makes a request of the Accountant. In the second email, timestamped 7:19 a.m., the Accountant responds to the request. The substance of the email exchange does not include the seeking of advice (a consultation), nor does it include the consideration of a decision being made (a deliberation).
- Pages 601 and 602 feature email exchanges from “Board Admin Support” to the Team Leader of Board Services and the Chairman of the Board. The contents of the emails do not contain the seeking of advice (a consultation), nor does it include the consideration of a decision being made (a deliberation).
- Page 714 contains two emails where the body of the emails was redacted. The first email, timestamped 8:47 a.m., is by a Board member. The substance of the email is not the seeking of advice (a consultation), nor is it a consideration of a decision being made (a deliberation). The second email, timestamped 9:37:05 a.m., is where the Team Leader of Board Services indicates what they will do. The substance of the email is not the seeking of advice (a consultation), nor does it include the consideration of a decision being made (a deliberation).
- Page 773 features two emails where the body of the email was redacted. The first email, timestamped 4:18 p.m., is by the Manager of Appeals to an Appeals Officer and the Team Leader of Board Services. The email is a summary of what the Manager has done and will do. The second email, timestamped 7:46:00 a.m. is by the Team Leader of Board Services to the Manager of Appeals. The Team Leader says what they will do. The contents of the emails are not the seeking of advice (a consultation), nor does it include the consideration of a decision being made (a deliberation).
- Page 863 features an email timestamped 3:26:00 p.m. by the Team Leader of Board Services to the CEO. The Team Leader is providing a briefing of what has occurred.

The contents of the email is not the seeking of advice (a consultation), nor does it include the consideration of a decision being made (a deliberation).

- [42] I find that WCB has not properly applied subsection 17(1)(b) of FOIP. Since WCB applied subsection 22(c) of FOIP to pages to which it had also applied subsection 17(1)(b) of FOIP, I will consider whether subsection 22(c) of FOIP applies to these portions before making further recommendations.

4. Did WCB properly apply subsection 22(c) of FOIP?

- [43] WCB applied subsections 22(a), (b) and (c) of FOIP to portions of pages 640, 643, 961, 963, 966, 1038, 1042, 1051 to 1056, 1059 to 1061, 1076 and 1096. I will consider whether subsection 22(c) of FOIP applies to these pages except for page 1042. I have already found that it is an absurd result to withhold page 1042 from the Applicant and it should be released to the Applicant.

- [44] Subsection 22(c) of FOIP provides:

22 A head may refuse to give access to a record that:

...

(c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other person in relation to a matter involving the provision of advice or other services by the agent or legal counsel.

- [45] My office uses the following two-part test to determine if subsection 22(c) of FOIP applies:

1. Is the record a correspondence between the government institution's legal counsel (or an agent of the Attorney General) and any other person?
2. Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?

(Guide to FOIP, Ch. 4, pp. 292-293)

- 1. Is the record a correspondence between the government institution's legal counsel (or an agent of the Attorney General) and any other person?***

[46] Pages 292 to 293 of the *Guide to FOIP*, Ch. 4, provide:

- “Correspondence” means letters sent or received. It is an interchange of written communication.
- “Any other person” was an intentional and inclusive phrase to capture just that – any other person. The government institution must make it sufficiently clear, as to what the nature of that other person’s role in the correspondence was.

[47] In its submission, WCB said:

The Records contain correspondence between the WCB’s in-house legal counsel and WCB, WCB Board members and/or WCB staff. The Records consist of correspondence between in-house counsel and WCB, WCB Board members and/or WCB staff. These include email threads, memos and comments related to the adjudication of the Applicant’s claim file(s), his concerns and the proposed action(s) and recommendation(s) to address such concerns.

[Underline in original]

[48] Based on a review of pages 640, 643, 961, 963, 966, 1038, 1051 to 1056, 1059 to 1061, 1076 and 1096, the records are correspondence between WCB’s in-house legal counsel, who is a member of the Law Society of Saskatchewan, and WCB board members and/or WCB staff. Therefore, the first part of the two-part test is met.

2. Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?

[49] Page 293 of my office’s *Guide to FOIP*, Ch. 4 provides the following definitions:

- “In relation to” has been found to have a similar meaning as “in respect of”.
- “Legal advice” includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.
- “Legal service” includes any law-related service performed by a person engaged by a government institution and who is licenced to practice law.

[50] In its submission, WCB said:

The Records contain correspondence related to matters involving the provision of advice or services by in-house legal counsel. The Records include correspondence involving the provision of advice or services by in-house counsel to WCB, its Board members and/or staff. These include email threads, memos and comments related to the adjudication of the Applicant's claim file(s), their concerns and proposed action(s) and recommendation(s) to address such concerns.

[51] Based on a review of pages 640, 643, 961, 963, 966, 1038, 1051 to 1056, 1059 to 1061, 1076 and 1096, are the records involving the provision of legal services by WCB's in-house counsel. In my office's [Review Report 171-2019](#), I cited [Order F2015-22](#), which explains how correspondence must be in relation to a matter in which involves the provision of advice or service by a lawyer:

[140] In order for the second part of the test to be met, the correspondence must be in relation to a matter in which involves the provision of advice or services by the lawyer. Subsection 27(1)(c) of Alberta's Freedom of Information and Protection of Privacy Act (AB FOIP) is similar to subsection 22(c) of FOIP. In its Order F2015-22, the AB IPC provided that in order for subsection 27(1)(c) of AB FOIP to apply, **the correspondence must contain content that enables the public body's lawyer to provide legal advice or a legal service to the public body.** Further, in that Order, the AB IPC asserts that subsection 27(1)(c) of AB's FOIP is not meant to protect information that is publicly available, including court documents. Relevant excerpts from that order are as follows:

[para 115] As stated above, section 27(1)(c)(iii) contemplates information in correspondence between a public body's lawyer and any other person; **the correspondence must be in relation to a matter in which involves the provision of advice or services by the lawyer.**

[para 116] Here, the correspondence in question was between the Third Party and the Public Body's lawyer. The correspondence was in relation to a matter, and the matter, from the perspective of the Public Body, involved the provision of legal services to the Public Body.

[para 117] However, the correspondence was itself not in relation to the provision of advice or other services by the lawyer; the correspondence was in relation to the legal status of certain organizations and what the correspondent thought the significance of that status might be. Nothing in the content of the emails suggests that the correspondence was prepared for the purpose of directing how the lawyer might use the information to provide advice to the public body, or that this was even contemplated. If there were a prior exchange of information which could lead me to conclude that the correspondence was prepared for this purpose, then this was not stated or explained to me.

[para 118] To put this another way, **I believe that the understanding of both parties to the correspondence must be that there is a matter involving the provision of advice or other services by the lawyer, and the correspondence is intended, if not to advance the matter, then to relate to that matter.** For example, if a party were to send an offer of settlement to the lawyer of a public body, then such correspondence would be “in relation to a matter involving the provision of advice or other services” by the public body’s lawyer. However, if a third party sends correspondence to a public body’s lawyer and the third party does not contemplate that there is a matter involving the provision of a lawyer’s advice or services, then the correspondence cannot be said to be in relation to such a matter.

[para 119] That is not to say that a lawyer cannot obtain information on a confidential basis from a third party that the lawyer requires in order to provide advice or services. (Such information is typically covered by litigation privilege when it is obtained for the dominant purpose of preparing for litigation.) Rather, **I mean that section 27(1)(c) is intended to allow parties to correspond freely in relation to matters about which they need to speak in order to allow the lawyer’s advice or services to be provided.**

[para 120] In my view, the fact that a “matter” within the terms of section 27(1)(c) is one “involving the provision of advice or other services” by a lawyer, indicates that the legislature is referring to a “legal matter”, as this is the type of matter for which a lawyer might provide advice or services. The Canadian Oxford Dictionary offers the following definition of “matter,” where that term is used in a legal context: “Law: a thing which is to be tried or proved”.

[para 121] **It also seems to me that section 27(1)(c) is intended to address correspondence in which at least one of the parties is in a position to require that the information in the correspondence be kept in confidence, or certainly, not to be entered into evidence in court.** I say this because section 27(1)(c) would serve little purpose if the information in question (i.e. the information in the correspondence) is publicly available, or the sender has the power to disclose the information unilaterally and the fact that it was sent. **The purpose of allowing a public body’s lawyers or agents to correspond freely without fear of interference (discussed above) would not be met if the sender could make the correspondence generally known.** Again, here, there were no requests for, or assurances or expectations of confidentiality, or certainly, none that have been provided to me.

[Emphasis added]

[52] In this case, the portions on pages 640, 643, 961, 963, 966, 1038, 1042, 1051 to 1056, and 1059 to 1061, involve correspondence to be forwarded to WCB’s in-house counsel for WCB’s in-house counsel to provide advice on how to go about a matter. Therefore, the

second part of the two-part test is met. I find that WCB properly applied subsection 22(c) of FOIP to portions of pages 640, 643, 961, 963, 966, 1038, 1051 to 1056, 1059 to 1061. I recommend that WCB continue to withhold these portions on pages 640, 643, 961, 963, 966, 1038, 1051 to 1056, 1059 to 1061, as per the redlined version of the records prepared by my office, pursuant to subsection 22(c) of FOIP.

[53] However, based on a review of pages 1076 and 1096, it is not clear how the correspondence relates to a matter involving the provision of advice or other services by WCB's in-house counsel. Therefore, the second part of the two-part test is not met for these two pages. I find that WCB has not properly applied subsection 22(c) of FOIP to these portions on pages 1076 and 1096 but will consider if it properly applied subsections 22(a) and (b) of FOIP to them.

5. Did WCB properly apply subsection 22(a) of FOIP?

[54] I only need to consider if WCB properly applied subsection 22(a) of FOIP to portions of pages 1077 and 1096. Part 9 of my office's [*Rules of Procedure*](#) sets out the procedure to be followed in a review with my office when a head of a government institution claims solicitor-client privilege or litigation privilege. That is, the government institution may provide my office with a copy of the records at issue or an affidavit of records, schedule and redacted record over which solicitor-client or litigation privilege is claimed. In this case, WCB provided my office with a copy of page 1077 and 1096.

[55] Subsection 22(a) of FOIP provides:

22 A head may refuse to give access to a record that:

(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

[56] Pages 263 to 267 of the *Guide to FOIP*, Ch. 4, sets out the following three-part test that my office applies to determine if solicitor-client privilege applies:

1. Is the record a communication between solicitor and client?

2. Does the communication entail the seeking or giving of legal advice?
3. Did the parties intend for the communication to be treated confidentially?

[57] Pages 263 to 266 of the *Guide to FOIP*, Ch. 4, provide the following definitions:

- A “communication” is the process of bringing an idea to another’s perception; the message or ideas so expressed or exchanged; the interchange of messages or ideas by speech, writing, gestures or conduct.
- “Solicitor” means a lawyer who is duly admitted as a member and whose right to practice is not suspended. Lawyer means a member of the Law Society and includes a law student registered in the Society’s pre-call training program.
- “Client” means a person who:
 - Consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or
 - Having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf;and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client’s work.
- “Legal advice” means a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.

[58] In its submission, WCB said:

The Records satisfy the test for section 22(a) as follows:

- (a) The Records contain communications between in-house counsel and WCB, WCB Board members and/ or WCB staff. The IPC Guide confirms a “client” means a person who consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services, and that solicitor-client privilege can apply in the context of in-house legal counsel. The Records contain communications between in-house legal counsel and WCB Board members and/ or staff regarding the adjudication of the Applicant’s claim file(s), investigation of the Applicant’s concerns on same and proposed action(s) to address the Applicant’s multiple concerns. The Records also include information prepared for in-house counsel by WCB personnel for the sole purpose of receiving legal advice.

- (b) The communications entail the seeking or giving of legal advice by or to WCB. The Records contain, among other things, email threads seeking and providing legal advice and legal memos to the Applicant's file. Such communications clearly fall within section 22(a) of FOIP. The Records similarly contain advice relating to the applicant across a variety of mediums, including legal memos and emails investigating the Applicant's concerns. The scope of solicitor-client privilege is broad and applies to all of these communications.
- (c) The parties intended the communications to remain confidential and WCB did not waive the privilege. The relevant Records were intended to be confidential, and only circulated between in-house counsel, and members of WCB who were receiving the legal advice and/or had a strict *need-to-know* the advice.

[Underline in original]

[59] Based on a review of pages 1077 and 1096, I note that the communications are between WCB employees and WCB's in-house legal counsel. However, based on a review, the communications do not entail the seeking or giving of legal advice. As such, the second part of the three-part test is not met. I find that WCB did not properly apply subsection 22(a) of FOIP to pages 1077 and 1096. Before I make a recommendation regarding these two pages, I will consider whether WCB properly applied subsection 22(b) of FOIP to these two pages.

6. Did WCB properly apply subsection 22(b) of FOIP?

[60] I am only considering if WCB properly applied subsection 22(b) of FOIP to portions of pages 1077 and 1096.

[61] Subsection 22(b) of FOIP provides:

22 A head may refuse to give access to a record that:

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;

[62] My office uses the following two-part test to determine if subsection 22(b) of FOIP applies:

1. Were the records “prepared by or for” an agent or legal counsel for a government institution?
2. Were the records prepared in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

(*Guide to FOIP*, Ch. 4, pp. 290-291)

[63] Pages 290 and 291 of the *Guide to FOIP*, Ch. 4, provide the following definitions:

- “Prepared” means to be made ready for use or consideration.
- “By or for” means the person preparing the record must be either the person providing the legal advice or legal service or a person who is preparing the record in question on behalf of, or, for the use of, the provider of legal advice or legal related services.
- In relation to has been found to have a similar meaning as “in respect of”.
- “Legal advice” includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.
- “Legal service” includes any law-related service performed by a person engaged by a government institution and who is licenced to practice law.

[64] In its submission, WCB said:

The Records satisfy the test for section 22(b) as follows:

(a) The Records contain communications prepared for in-house legal counsel. The Records contain communications between in-house legal counsel and WCB regarding the adjudication of the Applicant’s claim file(s), investigation of the Applicant’s concerns on same and proposed action(s) to address the Applicant’s concerns by WCB for the sole purpose of receiving legal advice.

(b) The Records were prepared specifically to receive legal advice regarding the adjudication of the Applicant’s claim file(s), investigation of the Applicant’s concerns on same and proposed action(s) to address the Applicant’s concerns. The Records were prepared to directly communicate with in-house counsel to receive legal advice.

[Underline in original]

[65] In [Review Report 171-2019](#), I cited AB IPC's [Order F2008-021](#) for guidance regarding subsection 22(b) of FOIP. I said:

[119] The record must be “prepared” in relation to the advice or services or compiled or created for the purpose of providing advice or services. In order to qualify, the person preparing the record must be either the person providing the legal advice or legal service or a person who is preparing the record in question on behalf of, or, for the use of, the provider of legal advice or legal related services (SK IPC Review Report 149-2019, 191-2019). My office's *Guide to FOIP* at page 262 provides that “legal advice” includes a legal opinion about a legal issue and recommended course of action, based on legal considerations, regarding a matter with legal implications. “Legal service” includes any law-related service performed by a person engaged by the government institution and who is licensed to practice law.

[120] Further, the prepared record does not have to constitute legal advice or legal services to qualify for the second part of the test. However, the record must relate to a matter such that the matter is constituted by, or consists of, the provision of legal advice or services. The portion(s) of the record to which the government institution applies subsection 22(b) of FOIP should be substantive and not merely referencing the advice or service provided. That is, information such as letter or email headers, dates, the business contact information of senders and/or recipients of correspondence that does not reveal the substance of the legal advice or legal service does not fall within the scope of subsection 22(b) of FOIP. AB IPC said the following in Order F2008-021 regarding subsection 27(1)(b) of Alberta's AB FOIP:

[para 110] **In the context of “information in relation to a matter involving the provision of legal services”, I read “matter involving the provision of the legal services” such that the “matter” is constituted by, or consists of, the provision of legal services.** The other potential interpretation of this part of the provision – that the phrase is met for any matter to which legal services have been provided at some time – is implausible. It would have the provision take into account a factor (that the matter happens to have involved the provision of legal services) that may be coincidental and have no relevance to the information that is being prepared and which requires the protection of the provision. I interpret the phrase “information prepared in relation to” as referring to information compiled or created for the purpose of providing the services, in contrast to merely touching or commenting upon the provision of the services. **The use of the term “prepared” – which the Canadian Oxford Dictionary defines as “to make ready for use” - carries the suggestion that the information is necessary for the outcome that legal services be provided.**

[para 111] **It follows, then, that the person contemplated by the provision who is preparing the information, is doing so for the purpose of providing legal services, and therefore must be either the person providing the legal service or a person who is preparing the information on behalf of, or, at a minimum, for the use of, the provider of legal services.**

[para 112] It also follows that section 27(1)(b) does not cover the situation where a person, even a person who is one of the persons listed in subclauses i – iii, creates information that is connected in some way with the provision of legal services but is not created for that purpose. For example, section 27(1)(b) does not apply to information that merely refers to or describes legal services without revealing their substance.

[Emphasis added]

[66] Pages 1076 and 1096 contain chat messages between WCB employees and WCB's in-house legal counsel. My office reviewed the substance of the chat messages on page 1077 and 1096. Although I note that WCB asserted in its submission that the records were prepared in order for WCB employees to receive legal advice, the substance of the chat messages do not appear to show that. Based on a review by my office, the chat messages on page 1076 appear to be about an administrative aspect of file management. The chat messages on page 1096 appear to be status updates on a file. Therefore, the second part of the two-part test for subsection 22(b) of FOIP is not met. I find that WCB did not properly apply subsection 22(b) of FOIP to pages 1076 and 1096. I recommend that WCB release pages 1076 and 1096 in their entirety to the Applicant within 30 days of the issuance of this Report.

7. Did WCB properly apply subsection 29(1) of FOIP?

[67] WCB applied subsection 29(1) of FOIP to portions of pages 628 and 986.

[68] Subsection 29(1) of FOIP provides:

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

[69] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure, or if the disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP

(*Guide to FOIP*, Chapter 6, “Protection of Privacy”, updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 183).

[70] In order to withhold information pursuant to subsection 29(1) of FOIP, the information must qualify as “personal information” as defined by subsection 24(1) of FOIP.

[71] Subsection 24(1) of FOIP provides the definition of personal information. The relevant subsections of subsection 24(1) of FOIP are as follows:

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

...

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

...

(k) the name of the individual where:

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

[72] The list of examples provided for at subsection 24(1) of FOIP is not meant to be exhaustive. This means there can be other types of information that could qualify as personal information. “Including” means that the list of information that follows is incomplete (non-exhaustive). The examples in the provision are the types of information that could be presumed to qualify as personal information. However, more broadly, to constitute personal information, two elements must be present:

1. The information must be about an identifiable individual; and
2. The information must be personal in nature.

(*Guide to FOIP*, Ch. 6, p. 32)

[73] WCB did not provide any arguments in its submission as to why subsection 29(1) of FOIP applies to a portion of page 628. However, based on a review of the second paragraph on page 628 to which WCB applied subsection 29(1) of FOIP, the paragraph is about family

members of a WCB employee in their personal capacity. I find that such information qualifies as personal information pursuant to subsection 24(1)(k)(i) of FOIP. Therefore, I find that WCB properly applied subsection 29(1) of FOIP to the second paragraph on page 628. I recommend that WCB continue to withhold the second paragraph on page 628 pursuant to subsection 29(1) of FOIP as per the redlined version of the record prepared by my office.

[74] WCB provided the following arguments as to why subsection 29(1) of FOIP applies to the redacted content on page 986:

The information withheld pursuant to section 29(1) of FOIP includes:

- (a) The name of Fair Practices Officer, [Name of Fair Practices Officer]’s coach – who is a third party, outside of WCB.
- (b) The coach’s previous job position and employer.
- (c) The coach’s previous lecturing position.

The information above constitutes personal information of a third party outside WCB. Obtaining consent for its release was deemed unreasonable – because the information is irrelevant to the purpose of disclosure or the Applicant’s request.

[75] Based on WCB’s submission, it appears that WCB is asserting that the redacted content on page 986 qualifies as personal information pursuant to subsection 24(1)(b) of FOIP – that is, the information qualifies as “employment history” of a third party individual. As noted at page 44 of the *Guide to FOIP*, Ch. 6, past employment of individuals qualifies as “employment history” (see also paragraph [95] of [Review Report LA-2013-001](#)). I note that in [Order F21-66](#), the Office of the Information and Privacy Commissioner of British Columbia (BC IPC) also found that past employment qualified as employment history:

[39] Under s. 22(3)(d), disclosure of a third party’s employment, occupational or educational history is presumed to be an unreasonable invasion of that third party’s personal privacy.

[40] The Ministry submits that s. 22(3)(d) applies to information about the Candidates’ educational background, past employment, past and present directorships, memberships in professional organizations and to the self-assessed score.[16] The

Ministry says that it was careful to disclose information that is already available through the Candidates' biographies.[17]

[41] **In my view, most of this information plainly relates to the Candidates' employment, educational or occupational history. The information about the Candidates' educational background and past employment clearly relate to their educational and employment histories,** respectively. Further, I find that information about the Candidates' positions as current or past directors or officers are the Candidates' occupational history. This information is about formal positions held by the Candidates.

[Emphasis added]

[76] The redacted contents on page 986 qualifies as employment history of a third-party individual. Therefore, the information qualifies as personal information pursuant to subsection 24(1)(b) of FOIP. As such, I find that WCB properly applied subsection 29(1) of FOIP to the redacted contents on page 986. I recommend that WCB continue to withhold the redacted contents on page 986 as per the redlined version of the record prepared by my office.

[77] To summarize, I recommend that WCB continue to withhold the redlined portions of the records that my office has prepared, and that it release the remainder to the Applicant within 30 days of the issuance of this Report.

8. Did WCB conduct a reasonable search to locate records?

[78] My office reviews a government institution's efforts to search for records when it responds to an applicant's access request by indicating that records do not exist. The focus of a search review by my office is whether the government institution conducted a reasonable search. A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances (*Guide to FOIP*, Chapter 3: "Access to Records", updated May 5, 2023 [*Guide to FOIP*, Ch. 3] at pp. 13-14).

[79] When a government institution receives a notice of a review from my office requesting details of its search efforts, some or all of the following can be included in the government institutions' submission (not exhaustive):

- For personal information requests – explain how the individual is involved with the government institution (i.e., client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by:
 - Alphabet
 - Year
 - Function
 - Subject
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the government institution's control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.

- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see *Using Affidavits in a Review with the IPC*.

(*Guide to FOIP*, Ch 3, pp. 14-15)

[80] In an email to my office dated February 27, 2025, WCB described its search strategy as follows:

- The search strategy for identifying employees to conduct a search for responsive records, was based on where responsive records were likely to be stored and who had the appropriate knowledge to locate them.
- Information related to the adjudication of a worker's claim and any relevant appeals is typically stored in their individual claim file within Eclipse, WCB's case management system. Any information unrelated to claim adjudication and appeals is stored by the respective business area utilizing it for their business needs.
- Therefore, after clarifying that the Applicant's request was related to the adjudication of their injury claim files and related appeals, we conducted a review to identify the most appropriate business areas and employees to conduct the search. The search strategy included:
 - i. Identifying business areas and employees with direct knowledge or sufficient familiarity with relevant records.
 - ii. Engaging leaders from relevant business areas to oversee, contribute and/or direct the search process.
 - iii. Including specific employees named in the Applicant's request.

[81] WCB also indicated that it conducted a search of its case management system, Eclipse, for responsive records. WCB's Legal and Privacy Analyst had downloaded all the records from Eclipse that fell within the Applicant's requested date range and provided all the records to the Applicant with no redactions (pages 1 to 561 of the responsive records).

[82] Enclosed with its submission, WCB provided documentation of its search efforts. Based on a review, my office noted the following:

- On October 9, 2024:

- WCB's Legal and Privacy Analyst contacted the Complex Injury Claims Specialist to search for records.
- The Complex Injury Claims Specialist responded by identifying the following individuals who would have records responsive to the access request:
 - the Manager, Psychological Injuries, Case Management South,
 - Manager, Appeals,
 - Director, Board Services.
 - The Director, Board Services indicated that:
 - the Executive Administrative Assistant to the CEO was searching the CEO's emails,
 - the Executive Administrative Assistant was searching through the Chairman's emails,
 - Director of Claims Operations and herself (Director, Board Services) would be gathering records responsive to the access request.
- WCB's Legal and Privacy Analyst contacted the Manager, Psychological Injuries, Case Management South to search for records.
 - the Manager, Psychological Injuries, Case Management South responded by indicating they had spoken with the Client Care Facilitator who indicated "there are not additional notes that are not on the electronic file. Everything is on eclipse [sic]."
- WCB's Legal and Privacy Analyst contacted the Appeals Officer to search for records.
 - The Appeals Officer indicated they had taken notes at the meeting. They had typed out the notes and placed them on file. Then, they discarded their notes.

[83] WCB also provided my office with documentation of search efforts of the following WCB employees on October 9, 2024:

- Director, Board Services
 - Completed search on October 9, 2024.
 - Searched email folders.

- Noted that records are not saved on devices such as computers nor are paper records kept.
 - Identified six emails.
- Appeals Officer
 - The fourth part of the Applicant's access request had sought handwritten notes by the Appeals Officer.
 - Completed search on October 9, 2024
 - Searched the electronic claim file
 - Identified memo.
- Accountant
 - Completed search on October 9, 2024
 - Searched electronic records on the W drive.
 - Identified 11 records.
- Executive Administrative Assistant to the CEO
 - Completed search on October 9, 2024.
 - Searched the CEO's email.
 - Identified 39 records.

[84] WCB also provided my office with documentation of further search efforts by WCB employees on December 2, 2024 (which is after the Applicant had come to my office to request a review):

- Team Leader, Board Services
 - Completed search on December 2, 2024.
 - Searched "Outlook Calendar and [Last name of Applicant] Mail folder, Teams chat [Name of Director of Claims Operations/Name of Director of Board Services/Name of General Counsel]".
 - Noted that records are not saved on devices such as computers nor are paper records kept.
 - Identified one meeting invitation (April 8, 2024) in their Outlook – which was provided to the Applicant as part of the enclosure of WCB's letter dated December 10, 2024 to the Applicant.
- Manager, Appeals
 - Completed search on December 2, 2024.
 - Searched "Outlook Calendar and [Last name of Applicant] Mail folder, Teams chat [Name of Director of Claims Operations/ Name of Director of Board Services/Name of General Counsel]".

- Noted that records are not saved on devices such as computers nor are paper records kept.
- Identified one meeting invitation and email chain (4 emails) and one Teams message with WCB's general counsel.

[85] I also note that the Applicant sought records involving WCB's general counsel related to their file. WCB said it conducted a search for records with three of its lawyers. On October 7, 2024, both two of the lawyers forwarded emails to WCB's Legal and Privacy Analyst for the purposes of processing the Applicant's access request. WCB indicated that the records from one of the lawyers appear at pages 1064 to 1071 while the records from another lawyer appear at pages 1038 to 1063.

[86] WCB explained that the third lawyer did not find any records responsive to the Applicant's access request. WCB provided my office with an email dated October 7, 2024, from the third lawyer to WCB's Legal and Privacy Analyst. In it, the third lawyer forwarded an email dated October 3, 2024, where they had indicated they were not aware of an FOI request. I am satisfied that this email dated October 3, 2024 is not responsive to the Applicant's access request.

[87] My office followed up to determine if the Director, Claims Operations conducted a search for records since the Director, Board Services had indicated that they both would be "gathering records responsive to the access request." WCB explained as follows:

No. As Director of Claims Operations, [Name of Director of Claims Operations]'s role in the search process was to provide guidance to relevant employees within her business area. Given that any records related to the adjudication of a worker's injury claim file would be stored on Eclipse, [Name of Director of Claims Operations] provided guidance accordingly. Additionally, [Name of Director of Claims Operations] was not directly involved in the adjudication of the Applicant's claim and/or appeals.

[88] Applicants must establish the existence of a reasonable suspicion that a government institution is withholding a record or has not undertaken an adequate search for a record (*Guide to FOIP*, Ch. 3, p. 13). In this case, the Applicant provided my office with a submission where they had cited four reasons why they believe WCB did not conduct a reasonable search for records.

a. Applicant's first reason

[89] The Applicant cited an email dated October 9, 2024, that was within the responsive records. The email is an internal WCB email from the Director, Board Services to the Legal and Privacy Analyst. The Director is forwarding emails to the Legal and Privacy Analyst. The Director says: "This is between [Name of Accountant] and myself, so I am not sure if this is required." The Applicant detailed their concern regarding this email:

Indicates that a full OIPC's (not privy to what this is) search of information was not completed and/or individuals have been requested to search email documents. This method is not a reliable or realistic document search and the potential of missed information is obviously very high.

[90] My office expects government institutions such as WCB to contact employees who are likely to have records responsive to access to information requests. Therefore, this email dated October 9, 2024 actually demonstrates that WCB did indeed contact employees to conduct a search for records.

b. Applicant's second reason

[91] The Applicant referenced WCB's letter dated December 10, 2024 (which was sent during the intake stage of my office's review process). Enclosed with the letter was an email dated February 2, 2024, between the Fair Practices Officer to the Applicant. The Applicant said:

... There are two problems.

1. There were multiple conversations with the FPO. Does that mean that other telephone records and email conversations have not been added to the file?
2. Why have the FPO conversations been provided – is that not a breach of protocol and confidentiality. Why has one conversation been provided and others records not?

[92] I note that in WCB's letter dated December 10, 2024 (quoted in the background of this report), WCB had indicated that the February 2, 2024 email was "outside the scope of [the]

request” but was being provided to the Applicant to address their “immediate concern” (which was raised by the Applicant during the intake stage of my office’s review process).

[93] In the course of this review, my office asked WCB if it conducted a search for records with the Fair Practices Office. WCB said:

No. The Fair Practices Office’s records fall outside the scope of the access request – as they are not part of a worker’s claim file nor its adjudication. The Fair Practices Office is an independent office within WCB that reports directly to the Board. Its role is to assist workers by providing information on actions, decisions and/ or how the WCB system operates. They are not involved in the adjudication of claim files or appeals.

[94] Based on a review of the wording in the Applicant’s access request, I am satisfied that records from the Fair Practices Office are indeed outside the scope of the Applicant’s access request. Therefore, the existence of the February 2, 2024 email from the FPO (which was provided during the intake stage of my office’s review process) is not indicative that WCB did not complete a reasonable search for records responsive to the Applicant’s access request.

c. Applicant’s third reason

[95] The Applicant questioned why WCB did not provide a specific document in response to their access request but had only received it when WCB enclosed it in its letter December 10, 2024 during my office’s intake stage. The Applicant said:

May 10, 2024 - “This document was previously sent to you by [Name of Accountant] through an email dated Thursday December 15, 2022. Why was this document not attached to my WCB file? (Not provided in the first file request).

[96] Based on a review of the records responsive to the Applicant’s access request, the document was provided on pages 519, 520 and 521 of the responsive records.

[97] Further, the Applicant said:

July 10, 2024 entry – see: “while portions of this record were previously provided to you, additional parts were identified during the investigation of your immediate concern.” – Why was this information not compliant with the original request?

[98] The Applicant raises a good point. They received additional records only after having contacted my office, which is a good reason for believing why WCB did not conduct a reasonable search for records. However, as documented in the background of this Report, WCB made efforts to address the Applicant’s concerns during the intake stage of my office’s review process.

d. Applicant’s fourth reason

[99] The Applicant noted that they had not received records regarding Microsoft Teams meetings. In their submission, the Applicant said:

Microsoft Teams meetings not identified in the first request of information. Not able to determine conclusively any notes or follow-ups if Teams Meetings are unknown to me.

[100] I note that in WCB’s initial response to the Applicant’s access request dated October 25, 2024, WCB did not provide records from Microsoft Teams, whether that be meeting invitations for meetings conducted using Microsoft Teams software or chat messages through Microsoft Teams. However, a Microsoft Teams meeting invitation (dated April 8, 2024) as well as copies of chat messages sent over Teams were enclosed in WCB’s letter dated December 10, 2024. Therefore, while these records were missed in the initial processing of the Applicant’s access request, it appears that WCB has made efforts to locate such records during the intake stage of my office’s review process.

[101] My office does not hold government institutions to a standard of perfection. Rather, my office expects government institutions such as WCB to make a reasonable effort to search for records. Based on the efforts described above, I find that WCB has made a reasonable effort to search for records responsive to the Applicant’s access request. I recommend it take no further action regarding search.

[102] I note that the Applicant also raised privacy concerns in their submission to my office. However, the scope of my office's review is whether WCB properly applied exemptions to the responsive records and whether it conducted a reasonable effort to search for records. Should the Applicant receive additional records resulting from my office's recommendations and is concerned with how WCB may have collected, used, and/or disclosed their personal information, then they can raise those concerns with WCB. If they are dissatisfied with WCB's response to their privacy concerns, then they can raise those concerns with my office.

IV FINDINGS

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

[104] I find that WCB did not properly apply subsection 17(1)(a) of FOIP to pages 691 to 693, 823, 824, and 853 to 855.

[105] I find that it is an absurd result to withhold the contents of page 1042 from the Applicant, so I find no exemption applies.

[106] I find that WCB properly applied subsection 17(1)(a) of FOIP to portions of pages 571, 572, 575, 579, 594, 604, 605, 606, 658, 715, 717, 719, 783, 785, 789, 791, 796, 798, 836, 840, 877, 879, 883, 885, 890, 977, 980, 983, 993, 997, 1000, 1002, 1006, 1008, 1011, 1013, 1018 and 1021.

[107] I find that WCB has not properly applied subsection 17(1)(b) of FOIP.

[108] I find that WCB properly applied subsection 22(c) of FOIP to pages 640, 643, 961, 963, 966, 1038, 1051 to 1056, 1059 to 1061.

[109] I find that WCB has not properly applied subsection 22(c) of FOIP to pages 1077 and 1096.

[110] I find that WCB did not properly apply subsection 22(a) of FOIP to pages 1077 and 1096.

[111] I find that WCB did not properly apply subsection 22(b) of FOIP to pages 1076 and 1096.

[112] I find that WCB properly applied subsection 29(1) of FOIP to the second paragraph on page 628.

[113] I find that WCB properly applied subsection 29(1) of FOIP to the redacted contents on page 986.

[114] I find that WCB has made a reasonable effort to search for records responsive to the Applicant's access request.

V RECOMMENDATIONS

[115] I recommend that WCB release page 1042, in its entirety, to the Applicant within 30 days of issuance of this Report.

[116] I recommend that WCB continue to withhold the redacted contents on pages 640, 643, 961, 963, 966, 1038, 1051 to 1056, 1059 to 1061 pursuant to subsection 22(c) of FOIP.

[117] I recommend that WCB release pages 1076 and 1096 in their entirety to the Applicant within 30 days of the issuance of this Report.

[118] I recommend that WCB continue to withhold the second paragraph on page 628 pursuant to subsection 29(1) of FOIP.

[119] I recommend that WCB continue to withhold the redacted contents on page 986.

[120] I recommend that WCB continue to withhold the redlined portions of the records that my office has prepared, and that it release the remainder to the Applicant within 30 days of the issuance of this Report.

[121] I recommend that WCB take no further action regarding search.

Dated at Regina, in the Province of Saskatchewan, this 7th day of March, 2025.

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