



REVIEW REPORT 317-2023

Ministry of Health

January 30, 2023 

Summary:

The Applicant submitted an access to information request to the Ministry of Health (Health). After 237 days, they still had not received a response from Health and requested a review by the Commissioner. In the course of the review, Health provided its response to the Applicant. Health indicated it was providing access to some but not all portions of the responsive records. Health said it was withholding portions of the records pursuant to subsections 13(1)(b), 13(2), 17(1)(a), 17(1)(b)(i), 18(1)(b), 19(1)(b), 19(1)(c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 27(1) of *The Health Information Protection Act* (HIPA). Health also said it redacted portions of the records because those portions were not responsive to the access request. The Commissioner made a number of findings, including that Health did not meet certain legislated timelines. He recommended that Health provide a full explanation to his office of the “many factors” that contributed to the processing delay of the access request. Regarding exemptions, the Commissioner found that Health properly applied exemptions to some of the records, but not all. He set out his findings in the Appendix to the Report. Where he found that Health properly applied discretionary exemptions, he recommended that Health reconsider the exercise of its discretion to determine if it would release additional information to the Applicant. Finally, he recommended that Health refund the deposit they paid due to the excessive delay in responding to the access request.

I BACKGROUND

[1] On March 30, 2023, the Ministry of Health (Health) received the following access to information request:

I'm requesting any and all emails, memos, letters and briefing notes from Melissa Kimens, Bailey Salkeld, Rebecca Carter and the health minister's office regarding transferring COVID-19 patients out of Saskatchewan.

[2] On April 11, 2023, Health sent a letter to the Applicant with a fee estimate of \$600.00 to process the access request. Health requested a payment of \$300.00 as a deposit.

[3] On May 4, 2023, Health received payment of the deposit from the Applicant.

[4] On May 18, 2023, Health sent a letter to the Applicant explaining it was extending the 30-day response time by an additional 30 days. Health cited subsections 12(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Health said:

This is to inform you that the 30 day response period has been extended an additional 30 days to June 22, 2023 pursuant to the Act sub-clauses:

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).

12(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

[Emphasis added]

[5] On July 14, 2023, the Applicant emailed Health requesting a status update.

[6] On July 24, 2023, Health responded to the Applicant that it was still processing the access request. Health said that the request was “currently in the approval process.”

[7] On October 23, 2023, the Applicant emailed Health again asking about the progress of processing the access request. The Applicant received a notice indicating that their email couldn't be delivered due to an error.

[8] On the same day, the Applicant followed up with the Director, Health Information and Privacy and the Executive Coordinator. A Senior Policy Analyst at Health followed up with the Applicant indicating that their access request was still being processed.

- [9] On November 22, 2023, 237 days after submitting their access request, the Applicant requested a review by my office.
- [10] On December 14, 2023, my office notified Health and the Applicant that my office would be undertaking a review.
- [11] On the same day, after my office notified Health and the Applicant of its review, Health sent notices to the following organizations that it identified as “third parties”:
- Ministry of Government Relations (Government Relations),
 - Saskatchewan Public Safety Agency (SPSA),
 - Saskatchewan Health Authority (SHA),
 - Alberta Health, and
 - Alberta Health Services (AHS).
- [12] On January 15, 2024, Health provided my office with a copy of the records at issue, an index of records, and a submission. My office noted that Health did not apply the third party exemption, section 19 of FOIP, to any of the records involving the organizations listed at paragraph [11].
- [13] However, my office noted that Health had applied subsections of section 19 of FOIP to records that identified other third parties, such as Fox Flight and Sunwest Aviation/STARS, and Medtronic.
- [14] On January 16, 2024, Health provided a decision pursuant to section 7 of FOIP to the Applicant. Health indicated it was not seeking payment of the balance of the fees. It said it was providing the Applicant access to 250 pages of records, but it withheld portions of the records pursuant to subsections 13(1)(b), 13(2), 17(1)(a), 17(1)(b)(i), 18(1)(b), 19(1)(b), (c) and 29(1) of FOIP. It also said it as relying on subsection 27(1) of *The Health Information Protection Act* (HIPA) to withhold portions of the records.

II RECORDS AT ISSUE

[15] At issue are 250 pages of records, which were partially redacted pursuant to subsections 3(1)(b), 13(2), 17(1)(a), 17(1)(b)(i), 18(1)(b), 19(1)(b), (c), and 29(1) of FOIP and subsection 27(1) of HIPA.

[16] Health also identified portions of the records as non-responsive to the Applicant's access request.

[17] The Appendix outlines the records at issue and the exemptions applied to them.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[18] Health qualifies as a "government institution" as defined by subsection 2(1)(d)(i) of FOIP. Health also qualifies as a "trustee" as defined by subsection 2(1)(t)(i) of HIPA. Therefore, I find that I have jurisdiction to conduct this review.

[19] The organizations listed at paragraph [13] qualify as a "third party" as defined by subsection 2(1)(j) of FOIP.

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

[20] Subsection 7(2) of FOIP sets out the time in which a government institution shall respond to an access to information request and the way in which a head shall respond to the request. It provides:

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

[21] Section 12 of FOIP provides that a government institution can extend the 30-day response period up to an additional 30 days. In total, government institutions may have up to 60 days

to respond to access requests in the limited circumstances outlined in subsection 12(1) of FOIP. As noted in the background, Health cited subsection 12(1)(c) of FOIP in its May 18, 2023 letter to the Applicant as its reason for extending the 30-day response period. Subsection 12(1)(c) of FOIP provides:

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

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

[22] As outlined in the background, Health had:

- Received the access request on March 30, 2023.
- Issued a fee estimate on April 11, 2023.
- Received payment of the deposit on May 4, 2023.
- Extended the 30-day response period by an additional 30 days pursuant to subsection 12(1)(c) of FOIP on May 18, 2023.
- Sent notices pursuant to section 34 of FOIP to organizations listed at paragraph [11] (but not the third parties listed at paragraph [13]) of the access request on December 14, 2023.
- Provided its section 7 decision to the Applicant on January 16, 2024.

[23] Health sent notices to some organizations it identified as “third parties” in the course of my office’s review, not within the original 30-day response period or within the period of extension. This is not in compliance with the requirements of section 12 of FOIP. Subsection 12(1)(c) of FOIP permits government institutions to extend the 30-day response period by an additional 30 days for the purpose of notifying third parties pursuant to subsection 34(1) of FOIP. However, subsection 12(3) of FOIP still requires government institutions to respond to the access request within the period of extension. Subsection 12(3) of FOIP provides:

12(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[24] Based on subsection 12(3) of FOIP, then, Health would have had until June 22, 2023, to provide its section 7 decision to the Applicant. However, it provided its section 7 decision on January 16, 2024, which was 208 days overdue.

[25] In this regard, I find that Health is not in compliance with the legislated timelines set out in sections 7 and 12 of FOIP.

[26] In its submission, Health indicated that “many factors” contributed to the processing delay of this access request. It said:

While many factors can be attributed to the processing delay for this request, which is still ongoing, the Ministry of Health has failed to meet the legislated timeline to complete this request. The Ministry acknowledges these factors do not outweigh its obligation both under the law and to the Applicant to release access to information requests within legislated timelines.

The Ministry of Health continues to be committed to processing access requests as quickly as possible within legislated timelines. The Ministry considers this Applicant’s request as a priority.

[27] Since 2014, I have published the following 23 reports on Health’s inability to meet legislated timelines:

- [Review Report 090-2014,](#)
- [Review Report 091-2014,](#)
- [Review Report 110-2014,](#)
- [Review Report 111-2014,](#)
- [Review Report 112-2014,](#)
- [Review Report 113-2014,](#)
- [Review Report 114-2014,](#)
- [Review Report 115-2014,](#)
- [Review Report 128-2014,](#)
- [Review Report 129-2014,](#)
- [Review Report 063-2015 to 077-2015,](#)

- [Review Report 112-2015](#),
- [Review Report 209-2015 to 213-2015](#),
- [Review Report 017-2016](#),
- [Review Report 326-2017 to 332-2017](#),
- [Review Report 082-2019, 083-2019](#),
- [Review Report 220-2021, 235-2021](#),
- [Review Report 249-2021](#),
- [Review Report 322-2021, 030-2022](#),
- [Review Report 003-2022](#),
- [Review Report 150-2022](#),
- [Review Report 232-2023, and](#)
- [Review Report 288-2023](#).

[28] This is now the 24th report I have published involving Health and this particular issue. I, therefore, recommend within 30 days of the issuance of this Report, that Health provide my office with a full explanation of the “many factors” that contributed to the processing delay of this access request. More particularly, I recommend that Health provide my office with who was involved in approving the processing of this access request and the dates in which they provided their approval. Depending on the response I receive from Health regarding these recommendations, my office may be at the stage where it will be engaging in or commissioning research into matters affecting the carrying out of the purposes of FOIP pursuant to section 45(2)(a) of FOIP.

[29] As in past reports, such as [Review Report 288-2023](#), I recommend that Health refund the \$300.00 the Applicant paid as a deposit due to the excessive delay in responding to the Applicant’s access request. This should be done within 30 days of the issuance of this Report.

3. Did Health properly apply subsection 17(1)(a) of FOIP?

[30] Health applied subsection 17(1)(a) of FOIP to pages 19 to 21, 24, 26, 27, 36 to 47, 49 to 50, 52 to 63, 71 to 78, 82 to 91, 94 to 105, 107 to 108, 114 to 115, 122 to 123, 139 to 140, 142, 160, 180 to 181, 184, 188 to 196, 199 to 206, 208 to 209, 211 to 218, 223 to 224, 231 to 235, 238 to 239 and 242 to 243. Most of these pages contain briefing notes and email exchanges. Pages 107 to 108 contains a letter.

[31] 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 October 18, 2023 [*Guide to FOIP*, Ch. 4], pp. 125-128)

[32] Pages 125 to 128 of the *Guide to FOIP*, Ch. 4, provides 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.

- “Policy options” are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant’s identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information.
- “Developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the government institution, or 2) outside the government institution but for the government institution and at its request (for example, by a service provider or stakeholder).

[33] In its submission, Health identified that the portions of the pages to which it applied subsection 17(1)(a) of FOIP qualifies as advice, proposals, recommendations, analyses, or policy options. Based on a review, I agree in some cases where Health applied subsection 17(1)(a) of FOIP to the pages, the contents qualify as proposals, analyses, policy options, and recommendations. These include pages such as 9, 45, 55, 61, 97, 103, 189, 190 and 204, that contain proposals in briefing notes regarding out of province transfers.

[34] Further, I note that many of the briefing notes contain analyses. I note that Alberta’s Office of the Information and Privacy Commissioner (AB IPC) made the point that analyses is different from a compilation of facts in its [Order 97-007](#) as follows:

[43.] Upon reviewing the briefing notes, I note that there is no reference to a possible course of action for the Minister. In short, the briefing notes appear to be a narration or a status report. The authors of the briefing notes were not advising the Minister as to what he should do or not do, nor were they providing an analyses of the events using their expertise. “Analyses” is defined in the Concise Oxford Dictionary, 9th edition, (New York: Oxford, 1995) as:

a detailed examination of the elements or structure of a substance etc.; a statement of the result of this.

[44.] While there is some discretion exercised in choosing which facts are gathered, without more, a compilation of facts is not an analyses. Gathering pertinent factual information is only the first step that forms the basis of an analyses. It is also the common thread of “advice, proposals, recommendations, or policy options” because they all require, as a base, a compilation of pertinent facts.

- [35] My office distinguished parts of the briefing notes that contain merely facts versus the parts of the briefing notes that contain analyses, such as portions of briefing notes at page 44, 45, 60 and 61 that analyze ICU census.
- [36] Further, my office noted that some of the briefing notes (such as the briefing notes on pages 238 to 239 and 242 to 243 contained policy options, including “alternative options”, or scenarios that would occur if certain action is not taken.
- [37] Finally, my office noted that portions of the briefing notes to which Health applied subsection 17(1)(a) of FOIP contained recommendations.
- [38] For the portions of pages where my office found that they contained proposals, recommendations, analyses, or policy options, my office also noted that the proposals, recommendations, analyses or policy options were “developed by or for” Health. For example, briefing notes containing proposals, recommendation analyses or policy options were developed by the Assistant Deputy Minister of Health for the Deputy Minister of Health. Therefore, the second part of the two-part test for subsection 17(1)(a) of FOIP is met. My findings and recommendations are set out in the Appendix.
- [39] Even though I have found that subsection 17(1)(a) of FOIP applies to some of the records, I note that subsection 17(1)(a) of FOIP is a discretionary exemption. The decision to apply a discretionary exemption requires two steps. First, the head must determine whether the exemption applies. If it does, then, the head must go on to ask whether, having regard to all relevant interests, including public interest in disclosure, disclosure should be made (*Guide to FOIP*, Ch. 4, p. 11).
- [40] In past reports, such as [Review Report 173-2018](#) and [Review Report 017-2023](#), and at pages 11 to 12 of the *Guide to FOIP*, Ch. 4, my office has said the following regarding the exercise of discretion:

A discretion conferred by statute must be exercised consistently with the purposes underlying its grant. It follows that to properly exercise this discretion, the head must

weigh the considerations for and against disclosure, including the public interest in disclosure.

Some factors that should be considered when exercising discretion include:

- The general purposes of the Act (i.e., government institutions should make information available to the public, and individuals should have access to personal information about themselves).
- The wording of the discretionary exemption and the interests which the exemption attempts to protect or balance.
- Whether the applicant's request may be satisfied by severing the record and providing the applicant with as much information as is reasonably practicable.
- The historical practice of the government institution with respect to the release of similar types of records.
- The nature of the record and the extent to which the record is significant or sensitive to the government institution.
- Whether the disclosure of the information will increase public confidence in the operation of the government institution.
- The age of the record.
- Whether there is a definite and compelling need to release the record.
- Whether the Commissioner's recommendations have ruled that similar types of records or information should be released.

The Supreme Court of Canada in [Ontario \(Public Safety and Security\) v. Criminal Lawyers' Association, \(2010\) SCC 23](#), confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exemption and to return the matter for reconsideration to the head of the government institution. The Court also considered the following factors to be relevant to the review of discretion:

- the decision was made in bad faith;
- the decision was made for an improper purpose;
- the decision took into account irrelevant considerations; or
- the decision failed to take into account relevant considerations.

[41] In a review of a discretionary exemption, I may recommend that the head of a government institution reconsider its exercise of discretion. However, I will not substitute my discretion for that of the head.

[42] In their submission, the Applicant cited [Order F23-95](#) by British Columbia's Office of the Information and Privacy Commissioner (BC IPC). The BC IPC reviewed a decision by Metro Vancouver to withhold portions of a report regarding an incident at a dam that resulted in the deaths of two members of the public. The BC IPC considered subsection 25(1)(a) of British Columbia's *Freedom of Information and Protection of Privacy Act* (BC FOIPPA) that requires a public body to disclose to the public information about a risk of significant harm to the health or safety of the public or a group of people. The BC IPC found that the requirements of subsection 25(1)(a) of BC FOIPPA was met and ordered that the report be provided to the applicant.

[43] In this review, the Applicant said in their submission the following:

The principles in [BC IPC's Order F23-95] are echoed in Saskatchewan's own Privacy Act and in fundamental democratic principles because governments must be accountable.

But while the principles are the same, the need is even greater.

I've requested records from an extremely turbulent time for Saskatchewan, when the provincial healthcare system was so overwhelmed with COVID-19 patients there weren't enough hospital beds in the province to care for them. The Saskatchewan Government and Saskatchewan Health Authority needed to transfer those requiring life-saving care to Ontario.

The records I've requested show how, why and with what speed government personnel acted to ensure Saskatchewan residents received the care they desperately needed.

I'm asking you to ensure the records are released, and completely released, because doing so is a matter of transparency and accountability.

The records will show how government decided the fates of their fellow citizens. The public is entitled to know what was done – and, potentially, what more could have been done – during the COVID-19 pandemic.

The public has the right to see those records because they have the right to understand their government, to hold them accountable and to prepare for the next public health

emergency when those public servants will again be called upon to make tough decisions quickly.

[44] While I note that FOIP does not have an equivalent of BC FOIPPA's subsection 25(1) of FOIP (meaning there is no general public interest override), the Applicant's point is well-taken. It is important for Saskatchewan residents to understand the decisions made by Health during the recent pandemic. Based on the broad application of subsection 17(1)(a) of FOIP to the records, it appears as though Health may not have considered relevant considerations in its application of subsection 17(1)(a) of FOIP. Disclosing proposals, recommendations, analyses or policy options that led to the decisions made by government during the pandemic could increase the public's understanding of how the province navigated the challenges of the pandemic. While I will not substitute my discretion for that of the head, I recommend that Health reconsider the exercise of its discretion and determine if it will release to the Applicant additional information from the records where it properly applied subsection 17(1)(a) of FOIP. Health should take into consider the factors set out at paragraph [41].

[45] I should note, though, that there are pages to which Health applied subsection 17(1)(a) of FOIP that I find do not contain advice, proposals, recommendations, analyses, or policy options. As such, I find that Health has not properly applied subsection 17(1)(a) of FOIP to some pages. For example, pages 107 to 108 is a letter signed by individuals in leadership positions. In its submission, Health indicated that these pages contain "analysis related to patient care." However, based on a review, the contents of the letter appear to only contain factual information. The contents of the letter do not contain advice, proposals, recommendations, analyses or policy options.

[46] Another example is the redacted portions of pages 114 and 115. Pages 114 and 115 is an email thread. In its submission, Health indicated that these pages contain "analysis related to the transportation decision and contract status". I note that the majority of the contents of this email thread has been released to the Applicant. However, two portions of page 114 have been redacted. One of these portions appear to contain a fact. The other portion appears to be the threshold to trigger an action, which is a guideline and not advice,

proposals, recommendations, analyses, or policy options. Page 15 contains three redacted portions. Each portion contains the name of a third party air ambulance provider. The name of a third party air ambulance provider does not qualify as advice, proposals, recommendations, analyses or policy options.

[47] Further, pages 24, 140 and 142 is a copy of the same email dated October 7, 2021. The body of the email was redacted. However, the body of the email contains an opinion. An opinion is not advice, proposals, recommendations, analyses or policy options.

[48] Finally, pages 84, 85, 192, 193, 199, 200, 234 and 235 are guidelines for assessing ICU capacity and making decisions regarding care delivery. Such information should be available to the public pursuant to subsection 65(1) of FOIP, which says:

65(1) Every government institution shall take reasonable steps to:

(a) make available on its website all manuals, policies, guidelines or procedures that are used in decision-making processes that affect the public by employees of the government institution in administering or carrying out programs or activities of the government institution; or

(b) provide those documents when requested in electronic or paper form.

[49] Therefore, I find that Health did not properly apply subsection 17(1)(a) of FOIP to pages such as pages 24, 84 to 85, 107 to 108 and 114 to 115, 140, 142, 192, 193, 199 to 200 and 234 to 235. My findings and recommendations are set out in the Appendix.

4. Did Health properly apply subsection 17(1)(b)(i) of FOIP?

[50] Health applied subsection 17(1)(b)(i) of FOIP to pages 19 to 21, 24, 26 to 27, 49 to 50, 71 to 78, 82 to 91, 114, 123, 139 to 140, 142, 146 to 149, 152 to 154, 158 to 160, 180 to 181, 184, 188, 190 to 196, 199 to 206, 208 to 209, 211 to 218, 226 to 227, 231, 233 to 235, 238 to 239, and 242 to 243. These pages are the same pages to which Health applied subsection 17(1)(a) of FOIP, except for pages 226 to 227, where Health only applied subsection 17(1)(b)(i) of FOIP.

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

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

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[52] 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. 133-135)

[53] Pages 133 to 135 of the *Guide to FOIP*, Ch. 4, provides definitions for the following terms:

- “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.

- “The staff of a member of the Executive Council”: The phrase includes the staff in a Minister’s office, such as Chief of Staff, Administrative Assistants and Ministerial Assistants. It also includes the staff of the Office of the Executive Council.

[54] In its submission, Health asserted that the pages to which it applied subsection 17(1)(b)(i) of FOIP “would reveal the content of consultations and deliberations”, or that the redacted information “were subject of consultations” and “would reveal the content of consultations or deliberations.”

[55] Based on a review of the pages, my office noted that the body of emails on pages 76 to 77 and 216 to 217 appear to contain deliberations of the decision regarding out of province transfers, which involve employees of Health. Therefore, the two-part test for subsection 17(1)(b)(i) of FOIP is met. I find that Health properly applied subsection 17(1)(b)(i) of FOIP to the bodies of the emails on pages 76 to 77 and 216 to 217.

[56] Similar to my recommendation earlier regarding the exercise of discretion, I recommend that Health reconsider the exercise of its discretion and determine if it will release any additional information from the records to the Applicant. Health should take into consideration the factors set out at paragraph [41] to which subsection 17(1)(b)(i) of FOIP applies.

[57] However, for the remaining portions of pages to which Health applied subsection 17(1)(b)(i) of FOIP, I have either found that subsection 17(1)(a) of FOIP applies to them or I find that they do not contain consultations or deliberations.

[58] I note that subsection 24(1)(b) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP) is similar to subsection 17(1)(b) of FOIP. In [Order F2013-13](#), the AB IPC said the following explaining what “consultations” and “deliberations” are:

[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 the 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]

- [59] The contents of the remaining pages to which Health applied subsection 17(1)(b)(i) of FOIP do not contain consultations or deliberations. This is because the contents of the pages do not contain the seeking of advice (consultations) or the deliberations of a decision. For example, page 191 contains a communications protocol. The contents of this page are a protocol. It does not contain the seeking of advice (consultations) or the deliberations of a decision. Further, pages 192 and 234 contains a guideline on how to assess the pressure on the ICU capacity. While this guideline could have informed deliberations over a decision, the guideline itself does not contain the deliberations.
- [60] Another example is an email exchange that appears on pages 74 to 75 and 214 to 215. The email exchange appears to be the assembling of information for a briefing. However, the contents of the email exchange do not contain the seeking of advice (consultations) or the deliberations of a decision.
- [61] Finally, pages 24, 140 and 142 contain the same email dated October 7, 2021. The body of the email was redacted. However, the body of the email contains an opinion. An opinion is not a consultation or deliberation.
- [62] Therefore, I find that Health did not properly apply subsection 17(1)(b)(i) of FOIP to pages such as pages 24, 74 to 75, 140, 142, 192, 214 to 215 and 234. My findings and recommendations are set out in the Appendix.

5. Did Health properly apply subsection 18(1)(b) of FOIP?

[63] Health applied subsection 18(1)(b) of FOIP to pages 20 and 27. Pages 20 and 27 are duplicates of a second page of a briefing note. Contained within these pages is information regarding the approximate cost of transferring a certain number of patients.

[64] Subsection 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 monetary value;

[65] My office uses the following three-part test to determine if subsection 18(1)(b) of FOIP applies:

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

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

[66] In its submission, Health provided the following argument as to why subsection 18(1)(b) of FOIP applies to pages 20 and 27:

The withheld information on pages 20, and 27 qualifies as commercial information because it is information related to the buying and costs of services. These costs were prepared specifically for the Ministry for the purposes of government initiated out of province transfers, therefore the Ministry has a right to use this information.

Therefore, the Ministry submits the above-mentioned information meets the requirements for an exemption from disclosure pursuant to subsection 18(1)(b) and was withheld appropriately.

[67] I note that subsection 11(a) of Ontario's *Municipal Freedom of Information and Protection of Privacy Act* (ON MFIPPA) is similar to subsection 18(1)(b) of FOIP. In [Order M-654](#), Ontario's Office of the Information and Privacy Commissioner (ON IPC) explained the purpose of subsection 11(a) of ON MFIPPA:

The use of the term "monetary value" in section 11(a) requires that the information itself have an intrinsic value. The purpose of section 11(a) is to permit an institution to refuse to disclose a record which contains information where circumstances are such that disclosure would deprive the institution of the monetary value of the information...

[68] Therefore, in order for information to be exempted pursuant to subsection 18(1)(b) of FOIP, the information itself must have monetary value for Health. Information about the approximate cost of transferring patients does not have an intrinsic monetary value. Therefore, I find Health did not properly apply subsection 18(1)(b) of FOIP to pages 20 and 27. My findings and recommendations are set out in the Appendix.

6. Did Health properly apply subsection 19(1)(b) of FOIP?

[69] Health applied subsection 19(1)(b) of FOIP to pages 36 to 47, 52 to 63, 94 to 105, 115, 122 and 130. I have already found that subsection 17(1)(a) of FOIP applies to some of these pages. Therefore, I will only consider pages 46, 62, 104, 115, 122 and 130.

[70] Subsection 19(1)(b) of FOIP provides:

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

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

[71] My office uses the following three-part test to determine if subsection 19(1)(b) of FOIP applies:

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?
2. Was the information supplied by the third party to a government institution?
3. Was the information supplied in confidence implicitly or explicitly?

(*Guide to FOIP*, Ch. 4, pp. 201-205)

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

[72] In its submission, Health asserted the information to which it applied subsection 19(1)(b) of FOIP qualifies as commercial information. It noted that it applied subsection 19(1)(b) of FOIP to information that are cost estimates of services by third parties (pages 36, 37, 44 to 47, 52, 53, 60 to 63, 94, 95 and 102 to 105), information about services that can be provided by third parties (pages 38 to 43, 54 to 59 and 96 to 101), information about services provided by a contracted third party (pages 115 and 122), and information about the cost of a medical device (page 130).

[73] Page 201 of the *Guide to FOIP*, Ch. 4, defines “commercial information” as follows:

“Commercial information” is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records.

[74] As I have mentioned earlier, I have already found that subsection 17(1)(a) of FOIP applies to some of the information on pages to which Health applied subsection 19(1)(b) of FOIP. Therefore, there is no need to consider that information here. However, I note that pages 46, 62, and 104 each contain a bullet point that describes the approximate cost of transferring a certain number of patients. I have not found that subsection 17(1)(a) of FOIP applies to this particular information, so I will consider whether subsection 19(1)(b) applies to this bullet point.

- [75] The bullet point that appears on pages 46, 62 and 104 describes the estimated approximate cost of transferring a certain number of patients. I am satisfied that this qualifies as commercial information as it relates to the buying of services from third parties. I will consider if this information meets the second part of the three-part test.
- [76] Pages 115 and 122 contain the description of services that are to be provided by the contracted third party. The description of the services has been released to the Applicant; however, Health has redacted the name of the contracted third party service provider pursuant to subsection 19(1)(b) of FOIP. The name of a company is not commercial information. Therefore, the first part of the three-part test is not met for the redacted information on pages 115 and 122. I find that Health did not properly apply subsection 19(1)(b) of FOIP to pages 115 and 122. I also note that the name of the third party service provider is publicly available through the [Hansard](#) Verbatim Report dated November 30, 2021 for the Standing Committee on Human Services, so there is no need to withhold this information pursuant to any exemption.
- [77] Finally, page 130 is an email by a SHA employee. The SHA employee provides an approximate cost of a device but indicates a quote is being requested from the third party. Health redacted the approximate cost of the device. I find that the cost of a device qualifies as commercial information. I will consider if this information meets the second part of the three-part test.

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

- [78] Page 203 of the *Guide to FOIP*, Ch.4, defines “supplied” as being provided or furnished. Information may qualify as “supplied” if it was directly supplied to a government institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.
- [79] In its submission, Health said the following:

The third parties are private air ambulance providers that provide emergency travel services to individuals requiring health care services. The Saskatchewan Health Authority received information from various third-party air ambulance providers regarding costs and services for transporting patients out of province. The Saskatchewan Health Authority then provided that information to the Ministry for the purposes of making decisions and providing approvals for out of province transport. Therefore, the information originated from third parties and was supplied by the third parties to the Ministry.

[80] The bullet point on pages 46, 62 and 104, appears to be an estimated approximate cost of transporting patients for more than one contracted air ambulance service provider. This information – the estimated approximate cost – was not supplied by a third party. It could have been derived from information supplied by multiple third parties but the information itself was not supplied by a third party. Therefore, the second part of the three-part test is not met. I find that Health did not properly apply subsection 19(1)(b) of FOIP to the bullet point on pages 46, 62 and 104.

[81] Health did not provide arguments as to how the approximate cost of a device was supplied by a third party on page 130. However, I note that it was the SHA employee who indicated the approximate cost of the device in the email and then said that a quote was being requested from the third party. Therefore, the approximate cost of the device was not supplied by a third party. Therefore, the second part of the three-part test is not met. I find that Health did not properly apply subsection 19(1)(b) of FOIP to the information redacted on page 130.

[82] There is no need to consider the third part of the three-part test since I have either found that Health properly applied subsection 17(1)(a) of FOIP to the information where it applied subsection 19(1)(b) of FOIP, or the information has not met the first or second part of the three-part test for subsection 19(1)(b) of FOIP.

[83] My findings and recommendations are set out in the Appendix.

7. Did Health properly apply subsection 19(1)(c)(i) of FOIP?

[84] Health applied subsection 19(1)(c)(i) of FOIP to the same pages as it applied subsection 19(1)(b) of FOIP - pages 36 to 47, 52 to 63, 94 to 105, 115, 122, and 130. Similar to what I said in my analysis of subsection 19(1)(b) of FOIP, I have already found that subsection 17(1)(a) of FOIP applies to some of the information on pages to which Health applied subsection 17(1)(a) of FOIP. Therefore, I will only consider pages 46, 62, 104, 115, 122 and 130.

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

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

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

(i) result in financial loss or gain to;

...
a third party;

[86] Page 211 of the *Guide to FOIP*, Ch. 4, outlines the following two-part test my office uses to determine if subsection 19(1)(c)(i) of FOIP applies:

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

[87] Page 211 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

- “Financial loss or gain” must be monetary, have a monetary equivalent, or value (e.g. loss of revenue or loss of corporate reputation).
- “Could reasonably be expected to” means there must be a reasonable expectation that disclosure could result in financial loss or gain to a third party.

[88] Further, page 215 of the *Guide to FOIP*, Ch. 4, provides that the harm must be described in a precise and specific way in order to support the application of the provision. The

expectation of harm must be reasonable, but it need not be a certainty. The evidence of harm must:

- Show how the disclosure of the information would cause harm;
- Indicate the extent of harm that would result; and
- Provide facts to support the assertions made.

[89] In its submission, Health provided the following arguments:

The financial loss being claimed is the revenue loss that could occur if the withheld information were released. Disclosing the withheld information could put the third parties at a competitive risk and advance the interest of competitors, which could result in a revenue loss for the third parties.

...

The information was provided in order for the Ministry to make the decision about which third party or parties would be contracted to provide services. Third party air ambulance providers would prepare this information using a combination of industry knowledge and experience along with knowledge of the operational capacities unique to that third party. Disclosure of cost estimates, services provided, and locations served would assist competitors in anticipating bids and obtaining an advantage over the third parties in securing contracts with the Ministry. This information gives competitors an advantageous position and is reasonably expected to result in the financial loss for the third-party air ambulance providers.

[90] Based on how Health redacted the records and based on its submission, it is not entirely clear on which information Health is applying subsection 19(1)(c)(i) of FOIP. For example, Health redacted all of pages 46, 62 and 104. They are triplicates of page 3 of a briefing note. I have not found that subsections 17(1)(a) or 19(1)(b) of FOIP apply to any portion of these pages. The information on these pages includes:

- a strategy on transporting patients;
- out of province ICU capacity requirements;
- roles and responsibilities of Health and the SHA; and
- estimated costs.

[91] The first three topics do not appear to contain any information about third parties. Therefore, there is no possibility that subsection 19(1)(c)(i) of FOIP would apply to that type of information. The fourth topic, estimated costs, appears to include the approximate estimated cost for contracting third party air ambulance service providers to transport a certain number of patients. This approximate estimated cost appears to be a sum of estimated cost to contract with more than one third party service provider. The redacted information is not delineated as to show the cost of contracting each third party. Therefore, the information is not about any single third party. Therefore, it is unclear how the release of the approximate estimated cost to contract with more than one third party service provider would put any of the third parties “at a competitive risk and advance the interest of competitors which could result in a revenue loss for the third parties”. I find that Health did not properly apply subsection 19(1)(c) of FOIP to pages 46, 62 and 104.

[92] Regarding the redacted information on pages 115 and 122, I have already found this information is publicly available. Therefore, there is no need to withhold this information pursuant to any exemption.

[93] Page 130 contains an email by a SHA employee. I note that all of page 130 has been released to the Applicant except for the approximate cost of a device by one third party. As noted earlier in my analysis of subsection 19(1)(b) of FOIP, the SHA provides an approximate cost of a device by Medtronic. Based on Health’s submission, Health has not identified what the harm of disclosing the approximate cost of the device nor has it explained how the disclosure of the information would cause the harm. I find that Health has not properly applied subsection 19(1)(c)(i) of FOIP to page 130.

8. Did Health properly apply subsection 13(1)(a) of FOIP?

[94] Health applied subsection 13(1)(a) of FOIP to a portion of page 172 and a portion of page 173. I note that pages 172 and 173 contains additional portions redacted pursuant to subsection 13(1)(b) of FOIP, which I will analyze later.

13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

(a) the Government of Canada or its agencies, Crown corporations or other institutions;

[95] My office uses the following three-part test to determine if subsection 13(1)(a) of FOIP applies:

1. Was the information obtained from the Government of Canada or its agencies, Crown corporations or other institutions?
2. Was the information obtained implicitly or explicitly in confidence?
3. Is there consent to disclose the information or has the information been made public?

(*Guide to FOIP*, Ch. 4, pp. 17-21)

[96] Pages 22 and 23 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

- “Obtained” means to acquire in any way; to get possession of; to procure; or to get a hold of by effort.
- “Information” means facts or knowledge provided or learned as a result of research or study.
- “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 party that provided the information at the time the information was obtained.
- “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.
- “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated, or made definite. There may be documentary evidence that shows that the information was obtained with the understanding that it would be kept confidential.

[97] In its submission, Health provided the following arguments:

Pages 172 to 173 contains information from the Public Health Agency of Canada.

...

The information contained on pages 160, 172 to 174 and 176 of the responsive records was obtained in confidence. Information gathered from federal and provincial government agencies and institutions was done in the context of providing assistance regarding the COVID-19 pandemic. The Ministry sent and received requests from other governments for assistance during this time and there was an understanding between jurisdictions that information regarding response to the pandemic would not be disclosed unless the jurisdiction's information was publicly available.

...

Pages 172 to 174 and 176 contains a communication summary pertaining to federal and provincial government agencies and institutions' requests for assistance to provide health care services for their citizens with COVID-19. This information was not publicly released, and the other governments' formal requests to Saskatchewan for assistance regarding the COVID-19 pandemic was provided in confidence. Consent to release this information was not provided from the other governments.

[98] Based on the information that was released to the Applicant on page 172, it appears that some of the redacted information on pages 172 and 173 are from the Public Health Agency of Canada's (PHAC) Operational Framework for Mutual Aid Requests (OFMAR) program. PHAC is an agency of the Government of Canada pursuant to Schedule I of the federal *Access to Information Act*.

[99] The portion of page 173 that Health redacted pursuant to subsection 13(1)(a) of FOIP appears to be information from PHAC's OFMAR program. However, the information redacted pursuant to subsection 13(1)(a) of FOIP at the bottom of page 172 appears to be Health's response to the request for aid. Therefore, the information redacted pursuant to subsection 13(1)(a) of FOIP on page 172 is not information "obtained" from an agency of the Government of Canada.

[100] Regarding whether the redacted information on page 173 was obtained in confidence, Health asserted in its submission that it obtained the information in confidence (as quoted above). It said that "there was an understanding between jurisdictions that information regarding response to the pandemic would not be disclosed unless the jurisdiction's

information was publicly available.” It’s unclear what Health means by “unless the jurisdiction’s information was publicly available.” Health has not provided my office with any memorandum of understanding (MOU) between the federal government and provinces and territories indicating requests for assistance was to be kept confidential. I also note that Public Safety Canada’s [website](#) provides details of requests for federal assistance here during the pandemic. This suggests there is no understanding between jurisdictions that the information is to be kept confidential. Health has not met the burden of proof pursuant to section 61 of FOIP demonstrating that subsection 13(1)(a) of FOIP applies.

[101] I find that Health has not properly applied subsection 13(1)(a) of FOIP to pages 172 and 173. My findings and recommendations are set out in the Appendix.

9. Did Health properly apply subsection 13(1)(b) of FOIP?

[102] Health applied subsection 13(1)(b) of FOIP to pages 28, 29, 128, 160, 172 to 174 and 176.

A description of the redactions are below:

- The redacted portions on pages 28 and 29 are the cost estimates of sending family members to travel to Ontario with transferred ICU patients.
- The redacted portion on pages 128 identifies a province that may potentially be able to deploy resources to Saskatchewan.
- The redacted portion on page 160 describes a practice undertaken by another province.
- The redacted portions on pages 172 to 173 contains descriptions of OFMAR requests and Health’s response to such requests.
- The redacted portions on pages 174 and 176 identifies jurisdictions that have contacted Saskatchewan for assistance.

[103] Subsection 13(1)(b) of FOIP provides:

13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

...

(b) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;

[104] My office uses the following three-part test to determine if subsection 13(1)(b) of FOIP applies:

1. Was the information obtained from the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions?
2. Was the information obtained implicitly or explicitly in confidence?
3. Is there consent to disclose the information or has the information been made public?

(Guide to FOIP, Ch. 4, pp. 22-25)

[105] Earlier, I provided the definitions of the terms obtained, information, in confidence, implicitly and explicitly in my analysis of subsection 13(1)(a) of FOIP.

[106] In its submission, Health said the following:

Pages 128 and 160 contains information gathered from the Government of Ontario. Pages 172 to 174 and page 176 contain information from the Government of the Northwest Territories, the Government of Nunavut, the Government of British Columbia and the Government of Yukon.

...

The information contained on pages 160, 172 to 174 and 176 of the responsive records was obtained in confidence. Information gathered from federal and provincial government agencies and institutions was done in the context of providing assistance regarding the COVID-19 pandemic. The Ministry sent and received requests from other governments for assistance during this time and there was an understanding between jurisdictions that information regarding response to the pandemic would not be disclosed unless the jurisdiction's information was publicly available.

...

Pages 28 and 29 contains information regarding the Province of Ontario's estimated financial costs regarding the transfer of Ontario ICU patient transfers. This information was not publicly released, and the other governments' formal requests to Saskatchewan for assistance regarding the COVID-19 pandemic was provided in confidence. Consent to release this information was not provided from the other governments.

- [107] I note that the information on pages 28 and 29 was not obtained from the government of another province or territory of Canada, or its agencies, Crown Corporations or other institutions. Therefore, I find that Health has not properly applied subsection 13(1)(b) of FOIP to the redacted portions of pages 28 and 29.
- [108] The redacted portion on page 128 identifies a province that may potentially be able to deploy resources to Saskatchewan. First, I note that the information would have been obtained from the other province. Second, the information on page 128 that was released to the Applicant is about Saskatchewan seeking additional perfusionists during the recent pandemic. The redacted information was information obtained from another province but given the fluidity of the situation and the fact the other province merely indicated it “may potentially” have resources that could be deployed, it is reasonable to believe the information was obtained in confidence. I find that Health properly applied subsection 13(1)(b) of FOIP to the redacted portion on page 128.
- [109] The redacted portion on page 160 describes a practice undertaken by another province. First, the information would have been obtained from another province. Second, though, I do not find that the information was obtained in confidence. Since it is a practice that has been undertaken by the other province, this suggests that knowledge of the practice is available to the public. I find that Health has not properly applied subsection 13(1)(b) of FOIP to the redacted portion on page 160.
- [110] Pages 172 and 173 contains descriptions of OFMAR requests from other provinces and territories and Health’s response to such requests. Similar to what I found in my analysis of subsection 13(1)(a) of FOIP, the descriptions of the OFMAR requests would be information obtained from other provinces or territories. However, Health’s response to such requests would not have been “obtained” from other provinces or territories. Further, as described in my analysis of subsection 13(1)(a) of FOIP, Health has not met the burden of proof that it obtained such information in confidence. Therefore, I find that Health has not properly applied subsection 13(1)(b) of FOIP to pages 172 and 173.

[111] Pages 174 and 176 identifies jurisdictions that have contacted Saskatchewan for assistance. Similar to my finding regarding OFMAR requests, Health has not demonstrated that the requests for assistance was obtained in confidence. I find that Health has not properly applied subsection 13(1)(b) of FOIP to pages 174 and 176.

10. Did Health properly apply subsection 13(2) of FOIP?

[112] Health applied subsection 13(2) of FOIP to pages 24, 139, 140 and 142. These pages contain two emails. The first email is dated October 7, 2021 and timestamped 10:40 p.m. The second email is dated October 7, 2021, and timestamped 10:47 p.m.

[113] Subsection 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.

[114] My office uses the following two-part test to determine if subsection 13(2) of FOIP applies:

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. 35-36)

[115] Earlier in this Report, I provided the definitions of the terms of obtained, information, in confidence, implicitly and explicitly. Subsection 2(2) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) points to the definition of “local authority” in subsection 2(1)(f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Subsection 2(1)(f) of LA FOIP provides:

2(1) In this Act:

...
(f) “**local authority**” means:

...

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

[116] I note that the SHA qualifies as a “local authority” pursuant to subsection 2(1)(f)(xiii) of LA FOIP.

[117] In its submission, Health provided the following arguments as to why subsection 13(2) of FOIP applies to pages 24, 139, 140 and 142:

The information contained on pages 24, 139, 140 and 142 are emails from employees of the Saskatchewan Health Authority to the Ministry. Therefore, the first part of this test is met.

The email threads on pages 24, 139, 140, and 142 contain an email response from a Saskatchewan Health Authority employee about a decision regarding critical care transfers that was provided to the Ministry in confidence. This decision was not released to the public and Saskatchewan Health Authority did not consent to the release of this information to the Applicant. The Saskatchewan Health Authority requested the information in these email threads be withheld in their June 22, 2023, response to the third-party notice provided.

Therefore, the second part of the test has been met as the Saskatchewan Health Authority explicitly stated in their third-party notice to withhold the information contained in the email thread.

[118] Regarding the first email (the email timestamped 10:40 p.m.), Health released the email header and email signature that was on pages 24, 140 and 142, but redacted a portion of the body of the email pursuant to subsection 13(2) of FOIP. The email was sent by the former President and Chief Executive Officer (CEO) of the SHA. Therefore, the information was obtained from a local authority, which meets the first part of the two-part test. I note that the redacted information is the former President and CEO’s opinion on a matter. In [Review Report 202-2020](#) at paragraph [85], I considered correspondence between a Hamlet and the Ministry of Government Relations (Government Relations). I said:

[85] However, considering all the circumstances, including the highly sensitive nature of the information severed, the frankness of the communications between the Hamlet and Government Relations and that Government Relations consistently treated this information as confidential, it would be reasonable to conclude that there was a mutual

understanding that this information would be treated in confidence. Therefore, I find that Government Relations appropriately applied section 13(2) of FOIP,...

[119] Similarly, when I review the redacted information from the email timestamped 10:40 p.m., I note that there is a frankness to the communication that it would be reasonable to conclude that there was a mutual understanding that this information would be treated in confidence. Therefore, the second part of the two-part test is met. I find that Health properly applied subsection 13(2) of FOIP to the body of the email timestamped 10:40 p.m. on pages 24, 140 and 142. Similar to my recommendation for subsections 17(1)(a) and (b) of FOIP, I recommend that Health reconsider the exercise of its discretion and determine if it will release the email timestamped 10:40 p.m. on pages 24, 140 and 142.

[120] Regarding the second email (the email timestamped 10:47 p.m.), I note it was released to the Applicant on page 24, but it was redacted on pages 139 and 142. Since it has been released on page 24, I recommend that Health release the email on pages 139 and 142 as well.

11. Did Health properly apply subsection 29(1) of FOIP?

[121] Health applied subsection 29(1) of FOIP to portions of pages 6 to 8, 10, 12, 23, 30, 32 to 33, 65 to 66, 68 to 70, 73, 76, 81, 112, 132, 134 to 135, 137, 138, 155, 189, 213, 216, 221 and 232.

[122] 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.

[123] In order for subsection 29(1) of FOIP to apply, the withheld information must qualify as a third party's "personal information" as defined by subsection 24(1) of FOIP.

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

[124] When determining whether information qualifies as “personal information”, my office asks the following two questions:

1. Is the information about an identifiable individual?
2. Is the information personal in nature?

(*Guide to FOIP*, Chapter 6, “Protection of Privacy”, updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 34)

[125] Based on a review of the records, it appears that Health applied subsection 29(1) of FOIP to two types of information. First, it applied subsection 29(1) of FOIP to “business card information” of individuals who are not employees of a government institution. Second, it redacted information that it believed could be combined with other available sources of information to enable a person to accurately infer the identity of a person.

[126] First, page 36 of the *Guide to FOIP*, Ch. 6, defines “business card information” as follows:

“Business card information” is the type of information found on a business card (name, job title, work address, work telephone numbers and work email address). This type of information is generally not personal in nature and therefore would not be considered personal information. This is considered “business contact information” and not personal information.

[127] Page 37 of the *Guide to FOIP*, Ch. 6, explains why my office takes the position business card information is not “personal information:

The rationale for a distinction between personal information and information that relates to a person in their professional or official capacity preserves the integrity of the regime that establishes the public’s right of access and government’s disclosure obligations. Without this distinction, the routine disclosure of information by government would be greatly impeded. For example, withholding all recorded information relating to the activities of public servants or other individuals in their professional or official capacities impedes FOIP’s overarching goal of creating accountability and transparency over government activities. Further, not differentiating between information that is personal in nature and information that relates to a person’s professional capacity would frustrate the purpose of FOIP, namely that information under the possession or control of a government institution should be made available to the public (unless subject to a limited and specific exemption).

[128] Therefore, I find that Health has not properly applied subsection 29(1) of FOIP to business card information. My findings and recommendations are set out in the Appendix.

[129] Second, regarding information Health believes could be combined with other available sources of information to accurately infer the identity of an individual, Health said the following:

Chapter 6 of IPC Guide to FOIP states on page 33 that individuals are considered identifiable where the information “either directly identifies a person or enables an accurate inference to be made as to their identity when combined with other available sources of information (data linking) or due to the context of the information in the record.” This means that individuals can still be identifiable, even when their names are removed. The ability to re-identify is increased when the information contains unique characteristics (e.g., unusual occupation, unusual death, or event) and the existence of external sources of records with matching data elements which can be used to link with the de-identified information (e.g., voter registration records, newspapers, obituaries, social media sites and other public registries).

The risk of re-identification increases as the number of variables increases, as the accuracy or resolution of the data increases and the number of external sources increases. This information, which could reasonably be used to identify an individual, is referred to as quasi-identifiers below.

[130] Health goes on to indicate that information on pages 23, 81, 112, 132, 189, 216, 221 and 232, contains “quasi-identifiers” that may lead to the identification of individuals. However, I disagree. For example, Health redacted the number of patients transferred from the Royal University Hospital in Saskatoon and the Regina General Hospital on October 7, 2021. It is unclear how that information could be used to identify a patient. And even if a patient could be identified, it is unclear what personal information would be revealed about the patient who was transferred on that date from those hospitals if those numbers were disclosed.

[131] Another example is on pages 23 and 132. The location (name of city) of a patient that may be transferred was redacted. Health has not provided any argument as to how the location of the patient could lead to the identification of the specific patient being discussed. On the

face of the record, it is unclear how the information could lead a reader to accurately infer the identity of the patient being discussed.

[132] Further, page 221 contains an email where it describes the condition of a patient. The author of the email describes the patient in a way that even the recipients of the email likely could not identify which patient is being discussed. It's unclear how the information could lead to the identification of the specific patient being discussed. Further, if identifiable, since describing the condition of a patient, HIPA, not FOIP would arguably apply.

[133] I find that Health has not properly applied subsection 29(1) of FOIP. My findings and recommendations are set out in the Appendix.

12. Did Health properly apply subsection 27(1) of HIPA?

[134] Health applied subsection 27(1) of HIPA to pages 7, 76, 81, 112, 130, 155, 189, 216, 221 and 232.

[135] Subsection 27(1) of HIPA provides:

27(1) A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.

[136] "Personal health information" is defined in subsection 2(1)(m) of HIPA as follows:

2(1) In this Act:

...

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

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

(ii) information with respect to any health service provided to the individual;

...

(iv) information that is collected:

(A) in the course of providing health services to the individual;

[137] In its submission, Health indicated it applied subsection 27(1) of HIPA to information about patient care outcomes, information with respect to a health service provided to an individual, and information that relates to the physical or mental health of an individual, and information that was collected in the course of providing health services to the individual. It also said it applied subsection 27(1) of HIPA to “small numbers”. It said:

In addition to the exemptions above, the Health Information and Privacy Unit follows a work standard (ATI - Redact Small Numbers) when processing ATIs that have small number regarding aggregated health and related data provided to the public.

The ATI- Redact Small Numbers work standard complies with the Ministry’s Guidelines for Working with Small Numbers. The Guidelines provide direction on how to manage information that contains small numbers with population-based data.

Most problems with confidentiality occur when the population from which the events arise (i.e., denominator) is small, but the number of events (i.e., numerator) might also be important. For example, if there are 5,000 individuals in a specific age-race-sex group in a single neighbourhood, the likelihood of identifying a single individual from data in a published table is quite small. In smaller populations, it is more likely that an individual might be identifiable. However, even in larger populations, it is conceivable that a single individual might be identifiable, if there are only one or two individuals with some special characteristic.

For example, in a modest sized community, it may be commonly known that there is only one child who is frequently hospitalized, and a table showing that this community has one case of pediatric HIV-AIDS could unintentionally allow knowledgeable residents to infer the child’s illness. Similarly, if a unique individual, such as one of the parents of the frequently hospitalized child described above, were drawn into a survey, knowledgeable residents might infer the illness of the child from survey data indicating one child with HIV-AIDS in that community. Thus, the same cautions for population data generally apply to survey data as well.

The responsive records for this request contain small numbers that when linked with other information (quasi-identifiers) could reasonably be used to re-identify individuals.

[138] With the exception of a redacted paragraph at page 7, I find that Health has not properly applied subsection 27(1) of HIPA. The information that it claims that subsection 27(1) of HIPA applies does not contain identifiable information, nor has Health demonstrated that

information can be linked to other publicly available information in order to identify individuals. While I appreciate the caution that Health is exercising regarding small numbers, Health cannot merely just redact such information because it is a small number. There still needs to be context and reasons as to why the small number can be linked to publicly available information in order to re-identify an individual.

[139] Regarding page 7, there is a paragraph that contains the personal health information of an individual. The paragraph includes the name of an individual, information about health services provided to the individual, and a description of a physical illness. Such information qualifies as personal health information as defined by subsection 2(1)(m)(i), (ii), and (iv) of HIPA. I find that Health properly applied subsection 27(1) of HIPA to this paragraph at page 7.

[140] My findings and recommendations are set out in the Appendix.

13. Is there information that is not responsive to the access request?

[141] Health redacted information on pages 123, 178,179, 182, 183, 185, 187, 197, 198, 206, 207, 228, 230, 240 and 241, it regarded as “non-responsive” to the Applicant’s access request.

[142] When a government institution receives an access to information request, it must determine what information is responsive to the access request. “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 related to an applicant’s request will be considered “not responsive” (*Guide to FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023, [*Guide to FOIP*, Ch. 3], at p. 26).

[143] When determining what information is responsive, consider the following:

- The request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

- A government institution can remove information as not responsive only if the applicant has requested specific information, such as the applicant's own personal information.
- The government institution may treat portions of a record as not responsive if they are clearly separate and distinct and entirely unrelated to the access request. However, use it sparingly and only where necessary.
- If it is just as easy to release the information as it is to claim not responsive, the information should be released (i.e., releasing the information will not involve time consuming consultations nor considerable time weighing discretionary exemptions).
- The purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If it is unclear what the applicant wants, a government institution should contact the applicant for clarification. Generally, ambiguity in the request should be resolved in the applicant's favour.

(Guide to FOIP, Ch. 3, pp. 26-27)

[144] Based on a review of the records, I find that the information marked as non-responsive on pages 123, 178 to 179, 182 to 183, 185, 187, 197 to 198, 206 to 207, 228, 230 and 240 to 241 are indeed non-responsive. The information appears to be topics beyond the topic of transferring patients out of Saskatchewan.

[145] However, as I have said in past reports, such as [Review Report 155-2022](#) at paragraph [87], and in my blog, ["What About the Non-Responsive Record?"](#), I recommend that Health release the non-responsive information to the Applicant, subject to any exemptions that may apply.

IV FINDINGS

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

[147] I find that Health is not in compliance with the legislated timelines set out in sections 7 and 12 of FOIP.

- [148] I find that Health properly applied subsection 17(1)(a) of FOIP to some of the pages it applied the exemption, as outlined in the Appendix.
- [149] I find that Health did not properly apply subsection 17(1)(a) of FOIP to some of the pages it applied the exemption, as outlined in the Appendix.
- [150] I find that Health properly applied subsection 17(1)(b)(i) of FOIP applies to the bodies of the emails on pages 76 to 77 and 216 to 217.
- [151] I find that Health did not properly apply subsection 17(1)(b)(i) of FOIP to some of the pages it applied the exemption, as outlined in the Appendix.
- [152] I find Health did not properly apply subsection 18(1)(b) of FOIP to pages 20 and 27.
- [153] I find that Health did not properly apply subsection 19(1)(b) of FOIP to pages 115 and 122.
- [154] I find that Health did not properly apply subsection 19(1)(b) of FOIP to the bullet points on pages 46, 62 and 104.
- [155] I find that Health did not properly apply subsection 19(1)(b) of FOIP to the information redacted on page 130.
- [156] I find that Health did not properly apply subsection 19(1)(c)(i) of FOIP to pages 46, 62 and 104.
- [157] I find that Health did not properly apply subsection 19(1)(c)(i) of FOIP to pages 115 and 122.
- [158] I find that Health properly applied subsection 19(1)(c)(i) of FOIP to the redaction information on page 130.

[159] I find that Health has not properly applied subsection 13(1)(a) of FOIP to pages 172 and 173.

[160] I find that Health has not properly applied subsection 13(1)(b) to the redacted portions of pages 28 and 29.

[161] I find that Health properly applied subsection 13(1)(b) of FOIP to the redacted portions on page 128, 160, 172, 173, 174 and 176.

[162] I find that Health properly applied subsection 13(2) of FOIP to the body of the email timestamped 10:40 p.m. on pages 24, 140 and 142.

[163] I find that Health has not properly applied subsection 29(1) of FOIP.

[164] I find that Health properly applied subsection 27(1) of HIPA to the redacted paragraph on page 7.

[165] I find that Health has not properly applied subsection 27(1) of HIPA to the records, with the exception of the redacted paragraph on page 7.

[166] I find that the information marked as non-responsive pages 123, 178 to 179, 182 to 183, 185, 187, 197 to 198, 206 to 207, 228, 230, and 240 to 241 are indeed non-responsive.

V RECOMMENDATIONS

[167] I recommend, within 30 days of the issuance of this Report, that Health provide my office with a full explanation of the “many factors” that contributed to the processing delay of this access request.

[168] I recommend that Health provide my office with who was involved in approving the processing of this access request and the dates in which they provided their approval.

[169] I recommend that Health refund the \$300.00 the Applicant paid as a deposit due to the excessive delay in responding to the Applicant's access request. This should be done within 30 days of the issuance of this Report.

[170] I recommend that Health reconsider the exercise of its discretion and determine if it will release additional information from the pages to which it properly applied subsection 17(1)(a) of FOIP to the Applicant. Health should take into consideration the factors set out at paragraph [41].

[171] I recommend that Health reconsider the exercise of its discretion and determine if it will release any additional information from the pages to which it properly applied subsection 17(1)(b)(i) of FOIP to the Applicant. Health should take into consideration the factors set out at paragraph [41].

[172] I recommend that Health reconsider the exercise of its discretion and determine if it will release any additional information from pages 24, 140 and 142 to which it properly applied subsection 13(2) of FOIP. Health should take into consideration the factor set out at paragraph [41].

[173] I recommend that Health release the non-responsive information to the Applicant, subject to any exemptions that may apply.

[174] I recommend that Health comply with the recommendations set out in the Appendix.

Dated at Regina, in the Province of Saskatchewan, this 30th day of January, 2024.

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

Appendix

Page	Exemptions applied by Health	IPC Findings	IPC Recommendations
1	Released		
2	Released		
3	Released		
4	Released		
5	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
6	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
7	29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA applies to the redacted paragraph in the email timestamped 12:51 p.m.	Withhold the redacted paragraph in the email timestamped 12:51 p.m. pursuant to subsection 27(1) of HIPA. Release remainder.
8	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
9	Released		
10	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
11	Released		
12	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
13	Released		
14	Released		
15	Released		
16	Released		
17	Released		
18	Released		
19	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to contents under "Capacity Issues". 17(1)(a) of FOIP applies to contents under "Recommendations".	Release content under "Issue" heading. Re-consider discretion and determine if additional information can be released.
20	17(1)(a); 17(1)(b)(i); 18(1)(b) of FOIP	17(1)(a) of FOIP applies to second	Reconsider discretion and determine if the second bullet

		bullet point under heading “Air Transport Options”. 17(1)(b)(i) of FOIP does not apply. 18(1)(b) of FOIP does not apply.	point under heading “Air Transport Options” can be released. Release remainder of contents.
21	17(1)(a) of FOIP; non-responsive	17(1)(a) of FOIP does not apply.	Release.
22	Released.		
23	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
24	13(2); 17(1)(a); 17(1)(b) of FOIP	13(2) of FOIP applies.	Re-consider discretion and determine if the information can be released.
25	Released.		
26	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to contents under “Capacity Issues”. 17(1)(a) of FOIP applies to contents under “Recommendations”.	Release content under “Issue” heading. Re-consider discretion and determine if additional information can be released.
27	17(1)(a); 17(1)(b)(i); 18(1)(b) of FOIP	17(1)(a) of FOIP applies to second bullet point under heading “Air Transport Options”. 17(1)(b)(i) of FOIP does not apply. 18(1)(b) of FOIP does not apply.	Reconsider discretion and determine if the second bullet point under heading “Air Transport Options” can be released. Release remainder of contents.
28	13(1)(b) of FOIP	13(1)(b) of FOIP does not apply.	Release.
29	13(1)(b) of FOIP	13(1)(b) of FOIP does not apply.	Release.
30	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
31	Released		

32	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
33	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
34	Released		
35	Released		
36	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies.	Reconsider discretion and determine if any information can be released.
37	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies.	Reconsider discretion and determine if any information can be released.
38	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under "Assessment heading" (from pages 39 to 41).	Release content under "Situation" and "Background" headings. Reconsider discretion and determine if any further information can be released.
39	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under "Assessment heading" (from pages 39 to 41).	Reconsider discretion and determine if any information can be released.
40	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under "Assessment heading" (from pages 39 to 41).	Reconsider discretion and determine if any information can be released.
41	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under "Assessment heading" (from pages 39 to 41).	Reconsider discretion and determine if any information can be released.
42	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to contents under Recommendation heading.	Reconsider discretion and determine if any information can be released.
43	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to contents.	Reconsider discretion and determine if any information can be released.
44	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to paragraph and Figure 1 under "Background" heading.	Release content under "Situation" heading.

		<p>19(1)(b) of FOIP does not apply.</p> <p>19(1)(c) of FOIP does not apply.</p>	<p>Reconsider discretion and determine if any further information can be released.</p>
45	<p>17(1)(a); 19(1)(b); 19(1)(c) of FOIP</p>	<p>17(1)(a) of FOIP applies to the first two paragraphs at top of the page.</p> <p>17(1)(a) of FOIP applies to the first three paragraphs under the "Assessment" heading.</p> <p>19(1)(b) of FOIP does not apply.</p> <p>19(1)(c) of FOIP does not apply.</p>	<p>Release the third and fourth paragraph.</p> <p>Release contents under "Air transport requirements".</p> <p>Reconsider discretion and determine if any further information can be released.</p>
46	<p>17(1)(a); 19(1)(b); 19(1)(c) of FOIP</p>	<p>17(1)(a) of FOIP does not apply.</p> <p>19(1)(b) of FOIP does not apply.</p> <p>19(1)(c) of FOIP does not apply.</p>	<p>Release.</p>
47	<p>17(1)(a); 19(1)(b); 19(1)(c) of FOIP</p>	<p>17(1)(a) of FOIP applies to contents under "Recommendation" heading.</p> <p>19(1)(b) of FOIP does not apply.</p> <p>19(1)(c) of FOIP does not apply.</p>	<p>Release contents under "Timing" heading.</p> <p>Reconsider discretion and determine if any further information can be released.</p>
48	<p>Released</p>		
49	<p>17(1)(a); 17(1)(b)(i) of FOIP</p>	<p>17(1)(a) of FOIP applies to contents under "Capacity Issues".</p>	<p>Release content under "Issue" heading.</p>

		17(1)(a) of FOIP applies to contents under “Recommendations”.	Re-consider discretion and determine if additional information can be released.
50	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to second bullet point under heading “Air Transport Options”. 17(1)(b)(i) of FOIP does not apply.	Reconsider discretion and determine if the second bullet point under heading “Air Transport Options” can be released. Release remainder of contents.
51	Released		
52	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies.	Reconsider discretion and determine if any information can be released.
53	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies.	Reconsider discretion and determine if any information can be released.
54	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under “Assessment heading” (from pages 54 to 57).	Release content under “Situation” and “Background” headings. Reconsider discretion and determine if any further information can be released.
55	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under “Assessment heading” (from pages 54 to 57).	Reconsider discretion and determine if any information can be released.
56	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under “Assessment heading” (from pages 54 to 57).	Reconsider discretion and determine if any information can be released.
57	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under “Assessment heading” (from pages 54 to 57).	Reconsider discretion and determine if any information can be released.
58	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to contents under	Reconsider discretion and determine if any information can be released.

		Recommendation heading.	
59	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to contents.	Reconsider discretion and determine if any information can be released.
60	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to paragraph and Figure 1 under "Background" heading. 19(1)(b) of FOIP does not apply. 19(1)(c) of FOIP does not apply.	Release content under "Situation" heading. Reconsider discretion and determine if any further information can be released.
61	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to the first two paragraphs at top of the page. 17(1)(a) of FOIP applies to the first three paragraphs under the "Assessment" heading. 19(1)(b) of FOIP does not apply. 19(1)(c) of FOIP does not apply.	Release the third and fourth paragraph. Release contents under "Air transport requirements". Reconsider discretion and determine if any further information can be released.
62	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP does not apply. 19(1)(b) of FOIP does not apply. 19(1)(c) of FOIP does not apply.	Release.
63	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to contents under "Recommendation" heading.	Release contents under "Timing" heading. Reconsider discretion and determine if any further information can be released.

		19(1)(b) of FOIP does not apply. 19(1)(c) of FOIP does not apply.	
64	Released		
65	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
66	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
67	Released		
68	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
69	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
70	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
71	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
72	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the body of the email timestamped 10:25 a.m.	Release email at the top of the page (timestamped 10:31 a.m.) Release email header of email timestamped 10:25 a.m. Reconsider discretion and determine if information from the body of the email timestamped 10:25 a.m. can be released.
73	17(1)(a); 17(1)(b)(i); 29(1) of FOIP	29(1) of FOIP does not apply. 17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
74	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
75	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply.	Release.

		17(1)(b) of FOIP does not apply.	
76	17(1)(a); 17(1)(b)(i); 29(1) of FOIP; 27(1) of HIPA	17(1)(b)(i) of FOIP applies to body of emails. 17(1)(a) of FOIP does not apply. 29(1) of FOIP does not apply. 27(1) of FOIP does not apply.	Release email signatures and email headers. Reconsider discretion and determine if body of emails can be released.
77	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP applies to body of emails. 17(1)(a) of FOIP does not apply.	Release email signatures and email headers. Reconsider discretion and determine if body of emails can be released.
78	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
79	Released		
80	Released		
81	29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
82	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
83	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
84	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply.	Release.

		17(1)(b) of FOIP does not apply.	
85	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
86	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to content under “ICU Demand and Capacity”. 17(1)(b)(i) of FOIP does not apply.	Release content under the heading “Situation”. Reconsider discretion and determine if any further information can be released.
87	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to continuation of “ICU Demand and Capacity” from previous page. 17(1)(b)(i) of FOIP does not apply.	Release content under “Current Situation”. Reconsider discretion and determine if any further information can be released.
88	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to Figure 1. 17(1)(b)(i) of FOIP does not apply.	Release content under the “ICU staffing” heading. Reconsider discretion and determine if any further information can be released.
89	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to content under the “Recommendation” heading.	Release content under the “ICU staffing” heading at the top of the page. Release content under the “Surge Capacity” heading. Reconsider discretion and determine if any further information can be released.
90	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
91	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies.	Reconsider discretion and determine if any information can be released.

92	Released		
93	Released		
94	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies.	Reconsider discretion and determine if any information can be released.
95	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies.	Reconsider discretion and determine if any information can be released.
96	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under "Assessment heading" (from pages 96 to 99).	Release content under "Situation" and "Background" headings. Reconsider discretion and determine if any further information can be released.
97	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under "Assessment heading" (from pages 96 to 99).	Reconsider discretion and determine if any information can be released.
98	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under "Assessment heading" (from pages 96 to 99).	Reconsider discretion and determine if any information can be released.
99	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to options under "Assessment heading" (from pages 96 to 99).	Reconsider discretion and determine if any information can be released.
100	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to contents under Recommendation heading.	Reconsider discretion and determine if any information can be released.
101	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to contents.	Reconsider discretion and determine if any information can be released.
102	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP applies to paragraph and Figure 1 under "Background" heading. 19(1)(b) of FOIP does not apply.	Release content under "Situation" heading. Reconsider discretion and determine if any further information can be released.

		19(1)(c) of FOIP does not apply.	
103	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	<p>17(1)(a) of FOIP applies to the first two paragraphs at top of the page.</p> <p>17(1)(a) of FOIP applies to the first three paragraphs under the "Assessment" heading.</p> <p>19(1)(b) of FOIP does not apply.</p> <p>19(1)(c) of FOIP does not apply.</p>	<p>Release the third and fourth paragraph.</p> <p>Release contents under "Air transport requirements".</p> <p>Reconsider discretion and determine if any further information can be released.</p>
104	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	<p>17(1)(a) of FOIP does not apply.</p> <p>19(1)(b) of FOIP does not apply.</p> <p>19(1)(c) of FOIP does not apply.</p>	Release.
105	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	<p>17(1)(a) of FOIP applies to contents under "Recommendation" heading.</p> <p>19(1)(b) of FOIP does not apply.</p> <p>19(1)(c) of FOIP does not apply.</p>	<p>Release contents under "Timing" heading.</p> <p>Reconsider discretion and determine if any further information can be released.</p>
106	Released		
107	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
108	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
109	Released		
110	Released		
111	Released		

112	29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of FOIP does not apply.	Release
113			
114	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release
115	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP does not apply. 19(1)(b) of FOIP does not apply. 19(1)(c) of FOIP does not apply.	Release.
116	Released		
117	Non-responsive	Non-responsive.	Release.
118	Non-responsive	Non-responsive.	Release.
119	Released		
120	Released		
121	Released		
122	17(1)(a); 19(1)(b); 19(1)(c) of FOIP	17(1)(a) of FOIP does not apply. 19(1)(b) of FOIP does not apply. 19(1)(c) of FOIP does not apply.	Release.
123	17(1)(a); 17(1)(b)(i) of FOIP; non-responsive	Non-responsive.	Release.
124	Released		
125	Released		
126	Released		
127	Released		
128	13(1)(b) of FOIP	13(1)(b) of FOIP applies.	Continue to withhold.
129	27(1) of HIPA	27(1) of HIPA does not apply.	Release.
130	19(1)(b); 19(1)(c) of FOIP	19(1)(b) of FOIP does not apply.	Release.

		19(1)(c) of FOIP does not apply.	
131	Released		
132	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
133	Released		
134	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
135	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
136	Released		
137	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
138	29(1) of FOIP	29(1) of FOIP does not apply.	Release.
139	13(2); 17(1)(a); 17(1)(b)(i) of FOIP	Redacted portion already released at page 24.	Release.
140	13(2); 17(1)(a); 17(1)(b)(i) of FOIP	13(2) of FOIP applies.	Re-consider discretion and determine if the information can be released.
141	Released		
142	13(2); 17(1)(a); 17(1)(b)(i) of FOIP	Email timestamped 10:47:19 p.m. already released at page 24. 13(2) of FOIP applies to email timestamped 10:40 p.m.	Release email timestamped 10:47:19 p.m. Re-consider discretion and determine if the information in the email timestamped 10:40 p.m. can be released.
143	Released		
144	Released		
145	Released		
146	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
147	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
148	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
149	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
150	Released		
151	Released		
152	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.

153	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
154	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
155	29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
156	Released		
157	Released		
158	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
159	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
160	13(1)(b); 17(1)(a); 17(1)(b)(i) of FOIP	13(1)(b) of FOIP does not apply. 17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
161 to 171	Released		
172	13(1)(a); 13(1)(b) of FOIP	13(1)(a) of FOIP does not apply. 13(1)(b) of FOIP does not apply.	Release.
173	13(1)(b) of FOIP	13(1)(b) of FOIP does not apply.	Release.
174	13(1)(b) of FOIP	13(1)(b) of FOIP does not apply.	Release.
175	Released		
176	13(1)(b) of FOIP	13(1)(b) of FOIP does not apply.	Release.
177	Released		
178	Non-responsive	Non-responsive.	Release.
179	Non-responsive	Non-responsive.	Release.
180	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the “Recommendation” and “Background” headings.	Reconsider discretion and determine if any information can be released.

181	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to content under “Alternative Options”.	Release content under “Considerations or Implications” heading. Reconsider discretion and determine if any further information can be released.
182	Non-responsive	Non-responsive.	Release.
183	Non-responsive	Non-responsive.	Release.
184	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the “Recommendations” heading. 17(1)(b)(i) of FOIP does not apply.	Release content under the “Background” and “Out of Province Transfer Strategy” headings. Reconsider discretion and determine if any further information can be released.
185	Non-responsive	Non-responsive.	Release.
186	Released		
187	Non-responsive	Non-responsive.	Release.
188	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the “Recommendation” and “Considerations or Implications” headings.	Release content under the “Supporting Documents” and “Background” headings. Reconsider discretion and determine if any further information can be released.
189	17(1)(a); 29(1) of FOIP; 27(1) of HIPA	17(1)(a) of FOIP applies to the five bullet points at the top of the page. 17(1)(a) of FOIP applies to the content under the “Proposed Surge Strategy” heading.	Release content under the “Ethical Triage of ICU Admissions” heading. Reconsider discretion and determine if any further information can be released.
190	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the and “Alternative Options”.	Release contents at top of the page, the contents under the headings “OOP Transfer Strategy” and “Communication plan”. Reconsider discretion and determine if any further information can be released.

191	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
192	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
193	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
194	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the "Recommendation" heading.	Release content under the "Supporting Documents" and "Background" headings.
195	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the "Alternative Options" heading.	Release all of the contents on the page except for content under the "Alternative Options" heading. Reconsider discretion and determine if contents under the "Alternative Options" heading can be released.
196	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
197	Non-responsive	Non-responsive.	Release.
198	Non-responsive	Non-responsive.	Release.
199	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
200	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.

201	17(1)(a); 17(1)(b)(i) of FOIP	<p>17(1)(a) of FOIP applies to the content under the “Recommendation” and “Considerations or Implications” headings.</p> <p>Neither 17(1)(a) or (b) of FOIP does not apply to the “Supporting Documents” and “Background” headings.</p>	<p>Release the content under the “Supporting Documents” and “Background” headings.</p> <p>Reconsider discretion and determine if any further information can be released.</p>
202	17(1)(a); 17(1)(b)(i) of FOIP	<p>17(1)(a) of FOIP applies to the “Tertiary ICU Services and Surgical Impact” heading.</p> <p>17(1)(a) of FOIP does not apply to the remainder of the page.</p> <p>17(1)(b)(i) of FOIP does not apply.</p>	<p>Release content under the “Ethical Triage of ICU Admissions” and “OOP Transfer Strategy” headings.</p> <p>Reconsider discretion and determine if further information can be released.</p>
203	17(1)(a); 17(1)(b)(i) of FOIP	<p>17(1)(a) of FOIP applies to the content under the “Alternative Options” heading.</p> <p>17(1)(b)(i) of FOIP does not apply.</p>	<p>Release content at the top of the page.</p> <p>Reconsider discretion and determine if further information can be released.</p>
204	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies.	Reconsider discretion and determine if any information on the page can be released.
205	17(1)(a); 17(1)(b)(i) of FOIP	<p>17(1)(a) of FOIP does not apply.</p> <p>17(1)(b) of FOIP does not apply.</p>	Release.
206	17(1)(a); 17(1)(b)(i) of FOIP; non-responsive	17(1)(a) of FOIP does not apply.	Release.

		<p>17(1)(b) of FOIP does not apply.</p> <p>Contents in the Attachment field is non-responsive.</p>	
207	Non-responsive	Non-responsive.	Release.
208	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the "Recommendation" and "Background" headings.	<p>Release content under the "Supporting Documents" heading.</p> <p>Reconsider discretion and determine if any further information can be released.</p>
209	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the "Alternative Options" heading.	<p>Release content under the "Considerations or Implications" heading.</p> <p>Reconsider discretion and determine if any further information can be released.</p>
210	Released		
211	17(1)(a); 17(1)(b)(i) of FOIP	<p>17(1)(a) of FOIP does not apply.</p> <p>17(1)(b) of FOIP does not apply.</p>	Release.
212	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the body of the email timestamped 10:25 a.m.	<p>Release email at the top of the page (timestamped 10:31 a.m.).</p> <p>Release email header of email timestamped 10:25 a.m.</p> <p>Reconsider discretion and determine if information from the body of the email timestamped 10:25 a.m. can be released.</p>
213	17(1)(a); 17(1)(b)(i); 29(1) of FOIP	<p>29(1) of FOIP does not apply.</p> <p>17(1)(a) of FOIP does not apply.</p> <p>17(1)(b) of FOIP does not apply.</p>	Release.

214	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
215	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
216	17(1)(a); 17(1)(b)(i); 29(1) of FOIP; 27(1) of HIPA	17(1)(b)(i) of FOIP applies to body of emails. 17(1)(a) of FOIP does not apply. 29(1) of FOIP does not apply. 27(1) of FOIP does not apply.	Release email signatures and email headers. Reconsider discretion and determine if body of emails can be released.
217	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP applies to body of emails. 17(1)(a) of FOIP does not apply.	Release email signatures and email headers. Reconsider discretion and determine if body of emails can be released.
218	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b) of FOIP does not apply.	Release.
219	Released		
220	Released		
221	29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
222	Released		
223	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
224	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
225	Released		

226	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
227	17(1)(b)(i) of FOIP	17(1)(b)(i) of FOIP does not apply.	Release.
228	Non-responsive	Non-responsive.	Release.
229	Released		
230	Non-responsive	Non-responsive.	Release.
231	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the “Recommendation” and “Background” headings. 17(1)(b)(i) of FOIP does not apply.	Release content under the “Supporting Documents” headings. Reconsider discretion and determine if any further information can be released.
232	17(1)(a); 29(1) of FOIP; 27(1) of HIPA	17(1)(a) of FOIP applies to the bullet points at the top of the page.	Release content under the “Out of Province Transfer Strategy” and “Considerations or Implications” headings. Reconsider discretion and determine if any further information can be released.
234	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
235	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP does not apply. 17(1)(b)(i) of FOIP does not apply.	Release.
236	Released		
237	Released		
238	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the “Recommendation” and “Background” headings. 17(1)(b)(i) of FOIP does not apply.	Release content under the “Supporting Documents” headings. Reconsider discretion and determine if any further information can be released.

239	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the “Alternative Options” heading.	Release content under the “Considerations or Implications” heading. Reconsider discretion and determine if any further information can be released.
240	Non-responsive		
241	Non-responsive		
242	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the “Recommendation” and “Background” headings. 17(1)(b)(i) of FOIP does not apply.	Release content under the “Supporting Documents” headings. Reconsider discretion and determine if any further information can be released.
243	17(1)(a); 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies to the content under the “Alternative Options” heading.	Release content under the “Considerations or Implications” heading. Reconsider discretion and determine if any further information can be released.
244	Released		
245	Released		
246	Released		
247	Released		
248	Released		
249	Released		
250	Released		