



REVIEW REPORT 138-2021, 185-2021

Ministry of Social Services

December 16, 2022

Summary:

The Applicant submitted an access to information request to the Ministry of Social Services (Social Services). Social Services notified the Applicant it was extending its response time by an additional 30 days pursuant to subsection 12(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Social Services failed to respond to the Applicant within the extended timeline, so the Commissioner found that Social Services did not comply with section 12 of FOIP. Social Services released portions of the responsive record, but withheld other portions pursuant to subsections 15(1)(m), 17(1)(a), 17(1)(b), 18(1)(b), 18(1)(d), 19(1)(b), 19(1)(c), 29(1) of FOIP and subsection 27(1) of *The Health Information Protection Act* (HIPA). The Applicant requested a review of Social Services' decision to withhold portions of the record. The Commissioner recommended Social Services review why it was not able to respond to the Applicant within the legislated timeframe and determine if it needs to revisit its policies and procedures, or if it has adequate resources. The Commissioner also found that subsections 17(1)(a), 17(1)(b), 29(1) of FOIP and subsection 27(1) of HIPA were appropriately applied in some portions of the record, but not others. The Commissioner recommended that the portions of the record where it found the exemptions do not apply, be released.

I BACKGROUND

[1] On February 18, 2021, the Ministry of Social Services (Social Services) received an access to information request from the Applicant. The Applicant requested access to the following records for the time period of November 1, 2020 to January 31, 2021:

1. All information, emails, written communications, logged and documented telephone calls pertaining to SWAP/RH specifically BETWEEN all Government of Saskatchewan officials, Ministry of Social Services officials, Ministry of Health officials, Ministry of Mental Health and Addictions officials including but not limited

to [names of specified individuals] AND SWAP Executive Director [name of Executive Director].

2. All information, emails, written communications, logged and documented telephone calls pertaining to SWAP/RH specifically BETWEEN all Government of Saskatchewan officials, Ministry of Social Services officials, Ministry of Health officials, Ministry of Mental Health and Addictions officials including but not limited to [names of specified individuals], AND SWAP Board of Directors.

3. All information, emails, written communications, logged and documented telephone calls pertaining to SWAP/RH specifically BETWEEN all Government of Saskatchewan officials, Ministry of Health officials, Ministry of Mental Health and Addictions officials including but not limited to [names of specified individuals] AND SWAP Advisory Committee.

[2] On March 22, 2021, Social Services emailed a letter to the Applicant advising it was extending the 30-day response period an additional 30 days pursuant to subsection 12(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The letter noted the response deadline would be extended from March 22, 2021 to April 20, 2021.

[3] On May 20, 2021, the Applicant submitted a request for review to my office as they had not received a response from Social Services. The Applicant also objected to the need for Social Services to apply an extension pursuant to subsection 12(1)(b) of FOIP.

[4] On May 25, 2021, my office followed up with Social Services inquiring when the Applicant should anticipate receiving a response to their request. On June 9, 2021, Social Services advised that responses were being finalized and would be “released shortly”. However, it was unable to provide a specific date.

[5] On July 6, 2021, my office followed up with Social Services on the status of the response for the Applicant. On the same day, Social Services responded advising the file was being finalized but there was not a date for the release. On July 21, 2021, the Applicant provided my office with a copy of the email and response provided by Social Services. The email from Social Services to the Applicant was dated July 19, 2021 with a letter attached dated July 16, 2021. On November 16, 2021, Social Services also released some additional

portions of records that it had previously released under other access requests that it had withheld in this file.

- [6] On July 21, 2021, my office emailed the Applicant to ask if they were satisfied with Social Services' response.

- [7] On July 22, 2021, the Applicant advised they were not satisfied with the response and requested my office proceed with reviewing if Social Services met the legislated timelines to respond to their access to information request, and Social Services' need for an extension pursuant to subsection 12(1)(b) of FOIP. Additionally, the Applicant requested my office review Social Services' decision to withhold portions of the record pursuant to subsections 18(1)(d), 19(1)(c), 29(1) of FOIP and subsection 27(1) of *The Health Information Protection Act* (HIPA).

- [8] On August 26, 2021, my office notified Social Services, the Applicant and the third party (SWAP) of my intention to undertake a review.

- [9] On May 16, 2022, Social Services provided my office with its submission. The third party provided my office with its submission on October 12, 2021. The Applicant did not provide a submission.

II RECORDS AT ISSUE

- [10] Social Services withheld 174 pages of records in full or in part as follows:

Record	Page Numbers	Description	Withheld in Full or in Part	Exemptions claimed
1	1	Email thread	Withheld in part	29(1) of FOIP
3	3 and 4	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
4	6	Email	Withheld in part	29(1) of FOIP
5	7	Email	Withheld in part	29(1) of FOIP
6	8 and 9	Attachment for Record 5: Board Meeting Minutes	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP

Record	Page Numbers	Description	Withheld in Full or in Part	Exemptions claimed
7	10 and 11	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
8	13	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
9	14 and 15	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
10	17	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
11	18 and 19	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
13	21 and 22	Attachment to Record 12: List of Board of Directors	Withheld in Part	29(1) of FOIP
15	24 and 25	Attachment to Record 13: Letter	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) of FOIP
20	32	Email	Withheld in part	29(1) of FOIP
22	34	Email	Withheld in part	29(1) of FOIP
24	36	Email	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
26	38	Email	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
27	39	Email meeting invite	Withheld in part	15(1)(m), 17(1)(b), 18(1)(b), 18(1)(d), 19(1)(c), 29(1) of FOIP
29	41 and 42	Attachment to Record 28: Concerns raised to Board	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP; 27(1) of HIPA
31	44 and 45	Attachment to Record 30: Considerations for review	Withheld in full	17(1)(a), 17(1)(b), 19(1)(c) of FOIP
32	46	Email	Withheld in part	29(1) of FOIP
35	49	Email	Withheld in part	29(1) of FOIP
36	50 to 68	Attachment 1 to Record 35: Raising Hope Community Concerns	Withheld in full	17(1)(b), 19(1)(c) of FOIP
37	69	Attachment 2 to Record 35: concerns related to a resident	Withheld in full	17(1)(b), 19(1)(c) of FOIP
38	70 to 75	Attachment 3 to Record 35: staff concerns	Withheld in full	17(1)(b), 19(1)(c) of FOIP

Record	Page Numbers	Description	Withheld in Full or in Part	Exemptions claimed
39	76	Email	Withheld in part	17(1)(b), 19(1)(c) of FOIP
40	77	Email	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
41	78	Email	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
42	79	Email	Withheld in full	29(1) of FOIP
43	80	Email	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c), 29(1) of FOIP
44	81	Email	Withheld in part	29(1) of FOIP
46	83 and 84	Email thread	Withheld in full	29(1) of FOIP
47	85	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c), 29(1) of FOIP
48	91	Letter	Withheld in part	29(1) of FOIP
49	92 and 93	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
50	96 and 97	Email thread	Withheld in part	29(1) of FOIP
51	98	Email	Withheld in part	29(1) of FOIP
53	100	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) 29(1) of FOIP
54	101	Email	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) of FOIP
55	103	Email	Withheld in part	29(1) of FOIP
56	104	Email	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) of FOIP
57	105	Email	Withheld in part	17(1)(b), 19(1)(c) of FOIP
61	109 to 111	Attachment for record 29: meeting notes	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
63	114	Attachment for record 62: Draft letter	Withheld in full	17(1)(b), 19(1)(c) of FOIP
65	116 and 117	Attachment for Record 64: Community concerns	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
66	118	Email	Withheld in part	29(1) of FOIP
67	119	Attachment for Record 66: list of concerns shared in November 3 meeting	Withheld in full	17(1)(b), 19(1)(c) of FOIP
69	121	Email	Withheld in part	29(1) of FOIP
71	123	Email thread	Withheld in part	29(1) of FOIP

Record	Page Numbers	Description	Withheld in Full or in Part	Exemptions claimed
72	124	Email thread	Withheld in part	29(1) of FOIP
76	130	Attachment 2 for Record 74: Appendix A of agreement, supportive family living	Withheld in part	18(1)(d), 19(1)(c) of FOIP
78	135	Attachment 4 for Record 74: Appendix A of agreement, intensive direct services	Withheld in part	18(1)(d), 19(1)(c) of FOIP
80	139 and 140	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
81	141	Email thread	Withheld in part	29(1) of FOIP
82	142	Attachment to Record: CBC Response	Withheld in full	17(1)(a), 17(1)(b), 18(1)(d), 19(1)(c) of FOIP
83	143	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c), 29(1) of FOIP
85	145	Email thread	Withheld in full	29(1) of FOIP
86	146	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
87	147 and 148	Email thread	Withheld in full	29(1) of FOIP
88	149	Email thread	Withheld in part	29(1) of FOIP
89	151 to 153	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c), 29(1) of FOIP
90	155 and 156	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
91	157 and 158	Email thread	Withheld in part	18(1)(d), 19(1)(c), 29(1) of FOIP
92	159 and 160	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c) of FOIP
93	162	Email	Withheld in part	29(1) of FOIP
94	163	Email thread	Withheld in part	17(1)(b), 19(1)(c) of FOIP
95	164	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
96	165	Email thread	Withheld in part	29(1) of FOIP
97	166	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP; 27(1) of HIPA

Record	Page Numbers	Description	Withheld in Full or in Part	Exemptions claimed
98	168	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP; 27(1) of HIPA
99	170 to 172	Email thread	Withheld in full	29(1) of FOIP
100	173 and 174	Email thread	Withheld in part	17(1)(b), 19(1)(b), 19(1)(c), 29(1) of FOIP
103	184	Email thread	Withheld in part	29(1) of FOIP
105	186	Email thread	Withheld in part	29(1) of FOIP
108	190 to 192	Email thread	Withheld in full	29(1) of FOIP
109	193	Email	Withheld in part	29(1) of FOIP
110	194	Email	Withheld in full	29(1) of FOIP
111	195	Email	Withheld in part	29(1) of FOIP
112	196	Email	Withheld in part	29(1) of FOIP
116	202	Email	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
117	203 to 205	Email	Withheld in full	29(1) of FOIP
118	206	Email	Withheld in part	29(1) of FOIP
119	207	Email	Withheld in part	29(1) of FOIP
120	208 and 209	Email Teams meeting invite	Withheld in part	15(1)(m), 18(1)(b), 29(1) of FOIP
121	210 and 211	List of Board of Directors	Withheld in part	29(1) of FOIP
122	212	Meeting notes	Withheld in part	29(1) of FOIP
123	213 to 215	Meeting notes	Withheld in part	29(1) of FOIP
124	216	Meeting notes	Withheld in part	29(1) of FOIP
125	217 to 221	Meeting notes	Withheld in part	29(1) of FOIP; 27(1) of HIPA
126	222 to 224	Meeting notes	Withheld in part	29(1) of FOIP
127	225 to 231	Community concerns	Withheld in full	17(1)(b), 19(1)(c), 29(1) of FOIP
128	232	Meeting notes	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
129	233	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
130	234	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1)
131	236 and 237	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP

Record	Page Numbers	Description	Withheld in Full or in Part	Exemptions claimed
132	238	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
133	239	Email thread	Withheld in part	17(1)(a), 17(1)(b), 19(1)(c), 29(1) of FOIP
134	241	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
135	242	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
136	244 and 245	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
137	247 to 249	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP
138	250 and 251	Email thread	Withheld in part	17(1)(b), 19(1)(c), 29(1) of FOIP

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] Social Services is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

[12] SWAP is a “third party” as defined by subsection 2(1)(j) of FOIP.

[13] Social Services claimed that subsection 27(1) of HIPA applies to portions of the records. HIPA applies when three elements are present: 1) “personal health information” 2) a “trustee” and 3) the trustee has custody or control of the personal health information.

[14] Social Services applied subsection 27(1) of HIPA to the second redaction on page 41, the first redaction in the body of the second email on pages 166 and 168, and the second redaction on page 221 of the record.

[15] On page 41, Social Services withheld a statement about a medical condition relating to a number of residents. While residents were not named, the statement about their medical conditions could reveal their personal health information. The information withheld on pages 166 and 168 relate to a medical procedure, and the information on page 221 relates to a medical event. These portions of the records qualify as personal health information of an individual as defined by subsections 2(m)(i) and (ii) of HIPA, which provides:

2 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;

[16] Social Services also qualifies as a “trustee” as defined by subsection 2(t)(i) of HIPA. With respect to the third element, in my office’s [Review Report 047-2022](#), I stated that “custody” is the physical possession of a record by a trustee with a measure of control. “Control” connotes authority, meaning the trustee has the authority to manage the records, including restricting access to it. In this matter, the records are in the custody of Social Services. As Social Services has custody of the personal health information at issue, I find that HIPA applies, and I also have jurisdiction under HIPA to conduct this review.

2. Did Social Services comply with section 12 of FOIP?

[17] Subsection 7(2) of FOIP requires that a government institution respond to an applicant within 30 calendar days of receiving an access to information request, unless the response deadline was extended pursuant to section 12 of FOIP. Subsection 7(2) of FOIP provides as follows:

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

[18] Section 12 of FOIP is clear that a government institution can extend the initial 30-day response deadline for a maximum of 30 more days. This means 60 days in total. However, this is only in limited circumstances, which are outlined in subsection 12(1) of FOIP (*Guide to FOIP*, Chapter 3: “Access to Records”, updated: June 29, 2021, at page 72 (*Guide to FOIP*, Ch. 3)).

[19] Social Services advised the Applicant it was relying on subsection 12(1)(b) of FOIP to extend its deadline to respond. Section 12 of FOIP provides as follows:

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

...

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period;

...

(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.

[20] My office’s [Review Report 152-2020](#) provides the following regarding the calculation of time:

[11] ...In terms of calculating the due date, *The Legislation Act* establishes general rules that govern the interpretation of all statutory instruments in the province. Section 2-28 of *The Legislation Act* provides guidance on the computation of time and can be applied to the 30 day calculation as follows:

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

- [21] Subsection 12(2) of FOIP states that a notice of an extension must be provided to an applicant within the first 30 days after the government institution receives an access to information request. Social Services received the Applicant's access to information request on February 18, 2021, and was required to provide notice of an extension to the Applicant within 30 days, or by March 20, 2021. Since that day was a Saturday, Social Services had until March 22, 2021, to provide the Applicant with any notice of extension.
- [22] On March 22, 2021, Social Services extended the time to respond pursuant to subsection 12(1)(b) of FOIP, so it provided this notice of extension within the period it was allowed to do so. I note that best practice would be for a government institution to provide such notice as soon as it is able, rather than waiting until the due date to do so.
- [23] Subsection 12(3) of FOIP then requires a government institution to respond 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] Social Services did not respond to the Applicant until July 19, 2021, which was 151 days after the Applicant submitted their request. This was well beyond the time it needed to do so. As such, Social Services did not comply with subsection 12(3) of FOIP, so there is no need for me to consider its reasons for providing an extension pursuant to subsection 12(1)(b) of FOIP. I find, then, Social Services did not comply with section 12 of FOIP.
- [25] My office has recommended Social Services amend its policies and/or procedures for the processing of access to information requests in my office's [Review Report 137-2021](#), [Review Report 142-2021, 193-2021](#) and [Review Report 141-2021, 192-2021](#). I again remind Social Services of its obligation to process access to information requests as required by FOIP. I recommend Social Services review why it was not able to do so and determine if it needs to revisit its policies and procedures, or if it has adequate resources.

3. Did Social Services properly apply subsection 27(1) of HIPA?

[26] Subsection 27(1) of HIPA provides as follows:

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.

[27] As noted earlier, Social Services applied subsection 27(1) of HIPA to portions of pages 41, 166, 168 and 221. I have found that these pages contain personal health information pursuant to subsections 2(m)(i) and (ii) of HIPA.

[28] As subsection 27(1) of HIPA is a mandatory exemption and the individuals have not consented to the disclosure of the information, I find that Social Services properly applied subsection 27(1) of HIPA as I have noted in the preceding paragraph. Social Services had also applied subsection 29(1) of FOIP to this information; however, as I have found subsection 27(1) of HIPA applied, there is no need to consider subsection 29(1) of FOIP to this portion of the record. See Appendix A for details.

4. Did Social Services properly apply subsection 29(1) of FOIP?

[29] Subsection 29(1) of FOIP provides as follows:

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.

[30] Subsection 29(1) of FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 30, 2021, p. 281).

[31] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 24 of FOIP (*Guide to FOIP*, Ch. 4, p. 281).

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

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

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

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

(c) **Repealed.** 1999, c.H-0.021, s.66.

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

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

(ii) the disclosure of the name itself would reveal personal information about the individual.

Pages 1, 6, 7, 98 and 162

[33] On pages 1, 6, 7, 98 and 162 of the record, Social Services withheld the name and email address of a SWAP employee in email headers and the name of the employee in the signature line of the emails.

[34] The SWAP employee appears to use the email address in a business capacity. In the submission, Social Services indicated:

There are many instances where individuals' email addresses, phone numbers and physical addresses were redacted. Email addresses are specific to individuals with technology ensuring no two individuals are assigned the same email address. 24(1)(e) identifies addresses and phone numbers are considered personal information regardless of whether they relate to a person's home or business.

[35] As I have noted in many past reports, the business contact information of an individual is not considered to be personal information (e.g., [Review Report 115-2021](#), [Review Report 369-2021](#)). As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 9

[36] Pages 8 and 9 are SWAP board meeting minutes from September 5, 2018. On page 9, Social Services withheld the name of a SWAP employee in one of the bulleted items regarding their interest in a specific program at Raising Hope. The information appears to

be related to work product and would not be considered personal in nature. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to the information withheld on this page. See Appendix A for details.

Pages 4, 11, 15 and 19

[37] The redactions on pages 4, 11, 15 and 19 have been withheld pursuant to subsection 29(1) of FOIP. The withheld information is part of a sentence in the initial email and relates to the employees. The release of this information would reveal information that is personal in nature to the identified individual and would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to this portion of the record. See Appendix A for details.

Page 13

[38] Page 13 contains an email thread. Social Services applied subsection 29(1) of FOIP to the first redaction on page 13 in the body of the second email. Social Services described the withheld information as “information about a Raising Hope resident and the services provided to [them] (outside of scope of request)”. The withheld information includes questions from Social Services regarding the audited financial statement and SWAP’s response to those items. It does not appear the information would contain personal information of an identifiable individual. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to the information withheld on this page. See Appendix A for details.

[39] Social Services also applied subsections 17(1)(b) and 19(1)(c) of FOIP to the first redaction on page 13. I will consider the application of these exemptions later in this report.

Pages 14, 17, 18, 34, 123 and 124

[40] On pages 14, 17, 18, 34, 123 and 124, Social Services withheld the first name of a SWAP employee in the body of an email. The emails relate to work product and work duties. As

such, I find Social Services did not properly apply subsection 29(1) of FOIP to the information withheld on this page. See Appendix A for details.

Pages 21, 22 210 and 211

[41] Social Services applied subsection 29(1) of FOIP to the personal addresses and telephone numbers of board members. In many past reports, including [Review Report 145-2021, 189-2021](#), I have made the point that an individual's home address and telephone number is an individual's personal information pursuant to subsection 24(1)(e) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP. See Appendix A for details.

Page 32

[42] On page 32, Social Services withheld most of the name of the attachment. The withheld portion contains names of two individuals. One of the names is a Raising Hope resident and the other is the name of an employee with a third-party organization. Social Services indicated the release of the employee's name allows for the identification of the resident. Based on this, the release of the Raising Hope resident's name would identify them as a resident, which is personal in nature and would qualify as personal information pursuant to subsection 24(1)(k)(ii) of FOIP. The release of the other individual's name could also identify the resident as an Internet search of their names shows results connecting them. As such, I find Social Services properly applied subsection 29(1) of FOIP to the withheld information. See Appendix A for details.

Page 36

[43] Page 36 is the same record as found on page 1 of Review Report 139-2021, 203-2021. In that file, Social Services released the email address that it currently withheld in the email header on page 36. Additionally, the advisory committee member appears to use the email address in a business capacity and therefore is not personal in nature. I find Social Services did not properly apply subsection 29(1) of FOIP to the withheld information. See Appendix A for details.

Pages 38

[44] On the first redaction on page 38, Social Services withheld the email address of the SWAP chairperson in the email header. As found in my office's Review Report 139-2021, 203-2021 and Review Report 140-2021, 186-2021, the email address of the SWAP chairperson appears to be used in a business capacity. This is not personal information. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to withheld information. See Appendix A for details.

Page 39

[45] On page 39, Social Services withheld initials of a Raising Hope resident found in the subject line and body of the email. The release of the initials of the individual could identify them and reveal the fact that they are a Raising Hope resident, which would be personal in nature. As such, the information would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to those portions. See Appendix A for details.

Pages 41 and 42

[46] Pages 41 and 42 are a list of concerns raised by community members, residents, and current and former employees. Social Services withheld portions of these pages of the record pursuant to subsection 29(1) of FOIP indicating it contained a variety of personal information. The information withheld on these pages pertains to feelings of residents, human resource matters, and the names of community members that brought forward concerns. Based on a review of the record, except for the last redaction on page 41, the information would qualify as personal information pursuant to subsections 24(1)(b), 24(1)(k)(i) and 24(1)(k)(ii) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to those portions. See Appendix A for details.

[47] Social Services applied subsections 17(1)(b) and 19(1)(c) of FOIP to the last redaction on page 41. I will consider the application of that exemption later on in this report.

Page 46

[48] Page 46 is an email between Social Services employees relating to instructions provided to an individual raising a concern. Social Services withheld the name of the individual. The release of the information would identify to the individual and that they had specific concerns. As such, I find that it would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to the withheld information. See Appendix A for details.

Page 49

[49] On page 49, Social Services withheld two pieces of information in the email header, the email address of the SWAP Board Chairperson in the email recipients and the name of a Raising Hope client in the file names of the attachments.

[50] Releasing the name of the Raising Hope client in the file names would reveal the fact that the individual was a client needing services, which would be personal information pursuant to subsection 24(1)(k)(i) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

[51] The SWAP Chairperson appears to use the email address in a business capacity. I previously noted in this Report, as in many past reports, that business card information, including personal email addresses used in a business context, are not personal information. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 50 to 75

[52] The records on pages 50 to 68 contain a variety of issues relating to employment concerns, workplace issues, and concerns involving residents, including examples of specific incidents. There are some instances where an employee is named in relation to the concerns. Not all individuals referred to are named; however, it is possible that individuals

could be identified if the information was released. Some examples include employee relations issues on page 5, specific examples of incidents involving residents and staff on pages 10 to 17 (although not specifically named), and a variety of details about named staff and residents on page 21 that are personal in nature. None of this information is about the Applicant. As such, I find that the information qualifies as personal information pursuant to subsections 24(1)(b) and 24(1)(k)(i) of FOIP and that Social Services properly applied subsection 29(1) of FOIP. See Appendix A for details.

[53] Page 69 includes notes related to an individual named in a news article, but not the news article itself. The release of this page of the record would reveal personal information about an identifiable individual. The page also includes personal health information about a person related to their medical condition. The information would qualify as personal information pursuant to subsections 24(1)(b), 24(1)(k)(i) of FOIP and personal health information pursuant to subsection 2(m)(i) of HIPA. As such, Social Services properly applied subsections 29(1) of FOIP and 27(1) of HIPA. See Appendix A for details.

[54] Pages 70 to 75 of the record outline a variety of concerns that name a number of individuals. The information relates to human resource issues and residents. The information would qualify as personal information pursuant to subsections 24(1)(b) and 24(1)(k)(i) of FOIP. As such, Social Services properly applied subsection 29(1) of FOIP. See Appendix A for details.

Page 77

[55] Page 77 of this record is the same as page 2 of the record in Review Report 140-2021, 186-2021. Social Services had released the first four withheld words in the other file, but redacted this information in this file. On page 77, Social Services withheld the first letter of a name that was used in the subject line of the email. In the body of the email, Social Services withheld the majority of the body of the email. The email is between three Social Services' employees regarding a Raising Hope client. Social Services' submission states that the "personal information includes name, housing options, and situation related to housing."

[56] The name of the client, along with the details of the issues being discussed related to them, would reveal that they are a client with Raising Hope and the issues being dealt with. This would be personal in nature to them and would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to the withheld portions of this email. See Appendix A for details.

[57] Social Services had also applied subsections 17(1)(b) and 19(1)(c) of FOIP. However, as I have already found subsection 29(1) of FOIP to apply, there is no need to consider the application of those exemptions to this page of the record.

Page 78

[58] On page 78, Social Services withheld initials of a Raising Hope resident found in the subject line of the email and a portion of the body of the email. The release of the initials of the individual could identify the individual and the release would reveal the fact that the individual is a Raising Hope resident which would be personal in nature. As such, the information would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to those portions. See Appendix A for details.

[59] Social Services also applied subsections 17(1)(b) and 19(1)(c) of FOIP to this information. However, as I have already found subsection 29(1) of FOIP to apply, there is no need to consider the application of those exemptions to this page of the record.

Pages 79, 83, 84, 145, 147 and 148

[60] Social Services applied subsection 29(1) of FOIP to withhold pages 79, 83, 84, 145, 147 and 148 in full. The emails on these pages relate to a Raising Hope resident and contain their first and last name, their address and details outlining a matter that is personal to them. As such, the information would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP to this page of the record. See Appendix A for details.

Page 80

[61] In the first redaction on page 80, Social Services applied subsection 29(1) of FOIP to withhold the email address of an advisory committee member and the name of a SWAP employee in the email header. This is not personal information. Further, Social Services released this information to the Applicant in a previous review involving the same email and the same Applicant. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

[62] Although Social Services does not speak to it in its submission, Social Services also applied subsection 29(1) to the body of the email. The email involves the SWAP advisory committee member updating Social Services on a matter involving SWAP. The matter is not personal in nature and as such would not qualify as personal information. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information.

[63] As Social Services also applied subsections 17(1)(a), (b) and 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Pages 81

[64] On pages 81, Social Services withheld the email address of the SWAP Chairperson. I previously noted in this Report that this individual appears to use the email address in a business context, and so is not personal information. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 85 and 91

[65] The information withheld in the emails on pages 85 and the email attachment on page 91 are email communications with the Applicant, and the attachment was prepared by the Applicant. My office's [Review Report 337-2021](#) at paragraph [17] discusses that "withholding personal information from someone who has knowledge of the information

or who supplied it would constitute an absurd result”. The recommendation in that Report was that such information should be released to the person who supplied it. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 92 and 93

[66] The information withheld in the emails on pages 92 and 93 pursuant to subsection 29(1) of FOIP are email communications with the Applicant regarding a request from the Applicant and subsequent follow up by the Applicant. Again, it would be an absurd result to withhold information from the Applicant that they supplied. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 96 and 97

[67] The information withheld in the emails on pages 96 and 97 pursuant to subsection 29(1) of FOIP are email communications with the Applicant regarding a request from the Applicant and subsequent follow up by the Applicant. As it would be an absurd result to withhold information the Applicant supplied, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 100

[68] The first redaction on this page withheld the email address of an Advisory Committee Member and information from an email communication with the Applicant. For the portion of the record containing the advisory committee members email address, I have previously indicated it is not personal information as it is used in a business context. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

[69] The remaining portion of the email communication where subsection 29(1) of FOIP was applied, are email communications with the Applicant regarding the review of

SWAP/Raising Hope. As the Applicant supplied the information or would otherwise have knowledge of it, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 103

[70] Social Services has withheld the name of an individual in the subject line of the email on page 103, as well as their name, telephone number and email address. Social Services' submission indicates that the withheld information is "name and contact information for individual." The submission does not indicate if the contact information is personal or business contact information and there is no other information in the email to provide any context about the contact information. An Internet search indicates this individual is affiliated with a university, but their telephone number and email address appear to be personal (i.e., nothing on the Internet suggests it is used in a business context). As such, the information qualifies as personal information pursuant to subsections 24(1)(e) and (k)(i) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 109

[71] Page 109 of the record is handwritten notes. Social Services redacted portions of the notes pursuant to subsection 29(1) of FOIP. The redacted portions name two individuals, one of which is the name of the Applicant and notes related to them. With the exception of the name of the other individual, the withheld information is the Applicant's personal information and therefore, does not qualify for exemption under subsection 29(1) of FOIP and the Applicant has a right of access to it. I find that Social Services did not properly apply subsection 29(1) of FOIP to the withheld information, except for the other individual's name. See Appendix A for details.

Pages 116 and 117

- [72] These pages are an attachment to an email on page 115. The portion of the record released to the Applicant indicates that information withheld from pages 5 and 6 includes concerns by staff that were recorded during a meeting. Social Services stated that the personal information involved is “name of specific employee of SWAP and concerns... While names were not used, the specific details related to these individuals could be easily identifiable to others.”
- [73] Pages 116 and 117 consist of statements contained in a list. While Social Services did not number each statement, I will do so for ease of reference. Social Services also appears to have applied subsections 17(1)(b) and 19(1)(c) of FOIP alongside subsection 29(1) of FOIP to each of the statements.
- [74] Upon review of these two pages, the only items that appear to contain personal information are the third and sixteenth items in the list on page 116. The items relate to the performance of two individuals and concerns about the environment related to employing a specific individual. This information would be information about their employment, or the type of information you might find on their personnel file, as defined by subsection 24(1)(b) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.
- [75] As Social Services has applied subsections 17(1)(b) and 19(1)(c) of FOIP to the remaining items on these pages, I will consider the application of that exemption to those items later on in this Report.

Page 118

- [76] Page 118 is an email. There are two redactions on this page in the email header. The first redaction is the email address of an advisory committee member, and the second redaction is the file name of the attachment. The email address appears to be used in a business

context, and is not personal information. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

- [77] The file name of the attachment withheld on this page contains the name of two individuals; while page 32 of the record is a different email, this email also forwards an attachment that contains the same names as found in the attachment name on page 32 of this record. I already found Social Services properly applied subsection 29(1) of FOIP to this information and find so again on this page. See Appendix A for details.

Page 121

- [78] On page 121, Social Services withheld the name of a Raising Hope resident in the body of the email. Release of the individual's name would reveal that the individual is a resident of Raising Hope, which is personal in nature. As such, the withheld information qualifies as personal information pursuant to subsection 24(1)(k)(ii) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 139 and 140

- [79] Pages 139 and 140 are an email thread containing three emails related to a CBC News inquiry, as indicated by the portion of the email released to the Applicant. Throughout, Social Services withheld the name, email address, position and telephone number of the CBC employee. In two of the emails, Social Services also withheld the email address of an advisory committee member. Upon review of the emails, it is clear the CBC employee is working in a business capacity, and as I have stated previously, the SWAP Advisory Committee Member appears to use their email address in a business capacity. Someone's position as well as their contact information when used in a business context is not personal information; as such, I find Social Services did not properly apply subsection 29(1) to this information. See Appendix A for details.

Page 141

- [80] The email address of the aforementioned advisory committee member was withheld in the email headers on page 141. As the information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 143

- [81] The email addresses of the SWAP Board Chairperson and an advisory committee member were withheld from the email headers on the page of this record. As the information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 146

- [82] Page 146 is an email thread consisting of two emails between SWAP and Social Services. Social Services applied subsection 29(1) of FOIP to the subject line of the emails which includes the initials of a Raising Hope resident. Social Services also applied subsection 29(1) of FOIP to part of the first sentence of the bottom email as well as the body of the email. The portions contain the resident's name as well as information regarding their circumstances. All this information would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 149

- [83] The information withheld in the emails on page 149 pursuant to subsection 29(1) of FOIP are email communications with the Applicant. As the Applicant supplied the information or would otherwise have knowledge of it, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 151 to 153

[84] The portions of these pages of the record where subsection 29(1) of FOIP was applied are email communications with the Applicant related to a request from the Applicant and subsequent follow up with the Applicant. As the Applicant would have been supplied or would have knowledge of the information, it would be an absurd result to withhold it from them. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 155 and 157

[85] On pages 155 and 157 Social Services withheld the email address of an advisory committee member in the email headers. As the information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 164

[86] Page 164 is an email communication between Social Services and SWAP. Social Services withheld a portion of the bottom email relating to a matter. The email does not identify an individual, nor does it appear the release of the information would allow for the identification of an individual. As such, I find that Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 165

[87] Page 165 of the record is an email communication between Social Services and SWAP. Social Services withheld the name of the Raising Hope resident. The release of the name would identify the individual as a Raising Hope resident which would be personal in nature. As such, the redacted name qualifies as personal information pursuant to subsection 24(1)(k)(ii) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 166

[88] On page 166 of the record, Social Services withheld the email address for the Chair of the Board and the name and email address of the advisory committee member. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 168

[89] On page 168, Social Services withheld the email address for the Chair of the Board and the name and email address of the advisory committee member. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP. See Appendix A for details.

Pages 170 to 172

[90] Pages 170 to 172 are an email thread relating to a housing matter for a Raising Hope resident that is named in the email communication. Social Services withheld these pages of the record in full. This information would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. However, there is one instance where the Applicant is mentioned in the top email in the third line. Personal information pertaining to the Applicant would not qualify for exemption under subsection 29(1) of FOIP. As such, Social Services properly applied subsection 29(1) of FOIP to these pages, except for the Applicant's personal information found in the third line of the top email on page 170. See Appendix A for details.

Pages 173 and 174

[91] On pages 173 and 174, Social Services withheld the name and email address of a SWAP employee in the email headers. As this information is used in a business capacity, it is not

personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP. See Appendix A for details.

Page 184

[92] Page 184 is an email communication with the Applicant relating to the Applicant's inquiry about the SWAP/Raising Hope review. As the Applicant supplied the information or would otherwise have knowledge of it, it is an absurd result to withhold it from them. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 186

[93] On page 186, Social Services withheld the cellphone number of SWAP's Executive Director. As this number is being used in a business capacity, it is not personal information. This would apply even if the individual was using their personal cellphone for business-related purposes. As such, I find Social Services did not properly apply subsection 29(1) of FOIP to this number. See Appendix A for details.

Pages 190 to 192 and 203 to 205

[94] Pages 190 to 192 are emails and an email attachment related to their status as a resident for a named Raising Hope resident. This information would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. However, there are subsequent emails between Social Services and SWAP that provide general comments relating to the attachment that was sent that would not qualify as personal information. These are the top email on page 191 and the top two emails on page 192. As such, I find Social Services properly applied subsection 29(1) of FOIP, except for the top email on page 191 and the top two emails on page 192. See Appendix A for details.

Pages 193, 195, 196 and 206 to 209

[95] On pages 193, 195, 196 and 206 to 209, Social Services withheld the email address of the SWAP Chairperson in the email headers on these pages. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP. See Appendix A for details.

Page 194

[96] Page 194 is an email to a Raising Hope resident related to a request submitted by that individual. This information would qualify as personal information pursuant to subsection 24(1)(k)(i) of FOIP. As such, Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 202

[97] Page 202 relates to a TikTok username, general description of content that was viewed when accessing that username, and some hashtags associated to the content or the username. Social Services has indicated it is the TikTok username of a former SWAP employee. The username of the former employee would be considered personal information pursuant to subsection 24(1)(k)(i) of FOIP. It is unclear if the hashtags are associated to the content or the username, however it is possible that if the application was searched using all the hashtags listed that the search could produce content that was posted by the former employee's username. As such, I find that Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details. As I have found that subsection 29(1) of FOIP applies, there is no need to consider the application of subsections 17(1)(b) or 19(1)(c) of FOIP.

Pages 208 and 209

[98] Social Services withheld the email address of the SWAP Board Chairperson from the email headers on pages 208 and 209. As this information is used in a business capacity, it is not

personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 212 to 224

[99] Page 212 includes handwritten notes from a meeting. The notes identify individuals by name and contain details relayed in a meeting regarding those individuals. That would qualify as their personal information pursuant to subsection 24(1)(k)(i) of FOIP. However, in the fourth bullet redacted, the information appears to relate to an action taken by the Applicant and another individual. Except for the name of the other individual, that bullet point would not qualify for exemption under subsection 29(1) of FOIP as it would be considered the Applicant's personal information and the Applicant would have a right of access to it. I find Social Services properly applied subsection 29(1) of FOIP to this page of the record, except for the portion as I have described containing the Applicant's personal information. See Appendix A for details.

[100] Pages 213 to 215 are handwritten meeting notes containing discussions regarding a number of individuals. The portion released to the Applicant indicates the meeting occurred November 16, 2020. The meeting notes appear to discuss different issues observed related to SWAP. Social Services described the withheld information as, "details of employees, former employees, and clients". The second redaction on page 213 and the fourth one on page 214 appear to contain the Applicants' personal information, and so Social Services did not properly apply subsection 29(1) of FOIP to these portions. The other redactions on pages 213 to 215 relate to a variety of issues and identify a number of different individuals. This information would qualify as their personal information pursuant to subsection 24(1)(k)(i) of FOIP. As such, Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

[101] Page 216 contains handwritten notes from a telephone call. The portion released to the Applicant indicates the notes were taken "Nov 30". The notes identify an individual and their family member and includes discussion about some of their issues. This information qualifies as personal information pursuant to subsection 24(1)(k) of FOIP; I find Social

Services properly applied subsection 29(1) of FOIP to this information. See Appendix for details.

[102] Pages 218 to 221 are also handwritten notes from a telephone call. The portion released to the Applicant indicates a date of “Dec”. The notes identify the individuals that the writer had spoken to and outlines issues they encountered. This information would qualify as the personal information of those individuals pursuant to subsection 24(1)(k)(i) of FOIP; I find Social Services properly applied subsection 29(1) of FOIP to these pages. See Appendix A for details.

[103] Pages 222 to 224 are handwritten notes regarding a telephone call. The portion released to the Applicant indicates the notes were taken “January 11/21”. On page 222, Social Services redacted the name of the Applicant as well as that of another individual. The Applicant’s name should not have been redacted. I find Social Services did not properly apply subsection 29(1) of FOIP in this case. However, on page 223, Social Services redacted the salary and benefits of another individual. In my office’s [Investigation Report F-2012-003](#) at paragraph [18], my office found that the pay for an individual that is not an employee of a government institution qualified as personal information pursuant to subsections 24(1)(b) and 24(1)(k)(i) of FOIP. As such, I find Social Services did properly apply subsection 29(1) of FOIP to these pages, except for the name of the Applicant. See Appendix A for details.

[104] Page 224 identifies a number of different individuals. It identifies actions taken by certain individuals and identifies career details, credentials and the gender of an individual. This information would qualify as personal information pursuant to subsections 24(1)(a), (b) and (k)(i) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.

Page 225 to 231

[105] Pages 225 to 231 are a list of concerns compiled from residents, staff and former staff, as well as a response to each of those concerns. Pages 116 and 117 of this record lists the same concerns as listed on this page, but the responses were not included on those pages.

- [106] Pages 225 to 231 consist of statements contained in a list. While Social Services did not number each statement, I will do so for ease of reference. Social Services also appears to have applied subsections 17(1)(b) and 19(1)(c) of FOIP alongside subsection 29(1) of FOIP to each of the statements.
- [107] Upon review of these pages, the only items that appear to contain personal information are the third concern and response on page 225 and the concern and response below the portion of a paragraph at the top of the page of 229. The items relate to the performance of two individuals and the concerns about the environment related to employing a specific individual. This information would be information about their employment, or the type of information you might find on their personnel file, as defined by subsection 24(1)(b) of FOIP. I find Social Services properly applied subsection 29(1) of FOIP to this information. See Appendix A for details.
- [108] As Social Services has applied subsections 17(1)(b) and 19(1)(c) of FOIP to the remaining items on these pages, I will consider the application of that exemption to those items later on in this Report.

Page 232

- [109] Page 232 is typed notes regarding a telephone call the writer had with the SWAP Executive Director. There are eight paragraphs. Social Services applied subsection 29(1) of FOIP to paragraphs 1, 2, 5, 6 and 7.
- [110] In paragraph 2, Social Services withheld information relating to the Applicant. As such, I do not find that Social Services properly applied subsection 29(1) of FOIP to this information. Social Services has also applied subsection 19(1)(c) of FOIP to this information, so I will consider the application of that exemption later in this Report.
- [111] In paragraph 7, the information Social Services withheld is the name of an individual with FSIN. The name of an employee with FSIN would not qualify as personal information. As

such, I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

- [112] Regarding paragraphs 1, 5 and 6, Social Services redacted information related to other staff or to clients, which is their personal information pursuant to subsection 24(1)(b) and (k)(i) of FOIP. As such, I find Social Services properly applied subsection 29(1) of FOIP to the remaining paragraphs. See Appendix A for details.

Pages 233, 234, 238 and 241

- [113] Pages 233 and 234 contain an email thread. Social Services withheld information from the body of the email communications on some portions of these pages of the record. The email threads on these pages are in response to an email from Social Services inquiring about publicly announcing the name of the individual hired to conduct the review of SWAP. Social Services' submission described the withheld content in these emails as "information about consultant hired to complete review of SWAP."

- [114] As discussed in my office's [Review Report 210-2017](#), the definition of work product is as follows:

While the paragraphs describing each individual's credentials would qualify as personal information, their names, titles and roles in the project would qualify as work product. Work product is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. This is not considered personal information.

- [115] The information withheld related to the review that will be conducted and would be considered work product. As such, it would not qualify as personal information. I find, therefore, Social Services did not properly apply subsection 29(1) of FOIP to this information. As Social Services also applied subsections 17(1)(b) and 19(1)(c) of FOIP to these same portions of the record, I will consider the application of these exemptions later in this Report.

Pages 236 and 237 and Page 242

- [116] On pages 236 and 242, the email address of an advisory committee member was withheld in the email headers. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.
- [117] Pages 236, 237 and 242 contain email threads. The second email starting on page 236 and the top email on page 242 are the same email as found on page 91 of the record in Review Report 139-2021, 203-2021. Social Services withheld information from the body of the email communication. The email threads are in response to an email from Social Services inquiring about publicly announcing the name of the individual hired to conduct the review of SWAP. This information would be considered work product. As such, it would not qualify as personal information. I find therefore, Social Services did not properly apply subsection 29(1) of FOIP to this information. As Social Services also applied subsections 17(1)(b) and 19(1)(c) of FOIP to these same portions of the record, I will consider the application of these exemptions later in this Report.

Page 239

- [118] Page 239 is an email thread; there are redactions in two of the emails in the thread. The second redaction contains the same email that was considered on pages 233, 234 and 238 of this record. As noted above, the information withheld relates to the review and so would be considered work product. As such, it would not qualify as personal information. I find, therefore, Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.
- [119] The first redaction is to the top email where Social Services withheld the majority of the body of the email. The email is between two Social Services employees making a comment on the response it had received from SWAP. The information appears to be seeking factual information related to the matter and does not qualify as personal information. As such, I

find that Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

Pages 244, 245, 247 to 250 and 251

[120] Social Services withheld the email address of an advisory committee member in the email headers of these pages of the record. As this information is used in a business capacity, it is not personal information, and I find Social Services did not properly apply subsection 29(1) of FOIP to this information. See Appendix A for details.

[121] These email threads all relate to the SWAP Review and the individual hired to complete it. The information withheld on these pages relates to the review that will be conducted and would be considered work product. As such, it would not qualify as personal information. I find therefore, Social Services did not properly apply subsection 29(1) of FOIP to this information. As Social Services also applied subsections 17(1)(b) and 19(1)(c) of FOIP to these same portions of the record, I will consider the application of these exemptions later in this Report.

5. Did Social Services properly apply subsection 15(1)(m) of FOIP?

[122] Social Services did not identify this exemption in its section 7 response to the Applicant, but raised the application of subsections 15(1)(m) and 18(1)(b) of FOIP to this information in its submission. In the future, I will not consider additional exemptions not raised in the section 7 decision, but because this was raised before September 1, 2022, I will consider it in this Report.

[123] Social Services applied subsection 15(1)(m) of FOIP to information regarding accessing the virtual Microsoft Teams meeting found in emails on pages 208 and 209 of this record which are the same records as considered on pages 88 and 89 in Review Report 139-2021, 203-2021. They also withheld the same Microsoft Teams meeting details on page 39 of the record.

[124] Subsection 15(1)(m) of FOIP provides as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[125] Subsection 15(1)(m) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems (*Guide to FOIP*, Ch. 4, p. 89).

[126] “Including” means that the list of information that follows is incomplete (non-exhaustive). The examples in the provision are the type of information that could be presumed to qualify as “security arrangements” (*Guide to FOIP*, Ch. 4, p. 89).

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

[128] The following two-part test can be applied. However, only one of the questions needs to be answered in the affirmative for the exemption to apply::

1. Could release reveal security arrangements (of particular vehicles, buildings, other structures or systems)?
2. Could release reveal security measures employed to protect the particular vehicles, buildings, other structures or systems?

(Guide to FOIP, Ch. 4, pp. 89 - 90).

[129] “Reveal” means to make known; cause or allow to be seen. *(Guide to FOIP, Ch. 4, p. 90)*

[130] “Security” means a state of safety or physical integrity. The security of a building includes the safety of its inhabitants or occupants when they are present in it. Examples of information relating to security include methods of transporting or collecting cash in a transit system, plans for security systems in a building, patrol timetables or patterns for security personnel, and the access control mechanisms and configuration of a computer system *(Guide to FOIP, Ch. 4, p. 90).*

[131] “Method” means a mode of organizing, operating, or performing something *(Guide to FOIP, Ch. 4, p. 90).*

[132] “Other structures or systems” includes computer and communication systems. An example of a communication system could be radio communication systems such as two-way radios *(Guide to FOIP, Ch. 4, p. 90).*

[133] Social Services submission provides as follows:

Saskatchewan Builds and Procurement has confirmed the link remains active even once the meeting is complete. This creates a potential security risk if applicants are permitted to navigate the site themselves.

The Ministry recognizes that records that are part of Teams meetings are subject to FOIPPA and its exemptions and, if responsive to an access request, would be part of the responsive records. However, it is quite another matter to permit an applicant to navigate the site through the Teams link, which could not only pose a security risk but also potentially allow an applicant to gain access to records that have not been redacted for exemptions and personal information.

[134] In its submission, Social Services’ does not specify what specifically the Applicant can access with the Teams link or with the other information in question. Also, Social Services can share such links and information either internally or externally and may not be aware of what those individuals do with the information, so the question is what security risk is posed? Social Services has not sufficiently argued or provided evidence to support its claim

that the alleged harm could occur to support that this exemption would apply. As such, the test is not met, and I find that Social Services did not properly apply subsection 15(1)(m) of FOIP. I will still, however, consider Social Services' application of subsection 18(1)(b) of FOIP to this information.

6. Did Social Services properly apply subsection 18(1)(b) of FOIP?

[135] Social Services applied subsection 18(1)(b) of FOIP to information regarding accessing the virtual Microsoft Teams meeting found in emails on pages 208 and 209 of the record. Social Services also withheld the same Microsoft Teams meeting details on page 39 of the record.

[136] Subsection 18(1)(b) of FOIP provides as follows:

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;

[137] Subsection 18(1)(b) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose financial, commercial, scientific, technical or other information which the Government of Saskatchewan or a government institution has a proprietary interest or a right of use and which has monetary value or reasonably likely to have monetary value (*Guide to FOIP*, Ch. 4, p. 164).

[138] My office applies the following three-part test when considering the application of subsection 18(1)(b) of FOIP:

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).

[139] Social Services submission provides:

For the first step of the test, the information is technical in nature. The exemption on these pages relates to technical links for connecting into Microsoft Teams (Teams) meetings, which the ministry uses to conduct virtual meetings internally and with external parties. Teams is a communication system used by the provincial government to facilitate virtual meetings.

[140] “Technical information” is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge, which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information (*Guide to FOIP*, Ch. 4, p. 165).

[141] The withheld information is login information for a Microsoft Teams meeting, a link to join the meeting, a telephone number and code to access the meeting. The information is not describing any “subject, craft or technique”, and does not involve information prepared by a professional in the field that describes the construction, operation or maintenance of a structure, process, equipment or thing. If it does, Social Services has not sufficiently argued how. As such, I find that the first part of the test is not met, and that Social Services has not properly applied subsection 18(1)(b) of FOIP to this information. See Appendix A for details.

7. Did Social Services properly apply subsection 18(1)(d) of FOIP?

[142] Social Services' submission indicated it was instead claiming subsection 17(1)(b) of FOIP rather than 18(1)(d); however, later in its submission it also indicated it is still claiming 18(1)(d) of FOIP to withhold portions of pages 130 and 135 of the record. As such, I will consider subsection 18(1)(d) of FOIP as Social Services has applied it on these pages.

[143] Subsection 18(1)(d) of FOIP provides:

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

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution;

[144] Subsection 18(1)(d) of FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Government of Saskatchewan or a government institution (*Guide to FOIP*, Ch. 4, p. 173).

[145] My office applies the following two-part test when considering the application of subsection 18(1)(d) of FOIP:

1. Are there contractual or other negotiations occurring involving the Government of Saskatchewan or a government institution?

2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations?

(*Guide to FOIP*, Ch. 4, pp. 174 - 175)

[146] Social Services' submission provides:

Information redacted on page 130 provides a breakdown of the increases to funding and the specifics around those increases. This is information specific to SWAP,

negotiated directly with them. Information includes individual pricing as well as limits payments cannot exceed in the fiscal year.

Appendix A of the agreement for services provides an itemized categories that create the funding issued to SWAP. Government annually reports the funding provided to a variety of organizations etc. through Volume 2 of Public Accounts. This report lists totals paid to an organization by ministry division; details of the categories is not made public. The categories and funding vary between organizations based on the services the organization provides and the support needed to provide those services. The release of information from either page could negatively impact the Ministry's ability to negotiate with both SWAP and other agencies.

[147] Pages 126 to 138 are an amending agreement and the appendices between Social Services and SWAP. Social Services released these pages of the record, except for a portion of information on page 130 and the table on page 135.

[148] A "negotiation" is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion. Prospective or future negotiations could be included within this exemption, as long as they are foreseeable. It may be applied even though negotiations have not yet started at the time of the access to information request, including when there has not been any direct contact with the other party or their agent. However, a vague possibility of future negotiations is not sufficient. There must be a reasonable fact-based exception that the future negotiations will take place (*Guide to FOIP*, Ch 4, p. 174).

[149] Social Services submission indicated that, "there are ongoing negotiations between the Ministry and SWAP and the Ministry and other CBOs. Releasing this information could impact the Ministry's ability to conduct negotiations." Social Services' submission did not provide any further information to support its position, other than the bare assertion that there are ongoing negotiations. As the first part of the test is not met, I find that subsection 18(1)(d) of FOIP does not apply to the information withheld on pages 30 and 35. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the application of that exemption to this information later in this Report.

8. Did Social Services properly apply subsection 17(1)(b) of FOIP?

[150] Social Services submission indicated that it was claiming subsection 17(1)(b) of FOIP, rather than subsection 18(1)(d) of FOIP. Subsection 17(1)(b) of FOIP provides as follows:

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

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

(ii) a member of the Executive Council; or

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

[151] Subsection 17(1)(b) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving 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, p. 131).

[152] The provision is intended to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public (*Guide to FOIP*, Ch. 4, p. 131).

[153] My office applies the following two-part test when considering the application of subsection 17(1)(b) of FOIP:

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. 132 – 133)

[154] Social Services' submission provided the following regarding the records where subsection 17(1)(b) of FOIP was applied:

...pertain to consultations between ministry staff, the Executive Director and Board members of SWAP on a variety of subjects including responses to media inquiries, documents required under the agreement for services, an internal review SWAP was planning etc.

[155] "Consultation" means: the action of consulting or taking counsel together: deliberation, conference; a conference in which the parties consult and deliberate (*Guide to FOIP, Ch. 4, p. 132*).

[156] 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 (*Guide to FOIP, Ch. 4, p. 132*).

Pages 3, 4, 10 11, 14, 15, 18 and 19

[157] Pages 3 and 4, 10 and 11 and 14 and 15 are duplicate emails. The withheld information in these emails is SWAP's response to a request from Social Services for specified documentation. The information simply appears to be providing Social Services with an explanation about upcoming items. This information would not qualify as a consultation. As the first part of the test has not been met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. Social Services also applied subsection 19(1)(c) of FOIP to this portion of the record. I will consider the application of this exemption to this portion of the record later in this Report.

Pages 8 and 9

[158] Pages 8 and 9 are SWAP board meeting minutes from September 5, 2018. On page 8, Social Services withheld information related to two items discussed at the meeting. While the record shows the application of subsection 17(1)(b) of FOIP, Social Services' submission does not provide any arguments for this page of the record regarding the application of this exemption. Based on a review of the record, this information would not qualify as a consultation. As such, I find the first part of the test is not met and therefore Social Services did not properly apply subsection 17(1)(b) of FOIP. Social Services also applied subsection 19(1)(c) of FOIP to this portion of the record. I will consider the application of that exemption later on in this Report.

Page 13

[159] On page 13 is an email thread. Social Services described the withheld information as "SWAP Executive Director and MSS CBO unit staff consulting on financial statements and audit." The withheld information is questions from Social Services regarding the Audited Financial Statement and SWAP's response to those items. The questions from Social Services appear to be requesting factual information regarding the financial statements and SWAP's response providing information. This information would not qualify as a consultation. As the first part of the test is not met, I find that subsection 17(1)(b) of FOIP was not properly applied. Social Services also applied subsection 19(1)(c) of FOIP to this portion of the record. I will consider the application of that exemption later on in this report.

Page 17

[160] On page 17, Social Services withheld a portion of SWAP's response to an email from Social Services requesting specified documentation. The response relates to the requested information and would not qualify as a consultation. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. See Appendix

A for details. Social Services also applied subsection 19(1)(c) of FOIP to this portion of the record. I will consider the application of that exemption later on in this Report.

Pages 24 and 25

[161] Pages 24 and 25 are a letter from Social Services to the SWAP Chairperson. The letter is regarding the reconciliation of funds for 2018-2019. The withheld information appears to be factual information regarding the annual financial analysis. This information would not qualify as a consultation and as such, the first part of the test is not met. As the first part of the test has not been met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. Social Services also applied subsection 19(1)(c) of FOIP to this portion of the record. I will consider the application of that exemption later on in this Report.

Page 36

[162] Social Services withheld a portion of a sentence in the email on page 36. The withheld portions of the email indicate the purpose of the call being arranged. The email simply indicates the purpose of a call and does not contain any information that would qualify as consultations. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. See Appendix A for details. Social Services indicated it was no longer claiming the third party exemption to this information, however as it does not appear the third party has dropped its refusal to release this page. I will, therefore, still consider the application of subsection 19(1)(c) of FOIP to this page of the record.

Page 38

[163] Page 38 is an email from Social Services to SWAP, an advisory committee member and the SWAP Chairperson. Social Services withheld the subject line and post of the body of the email. Social Services' submission for subsection 17(1)(b) of FOIP does not provide any arguments for the application of subsection 17(1)(b) of FOIP; however, the record shows it is being withheld pursuant to this exemption. The information appears to be noting an item that they are seeking information regarding, which would not qualify as a

consultation. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. Social Services indicated that it was no longer claiming the third party exemption to this information; however, as it does not appear the third party has dropped its refusal to release this page, I will still consider the application of subsection 19(1)(c) of FOIP to this page of the record.

Page 39

[164] On page 39 Social Services withheld the first sentence of the email. I have already found that the initials of the individual in that sentence qualify as personal information pursuant to subsection 29(1) of FOIP. Social Services submission for subsection 17(1)(b) of FOIP does not provide any arguments for the application of subsection 17(1)(b) of FOIP, however the record shows it is being withheld pursuant to this exemption. The withheld sentence would not qualify as a consultation. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. Social Services indicated it was no longer claiming the third party exemption to this information; however, as it does not appear the third party has dropped its refusal to release this page, I will still consider the application of subsection 19(1)(c) of FOIP to this page of the record.

Page 41

[165] Pages 41 and 42 are notes from a meeting including a list of concerns raised by community members, residents and current and former employees. Social Services applied subsections 17(1)(b) and 19(1)(c) of FOIP to the last redaction on page 41 of the record. The redacted information would not qualify as a consultation, as such the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP, but will still consider subsection 19(1)(c) of FOIP to this information later in this Report.

Pages 44 and 45

[166] Pages 44 and 45 were withheld in full and are an attachment to an email on page 43 of the record. The email on page 43 was released to the Applicant. The email is from Social

Services to SWAP and indicates that the document attached is for consideration related to a matter. Based on the email and information withheld in the attachment, I find that the information would qualify as consultations, which meets the first part of the test. The consultation involves an employee of a government institution, which meets the second part of the test. As such, I find Social Services properly applied subsection 17(1)(b) of FOIP.

[167] As I have found subsection 17(1)(b) of FOIP applies, there is no need to consider the application of subsection 19(1)(c) of FOIP to these pages of the record.

Page 76

[168] Page 76 is an email from Social Services involving a SWAP advisory committee member, the SWAP chairperson, a SWAP employee and a Social Services employee. The portion of the information withheld appears to relate to the reason that information is being requested. The information would not qualify as a consultation. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. Social Services indicated it was no longer claiming the third party exemption to this information; however, as it does not appear the third party has dropped its refusal to release this page, I will still consider the application of subsection 19(1)(c) of FOIP to this page of the record.

Page 80, 155, 156, 157 and 158

[169] On pages 80, and 155 to 158, Social Services withheld the bodies of two emails. I note that the email on pages 155 and 156 are a duplicate of the email on pages 157 and 158. I also note that I previously found that Social Services did not properly apply subsection 29(1) of FOIP to page 80.

[170] The emails involve the SWAP advisory committee member updating Social Services on a matter. There is nothing in the emails indicating a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to pages 80

and 155 to 158. As Social Services also applied subsections 19(1)(c) of FOIP to this information and subsection 17(1)(a) of FOIP to the information withheld on page 80, I will consider the information under those exemptions later in this Report.

Page 85

[171] The first redaction on page 85 is contained in an email discussing a matter that a member of the SWAP advisory committee had emailed Social Services about. The SWAP advisory committee member provides an opinion on the matter and seeks guidance from Social Services on how to proceed. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of the reasons for or against an action. The email simply provides an opinion on what was received and asks Social Services to take a specified action. This would not qualify as consultations and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 92

[172] The first redaction on page 92 is contained in an email. In the email, it appears a member of the SWAP advisory committee emailed a Social Services employee seeking guidance on a matter. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. The email simply provides an opinion on what was received and requests guidance, which would not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 100

[173] Page 100 includes an email chain, with subsection 17(1)(b) applied to the first email. In the email, it appears a member of the SWAP advisory committee emailed a Social Services employee providing an opinion on an email they had received. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. The email simply provides an opinion on what was received and requests guidance, which would not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsections 17(1)(a) and 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Page 101

[174] Page 101 is an email from Social Services to a SWAP advisory committee member. The majority of the body of the email was withheld. Social Services' submission described this page of the record as "consulting on potential media messaging for SWAP's consideration, as well as making suggestions regarding the use and dissemination of the information." From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The email simply provides an opinion and offers guidance, which would not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsections 17(1)(a) and 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Page 104

[175] Page 104 is an email from Social Services to SWAP. Social Services withheld the body of the email. As noted in the subject line that was released to the Applicant, the email relates

to intakes. However, the information withheld appears to relate to a factual statement and would not qualify as a consultation. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. See Appendix A for details. Social Services also applied subsection 19(1)(c) of FOIP to this portion of the record. I will consider the application of this exemption later in this report.

Page 105

[176] Page 105 is an email from Social Services; its submission describes the information withheld as “requesting clarification of funding from other sources.” Social Services withheld the subject line and the line of text from the body of the email. The email appears to be seeking factual information, as such this would not qualify as a consultation. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. See Appendix A for details.

Pages 110 and 111

[177] There are three redactions to handwritten notes on page 110. The redactions relate to items discussed. This information would not qualify as a consultation; therefore, the first part of test is not met. I find that subsection 17(1)(b) of FOIP was not properly applied. Social Services also applied subsection 19(1)(c) of FOIP to this portion of the record. As such, I will consider that exemption later in this report.

[178] Page 111 also includes handwritten notes. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. The notes describe possible actions or information required, which does not qualify as consultations, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 114

[179] Page 114 is an attachment to the email between two Social Services employees on page 113. Social Services withheld page 114 in full. Social Services' submission describes the record as a draft letter with comments. Based on a review of the record, it appears Social Services employees are preparing a letter and providing feedback on what should be included in the content. I find that this would qualify as consultations involving employees of a government institution. As such, I find Social Services properly applied subsection 17(1)(b) of FOIP. See Appendix A for details. As I have found that subsection 17(1)(b) of FOIP applies, there is no need to consider the application of subsection 19(1)(c) of FOIP.

Pages 116 and 117

[180] Pages 116 and 117 is an attachment to the email on page 115. The portion of the email released to the Applicant indicates the attachment includes a list of concerns shared verbally during a meeting on "Nov 3" to be forwarded to the "advisory and normal Board". It is not clear how any consultations are occurring. As such, the first part of the test is not met, therefore I find Social Services did not properly apply subsection 17(1)(b) of FOIP. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 119

[181] Page 119 is an attachment to the email on page 118. In the email on page 118, SWAP has forwarded a document related to the subject of the email which is "potential response to request comment from CBC". SWAP has forwarded it to a couple of advisory committee members, a SWAP/Raising Hope email address and a Social Services employee. SWAP had forwarded the document requesting feedback from the email recipients. This would qualify as a consultation, as such, the first part of the test is met. The consultation involves an employee of a government institution, which meets the second part of the test. As such, I find Social Services properly applied subsection 17(1)(b) of FOIP and I do not need to

consider Social Services' application of subsection 19(1)(c) to this information. See Appendix A for details.

Page 139

[182] Page 139 contains an email chain. Social Services applied subsection 17(1)(b) of FOIP to the email at the top of the page, which is between SWAP advisory committee members, a SWAP employee and a Social Services employee. The majority of the body of the email was withheld. Social Services' submission described this information as consultations between the email recipients regarding the media inquiry in the initial email of the email thread. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The email includes a request for someone to do something, and an opinion on the matter at hand, which would not qualify as consultations. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but as the third party has not dropped its refusal to release the information, I will still consider this information under subsection 19(1)(c) of FOIP later on in this Report.

Page 142

[183] Page 142 is an attachment to an email between Social Services' employees, SWAP employees and advisory committee members. The attachment is described in Social Services' submission as "draft reply to media request" and was withheld in full. The portion of the email released to the Applicant states that feedback is sought.

[184] From a review of the withheld information, it appears SWAP was engaging others, including employees from Social Services, on appropriateness of an action. SWAP prepared the statement for Social Services. This record, then, would qualify as a consultation involving an employee of a government institution, which meets the first and

second parts of the test. As such, I find that Social Services properly applied subsection 17(1)(b) of FOIP. As I find subsection 17(1)(b) of FOIP applies to this information, I have no need to consider Social Services' application of subsections 17(1)(a) and 19(1)(c) of FOIP to the same information. See Appendix A for details.

Page 143

[185] Page 143 contains an email chain. Social Services applied subsection 17(1)(b) of FOIP to the top email, which is between a Social Services employee, a SWAP employee, two advisory committee members and the board chairperson. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The email appears to address the inquiry from Social Services' initial email and discusses timing for a full response, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsections 17(1)(a) and 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Page 146

[186] Page 146 contains an email thread consisting of two emails between SWAP and Social Services. Social Services applied subsection 17(1)(b) of FOIP to the first redaction to the body of the top email and the first redaction of the body of the bottom email. That portion of the email is a response to the question posed by Social Services in the bottom email. The portions of the emails released to the Applicant appear to indicate Social Services asked questions about what was decided and SWAP was providing a response. It does not appear there are any consultations occurring. As such, the first part of the test is not met and I find Social Services did not properly apply subsection 17(1)(b) of FOIP. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release. I will also review Social Services' application of subsection 17(1)(a) of FOIP to this information.

Page 151

[187] Page 151 contains an email thread between a Social Services' employee and an advisory committee member. Most of the body of the email where Social Services applied subsection 17(1)(b) of FOIP was withheld. The email includes a discussion on how to handle a matter. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The email appears to address the inquiry from Social Services' initial email and discusses timing for a full response, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release. I will also review Social Services' application of subsection 17(1)(a) of FOIP to this information.

Pages 159 and 160

[188] The email thread on pages 159 and 160 contains two emails between Social Services and an advisory committee member. From a review of the withheld portions of the emails, they do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release. I will also review Social Services' application of subsection 17(1)(a) to this information.

Page 163

[189] Page 163 contains an email thread between an advisory committee member and Social Services. There are two emails in the thread; one sentence is redacted from the bottom email, and most of the body of the top email has been withheld. From a review of the

withheld portions of the emails, they do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release.

Page 164

[190] Page 164 is an email thread between Social Services and SWAP. In the bottom email on this page, Social Services withheld a part of a sentence. Social Services has indicated that the release of the information would identify “some substance from a consultation that CFP staff had with Privacy.” Based on a review of the information, it appears information is just being relayed. This information does not qualify as a consultation, as such the first part of the test is not met. I find Social Services did not properly apply subsection 17(1)(b) of FOIP. See Appendix A for details. I will also consider the Application of subsection 19(1)(c) of FOIP as Social Services also applied that exemption to this information.

Pages 166 and 168

[191] Pages 166 and 167 and pages 168 and 169 are email threads. Pages 166 and 168 include an email thread between Social Services, SWAP, the board chairperson and advisory committee members. One sentence in the second paragraph of the top email, which is the same email on pages 166 and 168, has been withheld pursuant to subsection 17(1)(b) of FOIP. From a review of the withheld information, it does not appear that there is any discussion of a proposal or suggested action, or consideration of reasons for or against an action. It does not appear that the email solicits any sort of back-and-forth interaction on the matter. The content of the email includes opinions on a comment made in another email, which would not qualify as consultations and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. As Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Pages 173 and 174

[192] Pages 173 and 174 contain email threads that contain duplicate paragraphs of information. Based on a review of the emails, it appears Social Services was requesting an update from SWAP on a matter, and SWAP responded. However, the information does not appear to be a consultation between the parties. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release. Social Services has also applied subsection 19(1)(b) of FOIP to these pages of the record, as such I will also consider the application of that exemption later in this report.

Page 225 to 231

[193] Pages 225 to 231 were withheld in full. Social Services' submission described these pages of the record as a "document prepared by SWAP and provided to CFP staff in response to the list of concerns provided by the ministry to SWAP... the information included in this document have been a part of on-going consultations between the two parties." While Social Services has indicated that this document is part of an ongoing consultation, I do not see anything in the record that shows there was a consultation regarding these responses, or it is simply SWAP advising of the responses provided to the concerns. As such, I am not persuaded that the withheld information would qualify as a consultation. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. As Social Services has applied subsection 19(1)(c) of FOIP to these pages, I will consider the application of that exemption later on in this Report.

Page 232

[194] The portions of page 232 released to the Applicant indicates the page contains notes taken from a telephone call. In reviewing the record, this information would qualify as a consultation. Additionally, as the Executive Director of SWAP raised this with the Manager of CFP Community Services, the consultation involves an employee of a

government institution. As such, I find both parts of the test are met and that Social Services properly applied subsection 17(1)(b) of FOIP to this information. As I have found that subsection 17(1)(b) of FOIP applies to this portion of the record, there is no need to consider any other exemptions raised on this information. See Appendix A for details.

Pages 233, 234, 238 and 241

[195] These pages contain email threads. From a review, the withheld portions contain statements of belief about something, and do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release.

Pages 236 and 237

[196] These pages contain an email thread. Social Services withheld the majority of the body of an email within the email thread. The portion released to the Applicant indicates the emails were about a review. The email that was withheld in part is a response to an email from an advisory committee member in response to an inquiry from Social Services relating to the announcement of the individual completing the review. From a review, the withheld portions of the emails outline actions taken, and do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action. As such, the first part of the test is not met and I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. I will still, however, review it under subsection 19(1)(c) of FOIP later on in this Report.

Page 239

[197] Page 239 is an email thread that contains four emails, with redactions made on the first and third emails. The first email is between two Social Services employees seeking

clarification, as indicated by the portion released to the Applicant. The information appears to be seeking factual information related to the matter, rather than a consultation between the parties. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(b) of FOIP. See Appendix A for details.

[198] The third email is the same email I considered on pages 233, 234 and 238 of this record. As I previously noted, the withheld portions include a statement of belief, and do not include an offer of a proposal or suggested action, or consideration of reasons for or against an action, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release.

Pages 244, 245, 247 to 250 and 251

[199] These email threads all relate to the SWAP “Review”, as indicated by the portions released to the Applicant. They each contain duplicate paragraphs. The information withheld appears to be factual in nature and would not qualify as consultations, so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(b) of FOIP to this information. I will still, however, review it under subsection 19(1)(c) of FOIP later on in this Report.

9. Did Social Services properly apply subsection 17(1)(a) of FOIP?

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

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

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

[201] Subsection 17(1)(a) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose

advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council (*Guide to FOIP*, Ch. 4, p. 123).

[202] My office applies the following two-part test when considering the application of subsection 17(1)(a) of FOIP:

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

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

[203] Social Services' submission provided:

... the emails identified contain analysis, advice and/or proposals. The first part of the test has therefore been met.

With respect to the second part of the test, in all of the emails for which s. 17(1)(a) has been claimed, the analysis, advice and proposals were developed either by the ministry for SWAP and/or the ministry, or by SWAP for the ministry. Therefore, the second part of the test has been met.

[204] “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 (*Guide to FOIP*, Ch. 4, p. 124).

[205] A “proposal” is something offered for consideration or acceptance (*Guide to FOIP*, Ch. 4, p. 125).

[206] “Analyses” is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements (*Guide to FOIP*, Ch. 4, p. 125).

Pages 24 and 25

[207] Pages 24 and 25 are a letter from Social Services to the SWAP Chairperson. The portions released to the Applicant indicate the letter is about the reconciliation of funds for 2018-2019. Social Services has described these pages of the record as “details on the financial analysis”. The withheld information appears to provide an analysis or breakdown of how it calculated the reconciliation amount, as such, the first part of the test is met. The analysis was prepared by an employee of a government institution, as such the second part of the test is met. I find Social Services properly applied subsection 17(1)(a) of FOIP. See Appendix A for details.

[208] While Social Services also applied subsection 19(1)(c) of FOIP to this portion of the record, there is no need to consider its application as I have found subsection 17(1)(a) of FOIP to apply.

Page 80

[209] Page 80 contains an email. Social Services withheld the body of the email in its entirety. This email is also found on other pages of the record; however, it appears Social Services has only applied subsection 17(1)(a) of FOIP to the email as it appears on this page. Social Services indicated that the record “contains SWAP’s analysis and opinion of the situation and their concerns.” I am not persuaded, however, that the information contains an analysis that would have been prepared for Social Services. As such, I find Social Services did not properly apply subsection 17(1)(a) of FOIP to this information. As Social Services also

applied subsection 19(1)(c) of FOIP to this information, I will consider the information under those exemptions later in this Report.

Page 85

[210] Page 85 involves an email thread with three emails. In the top email, it appears a SWAP advisory committee member provides an opinion on the matter and seeks guidance from Social Services on how to proceed. Based on a review of the record, the withheld information would not qualify as analysis, advice and/or proposals. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(a) of FOIP. Social Services also applied subsection 19(1)(c) of FOIP to this information, I will consider the information under that exemption later in this Report.

Page 100

[211] Page 100 contains an email chain. Social Services applied subsection 17(1)(a) of FOIP to portions of the top email. In the email, it appears a SWAP advisory committee member emailed a Social Services employee providing an opinion on the matter. The email simply provides an opinion on what was received and would not qualify as analysis, advice and/or proposals. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(a) of FOIP to this information. I will still, however, consider subsection 19(1)(c) of FOIP on this information later in this Report.

Page 101

[212] Page 101 contains an email from Social Services to a SWAP advisory committee member. Most of the body of the email was withheld. Social Services' submission described this page of the record as "consulting on potential media messaging for SWAP's consideration, as well as making suggestions regarding the use and dissemination of the information." Upon review, the information in the email qualifies as advice related to items to be included in a statement, which meets the first part of the test. The information in the email was developed by SWAP for Social Services, and so was developed by or for Social Services,

which meets the second part of the test. As such, I find Social Services properly applied subsection 17(1)(a) of FOIP to this information. I have no need to review Social Services application of subsection 19(1)(c) of FOIP to this information. See Appendix A for details.

Page 143

[213] Page 143 contains an email exchange between Social Services, a SWAP employee, two advisory committee members and the board chairperson. Social Services withheld the information in the body of the top email. The email appears to address an inquiry from Social Services. This information would not qualify as analysis, advice and/or proposals, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(a) of FOIP to this information. As Social Services applied subsection 19(1)(c) of FOIP to this information, I will consider it under that exemption later in this Report.

Page 151

[214] Page 151 contains an email thread with three emails. Social Services applied subsection 17(1)(a) of FOIP on the second email, which is between Social Services and an advisory committee member. Social Services withheld most of the body of the email. The email includes a discussion on how to handle a matter. I am not persuaded that this email contains analysis, advice and/or proposals, and so the first part of the test is not met. As such, I find Social Services did not properly apply subsection 17(1)(a) of FOIP to this information. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release.

Pages 159 and 160

[215] These pages contain two emails between Social Services and an advisory committee member. From a review of the emails, taken together I am satisfied that the information in the emails qualifies as advice, which meets the first part of the test. As the advice was

provided by Social Services, it was developed by Social Services for SWAP, which meets the second part of the test. As such, I find Social Service properly applied subsection 17(1)(a) of FOIP to this information. As I have found subsection 17(1)(a) of FOIP applies, I have no need to consider Social Services' application of subsection 19(1)(c) of FOIP to this same information. See Appendix A for details.

Page 239

[216] Page 239 is an email thread containing emails between Social Services and SWAP and emails between two Social Services employees. The portions released to the Applicant indicate the emails relate to an inquiry about the announcement of the individual completing the SWAP review. The email between SWAP and Social Services provides SWAP's response to the inquiry. The email between the Social Services employees discussing the response. The information withheld appears to be factual information related to this matter, and would not qualify as analysis, advice and/or proposals. As the first part of the test is not met, I find Social Services did not properly apply subsection 17(1)(a) of FOIP to this information. I will still, however, consider subsection 19(1)(c) of FOIP on this information later in this Report. Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release.

10. Did Social Services properly apply subsection 19(1)(b) of FOIP?

[217] Social Services applied subsection 19(1)(b) of FOIP to withhold portions of two emails on pages 173 and 174 of the record.

[218] Subsection 19(1)(b) of FOIP provides as follows:

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;

[219] Subsection 19(1)(b) of FOIP is a mandatory, class-based exemption. It permits refusal of access in situations where a record contains financial, commercial, scientific, technical or labour relations information that was supplied in confidence to a government institution by a third party. (*Guide to FOIP*, Ch. 4, p. 197).

[220] My office applies the following three-part test to determine if subsections 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. 198 - 202)

[221] Social Services' submission stated that "this financial information was supplied implicitly in confidence by SWAP to the Ministry."

[222] "Financial information" is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a third party. (*Guide to FOIP*, Ch. 4, p. 198)

[223] Pages 173 and 174 are email threads. Social Services withheld the majority of the body of the emails and the subject line. As previously discussed in this Report, the emails contain duplicate paragraphs. Based on a review of the emails, it appears Social Services was requesting an update from SWAP on a matter. SWAP responded to Social Services providing an explanation and making some requests. Based on a review of the record, it appears the information would qualify as financial information that was supplied by SWAP to Social Services, which meets the first and second parts of the test. Regarding the third

part of the test, aside from Social Services' assertion that it was supplied implicitly in confidence, Social Services has not provided my office with any other details to support this claim. As I have not been provided with sufficient information to support the third part of the test, I find that subsection 19(1)(b) of FOIP was not properly applied. See Appendix A for details.

[224] Social Services withdrew its reliance on subsection 19(1)(c) of FOIP from this information, but I will still review it under that exemption as the third party does not agree with its release.

11. Did Social Services properly apply subsection 19(1)(c) of FOIP?

[225] Subsection 19(1)(c) of FOIP provides as follows:

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

...

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

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

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

a third party;

[226] Subsection 19(1)(c) of FOIP is a mandatory, harm-based provision. It permits refusal of access in situations where disclosure could reasonably be expected to result in the harms outlined at subclauses (i), (ii) and (iii). Government institutions and third parties should not assume that the harms are self-evident. The harm must be described in a precise and specific way to support the application of the provision (*Guide to FOIP*, Ch. 4, pp. 209 - 210).

[227] “Could reasonably be expected to” means there must be a reasonable expectation that disclosure could result in an undue benefit or loss to a person. The Supreme Court of Canada set out the standard of proof for harms-based provisions as follows:

This Court in *Merck Frosst* adopted the “reasonable expectation of probable harm” formulation and it should be used wherever the “could reasonably be expected to” language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and “inherent probabilities or improbabilities or the seriousness of the allegations or consequences”...

(Guide to FOIP, Ch. 4, p. 188)

[228] My office applies the following tests to determine if subsections 19(1)(c)(i), (ii) or (iii) of FOIP applies:

19(1)(c)(i)

The following two-part test can be applied:

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

For this exemption to apply there must be objective grounds for believing that disclosing the information could result in loss or gain to a third party measure in monetary terms (e.g., loss of revenue).

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

19(1)(c)(ii)

The following two-part test can be applied:

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

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

19(1)(c)(iii)

The following two-part test can be applied:

1. Are there contractual or other negotiations occurring involving a third party
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations of a third party

Government institutions and third parties should not assume that the harm is self-evident. The harm must be described in a precise and specific way to support the application of the provision.

(Guide to FOIP, Ch. 4, pp. 221 - 222)

[229] Social Services' submission provided:

Although the tests in the Guide to FOIP are set out separately for clauses (i)(ii) and (iii), they need to be considered together, because the Courts have acknowledged the interrelationship between them.

Although s. 19(1)(c)(iii) was not applicable in *Canadian Bank Note Ltd v Saskatchewan Government Insurance*, the Saskatchewan Court of Queen's Bench considered s. 19(1)(c)(i) and (ii) and noted, at paragraph 50, that "there is a close interrelationship between the notion of 'prejudice' to the competitive position of a third party, the criteria set out in s. 19(1)(c)(ii), and resultant financial loss or gain set out in ss. 19(1)(c)(i)." Most importantly, the Court said that "[i]f an opponent to disclosure establishes prejudice to its competitive position, it is likely or at least it 'could reasonably be expected to result in financial loss' to it."

The Saskatchewan Court of Queen's Bench also referred to the Supreme Court of Canada case of *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3:

It is sufficient for a third party to show that disclosure could reasonably be expected to result in any one of a financial loss or gain or in prejudice to the third party's competitive position. In other words, it is not necessary for the third party to show "that the "prejudice" to his or her competitive position also results in "harm" ...

In view of these statements of the Supreme Court of Canada and the Saskatchewan Court of Queen's Bench, it is submitted that the tests for s. 19(1)(c)(i)(ii) and (iii) cannot be considered in isolation, as one affects the other. Therefore, the ministry is applying the test as reframed above.

The Ministry submits that both (a) and (c) of the reframed test apply. With respect to (a) there is a very real potential for loss of funding for SWAP programs, as described below, or for interference with the negotiations of SWAP and its various funders, as well as pending internal decisions.

With respect to (b), “negotiation” is defined in the IPC Guide to FOIP Chapter 4:

“A negotiation is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation”. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion.”

This definition reflects the relationship between SWAP and its funders when it negotiates funding agreements. SWAP is a non-profit corporation and relies upon various sources of funding for its survival.

The Ministry is one of SWAP’s funders. Child and Family Program (CFP) Community Services unit is responsible for the direct relationship with SWAP, related to the specific services identified in the ministry’s agreement with SWAP. They are responsible for ensuring CBOs providing services for children and families are meeting the requirements detailed in the agreement. Staff from this unit have been in regular communication with SWAP over the past several months to address the concerns previously mentioned. While most concerns do not fall within the scope of the Agreement, CFP has been working with SWAP to identify steps for addressing the concerns and limiting disruption to the services identified in the Agreement. This is also a form of negotiation. Release of information, without SWAP consent, would harm the trust and damage the communication between the ministry and SWAP, and could affect the resolution of these concerns.

[230] Exemption from disclosure should not be granted based on fear of harm that is fanciful, imaginary or contrived. Such fears of harm are not reasonable because they are not based on reason...the words “could reasonably be expected” “refer to an expectation for which real and substantial grounds exist when looked at objectively”. Some relevant questions that may assist are:

- What kind of harm is expected from disclosure?
- How will the loss or gain specifically occur?
- How much money is involved?
- Will the loss or gain affect the financial performance of the third party? How? To what degree?
- How old is the information? If the information is not current, why would disclosure still adversely affect the third party?

- Has similar information about the third party been made public in the past? If so, what was the impact? Was the impact quantifiable (e.g., lost sales or revenues)?
- Is information of this nature available about competitors of the third party?
- Are there examples in other businesses where disclosure of similar information led to material financial loss or gain? If so, describe and quantify the financial loss or gain. Why is the situation parallel to that of this third party?
- What actions could the third party take to counteract potential financial loss or gain knowing the information would be disclosed?

(*Guide to FOIP*, Ch. 4, pp. 223 and 224)

[231] Social Services provided detail regarding the potential harm that it did not want used in the Report; however, it did not provide sufficient detail or evidence to support the claim. The third party also provided arguments about why this exemption should apply, but also did not provide sufficient detail or evidence to support its claims. In my office's Review Report 205-2019, 255-2019, I stated the following about evidence at paragraphs [130] to [132] of that report:

[130] Evidence is the material that parties must submit in reviews/investigations to establish the facts on which they are relying. Arguments are the reasons why a party thinks that the evidence shows certain facts to be true, or why the Commissioner should interpret the law in a particular way, so as to make the decision that the party wants the Commissioner to make.

[131] Parties may not succeed in a review if they do not provide evidence to support their arguments. If the success of an argument depends on underlying facts, providing the argument alone is not sufficient. Examples of evidence include affidavits, expert reports, news articles, meeting minutes, policy documents or contracts. In a review, the records at issue are treated as evidence. Although news articles are not generally thought of as reliable evidence, they may be relevant in cases such as where a party is trying to demonstrate that something is publicly available, or where personal information has been disclosed without authority.

[132] It would not be sufficient to provide my office with records and leave it up to my office to draw from the records the facts on which the decisions will be based. In addition, it would not be sufficient to simply state "access is denied because of section 18." It is up to the local authority to 'make the case' that a particular exemption applies. That means presenting reasons why the exemption is appropriate for the part of the record that has been withheld. This is usually done in the form of written representations, commonly called a submission.

[232] The standard here is “could reasonably be expected to”, which is higher than just a mere possibility. There must be an objective basis supported by facts or evidence that the alleged harm is more than probable. While Social Services has alleged a potential outcome if the information was released, it did not provide evidence to support the outcome is more than probable.

[233] Social Services applied subsection 19(1)(c) of FOIP to portions of pages 3, 4, 8, 10 11, 13 14, 15, 17, 18, 19, 36, 38, 39, 41, 76, 80, 85, 92, 100, 104, 105, 110, 111, 116, 117 130, 135, 139, 143, 151, 155, 156, 157, 158, 164, 166, 168, 173, 174, 225, to 231, 232, 233, 234, 236, 237, 238, 239, 241, 242, 244, 245, 247, 248, 249, 250 and 251 of the record. However, based on a lack of supporting evidence, I am not persuaded that the release of these page of the record would result in any harm outlined by Social Services or the third party.

IV FINDINGS

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

[235] I find that Social Services did not comply with section 12 of FOIP.

[236] I find that Social Services properly applied subsections 17(1)(a), 17(1)(b) and 29(1) of FOIP and subsection 27(1) of HIPA to some portions of the record, but not others. See Appendix A for details.

[237] I find that Social Services did not properly apply subsections 15(1)(m), 18(1)(b), 18(1)(d), 19(1)(b) and 19(1)(c) of FOIP to the record. See Appendix A for details.

V RECOMMENDATIONS

[238] I recommend Social Services review why it was not able to respond to the Applicant within the legislative timeframe and determine if it needs to revisit its policies and procedures, or if it has adequate resources.

[239] I recommend Social Services continue to withhold the portions of the record where subsections 17(1)(a), 17(1)(b) and 29(1) of FOIP and subsection 27(1) of HIPA were found to apply. See Appendix A for details.

[240] I recommend that Social Services release the portions of the record where I have not found any exemptions apply within 30 days of issuance of this Report. See Appendix A for details.

Dated at Regina, in the Province of Saskatchewan, this 16th day of December, 2022.

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

Appendix A

Record	Page Numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
1	1	29(1)	No	Release
3	3 and 4	17(1)(b), 19(1)(c), 29(1)	29(1) of FOIP applies to the last redaction on page 4	Withhold the last redaction on page 4, release the remaining portions.
4	6	29(1)	No	Release
5	7	29(1)	No	Release
6	8 and 9	17(1)(b), 19(1)(c), 29(1)	No	Release
7	10 and 11	17(1)(b), 19(1)(c), 29(1)	29(1) of FOIP applies to the redaction on page 11	Withhold the redaction on page 11, release the remaining portions.
8	13	17(1)(b), 19(1)(c), 29(1)	No	Release
9	14 and 15	17(1)(b), 19(1)(c), 29(1)	29(1) of FOIP applies to the redaction on page 15	Withhold the redaction on page 15, release the remaining portions.
10	17	17(1)(b), 19(1)(c), 29(1)	29(1) does not apply	Release
11	18 and 19	17(1)(b), 19(1)(c), 29(1)	29(1) of FOIP applies to the redaction on page 19	Withhold the redaction on page 19, release the remaining portions.
13	21 and 22	29(1)	Yes	Withhold
15	24 and 25	17(1)(a), 17(1)(b), 19(1)(c)	17(1)(a) of FOIP applies	Withhold
20	32	29(1)	Yes	Withhold
22	34	29(1)	No	Release
24	36	17(1)(b), 19(1)(c), 29(1)	No	Release
26	38	17(1)(b), 19(1)(c), 29(1)	No	Release
27	39	15(1)(m), 18(1)(b), 17(1)(b), 19(1)(c), 29(1)	Subsection 29(1) of FOIP applies to the initials of a resident	Withhold the initials of the resident, release the remaining portions of the record.

Record	Page Numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
29	41 and 42	17(1)(b), 19(1)(c), 29(1); 27(1) of HIPA	27(1) of HIPA applies to the second redaction on page 41 29(1) of FOIP applies to the redacted portions, with the exception of the last redaction on page 41.	Continue to withhold, with the exception of the last redaction on page 41.
31	44 and 45	17(1)(b), 19(1)(c)	17(1)(b) of FOIP applies	Withhold
32	46	29(1)	Yes	Withhold
35	49	29(1)	Yes – applies to name of individual the file name in the email attachments	Withhold the name of the individual in the file name in the email attachments. Release the email address of the SWAP chairperson.
36	50 to 68	17(1)(b), 19(1)(c)	29(1) of FOIP applies	Withhold
37	69	17(1)(b), 19(1)(c)	29(1) of FOIP and 27(1) of HIPA applies	Withhold
38	70 to 75	17(1)(b), 19(1)(c)	29(1) of FOIP applies	Withhold
39	76	17(1)(b), 19(1)(c)	No	Release
40	77	17(1)(b), 19(1)(c), 29(1)	Yes – subsection 29(1) of FOIP applies	Withhold
41	78	17(1)(b), 19(1)(c), 29(1)	Yes – subsection 29(1) of FOIP applies	Withhold
42	79	29(1)	Yes	Withhold
43	80	17(1)(a), 17(1)(b), 19(1)(c), 29(1)	No	Release
44	81	29(1)	No	Release
46	83 and 84	29(1)	Yes	Withhold

Record	Page Numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
47	85	17(1)(a), 17(1)(b), 19(1)(c), 29(1)	No	Release
48	91	29(1)	No	Release
49	92 and 93	17(1)(b), 19(1)(c), 29(1)	No	Release
50	96 and 97	29(1)	No	Release
51	98	29(1)	No	Release
53	100	17(1)(a), 17(1)(b), 19(1)(c) 29(1)	No	Release
54	101	17(1)(a), 17(1)(b), 19(1)(c)	17(1)(a) of FOIP applies	Withhold
55	103	29(1)	Yes	Withhold
56	104	17(1)(b), 19(1)(c)	No	Release
57	105	17(1)(b), 19(1)(c)	No	Release
61	109 to 111	17(1)(b), 19(1)(c), 29(1)	Pages 109 – Subsection 29(1) only applies to the name of the other individual	Pages 109 – Withhold the name of the other individual and release remaining portions.
63	114	17(1)(b), 19(1)(c)	17(1)(b) of FOIP applies	Withhold
65	116 and 117	17(1)(b), 19(1)(c), 29(1)	Pages 116 – Subsection 29(1) applies to the third and sixteenth items on the list	Withhold the third and sixteenth items on page 116. Release remaining portions.
66	118	29(1)	29(1) does not apply to the email address. 29(1) of FOIP does apply to the name of the attachment.	Withhold the name of the attachment. Release the remaining portions of the record.
67	119	17(1)(b), 19(1)(c)	17(1)(b) applies	Withhold
69	121	29(1)	Yes	Withhold
71	123	29(1)	No	Release
72	124	29(1)	No	Release

Record	Page Numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
76	130	18(1)(d), 19(1)(c)	No	Release
78	135	18(1)(d), 19(1)(c)	No	Release
80	139 and 140	17(1)(b), 19(1)(c), 29(1)	No	Release
81	141	29(1)	No	Release
82	142	17(1)(a), 17(1)(b), 19(1)(c)	17(1)(b) of FOIP applies	Withhold
83	143	17(1)(a), 17(1)(b), 19(1)(c), 29(1)	No	Release
85	145	29(1)	Yes	Withhold
86	146	17(1)(b), 19(1)(c), 29(1)	29(1) applies to the subject line of the emails, the redacted portion of the bottom email and the name of the resident in the top email	Withhold the subject line of the emails, the redacted portion of the bottom email and the name of the resident in the top email
87	147 and 148	29(1)	Yes	Withhold
88	149	29(1)	No	Release
89	151 to 153	17(1)(a), 17(1)(b), 19(1)(c), 29(1)	No	Release
90	155 and 156	17(1)(b), 19(1)(c), 29(1)	No	Release
91	157 and 158	18(1)(d), 19(1)(c), 29(1)	No	Release
92	159 and 160	17(1)(a), 17(1)(b), 19(1)(c)	17(1)(a) of FOIP applies	Withhold
93	162	29(1)	No	Release
94	163	17(1)(b), 19(1)(c)	No	Release
95	164	17(1)(b), 19(1)(c), 29(1)	No	Release
96	165	29(1)	Yes	Withhold
97	166	19(1)(c), 29(1); 27(1) of HIPA	27(1) of HIPA applies to the sixth redaction on page 166	Withhold the sixth redaction, release the remaining portions
98	168	19(1)(c), 29(1); 27(1) of HIPA	27(1) of HIPA applies to the	Withhold the sixth redaction, release the remaining portions

Record	Page Numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
			sixth redaction on page 168	
99	170 to 172	29(1)	29(1) of FOIP applies, with the exception of the Applicant's personal information found in the third line of the top email on page 170.	Withhold, with the exception of the Applicant's personal information found in the third line of the top email on page 170.
100	173 and 174	17(1)(b), 19(1)(b), 19(1)(c), 29(1)	No	Release
103	184	29(1)	No	Release
105	186	29(1)	No	Release
108	190 to 192	29(1)	29(1) of FOIP applies, with the exception of the top email on page 191 and the top two emails on page 192.	Withhold, with the exception of the top email on page 191 and the top two emails on page 192.
109	193	29(1)	No	Release
110	194	29(1)	Yes	Withhold
111	195	29(1)	No	Release
112	196	29(1)	No	Release
116	202	17(1)(b), 19(1)(c), 29(1)	29(1) of FOIP applies	Withhold
117	203 to 205	29(1)	Yes	Withhold
118	206	29(1)	No	Release
119	207	29(1)	No	Release
120	208 and 209	15(1)(m), 18(1)(b), 29(1)	No	Release
121	210 and 211	29(1)	Yes	Withhold
122	212	29(1)	Yes - with the exception of the information	Withhold, with the exception of the fourth redacted bullet relating to the Applicant

Record	Page Numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
			about the Applicant	
123	213 to 215	29(1)	Yes – with the exception of the second redaction on page 24 that relates to the Applicant and the third and fourth redacted bullet relating to the Applicant on page 25	Withhold with the exception of the second redaction on page 24 that relates to the Applicant and the third and fourth redacted bullet relating to the Applicant on page 25
124	216	29(1)	Yes	Withhold
125	217 to 221	29(1); 38(1)(c) of HIPA	Yes – 29(1) of FOIP applies	Withhold
126	222 to 224	29(1)	Yes, with the exception of the name of the Applicant	Withhold, with the exception of the name of the Applicant
127	225 to 231	17(1)(b), 19(1)(c), 29(1)	Yes – 29(1) of FOIP applies to the third concern and response on page 225 and the concern and response below the portion of a paragraph at the top of the page of 229	Release, with the exception of the third concern and response on page 225 and the concern and response below the portion of a paragraph at the top of the page of 229.
128	232	17(1)(b), 19(1)(c), 29(1)	Yes – 29(1) of FOIP applies to paragraph 1, paragraph 5 and paragraph 6. Subsection 17(1)(b) of FOIP applies	Withhold the information specified and release the remaining information.

Record	Page Numbers	Exemptions claimed	Does the Exemption Apply?	Release or Withhold
			to the last redaction.	
129	233	17(1)(b), 19(1)(c), 29(1)	No	Release
130	234	17(1)(b), 19(1)(c), 29(1)	No	Release
131	236 and 237	17(1)(b), 19(1)(c), 29(1)	No	Release
132	238	17(1)(b), 19(1)(c), 29(1)	No	Release
133	239	17(1)(a), 17(1)(b), 19(1)(c), 29(1)	No	Release
134	241	17(1)(b), 19(1)(c), 29(1)	No	Release
135	242	17(1)(b), 19(1)(c), 29(1)	No	Release
136	244 and 245	17(1)(b), 19(1)(c), 29(1)	No	Release
137	247 to 249	17(1)(b), 19(1)(c), 29(1)	No	Release
138	250 and 251	17(1)(b), 19(1)(c), 29(1)	No	Release