



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 105-2024

Saskatoon Public Library

January 15, 2025

Summary:

The Applicant submitted an access to information request to the Saskatoon Public Library (SPL). SPL withheld parts of the record pursuant to subsections 16(1)(a), 17(1)(b), (d), (e), (f) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant asked the Commissioner to review SPL's section 7 decision. SPL indicated in its submission that it was no longer relying on subsection 17(1)(e) of LA FOIP to withhold parts of the record. The A/Commissioner found that the document titled, "corrective action plan" (CAP) contains public information pursuant to section 83 of *The Environmental Management and Protection Act, 2010* (EMPA) and therefore, exemptions in LA FOIP cannot be relied on to withhold it. The A/Commissioner recommended that SPL release the CAP in full to the Applicant within 30 days of the issuance of this Report. For the remaining portions of the record, the A/Commissioner found that SPL did not properly apply subsections 16(1)(a), 17(1)(b), (d) and (f) of LA FOIP. The A/Commissioner recommended that SPL also release the remaining portions of the record in full within 30 days of the issuance of this Report.

I BACKGROUND

[1] On January 26, 2024, the Applicant submitted three access to information requests to the Saskatoon Public Library (SPL). The Applicant submitted requests for review for each of these requests to my office. My office will issue separate reports addressing each of these requests including for this one (IPC File 105-2024) and for the other two (IPC file 106-2024 and 107-2024). This Report will address the access to information request to the

Saskatoon Public Library (SPL) for the following records for the time period of “January 2020 to present”:

Records relating to remediation of the site for the New Central Library including:

A copy of the remediation plan for the New Central Library site that has been approved by the Ministry of the Environment.

A copy of the documents produced by P. Machibroda for Geotechnical Consulting Services.

Copies of the Purchase and Sale Agreements for all of the parcels of land for the New Central Library that indicate the responsibilities of the seller regarding site remediation.

Any and all correspondence between Colliers Project Leaders and the Saskatoon Public Library regarding site remediation work.

- [2] On February 12, 2024, SPL emailed a letter to the Applicant addressing all three of the Applicant’s access requests. SPL advised that given the “size and scale of the project, there is an extensive volume of correspondence.” As such, SPL advised it would need to issue a fee estimate and also outlined what exemptions would likely apply to the records based on a sample it had produced. SPL asked the Applicant if they would like to proceed with the fee estimate or provide “more specific details of the information you are looking for” in an effort to reduce any fees.
- [3] On February 13, 2024, the Applicant responded to SPL asking that SPL proceed to prepare fee estimates for each of their requests. For this request, the Applicant asked that SPL proceed with preparing the fee estimate for this request based on the wording of their January 26, 2024 access request.
- [4] On February 16, 2024, SPL contacted the Applicant again to encourage them to consider narrowing the scope of their request. SPL advised that the volume would be excessive and that fees would be “in the thousands of dollars.” SPL offered suggestions for how the Applicant could narrow their search.

[5] On February 19, 2024, the Applicant responded to SPL indicating that they had “submitted three separate Access to Information Requests (along with three \$20 payments and [they] expect each request to be treated separately and distinctly.” The Applicant also attached a response to SPL’s suggestions for narrowing the scope of their request:

I have clarified my request to the following:

Records relating to remediation of the site for the New Central Library, from January 2020 to present, including:

- A copy of the remediation plan for the New Central Library that has been approved by the Ministry of Environment.
- Only the relevant pages of the Purchase and Sale Agreements for all of the parcels of land for the New Central Library that refer to site remediation obligations by each seller.

[6] On February 20, 2024, SPL emailed the Applicant advising that based on the Applicant’s narrowed scope of their request, fee estimates would not be necessary, and it would proceed with processing the amended request.

[7] On February 27, 2024, SPL emailed a letter to the Applicant advising that the requested record contains third party information pursuant to subsection 18(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and, as such, it was extending its response period by an additional 30 days pursuant to subsection 12(1)(c) of LA FOIP.

[8] On April 1, 2024, SPL emailed the Applicant its section 7 decision letter and released parts of the responsive record. SPL’s decision letter indicated that it had withheld portions of the record pursuant to subsections 16(1)(a), 17(1)(b), (d), (e), (f) and 28(1) of LA FOIP.

[9] On April 6, 2024, the Applicant submitted a request for review to my office.

[10] On April 26, 2024, SPL’s legal counsel advised that it had issued third party notifications to the third parties; however, it did not claim any third-party exemptions as the third parties

did not object to release of their information. On April 30, 2024, my office asked SPL’s legal counsel to provide documentation showing the third parties had no objection to the release; SPL’s legal counsel provided that documentation on May 6, 2024.

[11] On May 6, 2024, my office notified SPL and the Applicant that my office would be undertaking a review.

[12] On June 10, 2024, SPL’s legal counsel provided my office with a copy of the responsive records and the index of records. On July 11, 2024, SPL’s legal counsel provided my office with its submission. The Applicant did not provide a submission.

II RECORDS AT ISSUE

[13] SPL identified 78 pages of records, releasing some parts of the records. SPL withheld 43 pages (pages 3 to 10, 16 to 24, 26, 29 to 32, 75 and 77 withheld in part and pages 37 to 39 and 57 to 71 withheld in full) pursuant to subsections 16(1)(a), 17(1)(b), (d), (e), (f) and 28(1) of LA FOIP. SPL indicated in its submission that it is no longer relying on subsection 17(1)(e) of LA FOIP. As such, this review will not consider the application of this exemption. The records at issue are as follows:

Record	Page(s)	Title and Description	LA FOIP Exemptions Applied
1	3 to 10, 16 to 24, 26, 27, 29 to 32, 37 to 39 and 57 to 71	Corrective Action Plan - prepared by third party outlining “potential action plan for the construction project”	16(1)(a), 17(1)(b), (d), (f) and 28(1) of LA FOIP
2	75	Signed Offer to Purchase – “subject to board approval February 6, 2020”	16(1)(a), 17(1)(b), (d) and (f) of LA FOIP
3	77	Scan 4185 – “amending agreement between the vendor and purchaser”	16(1)(a), 17(1)(b), (d) and (f) of LA FOIP

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[14] SPL is a “local authority” as defined by subsection 2(1)(f)(vi) of LA FOIP. SPL identified two third parties, P. Machibroda Engineering Ltd. and FPR Developments Ltd. SPL did not apply any third party exemptions, however it did initially provide notifications to both third parties. However, neither objected to the release of the responsive records. Both organizations would qualify as third parties pursuant to subsection 2(1)(k) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

2. Does *The Environmental Management and Protection Act, 2010* have application to information contained in any part of the record in this review?

[15] SPL is relying on subsections 16(1)(a), 17(1)(b), (d), (f) and 28(1) of LA FOIP to withhold pages 3 to 10, 16 to 24, 26, 27, 29 to 32, 37 to 39 and 57 to 71 of a documented titled, “Corrective Action Plan” (CAP) in part. Except for subsection 28(1) of LA FOIP, SPL is also relying on these exemptions to withhold part of page 75, which is a part of an offer to purchase/sales agreement (OPSA), and on page 77, which is part of an amending agreement.

[16] Before I consider the exemptions that SPL is relying on in this review, it is useful to consider if *The Environmental Management and Protection Act, 2010* (EMPA) has any application to the CAP or the OPSA and amending agreement.

CAP

[17] Portions of the CAP released to the Applicant disclose that it was completed by the engineering firm P. Machibroda Engineering Ltd. (engineering firm). I noted earlier in this report that the engineering firm would qualify as a third party under LA FOIP.

[18] I raise the EMPA because I have considered in past review reports if section 83 of the EMPA would consider certain types of records submitted to the Minister of Environment (Minister) to be public documents. Most recently, I considered section 83 of the EMPA under reviews of subsection 19(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP), a provision which deals with third party information (e.g., [Review Report 203-2023](#), [Review Report 197-2023](#)). The equivalent LA FOIP provision would be subsection 18(1). In those review reports, I considered how subsections 83(1) to (11) of the EMPA apply to environmental reports that are deemed to be public information. It is my view that subsections 83(1) to (7) of the EMPA are relevant in this matter; these subsections provide as follows:

83(1) Subject to subsections (3) to (11), all applications, information, data, test results, reports, returns and records and responses to a direction of the minister submitted to the minister pursuant to this Act, the regulations, the code or an accepted environmental protection plan are deemed to be public information.

(2) The minister may disclose to the public any application, information, data, test result, report, return or record or response to a direction of the minister mentioned in subsection (1) at any time and in any manner that the minister considers appropriate.

(3) Subject to the regulations, a person who submits an application or any information, data, test result, report, return or record or responds to a direction of the minister pursuant to this Act may request in writing that all or any part of the application, information, data, test result, report, return, record or response be kept confidential for a period of up to 5 years after the date of submission.

(4) Before the expiry of the period mentioned in subsection (3) or, if a request by that person has been approved pursuant to this subsection, before the expiry of the most recent period, the person may request in writing that the application, information, data, test result, report, return, record or response be kept confidential for a further period of up to 5 years.

(5) A request made pursuant to this section is to be dealt with in the prescribed manner.

(6) On receipt of a written request pursuant to subsection (3) or (4), the minister may approve the request if the minister is satisfied that the application, information, data, test result, report, return, record or response:

(a) contains matters that:

(i) are of a commercial, financial, scientific or technical nature; and

(ii) would reveal proprietary business, competitive or trade secret information **about that person's business**; or

(b) meets any prescribed criteria.

(7) If the minister does not approve the written request pursuant to subsection (3) or (4), the minister shall:

(a) notify the person who made the request of the minister's decision along with reasons for the decision; and

(b) wait for a period of 30 days after sending the notice mentioned in clause (a) before disclosing the application, information, data, test result, report, return, record or response with respect to which the request was made to the public.

[Emphasis added]

[19] In the aforementioned review reports, it was ultimately found that subsection 19(1) of FOIP (equivalent to subsection 18(1) of LA FOIP) would not apply. This is because the environmental reports in those reviews could be considered public documents pursuant to section 83 of the EMPA.

[20] Subsection 83(3) of the EMPA allows an individual to ask the Minister, at the Minister's discretion, to keep a report that fits within the purview of section 83 of the EMPA confidential for up to five years after it has been submitted. Beyond that, if the Minister decides to release the record and the person disagrees, section 83 also contains provisions that allow for subsequent appeal to the Court of King's Bench. Of course, if a person does not make a request to the Minister in the first place pursuant to subsection 83(3) of the EMPA, it stands to reason that the record should be considered a public document.

[21] Further, it appears that based on the wording of subsection 83(6) of the EMPA where it states, "about **that person's** business", section 83 of the EMPA would not apply to local authorities. That is, it appears that a local authority would not be a "person" for the purposes of this provision, and so would not be in a position to ask the Minister to keep a report of this nature confidential for up to five years. A third party such as the engineer, however, would be considered a "person" in this context. [Emphasis added]

[22] The question, then, is if the CAP is a report for the purposes of section 83 of the EMPA. If so, do the conditions exist to consider it a public report, and has any person asked to keep it confidential for a period of up to five years? If an enactment creates a scheme whereby a specific type of document is considered public, then subsection 3(1)(b) of LA FOIP states that LA FOIP does not apply to it. Such documents are defined as ones contained in a public registry that the public has access to [*Guide to FOIP*, Chapter 1, “Purposes and Scope of LA FOIP”, updated March 7, 2023 [*Guide to FOIP*, Ch. 1], p. 20)]. Subsection 3(1)(b) of LA FOIP provides as follows:

3(1) This Act does not apply to:

...
(b) material that is a matter of public record; or

[23] The [Government of Saskatchewan](#) (GOS) website outlines as follows regarding environmentally impacted sites:

Environmentally impacted sites are areas of land or water that contain a substance that may cause, or is causing, an adverse effect to human health and the environment. In Saskatchewan, impacts are typically associated with transportation, manufacturing, industrial, commercial or mining activities. The ministry regulates the process for managing these environmentally impacted sites within the framework set out by *The Environmental Management and Protection Act, 2010* (EMPA, 2010), and the Saskatchewan Environmental Code chapters and associated standards.

[24] According to further information on the GOS website, it appears that under the EMPA, where there is an “adverse effect”, or an “impairment of or damage to the environment or harm to human health, caused by any chemical, physical or biological alteration...” that the Ministry of Environment (Environment) expects the person responsible to propose corrective actions. The purpose is to address any impacts from the discharge. Environment apparently does not direct that work be completed within a fixed timeline unless “there are/may be serious risks to environment or human health.” It appears that such a plan is called a corrective action plan, which in this matter appears to be the CAP completed by the engineering firm. Page 28 of the CAP, which was released in full to the Applicant, outlines that the CAP provides “general information, facility and site information” and that “Ministry approval is required prior to initiating any remediation work.”

[25] Subsection 2(1)(e), and sections 14 and 16 of the EMPA set out the requirements for corrective action plans as follows:

2(1) In this Act:

...

(e) “**corrective action plan**” means a plan that details the methods employed to prevent, minimize, mitigate, remedy or reclaim adverse effects;

...

14(1) If a site assessment discloses that the site is an environmentally impacted site, the person required to conduct the site assessment in accordance with subsection 13(1) shall prepare a corrective action plan that satisfies any prescribed requirements or any requirements set out in the code.

(2) The corrective action plan must be prepared within six months after completing the site assessment or any other period set by the minister.

...

16(1) The corrective action plan prepared in accordance with section 14 or 15 must be immediately submitted to the minister for review after it has been prepared.

(2) If the minister is not satisfied with the corrective action plan, the minister may require that the person preparing the corrective action plan resubmit it with any changes that the minister may direct.

[Emphasis added]

[26] Based on the above, a corrective action plan (or the CAP in this matter) is required to be completed and submitted to the Minister for review. Subsection 83(1) of the EMPA states that it applies to all reports “submitted to the minister pursuant to this Act”. It is my view that the CAP in this matter falls within the purview of “all reports” submitted to the Minister.

[27] This brings me to what is set out in subsection 83(3) of the EMPA. In this matter, SPL has not argued that the engineering firm asked the minister to keep the CAP confidential for a period of five years from the date submitted. Of note, SPL did provide notice to the engineering firm of the review pursuant to sections 33 and 34 of LA FOIP. SPL asked if it objected to release of the CAP. The engineering firm stated by email to SPL’s legal counsel

on March 20, 2024, “We have no objections to the release of the document.” That to me signals that the engineering firm had no intent to ask the Minister to keep the report confidential pursuant to subsection 83(3) of the EMPA. This is perhaps because the engineering firm was not concerned that the report, pursuant to subsection 83(6) of the EMPA, contained any commercial, financial, scientific or technical matters that would reveal its proprietary business, competitive or trade secret information.

[28] Based on the preceding, I find that the CAP contains public information pursuant to section 83 of the EMPA and that exemptions in LA FOIP cannot be relied on to withhold the CAP. I recommend that SPL release the CAP to the Applicant, in full, within 30 days of the issuance of this Report.

[29] As I come to this conclusion, I do not need to review SPL’s reliance on subsections 16(1)(a), 17(1)(b), (d), (f) and 28(1) of LA FOIP to withhold pages 3 to 10, 16 to 24, 26, 27, 29 to 32, 37 to 39 and 57 to 71 of the CAP, in part.

OPSA and Amending Agreement

[30] The OPSA and amending agreement are contained on pages 75 and 77 respectively. These are not reports in the way the CAP is, as they were not submitted to the Minister as per requirements set out in the EMPA. Rather, they appear to be part of an agreement between the SPL and a third party. These pages, then, do not appear to fit within the scope of subsection 83(1) of the EMPA, and so I will consider them pursuant to subsections 16(1)(a), 17(1)(b), (d) and (f) of LA FOIP.

3. Did SPL properly apply subsection 16(1)(a) of LA FOIP?

[31] I only need to consider SPL’s application of subsection 16(1)(a) of LA FOIP on page 75, which is a part of an offer to purchase/sales agreement (OPSA), and on page 77, which is part of an amending agreement.

[32] Subsection 16(1)(a) of LA FOIP provides:

16(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 the local authority;

[33] Pages 107 to 110 of my office's *Guide to LA FOIP*, Chapter 4, "Exemptions from the Right of Access," updated October 18, 2023 (*Guide to LA FOIP*, Ch. 4), provides that the following two-part test can be used to determine if this exemption applies:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for the local authority?

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

[34] SPL has taken the position that the information withheld qualifies as advice, proposals, recommendations and analyses. Pages 107 to 109 of the *Guide to LA FOIP*, Ch. 4, define these terms as follows:

- "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 local authority must make a decision for future action.

...

Advice has a broader meaning than recommendations. The legislative intention was for advice to have a distinct meaning from recommendations. Otherwise, it would be redundant. While "recommendation" is an express suggestion, "advice" is simply an implied recommendation.

- A “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.
- A “proposal” is something offered for consideration or acceptance.
- “Analyses” (or analysis) is the detailed examination of the elements.

[35] SPL provided the following arguments:

...In addition, the Redacted Portions of the OPSA [Offer to Purchase and Sale Agreement], and the Amending Agreement **contain information that permits the drawing of inferences with respect to the advice, recommendations and analysis contained in the Corrective Action Plan.** In particular, the Redacted Portions of the OPSA and Amending Agreement contain information relating to future responsibility for environmental remediation work related to the Project site and the cost of remediation work already performed. The disclosure of such information would permit the drawing of accurate inferences as to the nature of the actual advice, proposals, recommendations and analyses contained in the Redacted Portions of the Corrective Action Plan...

[Emphasis added]

[36] Page 112 and 113 of the *Guide to LA FOIP*, Ch. 4, states the following regarding the release of information revealing the substance of advice, recommendations, proposals, analyses and/or policy options:

If releasing this information reveals the substance of the advice, recommendations, proposals, analyses and/or policy options, the local authority can withhold this information. Where a review by the IPC occurs and this is the exception, the local authority should demonstrate how and why release of this type of information would reveal the substance of the advice, recommendations, proposals, analyses and/or policy options.

Advice, proposals, recommendations, analyses, or policy options can be revealed in two ways:

1. The information itself consists of advice, proposals, recommendations, analyses, or policy options.

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

[37] Page 75 is from the OPSA. Upon review, it is not clear how the withheld portions contain advice, proposals, recommendations and analyses, or would allow for the drawing of accurate inferences from the CAP. If that is the case, SPL has not directly demonstrated how. Even if the withheld portions could, I have already considered that section 83 of the EMPA authorizes release of the CAP as a record containing public information. Based on this, the first part of the test is not met, and I find that SPL has not properly applied subsection 16(1)(a) of LA FOIP to page 75. I will still consider the application of subsections 17(1)(b), (d) and (f) to this information.

[38] On page 77 of the amending agreement, portions released to the Applicant disclose that the withheld portion relates to a dollar amount that the vendor will contribute “to the costs and expenses incurred by the Purchaser to perform the remediation work.” The dollar amount does not appear to be contained in the CAP. A dollar amount itself without any context is not advice, a recommendation, a proposal or an analysis, and it is not clear how disclosure of the dollar amount would reveal the substance of any of these. As the first part of the test is not met, I find SPL did not properly apply subsection 16(1)(a) of LA FOIP to page 77. I will still consider, however, its application of subsections 17(1)(b), (d) and (f) of LA FOIP to this page.

4. Did SPL properly apply subsections 17(1)(b), (d), and (f) of LA FOIP?

[39] I am reviewing subsections 17(1)(b), (d) and (f) of LA FOIP on portions of pages 75 and 77. Subsections 17(1)(b), (d) and (f) of LA FOIP provide as follows:

17(1) Subject to subsection (3), 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 local authority has proprietary interest or a right of use; and

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

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority;

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the local authority;

Subsection 17(1)(b) of LA FOIP

[40] The *Guide to LA FOIP*, Ch. 4 at pages 141 to 144, outlines the following three-part test my office uses to determine if a local authority properly applied subsection 17(1)(b) of LA FOIP:

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

[41] SPL claims that pages 75 and 77 contain commercial, scientific and technical information. The *Guide to LA FOIP*, Ch. 4 at pages 141 and 142, provides the following definitions:

- “Commercial information” means information relating to the buying, selling or exchange of merchandise or services. This includes third party associations, past history, references and insurance policies and pricing structures, market research, business plans and customer records.
- “Scientific information” is information exhibiting the principles or methods of science. The information could include designs for a product and testing procedures or methodologies. It is information belonging to an organized field of knowledge in the natural, biological, or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information.
- “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.

[42] SPL adds as follows portions of pages 75 and 77, it withheld pursuant to subsection 17(1)(b) of LA FOIP:

...In particular, the OPSA and the Amending Agreement contain commercial information regarding the purchase and sale of the Project site. This includes specific commercial terms related to the Vendor's responsibilities regarding the environmental remediation of impacted areas at the Project site and the costs incurred by SPL related to such remediation work. The Corrective Action Plan contains commercial, scientific and technical information related to proposed remediation work at the Project Site. This includes: (i) scientific information, regarding the study of soil and groundwater samples, including the approach and methodologies, sampling protocols and procedures undertaken and the observations and the results of the monitoring and the identification of substances of potential concern; (ii) technical information related to the description of specific remediation technology, soil testing and analysis; and (iii) general commercial information regarding scopes of work for the proposed remediation work. The Commissioner has previously found similar information to constitute commercial, scientific or technical information.

[43] SPL has not stated directly which portions of either pages 75 or 77 contain commercial, scientific or technical information, or how disclosure would reveal any scientific, technical and commercial information contained in the CAP. For example, SPL argues page 75 contains "commercial terms", but doesn't highlight or describe any such terms. I previously stated that the CAP can be considered a record that contains public information, and so even if page 75 of the OPSA would reveal scientific, technical and commercial information from the CAP, the CAP itself contains what can be considered public information. Further, I also do not see how the dollar amount on page 77 qualifies as scientific, technical and commercial information, and SPL has not described or demonstrated how, either. As such, the first part of the test is not met, and I find that SPL did not properly apply subsection 17(1)(b) of LA FOIP to pages 75 and 77.

Subsection 17(1)(d) of LA FOIP

[44] Page 151 of the *Guide to LA FOIP*, Ch. 4, states that subsection 17(1)(d) of LA 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 local authority.

[45] The *Guide to LA FOIP*, Ch. 4 at pages 151 and 152, outlines the following two-part test my office uses to determine if a local authority properly applied subsection 17(1)(b) of LA FOIP:

1. Are there contractual or other negotiations occurring involving the local authority?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations?

[46] SPL submits as follows:

... As outlined in Sections 4 & 5 of the Amending Agreement, the Vendor has agreed to retain environmental responsibility for the Project site and all costs and expenses related to remediation work that is performed up to May 1, 2025. Therefore, to the extent that any additional remediation work or related investigations are required at the Project site, SPL will be required to negotiate additional agreements with contractors, engineering firms, or other providers to complete such further environmental investigations or remediation work. In addition, since the Project is still ongoing, SPL will be required to negotiate further contracts with other providers and contractors related to Project construction more generally. As outlined in the IPC Guide, prospective or future negotiations can be included within this exemption, provided they are foreseeable.

...It is SPL's position that the release of the Redacted Portions could reasonably be expected to hinder or hamper the prospective or future negotiations between SPL and contractors or other providers of environmental investigation or remediation services in various ways. For example, the Redacted Portions would provide such third parties with an unfair advantage and make it difficult for SPL to negotiate freely in future discussions as they would reveal or provide such third parties with negotiating positions, options, and pricing comparisons. In any negotiation, sharing what is paid to others in similar circumstances may hinder the ability to negotiate based on true market factors. Furthermore, without appropriate context, some third parties may decline to provide services in relation to the Project based on the environmental assessments or

analyses contained in the Redacted Portions. Such disclosure would interfere with SPL's ability to freely negotiate with such contractors or other providers.

[47] Page 151 of the *Guide to LA FOIP*, Ch. 4, defined a "negotiation" as 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.

[48] Based on the part of the Amending Agreement released to the Applicant, the Vendor has agreed to contribute the "additional costs" that do not exceed the dollar amount specified for remediation work prior to May 1, 2025. It appears the submission is alluding to prospective or future negotiations. Pages 151 and 152 of the *Guide to LA FOIP*, Ch. 4, provides the following regarding prospective or future negotiations:

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 expectation that the future negotiations will take place.

Once a contract is executed, negotiation is concluded. The exemption would generally not apply unless, for instance, the same strategy will be used again, and it has not been publicly disclosed.

The exemption covers negotiations either conducted directly by employees or officers of a local authority or conducted by a third party acting as an agent of the local authority. It does not cover information relating to negotiations to which a local authority is not a party.

When under review by the IPC, local authorities will be invited to provide the IPC with its submission (i.e., arguments) as to why the exemption applies. Local authorities should detail what negotiations are occurring and what parties are involved.

[49] In this case, SPL already has a signed agreement relating to the maximum dollar figure that the "Vendor" will contribute for remediation work for the site. For any other prospective or future negotiations, its submission does not include details about what negotiation are occurring or may occur or with what parties, and so is speculative. This detail isn't evident

upon review of the record itself, either. Therefore, I find that the first part of the test is not met.

[50] As such, I find that SPL did not properly apply subsection 17(1)(d) of LA FOIP to pages 75 and 77. I will now consider its reliance of subsection 17(1)(f) of LA FOIP.

Subsection 17(1)(f) of LA FOIP

[51] Page 159 of the *Guide to LA FOIP*, Ch. 4, provides that subsection 17(1)(f) of LA FOIP is a discretionary, harm-based exemption. It permits the refusal of access in situations where release of a record could reasonably be expected to prejudice the economic interests of the local authority. The following test can be applied:

Could disclosure reasonably be expected to prejudice the economic interests of the local authority?

[52] SPL submits as follows:

It is SPL's position that release of the Redacted Portions would prejudice the economic interests of SPL for the reasons outlined above relates to the potential effect disclosure of the Redacted Portions may have on the value or perceived value of the Project site and the effect such disclosure would have on future negotiations between SPL and other third parties...

[53] Page 161 of the *Guide to LA FOIP*, Ch. 4, offers the following definitions and examples of harm to economic interests:

- “Prejudice” in this context refers to detriment of economic interests.
- “Economic interests” refer to both the broad interests of a local authority in managing the production, distribution and consumption of goods and services. This also covers financial matters such as the management of assets and liabilities by a local authority and the local authority's ability to protect its own interests in financial transactions.

Examples of harm to economic interests can include:

- Information in budget preparation documents which could result in segments of the private sector taking actions affecting the local authority's ability to meet economic goals.
- Background material to be used in establishing land costs which if released would affect revenue from the sale of the land.

[54] In my office's [Review Report 237-2023](#) concerning the Chinook School Division No. 211, I discussed at paragraphs [36] to [38] that the purpose of subsection 17(1)(f) of LA FOIP is to protect a local authority's ability to earn money in the marketplace, or to compete for business with other public or private sector entities.

[55] In my office's [Review Report 301-2023](#) concerning the Saskatchewan Power Corporation (SaskPower), I considered subsection 18(1)(f) of FOIP, which is equivalent to subsection 17(1)(f) of LA FOIP. In that report, I outlined at paragraphs [68] and [69] that the general purpose of section 18 of FOIP (or in this case, section 17 of LA FOIP) is to protect commercially valuable information. A refusal to disclose information must be based on protecting the government institutions/local authority's ability to compete in the marketplace.

[56] In this matter, SPL states that disclosure of the withheld information would negatively impact the "value or perceived value of the Project site", thereby negatively impacting "future negotiations and other third parties." SPL has not gone into any length describing or demonstrating how this would occur, or how the information it is intending to protect is "commercially valuable" insofar as it would hinder SPL's ability to compete in the marketplace. I am not persuaded that release of the information could reasonably be expected to prejudice the economic interests of SPL. Therefore, I find that the test is not met.

[57] As such, I find that SPL did not properly apply subsection 17(1)(f) of LA FOIP to pages 75 and 77 of the record. As SPL has not applied any other exemptions to this information, I recommend that SPL release to the Applicant pages 75 and 77 of the record, in full, within 30 days of the issuance of this Report.

IV FINDINGS

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

[59] I find that the CAP contains public information pursuant to section 83 of the EMPA and that no exemption in LA FOIP can be relied to withhold the CAP.

[60] I find that SPL has not properly applied subsections 16(1)(a), 17(1)(b), (d) and (f) of LA FOIP to pages 75 and 77.

V RECOMMENDATION

[61] I recommend that SPL release the record to the Applicant, in full, within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 15th day of January, 2025.

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