



REVIEW REPORT 106-2024

Saskatoon Public Library

January 7, 2025

Summary:

The Applicant submitted an access to information request to the Saskatoon Public Library (SPL) regarding the Class A cost estimates for the new central library. SPL refused the Applicant access to the records. SPL cited subsections 15(1)(b), 17(1)(d), (e), (f), 18(1)(a), (b), and (c)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as its reasons for withholding. The Applicant requested a review by the Commissioner. The A/Commissioner found that SPL properly applied subsection 18(1)(b) of LA FOIP to a portion of the records. However, he found that SPL did not properly apply any other exemption to the records at issue. He recommended that SPL release pages 1 to 14 and 106 to 108 of the records at issue within 30 days of issuance of this Report but continue to withhold the remainder of the records at issue.

I BACKGROUND

[1] On January 26, 2024, the Saskatoon Public Library (SPL) received the following access to information request from the Applicant:

Records relating to the cost estimate of the New Central Library including:

Copies of all available cost estimates (Class A-D) from each of the independent [sic] cost consultants that were hired for the New Central Library.

Any and all correspondence related to the estimated cost of the New Central Library sent from or received by the following:

- [Name 1], former CEO
- [Name 2], Chair
- [Name 3], former Chair
- [Name 4], Director of Strategy & Communications

- [Name 5], Director of Finance & Administrative Services
- [Name 6], Project Lead for the New Central Library

- [2] The Applicant specified the time period of November 2019 to present for those records they sought.
- [3] In a letter dated February 12, 2024, SPL advised the Applicant that “there is an extensive volume of correspondence.” SPL indicated that a fee estimate would be required in order to process the Applicant’s access request and that a number of exemptions would likely apply to the records. SPL offered the alternative of working with the Applicant to modify the access request to help reduce or eliminate fees.
- [4] The following day, the Applicant responded by instructing SPL to proceed with preparing a fee estimate.
- [5] On February 16, 2024, SPL emailed the Applicant explaining that the fee estimate will likely be thousands of dollars. SPL offered the Applicant another opportunity to clarify their access request.
- [6] In a letter dated February 19, 2024 to SPL, the Applicant modified their access request to the following:
- Records relating to the cost estimate of the New Central Library, from November 2019 to present, including:
- Copies of the Class A cost estimates (which came in at \$79.7 million and \$81.1 million) from each of the independent cost consultants that were hired for the New Central Library.
- [7] In an email dated February 20, 2024 to the Applicant, SPL indicated that no fee estimate is required and that it would proceed with processing the amended access request.
- [8] In a letter dated February 27, 2024 to the Applicant, SPL indicated it was extending the 30-day response period by an additional 30 days pursuant to subsection 12(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

- [9] On April 1, 2024, SPL sent its written decision pursuant to section 7 of LA FOIP to the Applicant. SPL indicated that it was refusing the Applicant access to records pursuant to subsections 15(1)(b), 17(1)(d), (e), (f), 18(1)(a), (b), and (c)(ii) of LA FOIP.
- [10] On April 6, 2024, the Applicant requested a review by my office.
- [11] During the intake stage of my office's review process, SPL identified Altus Group and Postma Consulting as third parties.
- [12] On May 2, 2024, my office notified SPL, the Applicant and the two third parties that my office would be undertaking a review of the exemptions applied by SPL.
- [13] On July 2, 2024, Postma Consulting provided a submission to my office.
- [14] On July 8, 2024, SPL's legal counsel sent an email to the Applicant. SPL indicated that SPL "has now received consent to release the additional attached documents." Attached to the email were two portable document format (PDF) documents. Each PDF was one page in length. SPL had redacted a portion of each PDF document but released the remainder to the Applicant. SPL did not indicate which provision under LA FOIP it was relying on to redact portions of the PDF documents. Below, I will describe the records at issue, which total 151 pages in length. Therefore, SPL had only released portions of two pages out of the 151 pages of responsive records to the Applicant.
- [15] On July 11, 2024, SPL provided its submission to my office. In its submission, SPL indicated it was no longer relying on subsection 15(1)(b) of LA FOIP to refuse the Applicant access to records.
- [16] My office did not receive submissions from the Applicant or Altus Group.

II RECORDS AT ISSUE

[17] According to a letter dated November 9, 2023 by the Chair of SPL's board (which is appended to SPL's Board's [meeting minutes](#) dated November 15, 2023), SPL hired two independent cost consultants. The cost consultants completed five cost estimates between April 2021 and April 2023. According to a news release available [here](#), SPL received two independent "Class A cost estimates" from its two independent cost consultants.

[18] The two Class A cost estimates are the records at issue. The first cost estimate is the cost estimate by Altus Group. The second cost estimate is the estimate by Postma Consulting.

[19] SPL provided me both records that were merged into one PDF that is 151 pages long. Pages 1 to 105 is the cost estimate prepared by Altus Group. Pages 106 to 151 is the cost estimate prepared by Postma Consulting. A portion of page 20 and a portion of page 132 were released to the Applicant. The remainder of the 151 pages were withheld from the Applicant.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[20] SPL is a "local authority" pursuant to subsection 2(1)(f)(vi) of LA FOIP. Altus Group and Postma Consulting qualify as "third parties" as defined by subsection 2(1)(k) of LA FOIP. Therefore, I find that I have jurisdiction to undertake this investigation.

2. Did SPL properly apply subsection 18(1)(a) of LA FOIP?

[21] SPL applied subsection 18(1)(a) of LA FOIP, in full, to both records at issue.

[22] Subsection 18(1)(a) of LA FOIP provides as follows:

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

(a) trade secrets of a third party;

[23] My office uses the following test to determine if subsection 18(1)(a) of LA FOIP applies:

Does the record contain trade secrets of a third party?

(*Guide to LA FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated October 18, 2024 [*Guide to LA FOIP*, Ch. 4], p. 172)

[24] Pages 172 and 173 of the *Guide to LA FOIP*, Ch. 4, define “trade secret” as a plan or process, tool, mechanism or compound, which possesses each of the four following characteristics:

- i. The information must be secret in an absolute or relative sense (is known only by one or a relatively small number of people).
- ii. The possessor of the information must demonstrate he/she has acted with the intention to treat the information as secret.
- iii. The information must be capable of industrial or commercial application.
- iv. The possessor must have an interest (e.g., an economic interest) worthy of legal protection.

[25] The information must meet all of the above criteria to be considered a trade secret.

[26] In its submission, SPL indicated that it reviewed the records against the test set out in my office’s *Guide to LA FOIP* as well as the objections it received from the third parties. SPL asserted that it had determined the test was satisfied. It instructed my office to refer to the submissions by the third parties.

[27] My office received a submission from Postma Consulting but not Altus Group.

[28] In its submission, Postma Consulting said its “pricing formula” is a trade secret and that the information in its cost estimate “is a direct product of Postma’s proprietary cost database and the application of Postma’s highly technical pricing formula process to the specific facts and circumstances of the New Library construction project.”

[29] In *Canadian Bank Note v. Saskatchewan Government Insurance*, 2016 SKQB 262 (CanLII), the Court of King’s Bench said a vendor’s process that leads to the result may be a trade secret but the result itself is not a “trade secret”:

[35] While these submissions may very well be the case, it is not the comprehensive pricing plan or scheme or Veridos’ internal business analyses which is the information now sought in CBN’s reduced Request. Rather it is the result of the application of those factors, namely the Unit Price, that is the information requested. **While it might be validly argued that the process leading to the result might qualify as a trade secret, I have concluded that the result does not meet the *Merck* definition of “trade secret”.** I reject Veridos’ position to the contrary and accept, as well, the Commissioner’s conclusions on this point, although I disagree with his importation of another jurisdiction’s (apparently the Alberta Act) definition for the reasons articulated in *Merck*.

[Emphasis added]

[30] Similarly, Postma Consulting’s process may qualify as a trade secret but the information in the cost estimate (which is a result of its process) is not the trade secret itself. As such, the information in Postma Consulting’s cost estimate does not qualify as a trade secret.

[31] I did not receive a submission from Altus Group. Based on a review of the Altus Group Cost Estimate, I do not find that the information qualifies as a trade secret.

[32] I find that SPL did not properly apply subsection 18(1)(a) of LA FOIP to the records at issue; I will consider SPL’s reliance on subsection 18(1)(b) of LA FOIP to the records next.

3. Did SPL properly apply subsection 18(1)(b) of LA FOIP?

[33] SPL applied subsection 18(1)(b) of LA FOIP, in full, to both records at issue.

[34] Subsection 18(1)(b) of LA FOIP provides:

18(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 the local authority by a third party;

[35] My office uses the following three-part test to determine if subsection 18(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 local authority?
3. Was the information supplied in confidence implicitly or explicitly?

(Guide to FOIP, Ch. 4, pp. 174-178)

[36] Below is my analysis to determine if the three-part test is met.

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

[37] In its submission, SPL indicated that it reviewed the records against the test set out in my office's *Guide to LA FOIP* as well as the objections received from the third parties. SPL asserted that it determined that the test was satisfied. It instructed my office to refer to the submissions by the third parties.

[38] Postma Consulting asserted that the information in its cost estimate qualifies as commercial information and technical information.

[39] Pages 175 and 176 of the *Guide to LA FOIP*, Ch. 4, provides the definitions for commercial information and technical information as follows:

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

- “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.

[40] First, Postma Consulting cited Ontario’s Office of the Information and Privacy Commissioner (ON IPC) [Order MO-2866](#) to make its case that the information qualifies as commercial information. In Order MO-2866, the ON IPC considered whether the information in slide presentation entitled “City of Greater Sudbury Biosolids Project Determining Value-for Money Final Results December 6th, 2010” prepared by a financial project consultant. ON IPC found that the information qualified as commercial information. ON IPC said:

I also find that the record contains commercial information as it contains information that relates to the purchase of services to finance the building of the Biosolids Plant by the city.

[41] I note that the ON IPC was reviewing a record that contains information relating to the purchase of services to finance a building. That contrasts with the information in the Postma Consulting Cost Estimate in that the information at issue in this case are cost estimates. The cost estimates do not reflect the actual purchasing of goods and services. Therefore, I find that the information in the Postma Consulting Cost Estimate does not qualify as commercial information.

[42] Postma Consulting also cited British Columbia’s Information and Privacy Commissioner’s (BC IPC) [Order F20-04](#) to make the case that the information in the Postma Consulting Cost Estimate qualifies as technical information. In Order F20-04, BC IPC considered a review of construction costs developed by professional accredited cost consultants. The BC IPC found that information in the record at issue qualified as technical information. BC IPC said:

[22] In my view, the information in the Altus Report is technical information within the meaning of s. 21(1)(a). The report contains architectural drawings of each floor of the proposed housing unit and associated statistics (i.e. square footage). **The Altus report also contains a review of costs associated with the affordable housing project. I accept that the cost review was prepared by accredited consultants; in other words, professionals with relevant expertise about construction costs.**

[Emphasis added]

[43] With regard to its cost estimate, Postma Consulting said:

The Cost Estimate was prepared by professional quantity surveyors and construction management experts applying Postma's pricing formula and drawing on their vast knowledge and experience in the field of quantity surveying. As indicated by the Canadian Institute of Quantity Surveyors, a professional quantity surveyor is not only knowledgeable about measuring and costing novel construction methods, but also in the underlying fields of science such as economics, value engineering, and risk management. The Cost Estimate describes important steps necessary for the construction process of the New Library and details the professionally estimated costs for each building component.

[44] Similar to BC IPC in its Order F20-04, I accept the information in the Postma Consulting Cost Estimate (pages 109 to 151) is technical information. Also, for the same reason, I find that the information in the Altus Group Cost Estimate (pages 15 to 105) qualifies as technical information.

[45] However, I do not find that pages 1 to 14 and 106 to 108 qualifies as commercial or technical information. Pages 1 to 14 of the PDF include a cover letter by Altus Group, the table of contents, the introduction, the project details, scope assumptions and exclusions, contingencies, general statement of liability, glossary, a list of estimate documentation and a list of appendices. Pages 106 to 108 of the PDF is a cover letter by Postma Consulting that identifies the list of documentation that its cost estimate is based on, the basis of its estimate, estimate risks, and estimate exclusions. I find that such information does not qualify as commercial or technical information, and so the first part of the test is not met for these pages. I will consider them later in this Report pursuant to subsections 17(1)(d), (e), (f) and 18(1)(c)(ii) of LA FOIP.

2. Was the information supplied by the third party to a local authority?

3. Was the information supplied in confidence implicitly or explicitly?

[46] Page 176 of the *Guide to LA FOIP*, Ch. 4, defines “supplied” as “provided or furnished.” Information may qualify as “supplied” if it was directly supplied to a local authority by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.

[47] Pages 178 to 179 of the *Guide to LA FOIP*, Ch. 4 provides the following definitions:

- “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the supplier of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the local authority and the third party providing the information.
- “Implicitly” means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement or other physical evidence of the understanding that the information will be kept confidential.
- “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was supplied on the understanding that it would be kept confidential.

[48] Factors considered when determining whether a document was supplied in confidence implicitly include (not exhaustive):

- What is the nature of the information. Would a reasonable person regard it as confidential. Would it ordinarily be kept confidential by the third party or the local authority.
- Was the information treated consistently in a manner that indicated a concern for its protection by the third party and the local authority from the point at which it was supplied until the present time.
- Is the information available from sources to which the public has access.
- Does the local authority have any internal policies or procedures that speak to how records such as the one in question are to be handled confidentially.

(*Guide to FOIP*, Ch. 4, pp. 179-180)

[49] Factors to consider when determining if a document was supplied in confidence explicitly include (not exhaustive):

- The existence of an express condition of confidentiality between the local authority and the third party.
- The fact that the local authority requested the information be supplied in a sealed envelope and/or outlined its confidentiality intentions to the third party prior to the information being supplied.

(*Guide to FOIP*, Ch. 4, p. 180)

[50] SPL did not provide any information to support how the records at issue were supplied in confidence to it by the two third parties.

[51] I note that the cover letter for the Altus Group Cost Estimate included language as follows:

It should be noted that this report is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance.

[52] I note that in Order F20-04 that I referred to earlier, the BC IPC had found that a cost review by Altus Group was supplied to the public body in confidence, *explicitly*. BC IPC said:

[27] Altus submits that it supplied the report to its client and the City in confidence. It points to language in the report that states that it was “not intended for general circulation, publication or reproduction... without express written permission in each specific instance.” Altus says that this language reflects its expectation that no other party would be provided with a copy of the Altus Report without first obtaining Altus Group’s explicit written consent in each instance.

[28] In these circumstances, I accept that the Altus Report was supplied explicitly in confidence.

[53] Similar to BC IPC’s finding in Order F20-04, I accept that Altus Group supplied its cost estimate to SPL in confidence.

[54] Postma Consulting's Cost Estimate does not have similar explicit language in its cost estimate. However, in its submission, Postma Consulting asserted that it supplied its cost estimate to SPL in confidence:

In the present case, Postma provided the Cost Estimate to Formline Architecture on the understanding that the Cost Estimate was confidential and not to be disclosed publicly apart from those who required the estimate for purposes related to the New Library construction project. **It is standard in the industry that cost estimates of this kind are treated as confidential.** The preceding submissions have detailed the level of skill and knowledge required to apply the trade secret pricing formula to the synthesized data. The information contained in the Cost Estimate does not simply provide an estimate of what suppliers could charge for the goods and services. The numbers are certified to represent the fair market value for the construction. The fair market value of such goods and services is information that is not publicly available from any public source, nor could the information contained in the record be obtained by mere observation. If the fair market value of goods and services was obtainable online with some applied effort, there would be limited demand for quantity surveying services.

[Emphasis added]

[55] The fact that Altus Group had explicit language regarding how it supplied the information explicitly in confidence in its cost estimate lends credence to Postma Consulting's assertion that it is a standard in the industry that cost estimates of this kind are treated as confidential. I find that the second and third parts of the three-part test are met. I find that SPL properly applied subsection 18(1)(b) of LA FOIP to the technical information in the Altus Group Cost Estimate (pages 15 to 105 of the PDF) and the technical information in the Postma Consulting Cost Estimate (pages 109 to 151 of the PDF). I recommend that SPL continue to withhold pages 15 to 105 and 109 to 151 of the PDF pursuant to subsection 18(1)(b) of LA FOIP.

4. Did SPL properly apply subsection 18(1)(c)(ii) of LA FOIP?

[56] Since I have found that SPL properly applied subsection 18(1)(b) of LA FOIP to pages 15 to 105 and 109 to 151 of the PDF, I will analyze whether it properly applied subsection 18(1)(c)(ii) of LA FOIP to pages 1 to 14 and 106 to 108 of the PDF. Earlier, at paragraph [45], I described the contents of pages 1 to 15 and 106 to 108 of the PDF.

[57] Subsection 18(1)(c)(ii) of LA FOIP provides:

18(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:

...
(ii) prejudice the competitive position of;

...
a third party;

[58] My office uses the following two-part test to determine if subsection 18(1)(c)(ii) of LA FOIP applies:

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 LA FOIP*, Ch. 4, p. 190)

[59] Page 190 of the *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- "Prejudice" in this context refers to detriment to the competitive position of a third party.
- "Competitive position" means the information must be capable of use by an existing or potential business competitor, whether or not that competitor currently competes for the same market share.

[60] In its submission, SPL indicated that it reviewed the records against the test set out in my office's *Guide to LA FOIP* as well as the objections received from the third parties. SPL asserted that it determined that the test was satisfied. It instructed my office to refer to the submissions by the third parties.

[61] In its submission, Postma said:

As elaborated above, the disclosure of the Cost Estimate would permit Postma's competitors to gain access to information derived from proprietary sources and deduct its pricing formula. It is acknowledged that businesses of all kinds analyze the final product and services of competitors in order to determine how they may improve their own operations. **However, it is not common that businesses are provided the ability to thoroughly analyze the proprietary information and methodology underlying the product or service of a competitor.** This is because, as explained by the Supreme Court of Canada in *Merck*:

[220] [A]s a matter of principle, the disclosure of information that is not already in the public domain and that could give competitors a head start in product development, or which they could use to their competitive advantage, may be shown to give rise to a reasonable expectation of probable harm or prejudice to the third party's competitive position ...

...

As indicated above, the disclosure of the highly detailed Cost Estimate would reveal Postma's pricing formula. The financial loss that could be reasonably expected to flow from the disclosure of the Cost Estimate may be more easily conceptualized by considering the undue financial gain to Postma's competitors. The pricing formula is the essence of the services that Postma offers to its clients. Although difficult to predict with certainty, the disclosure of the Cost Estimate is likely to lead to a competitor adopting the pricing formula, in whole or part. The disclosure may result in existing competitors entirely adopting Postma's pricing formula or building off their own knowledge to develop an improved formula. At the very least, revealing the pricing formula would provide competitors with Postma's highly sensitive and proprietary commercial information such that they would be able to enlarge their own cost database and pinpoint the strengths and weaknesses in their own formula. The disclosure could also permit new competitors to adopt the pricing formula in order to enter the market, thereby reducing Postma's market share. Competitors would essentially be able to adopt or acquire the knowledge base from Postma's pricing formula without dedicating the same time, effort, and significant monetary investments that Postma has spent in the development of the formula. As indicated in *Culver v Canada (Minister of Public Works and Government Services)*, [1999] FCJ No. 1641 (TD)(QL), the prejudicial effect of the disclosure of that information would be magnified by virtue of the fact that Postma would have no access to similar information on the part of its competitors, nor would it have access to any improved formulas that would result from the disclosure (at para 17).

[Emphasis added]

[62] Similar to my analysis of subsection 18(1)(a) of LA FOIP earlier, I do not find that pages 106 to 108 of the PDF, as described at paragraph [45], contain a "pricing formula" used by Postma Consulting that it used to derive its cost estimate.

[63] I did not receive a submission from Altus Group. Therefore, it has not identified the prejudice to Altus Group's competitive position if pages 1 to 14 of the PDF were to be released.

[64] I find that SPL has not properly applied subsection 18(1)(c)(ii) of LA FOIP. Below, I will consider if subsection 17(1)(d) of LA FOIP applies to pages 1 to 14 and 106 to 108 of the PDF.

5. Did SPL properly apply subsection 17(1)(d) of LA FOIP?

[65] Since I have found that SPL properly applied subsection 18(1)(b) of LA FOIP to pages 15 to 105 and 109 to 151 of the PDF, I will analyze whether it properly applied subsection 17(1)(d) of LA FOIP to pages 1 to 14 and 106 to 108 of the PDF.

[66] Subsection 17(1)(d) of LA FOIP provides:

17(1) Subject to subsection (3), 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 local authority;

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

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

(Guide to LA FOIP, Ch. 4, pp. 151-152)

[68] Pages 151 and 152 of the *Guide to LA FOIP*, Ch. 4, provide the following definitions:

- 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.

- “Interfere” means to hinder or hamper.

[69] In its submission, SPL said:

(a) There are contractual or other negotiations occurring involving the Project and the Project site. Subsection 17(1)(d) of LAFOIP is intended to protect a local authority’s ability to negotiate effectively with other parties. The construction of the Project is scheduled to begin in October of 2024. As the Project progresses SPL will be required to negotiate additional agreements with contractors, engineering firms, or other providers to complete the work required for the Project. As outlined in the *IPC Guide*, prospective or future negotiations can be included within this exemption, provided they are foreseeable.

(b) The release of the Records could reasonably be expected to interfere with the prospective or future negotiations between SPL and other third parties regarding the Project. The Records include direct and indirect construction costs, procurement methodology, general conditions, contingencies, architectural observations, potential risks, and ongoing cost control. Such information all relates to matters or issues that are or may be subject to negotiation as part of future work related to the Project.

As outlined in the *IPC Guide*, “interfere” means to hinder or to hamper. It is SPL’s position that the release of the Records could reasonably be expected to hinder or hamper the prospective or future negotiations between SPL and contractors or other providers of services in various ways. For example, the Records 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 SPL sensitive information or confidential information related to the Project. Such information can reasonably be expected to weaken SPL’s negotiating position leading to less favourable legal and commercial terms in future contracts and increased costs for SPL. Increased costs for local authorities, such as SPL, lead to increased costs for the public and so there is also a public interest in protecting this information.

[Underline in original]

[70] I note that on its Saskatoon Central Library’s [website](#), SPL posted an update in November 2024 that provided “construction tendering is currently 60% complete” and that the “tendering process will be completed in the spring of 2025.” Therefore, as the tendering process appears to be ongoing, I am satisfied that the first part of the two-part test is met.

[71] However, since I am only considering pages 1 to 14 and 106 to 108 of the PDF, I do not find that the release of those particular pages would interfere with contractual or other negotiations. Earlier, in my analysis of subsection 18(1)(c)(ii) of LA FOIP, I described the contents of these pages. These pages do not contain the cost estimates by the two cost consultants. It is not clear that release of the contents of pages 1 to 14 and 106 to 108 would interfere with contractual or other negotiations.

[72] I find that SPL has not properly applied subsection 17(1)(d) of LA FOIP. Below, I will consider if subsection 17(1)(e) of LA FOIP applies to pages 1 to 14 and 106 to 108 of the PDF.

6. Did SPL properly apply subsection 17(1)(e) of LA FOIP?

[73] Since I have found that SPL properly applied subsection 18(1)(b) of LA FOIP to pages 15 to 105 and 109 to 151 of the PDF, I will analyze whether it properly applied subsection 17(1)(e) of LA FOIP to pages 1 to 14 and 106 to 108 of the PDF.

[74] Subsection 17(1)(e) of LA FOIP provides:

17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(e) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the local authority, or considerations that relate to those negotiations;

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

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

(*Guide to LA FOIP*, Ch. 4, pp. 155-156)

[76] Pages 155 to 156 of the *Guide to LA FOIP*, Ch. 4, provide the following definitions:

- A “position” is a point of view or attitude. An opinion, stand; a way of regarding situations or topics; an opinion that is held in opposition to another in an argument or dispute.
- A “plan” is a formulated and especially detailed method by which a thing is to be done; a design or scheme. A detailed proposal for doing or achieving something; an intention or decision about what one is going to do.
- A “procedure” is an established or official way of doing something; a series of actions conducted in a certain order or manner.
- “Criteria” are standards, rules, or tests on which a judgement or decision can be based or compared; a reference point against which other things can be evaluated.
- “Instructions” are directions or orders.
- A “consideration” is a careful thought; a fact taken into account when making a decision. Thus, a record identifying the facts and circumstances connected to positions, plans, procedures, criteria or instructions could also fall within the scope of this provision.

[77] SPL did not provide arguments as to how subsection 17(1)(e) of LA FOIP applies to the records at issue. On the face of the record, I do not find that the contents of pages 1 to 14 and 106 to 108 of the PDF qualify as a position, plan, procedure, criteria, instructions or a consideration related to negotiations. As I described at paragraph [45], pages 1 to 14 of the PDF include a cover letter by Altus Group, the table of contents, the introduction, the project details, scope assumptions and exclusions, contingencies, general statement of liability, glossary, a list of estimate documentation and a list of appendices. Further, pages 106 to 108 of the PDF are a cover letter by Postma Consulting that identifies the list of documentation that its cost estimate is based on, the basis of its estimate, estimate risks, and estimate exclusions. The contents of these pages do not qualify as a position, plan, procedure, criteria, instructions or a consideration related to negotiations.

[78] I find that SPL did not properly apply subsection 17(1)(e) of LA FOIP. The burden of proof under section 51 of LA FOIP has not been met. Below, I will consider if subsection 17(1)(f) of LA FOIP applies to pages 1 to 14 and 106 to 108 of the PDF.

7. Did SPL properly apply subsection 17(1)(f) of LA FOIP?

[79] Since I have found that SPL properly applied subsection 18(1)(b) of LA FOIP to pages 15 to 105 and 109 to 151 of the PDF, I will analyze whether it properly applied subsection 17(1)(f) of LA FOIP to pages 1 to 14 and 106 to 108 of the PDF.

[80] Subsection 17(1)(f) of LA FOIP provides:

17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

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

[81] My office uses the following test to determine if subsection 17(1)(f) of LA FOIP applies:

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

[82] Page 161 of my office's *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- "Prejudice" in this context refers to detriment to 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.

[83] In its submission, SPL said:

Disclosure of the Records could reasonably be expected to prejudice the economic interests of SPL. As outlined in the *IPC Guide*, to rely on this exemption the local

authority does not have to prove that a harm is probable but needs to show that there is a “reasonable expectation of harm” if any of the information were to be released. In addition, as further outlined in the *IPC Guide*, “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 its ability to protect its own interests in financial transactions.

The Records contain detailed information construction of the Project. Clearly, such information involves the economic interests of SPL as its related to the managing and consumption of goods and services and the management of a key SPL asset, namely the Project site. The release of such information is likely to prejudice the economic interests of SPL in numerous ways. For example, the disclosure of such information will likely disadvantage SPL in future contract negotiations since sharing of cost estimates may hinder the ability to negotiate freely based on true market factors since such information allows contractors and other providers to set pricing based on the disclosed information. Such information can reasonably be expected to weaken SPL’s negotiating position leading to less favourable legal and commercial terms in future contracts and increased costs for SPL. Increased costs for local authorities, such as SPL, lead to increased costs for the public and so there is also a public interest in protecting this information.

[Underline in original]

[84] I am only considering pages 1 to 14 and 106 to 108 of the PDF. I described the contents of these pages earlier – these pages do not contain the cost estimates. Therefore, I find that SPL has not properly applied subsection 17(1)(f) of LA FOIP.

[85] Since I have found that none of the exemptions applied by SPL to pages 1 to 14 and 106 to 108 of the PDF, I recommend that SPL release pages 1 to 14 and 106 to 108 of the PDF to the Applicant within 30 days.

IV FINDINGS

[86] I find that I have jurisdiction to undertake this review.

[87] I find that SPL did not properly apply subsection 18(1)(a) of LA FOIP to the records at issue.

[88] I find that SPL properly applied subsection 18(1)(b) of LA FOIP to the technical information in the Altus Group Cost Estimate (pages 15 to 105 of the PDF) and the technical information in the Postma Consulting Cost Estimate (pages 109 to 151 of the PDF).

[89] I find that SPL has not properly applied subsection 18(1)(c)(ii) of LA FOIP.

[90] I find that SPL has not properly applied subsection 17(1)(d) of LA FOIP.

[91] I find that SPL did not properly apply subsection 17(1)(e) of LA FOIP.

[92] I find that SPL has not properly applied subsection 17(1)(f) of LA FOIP.

V RECOMMENDATIONS

[93] I recommend that SPL continue to withhold pages 15 to 105 and 109 to 151 of the PDF pursuant to subsection 18(1)(b) of LA FOIP.

[94] I recommend that SPL release pages 1 to 14 and 106 to 108 of the PDF to the Applicant within 30 days.

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

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