



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## REVIEW REPORT 107-2024

### Saskatoon Public Library

January 9, 2025

#### Summary:

The Applicant submitted an access to information request to the Saskatoon Public Library (SPL) regarding the Risk Register for the new central library. SPL refused the Applicant access to the record. SPL cited subsections 15(1)(b), 16(1)(a), (b), 17(1)(d), (e), (f), 18(1)(a), (b), (c)(i) and (c)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as its reasons for refusing the Applicant access. The Applicant requested a review by the Commissioner. The A/Commissioner found that SPL properly applied subsection 16(1)(a) of LA FOIP to portions of the record at issue; however, he did not find that SPL properly applied any other exemption. The A/Commissioner recommended that SPL continue to withhold a portion of the record at issue pursuant to subsection 16(1)(a) of LA FOIP and to release the remainder to the Applicant within 30 days of the issuance of this Report.

#### 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 Risk Register for the New Central Library including:

The current version of the Risk Register.

The first version and all subsequent updated versions of the Risk Register.

Any and all correspondence between Saskatoon Library Board members regarding the Risk Register.

- [2] The Applicant specified the time period of “October 2020 to present” for the 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 Risk Register for the New Central Library, from October 2020 to present, including:
- The current version of the Risk Register.
- [7] In an email dated February 20, 2024 to the Applicant, SPL indicated that a fee estimate is not 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), 16(1)(a), (b), 17(1)(d), (e), (f), 18(1)(a), (b), (c)(i) 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 Colliers Project Leaders Inc. (Colliers) as a third party to the review.
- [12] On May 2, 2024, my office notified SPL, the Applicant and Colliers that my office would be undertaking a review of the exemptions applied by SPL.
- [13] On June 18, 2024, Colliers provided a submission to my office arguing that subsections 18(1)(b), (c)(i), (ii) and (iii) of LA FOIP applied to the record at issue.
- [14] On June 10, 2024, SPL provided the records at issue to my office.
- [15] On July 11, 2024, SPL provided a submission to my office. In its submission, SPL said it was no longer relying on subsections 15(1)(b), 17(1)(e), 18(1)(a), (b), (c)(i) and (c)(ii) of LA FOIP. It was still relying on subsections 16(1)(a), (b), 17(1)(d) and (f) of LA FOIP to withhold the record in full.
- [16] Although SPL is no longer relying on section 18 of LA FOIP, I will nonetheless still consider it in this review because the Third Party provided a submission on why it believes subsections 18(1)(b), (c)(i), (ii) and (iii) of LA FOIP apply, and because section 18 is a mandatory exemption.
- [17] The Applicant did not provide a submission to my office.

## **II RECORDS AT ISSUE**

[18] The record at issue is a six-page Risk Register prepared by Colliers, withheld in full, that outlines the potential and identified risks related to the new central library project in Saskatoon. The Risk Register contains twelve columns.

### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction?

[19] SPL is a “local authority” pursuant to subsection 2(1)(f)(vi) of LA FOIP. Colliers qualify as a “third party” as defined by subsection 2(1)(k) of LA FOIP. Therefore, I find that I have jurisdiction to undertake this review.

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

[20] SPL applied subsection 16(1)(a) of LA FOIP, in full, to all six pages of the record at issue.

[21] 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;

[22] My office uses the following two-part test to determine if subsection 16(1)(a) of LA FOIP applies:

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

(*Guide to LA FOIP*, Chapter 4, Exemptions from the Right of Access, updated October 18, 2024 [*Guide to LA FOIP*, Ch. 4], pp. 107-110)

[23] SPL claims the record contains advice, recommendations, and analysis. Pages 108 and 109 of the *Guide to LA FOIP*, Ch. 4, provide the following definitions:

- “Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. Advice includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.
- A “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.
- “Analyses” (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements.

[24] For the second part of the test, records should be developed “by or for” the local authority. The *Guide to LA FOIP*, Ch. 4 at page 110, provides the following definition:

- “Developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the local authority, or 2) outside the local authority but for the local authority (for example, by a service provider or stakeholder). For information to be developed by or for a local authority, the person developing the information should be an official, officer or employee of the local authority, be contracted to perform services, be specifically engaged in an advisory role (even if not paid) or otherwise have a sufficient connection to the local authority. Any advice, proposals, recommendations, analyses or policy options should:
  - Be either sought, be expected, or be part of the responsibility of the person who prepared the record.
  - Be prepared for the purpose of doing something, such as taking an action or making a decision.
  - Involve or be intended for someone who can take or implement the action.

[25] In its submission, SPL said:

The Records satisfy the test for Section 16(1)(a) as follows:

(a) The Records contain advice, recommendations and analyses. The Risk Register contains specific descriptions of potential risks related to the Project. This includes a breakdown of the impacts of the identified risks on the scope, time and cost of the Project and what steps SPL should take to mitigate, accept or exploit the identified risk. The Records, and in particular columns 3 through 12 of the Risk Register, constitute advice, recommendations, and analyses as those terms are defined in the *IPC Guide*. Such advice, recommendations and analyses hold the opinions of the Vendor and those individuals who prepared the Risk Register. As such, the Risk Register does not contain agreed upon facts, but rather is a guidance document designed to assist SPL in making decisions and considering risks related to the Project.

(b) The advice, recommendations and analyses in the Records were developed for SPL. As discussed above, the Risk Register was developed by the Vendor for SPL in connection with the Project. The header of the Risk Register includes both the Vendor and SPL branding to reflect this fact.

[Underline in original]

[26] The record at issue is a Risk Register, which is a common project management tool that helps assess potential risks to a project and how to mitigate them. Based on a review of the record at issue, columns 3 to 10 include information that identifies the potential risks to the central library project. Each of the columns breaks down the potential risks into its constituent parts, including a description, the scope, the time the risk would take up if the risk occurred, the cost, the project phase in which the risk may occur, and the probability of the risk occurring. Taken together, the contents of columns 3 to 10 qualify as an analysis of the risks involved.

[27] Regarding the second part of the test, SPL asserted that Colliers prepared the Risk Register for SPL. Further, I note that in Colliers' submission, Colliers asserted it prepared the information for SPL. On the face of the record, Colliers' logo appears which suggests Colliers prepared the record. Finally, the nature of the contents supports that the information was intended and prepared "for" SPL to assist in decision-making.

[28] Therefore, I find that SPL properly applied subsection 16(1)(a) of LA FOIP to the contents of columns 3 to 10 of the record at issue. I recommend that SPL continue to withhold the

contents of columns 3 to 10 of the record at issue pursuant to subsection 16(1)(a) of LA FOIP.

[29] However, the header of the document (such as the logos), footers, and the title of each column do not qualify as “analyses”. Therefore, I find that SPL did not properly apply subsection 16(1)(a) of LA FOIP to the header, footer and title of each column.

[30] Column 1 enumerates the identified risks. The enumeration of the risks does not qualify as advice, recommendations, or analyses.

[31] Column 2 is a column contains information about whether the identified risk is active or not. Therefore, such information does not qualify as advice, recommendations, or analyses.

[32] Columns 11 and 12 are about the action(s) that SPL has or will take to respond to the risk. Therefore, SPL’s response to the risk is not advice, recommendations, or analyses.

[33] As the first part of the test is not met for these columns, I find that SPL did not properly apply subsection 16(1)(a) of LA FOIP to columns 1, 2, 11 and 12 of the record at issue. I will consider if subsection 16(1)(b) of LA FOIP applies to these columns.

### **3. Did SPL properly apply subsection 16(1)(b) of LA FOIP?**

[34] SPL applied subsection 16(1)(b) of LA FOIP, in full, to the record at issue. Since I have already found that subsection 16(1)(a) of LA FOIP applies to columns 3 to 10 of the record at issue, I will consider whether subsection 16(1)(b) of LA FOIP applies to columns 1, 2, 11 and 12 of the record at issue. I will also consider if it applies to the header, foot and title of each column.

[35] Subsection 16(1)(b) 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:

...

(b) consultations or deliberations involving officers or employees of the local authority;

[36] My office uses the following two-part test to determine if subsection 16(1)(b) of LA FOIP applies:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of the local authority?

(*Guide to LA FOIP*, Ch. 4, pp. 115-116)

[37] Pages 115 to 117 of the *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- “Consultation” means the act of consulting or taking counsel together, or a deliberation or conference in which the parties consult and deliberate. A consultation can occur when the views of one or more officers or employees of a local authority are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation.
- “Deliberation” means the act of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over). It is the careful consideration with a view to a decision, and the consideration and discussions of the reasons for and against a measure by several councillors. A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.
- “Involving” means including. There is nothing in the exemption that limits the exemption to participation only of officers or employees of a local authority. Collaboration with others is consistent with the concept of consultation.
- “Officers or employees of a local authority” means an individual employed by a local authority and includes an individual retained under a contract to perform services for the local authority.

[38] In its submission, SPL said:

The Records satisfy the test for Section 16(1)(b) as follows:



(a) The Records, if disclosed, would permit the drawing of accurate inferences as to the nature of actual consultations of deliberations. SPL engaged in lengthy consultations and deliberations related to the potential risks associated with the Project. As outlined in the *IPC Guide*, a consultation can occur when the views of one or more officers or employees of a local authority are sought as to the appropriateness of a particular proposal or suggested action and a deliberation can occur when there is a discussion or consideration of the reasons for or against an action. Moreover, consultation typically refers to the act of seeking advice regarding an action one is considering taking. The Records, and in particular columns 4 and 12 of the Risk Register, contain details, considerations and descriptions that were the subject matter of such SPL consultations and deliberations regarding the Project. The release of these Records would permit others to draw accurate inferences as to the nature of SPL's actual consultations and deliberations related to the Project. These include consultations and deliberations related to public safety, impacted soils, environmental remediation, personnel turnover, Project costs, budget overruns and Project delays, among other things.

(b) The consultations and deliberations revealed involve SPL employees. Given the size and scope of the Project, numerous SPL employees have been involved and continue to be involved in consultations and deliberations related to the Project. Saskatoon's new central library has been decades in the making. In addition, as outlined in the *IPC Guide*, "officers or employees of a local authority ... includes an individual retained under a contract to perform services for the local authority". In this case, SPL retained the Vendor to perform specific services relating to the Project, which included the development of the Risk Register. In performing these services, the Vendor was involved in consultations and deliberations related to the Project, some of which are further described in the Records.

[Underline in original]

[39] Earlier in my analysis of subsection 16(1)(a) of LA FOIP, I described the contents of columns 1, 2, 11 and 12. SPL asserted that it engaged in "lengthy consultations and deliberations related to the potential risks" associated with central library and the release of the record at issue "would permit others to draw accurate inference as to the nature of [its] actual consultations and deliberations." I disagree. Column 1 is the enumeration of the risk and column 2 is about whether the risk is active or not. Neither of these columns would reveal the consultations or deliberations. Further, columns 11 and 12 describe the action(s) that SPL has or will take to respond to the risk. Based on a review, it does not reveal the actual consultations or deliberations that SPL engaged in when considering the risks.

Therefore, I find that SPL has not properly applied subsection 16(1)(b) of LA FOIP to columns 1, 2, 11 and 12.

[40] Further, the header, foot and title of each column do not qualify as “consultations” or deliberations”. I find that SPL did not properly apply subsection 16(1)(b) of LA FOIP to the header, footer and title of each column.

[41] I will consider if SPL properly applied subsection 17(1)(d) of LA FOIP to columns 1, 2, 11 and 12, the header, footer and title of each column.

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

[42] SPL applied subsection 17(1)(d) of LA FOIP, in full, to the record at issue. Since I have already found that subsection 16(1)(a) of LA FOIP applies to columns 3 to 10 of the record at issue, I will consider whether subsection 17(1)(d) of LA FOIP applies to columns 1, 2, 11 and 12 of the record at issue. I will also consider if it applies to the header, foot and title of each column.

[43] 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;

[44] 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)*

[45] Pages 151 to 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.

[46] In its submission, SPL said:

The Records satisfy the test for Section 17(1)(d) as follows:

(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. As outlined above, 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 contain potential risks associated with the Project, including a description of each risk, the impact of the identified risk on the scope, time and cost of the Project, and mitigation measures to address each identified risk. Such information all relates to matters or issues that are or may be subject to negotiation as part of future environmental investigations, remediation work or construction work generally 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 and SPL’s exposure to Project risks. 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. Furthermore, without appropriate context, some third parties may decline to provide services in relation to the Project based on the environmental assessments or other risks identified in the Risk Register. This would interfere with SPL's ability to freely negotiate with such contractors or other providers.

[Underline in original]

[47] Saskatoon Central Library's [website](#) (updated in November 2024) provides that "construction tendering is currently 60% complete" and that the "tendering process will be completed in the spring of 2025." Therefore, I am satisfied that the first part of the two-part test is met.

[48] Subsection 17(1)(f) of British Columbia's *Freedom of Information and Protection of Privacy Act* (BC FOIP) is similar to subsection 17(1)(d) of FOIP. Subsection 17(1)(f) of BC FOIP provides:

17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

...

(f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[49] In [Order F10-34](#) by the Office of the Information and Privacy Commissioner of British Columbia (BC IPC), the BC IPC considered a record that dealt with the evaluation of risks related to a project. In Order F10-34, the BC IPC said that the test for section 17 of BC FOIP would be met if the documents revealed negotiating positions or financial information relating to those negotiations. BC IPC said:

[21] I note that previous orders have generally treated information in concluded contracts (e.g., Order 03-15; F07-15; F08-22) differently from information in documents concerning negotiating positions that might be used in subsequent contract negotiations (e.g., Order 02-50; Order 03-25; Order 03-35; F05-28). Commissioner Loukidelis has found that s. 17 did not apply to the terms of completed contracts, but that it did apply to information public bodies used in negotiations. For example, **in Order 03-35 and F05-28, Commissioner Loukidelis stated that the test for s. 17 was met where documents revealed negotiating positions or financial information**

**relating to those negotiations that might influence future proponents to orient their bids to the detriment of the public body's financial interests.**

[22] The present case involves background information that PBC developed for use in the negotiations of the contract for the Abbotsford Hospital. It also involves information about how the public bodies assess the risk relating to specific portions of the Project and the extent to which the risks have been transferred to or shared with the partner. I note that the contract for the Project itself has already been disclosed, as has the report of the value for money analysis based the records at issue.

[23] The test that the public bodies must meet, as I indicated above, is that there must be a strong basis, supported by objective evidence that disclosure could be reasonably expected to cause the harm that s. 17(1) contemplates. Moreover, there must be a causal connection between the disclosure of the information in the records and the harm that could occur.

[24] I am convinced that the disclosure of the information about their evaluation of risk could harm their negotiating position in future contracts. The affidavit of the President and CEO of PBC, some of it submitted *in camera*, describes plausible hypothetical outcomes. **He states that disclosure of the information in the records would reveal details of their confidential PSC financial model. In essence, he says that, if potential partners knew the public bodies' evaluation of risk and it differed from their own, the partners might change their negotiating position with respect to certain provisions of the contract. They might refuse to assume risks that they otherwise would have accepted, or they might require greater levels of compensation than they would otherwise have been willing to accept as the price of assuming the risk.** Given his knowledge and experience with respect to these matters, this evidence merits considerable weight.

[25] The issues in this case were finely balanced. In the end, I conclude that, based on the evidence as a whole and the circumstances of this case, the public bodies have met the test set out in previous s. 17 cases. The public bodies have established that the disclosure of the information at issue could reasonably be expected to harm the negotiating position of the public bodies and, thus, the financial or economic interests of the province. The arguments of the public bodies (including material they provided *in camera*) combined with a review of the records establishes that there is a logical connection between the information identified and the contemplated harm that disclosure might pose. Therefore, I find that s. 17(1) authorizes PBC and FHA to withhold the information.

[26] **As an aside, the public bodies have not quantified the potential harm with precision. In future, public bodies could further strengthen their cases by providing explicit measures of harm. While I realize that it can be difficult to quantify such potential harm, a rough estimate in either dollar or percentage terms, or even a range of potential costs, would be useful.**

[Emphasis added]

[50] In BC IPC’s Order F10-34, the public body made arguments as to how the disclosure of the contents of the records at issue could reasonably be expected to harm the negotiating position of the public body. However, in this case, SPL has not identified which contents of the Risk Register would interfere with SPL’s contractual or other negotiations. Rather, SPL made assertions such as the release of the Risk Register “can reasonably be expected to weaken SPL’s negotiating position” but did not explain how. It did not identify the third parties with whom they are engaged in negotiations. SPL is speculating at best that disclosure of the Risk Register would specifically interfere with negotiations between it and third parties. It would be far more effective if SPL identified specific third parties with whom it is engaged in negotiations and the specific contents of the Risk Register where disclosure would interfere with SPL’s contractual or other negotiations. SPL has not done so.

[51] Therefore, the second part of the two-part test is not met. I find that SPL has not properly applied subsection 17(1)(d) of LA FOIP to columns 1, 2, 11 and 12 as well as the header, footer, and titles of each column. I will consider SPL’s reliance on subsection 17(1)(f) of LA FOIP to withhold this information.

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

[52] SPL applied subsection 17(1)(f) of LA FOIP, in full, to the record at issue. Since I have already found that subsection 16(1)(a) of LA FOIP applies to columns 3 to 10 of the record at issue, I will consider whether subsection 17(1)(f) of LA FOIP applies to columns 1, 2, 11 and 12 of the record at issue. I will also consider if it applies to the header, foot and title of each column.

[53] 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;

[54] 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?

(*Guide to LA FOIP*, Ch. 4, p. 159)

[55] 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.

[56] In its submission, SPL said:

The Records satisfy the test for Section 17(1)(f) as follows:

(a) 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 regarding SPL's management of the Project, its contracting strategy, and projected remediation costs related to the Project site. 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 Records contain sensitive information regarding environmental remediation work at the Project Site (e.g., soil remediation and vapor impact

management) and the disclosure of such information could affect future valuations of the Project site. It is well understood that environmental assessments or analyses, without appropriate context, have the ability to negatively impact the value or perceived value of real property.

- The Records contain information regarding the risks associated with costs exceeding the Project's operating and construction budgets. The disclosure of such information will likely disadvantage SPL in future contract negotiations since it is well known that sharing available budget totals and resource allocation 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 budgetary 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.
- Without appropriate context, some third parties may decline to provide services in relation to the Project based on the risks identified in the Risk Register. This would interfere with SPL's ability to freely negotiate with such contractors or other providers leading to increased costs for SPL.
- As outlined above, the Records do not contain agreed upon facts, but rather are guidance designed to assist SPL in making decisions and considering risks relating to the Project. As such, the Records contain errors and content/assessments that are not accurate. For example: assessments regarding City finances are incorrect in the Risk Register. SPL did not correct these errors as the Risk Register was an internal confidential document and SPL does not have the Project resources available to ensure that every internal or confidential document that is created in relation to the Project is 100% accurate. The release of such incorrect information can reasonably be expected to prejudice the economic interests of SPL by causing serious reputational damage to SPL by creating a false impression regarding its financial competency.

[Underline in original]

[57] SPL identifies four examples of how the disclosure of the information could reasonably be expected to prejudice the economic interest of the SPL. I address each of the four examples below:

1. Information about environmental remediation work



[58] Column 12 contains references to environmental remediation work, but it does not contain “environmental assessments or analyses”, as asserted by SPL.

[59] I should note that information about environmentally impacted sites is publicly available through Saskatchewan’s Ministry of Environment’s [website](#), which explains how information about environmentally impacted sites is available on an online map. It also explains how further information about the impacted sites are available through a freedom of information request. Its website says:

On April 1, 2022, the ministry launched an online map of the public registry of environmental impacted sites on the [Saskatchewan GeoHub](#). This allows users to see the location of the impacted site, the contaminant(s) of concern and its current status. Further information on specific sites can be obtained by filling out a freedom of information request with the ministry.

In 2022, the ministry created a new Environmentally Impacted Sites [webpage](#). Users can access information on historically impacted sites and spills. There are also useful factsheets and guidance documents that provide further education and information on the impacted sites process.

[60] Further, I note that subsection 83(1) of *The Environmental Management and Protection Act, 2010* (EMPA) provides that information that is submitted to the Minister of Environment pursuant to the EMPA is deemed to be public information, which includes information such as corrective action plans. Since such information is deemed to be public information accessible to any person, then the disclosure of the information cannot reasonably be expected to prejudice the economic interest of the SPL.

## 2. Budget information

[61] Column 12 contains a construction budget amount. SPL argued that sharing available budget totals and resource allocation may hinder its ability to negotiate freely based on true market factors. However, I note that the [project budget amount](#) and an updated [construction budget amount](#) is available on Saskatoon Central Library’s website. Since such information is publicly available, then it cannot be argued that the disclosure of the information could reasonable be expected to prejudice the economic interest of the SPL.

3. Third parties declining to provide services

[62] SPL argued that the disclosure of the record at issue may result in third parties declining to provide services and it would interfere with SPL's ability to freely negotiate with such contractors or other providers, leading to increased costs for SPL. However, SPL has not identified precisely what information, if disclosed, could result in such an outcome. If the outcome did occur, though, it could be argued that this would free up SPL to negotiate with third parties who are willing and able to manage the risks associated with the project.

4. Errors and inaccuracies in the Risk Register

[63] SPL indicated that the Risk Register was created only to be a guidance document to assist SPL in decision-making. Therefore, the Risk Register may contain errors and inaccuracies. SPL asserted that the release of such information "can reasonably be expected to prejudice the economic interests of SPL by causing serious reputational damage to SPL by creating a false impression regarding its financial competency." Based on a review of columns 1, 2, 11 and 12, it is unclear what information, if disclosed, could create a false impression regarding SPL's financial competency. The information is about actions taken (or will be taken) by SPL to mitigate risk if certain outcomes occur during the project.

[64] SPL has not demonstrated that the disclosure of columns 1, 2, 11 and 12 of the record at issue, or the header, footer or titles of each column could reasonably be expected to prejudice the economic interest of SPL. I find that SPL has not properly applied subsection 17(1)(f) of LA FOIP to columns 1, 2, 11 and 12, and the header, footer and title of each column. Before I make a recommendation on release, I will lastly consider if subsections 18(1)(b), (c)(i), (ii) or (iii) of LA FOIP have application to these remaining portions of the record.

**6. Does subsection 18(1)(b) of LA FOIP apply to the record at issue?**

[65] Although SPL said it was no longer relying on subsection 18(1)(b) of LA FOIP to refuse access to the record at issue, the Third Party provided my office with arguments as to why it believes subsection 18(1)(b) of LA FOIP applies to the record at issue. Since subsection 18(1)(b) of LA FOIP is a mandatory exemption, I will consider whether I find the exemption applies to columns 1, 2, 11 and 12 of the record at issue. I will also consider if it applies to the header, foot and title of each column.

[66] 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;

[67] My office uses the following three-part test to determine if subsection 18(1)(b) of LA 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 LA FOIP*, Ch. 4, pp. 174-178)

[68] In its submission, Colliers said the following that “[t]his information is commercial information that was supplied in confidence to the client [18(1)(b)].”

[69] Page 175 of the *Guide to LA FOIP*, Ch. 4, defines “commercial 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.

[70] Based on a review of columns 1, 2, 11 and 12 of the record at issue as well as the header, footer and titles of each column, I find that the information does not qualify as “commercial information”. The contents of the record at issue are about potential risks to SPL’s central library project. The contents are not about the buying, selling or exchange of merchandise or services. Since the first part of the three-part test is not met, then there is no need to consider whether the second or third parts of the test are met. I find that subsection 18(1)(b) of LA FOIP does not apply to the record at issue.

**7. Does subsection 18(1)(c) of LA FOIP apply to the record at issue?**

[71] SPL indicated it was no longer relying on subsection 18(1)(c) of LA FOIP. However, since it is a mandatory exemption and the Third Party provided my office with arguments as to why it believes subsection 18(1)(c) of LA FOIP applies to the record at issue, I will consider whether subsection 18(1)(c) of LA FOIP applies to columns 1, 2, 11 and 12 of the record at issue, as well as the header, footer, and title of each column.

[72] Subsection 18(1)(c) 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:

(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;

[73] The two-part test for subsection 18(1)(c)(i) of LA FOIP, which can be found in my office’s *Guide to LA FOIP*, Ch. 4, at page 185, is as follows:

1. What is the financial loss or gain being claimed?

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

[74] The two-part test for the application of subsection 18(1)(c)(ii) of LA FOIP is set out on pages 190 to 193 of the *Guide to LA FOIP*, Ch. 4. It is as follows:

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?

[75] The two-part test for the application of subsection 18(1)(c)(iii) of LA FOIP is set out on pages 195 and 196 of the *Guide to LA FOIP*, Ch. 4. It is as follows:

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?

[76] Subsection 18(1)(c) of LA FOIP is a harm-based exemption. In order for me to find that subsection 18(1)(c) of LA FOIP applies, there must be evidence that shows that the disclosure of the information would cause harm to the third party. In this case, since it is the Third Party (not SPL) that is arguing that subsection 18(1)(c) of LA FOIP applies to the record at issue, then it is the Third Party that needs to provide me with evidence that demonstrates how disclosure of the information would cause it harm, indicate the extent of the harm and provide facts to support the assertions made (*Guide to LA FOIP*, Ch. 4, pp. 187, 192 and 197).

[77] In its submission, the Third Party said:

Information contained within these records could be used for financial gain [Section 18(1)(c)(i)] by individuals or organizations pursuing contracts for completing work on the project which would result in financial loss [Section 18(1)(c)(i)] to the client and prejudice the client's position in obtaining competitive pricing for the execution of the project [Section 18(1)(c)(ii)], [Section 18(1)(c)(iii)].

The records requested identify risks to the project and corresponding mitigations. Some of these risks and mitigations are regarding project budget, funding, other project financials and project schedule information. Should this information be released, it may influence bid submissions and the ability of the client and project team members to

receive competitive pricing, schedule commitments and negotiate competitive contracts.

[78] The Third Party provided arguments as to why the disclosure of the record at issue would result in harm “to the client” rather than to itself. In this case, the Third Party’s client is SPL. Subsection 18(1)(c) of LA FOIP contemplates harms to the third party, not to the local authority. Therefore, the tests for subsection 18(1)(c)(i), (ii) and (iii) of LA FOIP have not been met. I find that subsections 18(1)(c)(i), (ii) and (iii) of LA FOIP do not apply to columns 1, 2, 11 and 12 of the record at issue, nor do they apply to header, footer, and title of each column.

[79] I recommend that SPL release columns 1, 2, 11 and 12, as well as the header, footer and title of each column of the record at issue to the Applicant within 30 days of the issuance of this Report.

#### **IV FINDINGS**

[80] I find that SPL properly applied subsection 16(1)(a) of LA FOIP to the contents of columns 3 to 10 of the record at issue.

[81] I find that SPL did not properly apply subsections 16(1)(a), (b), 17(1)(d) and (f) of LA FOIP to columns 1, 2, 11 and 12 and the header, footer and title of each column of the record at issue.

[82] I find that subsection 18(1)(b) of LA FOIP does not apply to the record at issue.

[83] I find that subsections 18(1)(c)(i), (ii) and (iii) of LA FOIP do not apply to the record at issue.

#### **V RECOMMENDATIONS**

[84] I recommend that SPL continue to withhold the contents of columns 3 to 10 of the record at issue pursuant to subsection 16(1)(a) of LA FOIP.

[85] I recommend that SPL release columns 1, 2, 11 and 12 as well as the header, footer and the title of each column of the record at issue to the Applicant within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 9<sup>th</sup> day of January, 2025.

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