Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 308-2025

Saskatchewan Human Right Commission

April 20, 2026

Summary: The Applicant requested records from the Saskatchewan Human Rights Commission (SHRC). The SHRC released four pages of a six page record and withheld two pages of the record pursuant to the mandatory exemption contained within section 16(1)(a) (Cabinet confidence) of *The Freedom of Information and Protection of Privacy Act* (*FOIP*).

Dissatisfied with the application of the exemption, by SHRC the Applicant asked the Office of the Saskatchewan Information and Privacy Commissioner for a review.

The Commissioner found that SHRC properly applied section 16(1)(a) of *FOIP* to the withheld portion of the records. Because this exemption is mandatory in nature and properly applied, the Commissioner cannot request the head to reconsider. The commissioner recommended that SHRC continue to withhold the record in its entirety under section 16(1)(a) of *FOIP*.

I BACKGROUND

[1] On August 25, 2025, the Saskatchewan Human Rights Commission (SHRC) received an access request, with the timeframe of "2024-present", from the Applicant that read as follows:

> Please provide all records relating to the services provided to the Commission or the members of the Commission by Alan Thomarat for which Alan Thomarat, or any company owned by Alan Thomarat, was provided compensation of any sort, including but not limited to, formation of any and all contracts, work product, quotations, invoicing, and payment including all communications related thereto, including those services provided through a corporate entity, partnership, or other body.

[2] By letter dated September 25, 2025, SHRC stated it was denying access to a portion of the record, in its entirety, under section 16(1)(a) of *The Freedom of Information and Protection of Privacy Act* (*FOIP*).[1]

[3] On November 20, 2025, the Applicant asked the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) to undertake a review of the application of the exemption by SHRC.

[4] On February 13, 2026, OIPC sent notice to the Applicant and SHRC of the review, inviting each party to provide a submission.

[5] On March 16, 2026, SHRC provided the record and its index of records. SHRC provided its submission on April 13, 2026, expressly stating that it cannot be shared with the Applicant.

[6] The Applicant did not provide a submission.

II RECORDS AT ISSUE

[7] The entire record in this matter is six pages. The SHRC characterized the two withheld pages as two separate memos. Both pages (memos) were withheld in their entirety by SHRC under section 16(1)(a) of *FOIP*.

III DISCUSSION OF THE ISSUES

1. Jurisdiction

[8] SHRC qualifies as a "government institution" under subsection 2(1)(d)(ii) of *FOIP* and section 3 and PART I of the Appendix to *The Freedom of Information and Protection of*

[1] *The Freedom of Information and Protection of Privacy Act*, SS 1990-91, c F-22.01, as amended.

Privacy Regulations.[2] OIPC has jurisdiction under PART VII of *FOIP* to undertake this review.

2. Did SHRC properly apply section 16(1)(a) of *FOIP*?

[9] Section 16(1)(a) of *FOIP* has been applied by SHRC to the two memos in their entirety. Section 16(1)(a) of *FOIP* provides:

> **16**(1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council, including:
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> (a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

[10] Section 16(1)(a) of *FOIP* is a mandatory, class-based provision. Subclauses (a) through (d) use the word "including", which signifies the list is not exhaustive. If none of the subclauses apply, the introductory wording for section 16(1) of *FOIP* must still be considered within an overall contextual consideration. Put simply, the information in question needs to be a confidence of Executive Council. Cabinet confidence is broadly defined as the privileged communications of Ministers either individually or collectively, the disclosure of which would make it difficult for government to speak in front of Parliament and the public.[3]

[11] Section 12(1) of the Ontario *Freedom of Information and Protection of Privacy Act*[4] (*FIPPA*) is similar to section 16(1) of *FOIP*. In 2018 the Canadian Broadcasting Corporation (CBC) requested 23 letters that the Premier of Ontario had delivered to each of his ministers shortly after forming the government. The letters were titled "mandate letters" and set out the Premier's views on policy priorities for the upcoming term. The Cabinet office withheld the letters in full. The head applied the mandatory exemption

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[2] *The Freedom of Information and Protection of Privacy Regulations*, RRS c F-22.01 Reg 1, (April 1, 1992) as amended.

[3] OIPC Review Report 250-2025 at paragraph [17].

[4] *Freedom of Information and Protection of Privacy Act,* R.S.O. 1990, c. F.31, as amended.

within section 12(1) of *FIPPA.* The Ontario Information and Privacy Commissioner found that the exemption was improperly applied and ordered the release of the letters. A unanimous Supreme Court of Canada disagreed.[5] The Court ruled that our Westminster system of government requires certain spheres of confidentiality to fulfill its constitutional role. Legislative privilege protects the ability of elected representatives to act on the will of the people, deliberative secrecy preserves the independence of the judiciary. Cabinet confidentiality grants the executive the necessary latitude to govern in an effective, collectively responsible manner. The Court elaborated:[6]

> [29] Cabinet secrecy derives from the collective dimension of ministerial responsibility…Collective ministerial responsibility requires that ministers be able to speak freely when deliberating without fear that what they say might be subject to public scrutiny…This is necessary so ministers do not censor themselves in policy debate, and so ministers can stand together in public, and be held responsible as a whole, once a policy decision has been made and announced. These purposes are referred to by scholars as the "candour" and "solidarity" rationales for Cabinet confidentiality…At base, Cabinet confidentiality promotes executive accountability by permitting private disagreement and candour in ministerial deliberations, despite public solidarity.
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> …
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> [61] In approaching assertions of Cabinet confidentiality, administrative decision makers and reviewing courts must be attentive not only to the vital importance of public access to government-held information but also to Cabinet secrecy's core purpose of enabling effective government, and its underlying rationales of efficiency, candour, and solidarity. They must also be attentive to the dynamic and fluid nature of executive decision making, the function of Cabinet itself and its individual members, the role of the Premier, and Cabinet's prerogative to determine when and how to announce its decisions.
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> [62] Such an approach reflects the opening words of s. 12(1), which mandate a substantive analysis of the requested record and its substance to determine whether disclosure of the record would shed light on Cabinet deliberations, rather than categorically excluding certain types of information from protection.

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[5] *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4. Justice Côté dissented on the standard of review only. She was in agreement with the rest of the Court's interpretation of section 12(1) of *FIPPA* and the conclusion that the mandate letters were exempt from disclosure pursuant to that provision. She considered the Information and Privacy Commissioner's decision to be reviewable on a standard of correctness because the issue raised in the appeal, the scope of Cabinet privilege, was a question of law.

[6] *Ibid,* at paragraphs [29], [61] and [62].

> Thus, "deliberations" understood purposively can include outcomes or decisions of Cabinet's deliberative process, topics of deliberation, and priorities identified by the Premier, even if they do not ultimately result in government action. And decision makers should always be attentive to what even generally phrased records could reveal about those deliberations to a sophisticated reader when placed in the broader context. The identification and discussion of policy priorities in communications among Cabinet members are more likely to reveal the substance of deliberations, especially when considered alongside other available information, including what Cabinet chooses to do.
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> [Emphasis added]

[12] In the case at hand, this office has taken guidance from the above and has considered the opening words of section 16(1) of *FOIP* in its ultimate determination. We have also effected a substantive analysis of the contents of the record in issue.

[13] It was submitted by SHRC that the memos were prepared for or by a committee of Executive Council[7] in support of an Order-in-Council. One memo was prepared by a government ministry to the committee of Executive Council to consider a proposal.[8] The second memo was then presented by the committee of Executive Council to the Minister responsible.

[14] Cabinet confidence involves a lengthy deliberative process. The Premier, individual ministers and Cabinet as a whole must be informed by civil servants every step of the way. There must be time for discussion and repeated sessions of consultation. Policy formulation can involve false starts, blind alleys, wrong turns and the change of direction. Consultation and education may result in the re-evaluation of priorities and the re-weighing of factors over a period of time. The process is dynamic, fluid and evolves with time and the solicitation of steady input from civil servants:[9]

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[7] A committee of Cabinet that exercises some or all powers of Cabinet, or that develops and provides recommendations to Cabinet as established under *The Executive Government Administration Act*, SS 2014, c E-13.1, as amended.

[8] A "proposal" is something offered for consideration or acceptance as per OIPC Review Report 079-2021 at paragraph [17].

[9] *Supra,* footnote 5 at paragraphs [46] to [49].

> [49] The dynamic and fluid nature of Cabinet's deliberative process also means that not all stages of the process take place sitting around the Cabinet table behind a closed door. The decision-making process in Cabinet extends beyond formal meetings of Cabinet or its committees, and encompasses "[o]ne-on-one conversations in the corridors..., in the [first minister's] office..., over the phone, or however and wherever they may take place"... As Professor Brooks writes, "[n]o organization chart can capture this informal but crucial aspect" of the deliberative process, nor the centrality of the first minister's role within it (*ibid*.).

[15] When civil servants seek information and then use the information to prepare materials to advise Cabinet, the Cabinet confidence exemption must apply to the materials. In Order PO-4598, the Office of the Information and Privacy Commissioner of Ontario (ON OIPC) considered whether section 12(1) of *FIPPA* applied to the contents of reports prepared by a consulting company for the Ontario Ministry of Finance. The ministry used the reports in preparing materials submitted to Cabinet. ON OIPC said:[10]

> [38] I have reviewed the records at issue. I find that all of the records were prepared by the consulting company for the ministry to assist the ministry in preparing its sector strategies which were eventually presented to the Recovery Committee via the Recovery Planning Centre.
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> [39] In the records I find to be exempt in full, the information includes expansive jurisdictional scans, surveys, and detailed analyses and options to be considered by the ministry when preparing its sector strategies to be presented to the Recovery Committee. It is my view that the information contained in these records, both in its nature and scope, is sufficiently detailed that it is reasonable to conclude that the information in some form would have been included in materials submitted to the Recovery Committee. I have reached this conclusion on the basis of the ministry's representations and my review of the records. Accordingly, while the ministry does not argue that these actual records were placed before the Recovery Committee, I find that the disclosure of this information would permit the drawing of accurate inferences with respect to the material that was considered and deliberated by the Recovery Committee.

[16] Further, Cabinet confidence does not end when a final decision is made and announced by the Minister, or in this case, the date of the execution of an Order-in-Council. The sphere

[10] Office of the Information and Privacy Commissioner of Ontario (ON OIPC) Order PO-4598 at paragraphs [38] to [39].

of confidence extends to protect the deliberations for at least 25 years or unless consent to access is given according to the dual requirements of section 16(2) of *FOIP*.[11]

> [53] The Letters on their face contain communications between the Premier and Cabinet ministers about policy priorities, many if not most of which would require decisions from Cabinet, both as to their substance and as to how they should be communicated to the public. Cabinet "formulates and carries out all executive policies," and all major government policy matters are forwarded to Cabinet for decision… Disclosure of the Premier's initial priorities, when compared against later announcements of government policy and what government actually accomplished, would reveal the substance of what happened during Cabinet's deliberative process. The IPC's characterization of the Letters as "the end point of the Premier's formulation of the policies and goals to be achieved by each Ministry", or "the product of his deliberations" was thus beside the point, and an unreasonable basis upon which to deny protection under s.12(1).
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> [Emphasis added]

[17] In the case at hand, one memo involves a proposal on the part of a government ministry to a committee of Executive Council and the responsible Minster. There is no information to suggest that the contents of the memos were ever made public, despite the execution of an Order-in-Council, or that the sphere of confidence has ended. Our review of the two pages/memos confirms the proper application of the Cabinet confidence mandatory exemption by SHRC.

3. There can be no reconsideration of the proper application of a mandatory exemption

[18] Long ago, the Supreme Court of Canada explained the importance of the public interest concept in the application of a discretionary exemption.[12] The discretionary exemptions provided for in the Ontario privacy legislation dealing with sections 14(2) (law enforcement investigations) and 19 of *FIPPA* (solicitor/client privilege) were both challenged by an organization that requested documents linked to a disturbing criminal

[11] *Supra*, footnote 5 at paragraph [53].

[12] *Ontario (Public Safety and Security) v. Criminal Lawyers' Association* 2010 SCC 23 [2010] 1 SCR 815.

trial. The Supreme Court of Canada instructed that section 23 of *FIPPA*, the "public interest override" section, did not specifically require a further consideration of the public interest in sections 14(2) and 19 of *FIPPA* because both sections adequately provided for a unilateral consideration by a government head of the public interest by virtue of the very nature of the exemption itself. In other words, it is accepted that in making the decision whether to apply a discretionary exemption, the government head will have taken the public interest into consideration when making its final decision.

[19] When a government head decides to apply a discretionary exemption, we must accept that a two-fold consideration has gone before. First, the head must determine if the exemption applies. If it does, the head must go on to ask if, having regard for all relevant interest, such as the public interest, disclosure should be ordered.[13]

[20] In the case of the application of a discretionary exemption, a provincial privacy commissioner has a "residual discretion" to consider all relevant matters and to review, if necessary, the exercise of discretion on the part of the head only under certain conditions or where it is clear that the public interest had been ignored:[14]

> [71] The Commissioner may quash the decision not to disclose and return the matter for reconsideration where: the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or the decision failed to take into account relevant considerations.

[21] A "public interest" means a matter that is central to public discussion or debate and that is closely aligned with the concept of government transparency which is a cornerstone of democracy and public trust. The issues at the core of the disclosure must relate to a shared concern of national or provincial consequence. The ON OIPC has provided seminal guidance on this issue:[15]

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[13] *Ibid,* at paragraphs [66] and [67].

[14] *Ibid,* at paragraph [71].

[15] *Public Interest Disclosure*. Ontario Information and Privacy Commissioner, September 2021 [page 5].

> For there to be a compelling public interest in disclosure of a record, the information must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expression public opinion or to make political choices.

[22] In the matter at hand, the subject of consideration in this review, the Order in Council, was released in full to the Applicant. The date on the Order-in-Council is June 2007. Logic dictates that it is highly unlikely any public interest still attaches. Regardless, section 16(1)(a) of *FOIP* is a *mandatory* exemption. In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association* the Supreme Court did not send the exemption covered by solicitor-client privilege back to the Commissioner for review in its final analysis. That is because the Supreme Court found this exemption to be "near absolute" in common law, in spite of the fact that the Ontario privacy legislation categorized the exemption as discretionary. If this discretionary exemption is outside the review and consideration of the Commissioner, then for sure, the proper application of a mandatory exemption will be as well. We take the Supreme Court's direction to be that this office cannot review a head's application of a non-discretionary exemption if it is properly applied.[16]

IV FINDINGS

[23] OIPC has jurisdiction under PART VII of *FOIP* to conduct this review.

[24] SHRC properly applied section 16(1)(a) of *FOIP* to the record.

[25] The exercise of discretion cannot be considered on section 16(1)(a) of *FOIP* as a mandatory exemption.

V RECOMMENDATION

[26] I recommend that SHRC continue to withhold the two-page record in its entirety under section 16(1)(a) of *FOIP*.

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[16] *Supra*, footnote 12 at paragraph [75].

Dated at Regina, in the Province of Saskatchewan, this 20th day of April, 2026.

Grace Hession David
Saskatchewan Information and Privacy Commissioner