



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## REVIEW REPORT 037-2025

### Public Service Commission

June 18, 2025

#### Summary:

The Applicant submitted an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) to the Public Service Commission (PSC) for records related to their job application and interview for a position within the Ministry of Agriculture. PSC responded to the access to information request by withholding certain records in part pursuant to sections 20(a), (b), and 31(2) of FOIP. The Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner. The Commissioner found that because the PSC properly applied section 20(a) of FOIP, there was no need to consider the application of section 20(b) in this matter. There was also a finding that PSC properly applied section 31(2) of FOIP. As a result, the Commissioner recommended that PSC continue to withhold the portions of the records at issue in which it applied sections 20(a) and 31(2) of FOIP.

#### I BACKGROUND

- [1] On December 18, 2024, the Public Service Commission (PSC) received, by email, an access to information request from the Applicant for the following:

I am requesting access to all personal records and evaluation documents related to my job application for the position of Data and Research Analyst (RES007171) at the Ministry of Agriculture. Specifically:

*Interview Notes and Scores:*

Handwritten or typed notes taken by interview panel members during my interview.

Score rubrics, competency evaluations, and final tallies used to assess my performance.

Any decision-making documents or notes used to determine my candidacy.

*Evaluation of Any Take-Home Exam:*

Grading criteria or rubrics used to evaluate the exam.

Detailed comments, scores, or evaluator notes related to the exam.

*Correspondence or Instructions Related to My Application:*

Any documents or communication sent to me (or intended for me) regarding the application process, including interview guidelines and evaluation methods.

*Environmental or Accommodation Notes:*

Any records regarding the state of the interview environment (e.g., room conditions, equipment).

Internal notes about any specific requests or accommodations made during my interview.

- [2] On January 17, 2025, PSC emailed a letter to the Applicant advising that the 30-day response period was being extended an additional 30 days pursuant to section 12(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Section 12(1)(b) of FOIP provides as follows:

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

...

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

...

- [3] On February 14, 2025, PSC provided its section 7 decision to the Applicant. In its decision, PSC asserted that portions of the records were being withheld pursuant to sections 20(a), (b), and 31(2) of FOIP. In the initial release of records, the Applicant received copies of emails between the Ministry of Agriculture and PSC, job competencies for the position, the post interview exercise, in addition to portions of completed interview guides, the template interview guide, and Behavioural Descriptive Interview (BDI) Questions.
- [4] On February 26, 2025, the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) received a request for a review from the Applicant.
- [5] Between February 27, 2025, and March 5, 2025, OIPC worked to effect an informal resolution of the matter without success. During this process, PSC released an additional record in full to the Applicant. PSC is not reconsidering the application of any other

exemptions to the record in this review. The Applicant continued to be unsatisfied with the decision of PSC to withhold the remainder of the records. PSC and the Applicant were given notice of the review on March 6, 2025.

[6] On March 6, 2025, OIPC requested that PSC provide a copy of the unredacted records and its index of records by April 7, 2025. Further, both parties were invited to provide submissions to OIPC by May 5, 2025.

[7] PSC provided OIPC with a redlined copy of the record and its index of records, which is reproduced below, on April 3, 2025. PSC provided its submission to OIPC on May 5, 2025. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

[8] There were 71 pages of records responsive to the Applicant's access to information request. PSC withheld 41 pages in part as outlined below:

<b>Description</b>	<b>Record Number</b>	<b>Page Number</b>	<b>FOIP Exemptions Applied</b>	<b>Status</b>
Completed Interview Guide - Applicant - 1	5a	14	31(2)	Released in part
	5b	15	31(2)	Released in part
	5c	16-26	20(a) and (b) and 31(2)	Released in part
Meeting Notes	6a	30	31(2)	Released in part
	6b	31-41	20(a) and (b) and 31(2)	Released in part
	6c	42	31(2)	Released in part
BDI Questions	7	44-47	20(a) and (b)	Released in part
Template Interview Guide	8	50-60	20(a) and (b)	Released in part

### III DISCUSSION OF THE ISSUES

#### 1. Does OIPC have jurisdiction?

[9] PSC qualifies as a “government institution” as defined by section 2(1)(d)(ii) of FOIP and section 3 and PART I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, OIPC has jurisdiction to undertake this investigation.

#### 2. Did PSC properly apply section 20(a) of FOIP?

[10] PSC applied section 20(a) of FOIP to the following portions of its documents and withheld:

- Record 5c - Completed Interview Guide: pages 16 to 26
- Record 6b – Meeting Notes: pages 31 to 41
- Record 7 – BDI Questions: pages 44, 46, and 47; and
- Record 8 – Template Interview Guide: pages 50 to 60.

[11] Section 20(a) of FOIP provides:

**20** A head may refuse to give access to a record that contains information relating to:

- (a) testing or auditing procedures or techniques; or
- ...

if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

[12] When speaking of the discretionary, harm-based exemption in section 20(a), this office has held in the past that if a record contains testing or auditing information that could reasonably be expected to prejudice the organization, then a two-part analysis is required to determine if the withholding is proper.<sup>1</sup>

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<sup>1</sup> See OIPC [Review Report 093-2024](#) at paragraph [22].

[22] Subsection 20(a) of FOIP is a discretionary, harm-based exemption. It permits refusal of access in situations where a record contains information relating to testing or auditing procedures or techniques if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 8, 2024 [*Guide to FOIP*, Ch. 4], p. 248). My office applies the following two-part test to determine if a government institution properly applied this exemption:

- (a) Does the record contain information relating to testing or auditing procedures or techniques?
- (b) Could disclosure reasonably be expected to prejudice the use or results of particular tests or audits?

*(a) Does the record contain information relating to testing or auditing procedures or techniques?*

[13] From a review of the redacted pages listed in paragraph [10] above, it is obvious that the redactions all involve interview questions that are posed to all prospective candidates, including the Applicant, for a position within the Ministry of Agriculture.

[14] In its submission, PSC asserted that the redacted information in the relevant segments of Records 5 to 8 involve testing procedures and techniques as defined by FOIP and relevant sources.

[15] This office has provided definitions that are helpful with respect to the analysis at hand in the past:<sup>2</sup>

[25] The *Guide to FOIP*, Ch. 4, offers the following definitions at pages 248 and 249:

- “Relating to” should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as “substantial connection”) for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. “*Relating to*”

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<sup>2</sup> *Ibid*, at paragraph [25].

requires some connection between the information and the testing or auditing procedures or techniques.

- A “test” is a set of questions, exercises, or practical activities that measure either what someone knows or what someone or something is like or can do.
- “Procedures” are the manner of proceeding; a system of proceeding; conduct, behavior.
- “Techniques” are the manner of execution or performance in relation to mechanical or formal details; a skillful or efficient way of doing or achieving something.

[Emphasis added]

[16] OIPC has not previously considered whether interview questions asked during a job interview scenario qualify for exemption under section 20(a) of FOIP. However, the Newfoundland and Labrador Office of the Information and Privacy Commissioner (NL IPC) has provided guidance with the following:<sup>3</sup>

[21] I will first deal with the issue of whether or not the questions asked in an interview constitute a test. The *Concise Oxford English Dictionary* 10<sup>th</sup> Edition, Revised (New York: Oxford University Press, 2002) defines “test” as “a procedure intended to establish the quality, performance, or reliability of something.” I believe that an interview process is clearly captured by this definition...

[Emphasis added]

[17] Based on the definition provided in the NL IPC Report, a “test” is considered “a procedure.” As a result of this definition, and a review of the interview questions in the records at issue, there will be a finding that the interview questions in the withheld pages qualify as a “test”, which meets the first part of the criteria.

*(b) Could disclosure reasonably be expected to prejudice the use or results of particular tests or audits?*

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<sup>3</sup> See [Report 2006-004](#) at paragraph [21].

- [18] In its submission to OIPC, PSC asserted that section 22 of the federal *Access to Information Act* (AITA) is substantially similar to section 20 of FOIP. PSC relied on this provision to supplement its submission which is reproduced below:

The [Access to Information Manual](#) developed by the Treasury Board of Canada secretariat as a reference tool to help interpret and administer the federal *Access to Information Act*. Section 22 of the *Access to Information Act* is similar to section 20 of FOIP. The federal exemption provides:

**22** The head of a government institution may refuse to disclose any record requested under this Part that contains information relating to testing or auditing procedures or techniques or details of specific tests to be given or audits to be conducted if the disclosure would prejudice the use or results of particular tests or audits.

...

In the decision *Bombardier v. Canada (Public Service Commission)*, (1990) 44 F.T.R. 39 (F.C.T.D), the Federal Court affirmed that section 22 permitted government institutions to protect the confidentiality of a test taken by the applicant, as well as the correction grid. The Court decided that if the test and correction grid had been disclosed to the applicant, certain future candidates could have an unfair advantage.

[Emphasis added]

- [19] PSC further asserted in its submission:

... disclosure of the questions in Records 5 to 8 would reasonably be expected to prejudice the future use and results of these tests. These questions and assessment approaches are used across multiple competitions and are not specific to a single hiring process. As such, if the content were disclosed, it would provide applicants with an opportunity to pre-prepare responses, defeating the purpose of a standardized evaluation. Candidates could rehearse answers or seek external assistance in crafting ideal responses, which would undermine the objectivity and fairness of the selection process.

The PSC, and the client ministries it supports, do not disclose interview questions in advance, as doing so removes the opportunity to assess candidates' spontaneous thinking, problem-solving skills, and authenticity of response. If the questions in Records 5 to 8 were disclosed, the PSC and the client ministries across the GoS would be required to develop an entirely new set of questions and assessment strategies, for all similar technical positions, for future competitions to ensure fairness. Such an outcome that would be resource-intensive and disruptive. Moreover, as these interview materials are similar to those used across other ministries within the GoS, for similar

technical positions, disclosure would have broader implications, potentially compromising testing integrity government-wide.

As Bombardier illustrates, where a test is part of a repeated or widely used evaluation tool, its confidentiality must be preserved to avoid giving future candidates an unfair advantage. The same rationale applies here. The interview questions in Records 5 to 8 are part of the Ministry's competency-based hiring process, for similar technical positions. They are designed to fairly and efficiently assess candidates' suitability for employment. If disclosed, the effectiveness of this evaluative mechanism would be irreparably harmed, satisfying the second part of the test under subsection 20(a) of FOIP.

[Emphasis added]

[20] This office has considered further definitions that are relevant in this analysis:<sup>4</sup>

[30] The *Guide to FOIP*, Ch. 4, offers the following definitions at page 250:

- “Could reasonably be expected to” means there must be a reasonable expectation that disclosure could prejudice the use or results of particular tests or audits. There is a middle ground that a government institution must establish by providing evidence that the harm is “well beyond” or “considerably above” a mere possibility. Government institutions should not assume the harm is self-evident; the harm must be described in a precise and specific way. Evidence must: 1) show how disclosure would cause harm; 2) indicate the extent of the harm that would result; and 3) be factual or factually support the assertions of the harm.
- “Prejudice” in this context refers to detriment to the use or to the results of tests or audits.

[31] The government institution 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 *British Columbia (Minister of Citizens' Service) v. British Columbia (Information and Privacy Commissioner)*, (2012), Bracken J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm. Government institutions should not assume that the harm is self-evident. The harm must be described in a precise and specific way to support the application of the provision. The expectation of harm need not be a certainty, but it must be reasonable. The evidence of harm must show how disclosure of the information would cause the harm and indicate the extent of the harm that would result, and there must be facts to support the assertions made.

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<sup>4</sup> *Supra*, footnote 1 at paragraphs [30] to [31].



[Emphasis added]

- [21] Assistance may be had from an Alberta case that was very similar to the matter at hand. In that case, section 26 of the Alberta *Freedom of Information and Protection of Privacy Act* (AB FOIP) was considered. Section 26 of AB FOIP provides as follows:

**26** The head of a public body may refuse to disclose to an applicant information relating to

- (a) testing or auditing procedures or techniques,
- (b) details of specific tests to be given or audits to be conducted, or
- (c) standardized tests used by a public body, including intelligence tests,

if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

- [22] The Alberta Information and Privacy Commissioner reviewed the facts of her case and stated the following:<sup>5</sup>

[38] Regarding the interview questions, the Public Body has told me that the interview questions continue to be used, and that

...the questions used to interview prospective police officers, and the guidelines used to evaluate answers to such questions, if disclosed, would undermine the utility of such interview questions, as it would allow future candidates to frame appropriate replies. (Initial submission, at para. 38)

[39] I accept that the interview questions in the records at issue are used regularly by the Public Body, and that disclosing the questions could prejudice their future use...

- [23] PSC asserted in its submission that the interview questions are asked in various job interviews and that “disclosure of the interview questions would compromise the integrity, fairness, and future usability of the Ministry’s hiring process.” In addition, PSC asserted that if the interview questions were disclosed to the Applicant, there would need to be a

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<sup>5</sup> See AB IPC [Order F2021-13](#) at paragraphs [38] and [39].

requirement to “develop an entirely new set of [interview] questions and assessment strategies” and that “such an outcome that would be resource-intensive and disruptive.”

[24] OIPC agrees that disclosure of the redacted material in Records 5c, 6b, 7, and 8 could reasonably be expected to prejudice PSC with respect to the future use of these interview questions. Based on the arguments put forward by the PSC, and in considering the sources as discussed above, there will be a finding that PSC has properly applied section 20(a) of FOIP to the interview questions in Records 5c, 6b, 7 and 8. Because PSC properly applied section 20(a) of FOIP, there is no need for a consideration of section 20(b) to this matter.

[25] There is a recommendation that PSC continue to withhold the information it redacted in Records 5c, 6b, 7 and 8 pursuant to section 20(a) of FOIP.

### **3. Did PSC properly apply section 31(2) of FOIP?**

[26] PSC submitted that section 31(2) of FOIP also applied to some of the withheld material in Records 5 and 6. From a review of the redactions under this phase of the analysis, it would appear that the material redacted involved the interviewers’ notes of the Applicant’s responses to interview questions and the subsequent scores given for each answer. To be clear, this material does not involve the Applicant’s verbatim responses but the interviewers’ notes with respect to the Applicant’s answers and the score thereon.

[27] Section 31(2) of FOIP provides:

**31(2)** A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability, eligibility, or qualification for employment or for the awarding of government contracts and other benefits, where the information is provided explicitly or implicitly in confidence.

[28] Section 31(2) of FOIP has been considered in the past by this office and a three-part test is recommended in the analysis of the nature of this type of withheld material:<sup>6</sup>

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<sup>6</sup> See OIPC [Review Report 013-2023](#) at paragraphs [16] to [18].

[16] Subsection 31(2) of FOIP enables the head to refuse to disclose to individuals, personal information that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment or for the awarding of government contracts and other benefits (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 8, 2024 [*Guide to FOIP*, Ch. 4], p. 298).

[17] The provision attempts to address two competing interests: the right of an individual to have access to his or her personal information and the need to protect the flow of frank information to government institutions so that appropriate decisions can be made respecting the awarding of jobs, contracts and other benefits (*Guide to FOIP*, Ch. 4, p. 298).

[18] The following three-part test can be applied:

- (a) Is the information personal information that is evaluative or opinion material?
- (b) Was the personal information compiled solely for one of the enumerated purposes?
- (c) Was the personal information provided explicitly or implicitly in confidence?

*(a) Is the information personal information that is evaluative or opinion material?*

[29] In order to properly analyze this branch of the test, it must be broken down into two parts. First was the information in question “personal information” and if it is considered to be such, then there must be a determination if this personal information was “evaluative or opinion material”.

*i. Is the information “personal information”?*

[30] In its written submission, PSC asserted that the interviewers’ notes of the Applicant’s responses to interview questions and the subsequent score given for each answer constituted personal information of the Applicant pursuant to sections 24(1)(b), (f), (h) of FOIP:

Subsection 24(1) of FOIP defines “personal information” to include recorded information about an identifiable individual. This includes any information that relates to the individual’s employment or education history, personal

views, or opinions expressed by or about them, or the views or opinions of another individual with respect to the individual.

The content of Records 5 and 6 clearly meets [the definition of subsection 24(1)(h) of FOIP]. The interviewers' notes capture the Applicant's responses to the interview questions (even in point form). These responses pertain specifically to the Applicant's experience, qualifications, and interest in the role as well as the Applicant's views and opinions regarding how to best answer the question. As such, the notes outline aspects of the Applicant's employment and education history, personal views and opinions and fall within the definition of personal information (subs. 24(1)(b) and (f) of FOIP). The scores are a judgment by the interviewer of how well the Applicant answered the specific question. In other words, it is an opinion about the Applicant and falls within the definition of personal information (subs. 24(1)(h) of FOIP). Accordingly, the information withheld in Records 5 and 6 is properly characterized as personal information under FOIP.

[Emphasis added]

- [31] To qualify as personal information, the information must be about an identifiable individual and must be personal in nature. Section 24(1) of FOIP provides a non-exhaustive list of types of information that can qualify as personal information. The provisions put forward by PSC as applying in this case are as follows:

**24(1)** Subject to sections (1.1) and (2), "personal information" means personal information about an identifiable individual that is record in any form and includes:

...

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

...

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

...

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

...

- [32] The information withheld in Records 5 and 6 are the interviewer's notes recorded as the Applicant responded to the interview questions and mixed interchangeably with the interviewer's assessment of the answer given in score point form – as noted above, the notes are *not* simply the verbatim answers given by the Applicant. In addition, Record 5

(Completed Interview Guide) contained scores for each of the interview questions based on the Applicant's responses and based on the interviewers' independent judgement of those responses. With respect to the assessor's notes of the Applicant's answers to the questions posted, PSC asserted:

More significantly, the interview notes are interviewers' transcriptions of the Applicant's responses. They are, by their nature, records of what the interviewer deemed important, relevant, or telling in the Applicant's answers. In choosing what to write down, the interviewer is exercising judgment, identifying, interpreting, and distilling aspects of the Applicant's response that they believe reflect on the Applicant's competence or suitability for the role.

[Emphasis added]

[33] This office has held in the past that test scores can indeed reveal something personal in nature about the Applicant, that is, the Applicant's level of performance in the job interview.<sup>7</sup>

[34] The Information and Privacy Commissioner in the province of British Columbia came to a similar conclusion with more detailed reasons:<sup>8</sup>

[38] Section 22(3)(d) educational and employment history- VIHA submits that previous orders have found that personal information collected as part of an employment interview process constitutes the educational and employment history of the individual candidates. VIHA asserts that it is clear on the face of the records that the resumes and interview information about the candidates consists of their educational and employment history.

...

[41] Past orders have found that personal information, such as resumes, interview scores, and job competition results, are their employment history...

[42] I can confirm that the records include personal information of candidates in employment applications and interviews... This information consists of the types of information that the previous orders noted above found to be educational and employment history.

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<sup>7</sup> See OIPC [Review Report 142-2022](#) at paragraph [22].

<sup>8</sup> See British Columbia's Office of the Information and Privacy Commissioner (BC IPC) [Order F23-03](#) at paragraphs [38], [41] and [42].

[Emphasis added]

- [35] Therefore, the interviewers' notes of the Applicant's responses to interview questions and the subsequent score on each answer constitute the employment history of the Applicant and qualifies as personal information pursuant to section 24(1)(b) of FOIP.

ii. *Is the personal information evaluative or opinion material?*

- [36] The next determination is whether the personal information withheld pursuant to section 31(2) in Records 5 and 6 was both evaluative and opinion material. PSC submitted:

The redacted information includes both the scores assigned by interviewers and the contemporaneous notes they took during the interview. This information squarely falls within the scope of "evaluative or opinion material." According to the IPC Guide, "opinion material" includes any belief or assessment that is based on grounds short of proof - such as an interviewer's assessment of a candidate's suitability for a position, formed in real time during the interview process. These types of assessments are inherently subjective and need not rest on verifiable or objective facts.

The scores reflect the evaluators' discretionary judgments about how well the Applicant met the expectations for each question. The structured rating scale is a guiding framework within which these decisions are made.

[Emphasis added]

- [37] OIPC has provided guidance for these terms as well:<sup>9</sup>

[25] "Evaluative" means to have assessed, appraised, to have found or to have stated the number of (*Guide to FOIP*, Ch. 4, p. 286).

[26] "Opinion material" is a belief or assessment based on grounds short of proof; a view held as probable for example, a belief that a person would be a suitable employee, based on that person's employment history. An opinion is subjective in nature and may or may not be based on facts (*Guide to FOIP*, Ch. 4, p. 287).

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<sup>9</sup> *Supra*, footnote 7 at paragraphs [25] and [26].

- [38] Scores assigned by an assessor during an interview process are usually used to determine eligibility. The entire interview process involves an evaluation on the part of the assessor who uses their skill and experience.<sup>10</sup>
- [39] The review conducted by this office would tend to confirm that any notes and test scores given by an assessor of the Applicant during the interview process were notes and scores of an evaluative nature. There is also the reality that any notes of the Applicant's direct answers to the interview questions would clearly mimic, and be in response to, the questions posed, thus revealing the questions themselves. The British Columbia Court of Appeal in *UBC v Lister* noted that a record that disclosed anything integral to a test question, either explicitly or implicitly, is to be considered properly withheld.<sup>11</sup> In that case, the privacy arbiter's ruling that disclosed the answers to the test questions and the scoring rubrics was deemed unreasonable by the reviewing court.
- [40] There will therefore be a finding that the interview notes and subsequent test scores are personal information that constitute evaluative and/or opinion material and, as such, pass the first threshold of the section 31(2) analysis.

*b) Was the personal information compiled solely for one of the enumerated purposes?*

- [41] PSC submitted the following with respect to the withheld material that comprised the entire interview process, the questions, the notes, and the test scores:

The purpose of the interview process, and the information gathered during the interview, was to assess whether the Applicant was a suitable candidate for the position of Data and Research Analyst. The questions asked during the interview targeted job-related competencies, and the notes and scores captured the Applicant's performance against those criteria. Accordingly, the information was compiled solely for an enumerated purpose as required by subsection 31(2) of FOIP.

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<sup>10</sup> *Ibid*, at paragraphs [19] and [20].

<sup>11</sup> *UBC v Lister*, 2018 BCCA 139 at paragraphs [29], [40] to [42]. See also [City of Vancouver, Order F25-04 \(British Columbia Information and Privacy Commissioner\)](#), 2025 BCIPC 4 at paragraphs [13] and [14].

[Emphasis added]

[42] This office has provided helpful definitions for the relevant terms relating to the second part of the test for the application of section 31(2) of FOIP:<sup>12</sup>

[24] The enumerated purposes are:

1. For determining the individual's suitability, eligibility, or qualifications for employment.

...

[25] "Suitability" means right or appropriate for a particular person, purpose or situation.

...

[27] "Employment" means the selection for a position as an employee of a government institution.

...

[29] The personal information must have been compiled solely for one of the enumerated purposes to qualify (*Guide to FOIP*, Ch. 4, p. 288).

[Emphasis added]

[43] In reviewing the withheld interview notes and subsequent test scores at issue in this matter, as well as previous decisions from this and other privacy offices, it is abundantly clear that the interviewers' notes and the test scores were compiled for the primary purpose of determining the Applicant's suitability for employment within the Ministry of Agriculture. Therefore, I find part two of the section 31(2) analysis has been met.

*(c) Was the personal information provided explicitly or implicitly in confidence?*

[44] PSC submitted the following with respect to the interview process, the questions, the notes, and the test scores:

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<sup>12</sup> *Supra*, footnote 6 at paragraphs [24], [25], [27] and [29].



...Although the notes were taken during the Applicant's interview, the scores by the interviewers were generated as part of the internal deliberative process used to evaluate the Applicant's suitability for the position. These materials are not merely factual transcripts but rather confidential records of assessment used to support hiring decisions.

There is a well-established and reasonable expectation in staffing and hiring processes that evaluation materials - such as interview notes, scoring assessments, and commentary, are kept confidential. This expectation is grounded in the nature of competitive hiring itself, which requires that interviewers can candidly assess candidates without concern that their evaluative comments will be disclosed. The PSC submits that this expectation of confidentiality existed in this case both explicitly and implicitly.

...

Taken together, the presence of explicit confidentiality language and the implicit expectation arising from the nature and purpose of the information clearly demonstrate that the material was provided in confidence. Accordingly, the final requirement of the test is satisfied.

[Emphasis added]

[45] This office has considered definitions that are relevant in the analysis:<sup>13</sup>

[32] "In confidence" usually describes a situation of mutual trust in which private matters are relayed or reported. Information provided 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 government institution and the party providing the information.

[33] "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.

...

[36] While LRWS cannot confirm if the individual who provided the reference understood it was confidential, there are factors to consider if confidence is implicitly understood in these circumstances. These include (not exhaustive):

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<sup>13</sup> *Ibid*, at paragraphs [32] to [36].

- What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the party providing it or by the government institution?
- Was the information treated consistently in a manner that indicated a concern for its protection by the party providing it and the government institution from the point at which it was provided until the present time?
- Does the government institution have any internal policies or procedures that speak to how records or information such as that in question are to be handled confidentially?

[Emphasis added].

[46] In its submission, PSC asserted:

... the information was also provided in confidence implicitly. This arises from the context in which the information was generated. The interviewers were acting in their official capacity as assessors in a formal staffing competition. The purpose of taking notes and assigning scores was not to share information with the Applicant, but to facilitate internal decision-making regarding hiring. The inherent structure and purpose of such evaluation processes, where judgments are recorded to inform deliberations and ensure consistency and fairness, carry with them an understood expectation that those records remain internal and protected. It would undermine the integrity and candour of the assessment process if such information were presumed to be shared or made public.

[Emphasis added]

[47] In *UBC v. Lister*, the British Columbia Court of Appeal stated:<sup>14</sup>

[40] However, UBC's submission goes a step further because it seeks a definition...that includes as a "record of a question" anything that is integral to the question such that disclosure would defeat the purpose for future use. In my view, this is consistent with an interpretation – apparently accepted by information commissioners across the country, that a record which discloses a question, either explicitly or implicitly, is included within the exclusion...and it is the only reasonable interpretation. I agree with UBC' submission that the underlying principle is to maintain the integrity of an examination or test. To disclose the grading system for an examination or test would, in my view, diminish the value of the question for future use...

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<sup>14</sup> *Supra*, footnote 11 at paragraph [40].

[Emphasis added]

[48] In a job interview situation where the integrity of the process is uppermost as in this case, there must be an implicit understanding of the confidentiality associated with the interview. In reviewing the pages of information at issue in this Report, it is abundantly clear that the test scores and interviewers' notes were provided within confidential parameters. The interview in this case was conducted implicitly in confidence for the purposes of the Applicant's potential employment with the Ministry of Agriculture. Because PSC met one part of the two-part test regarding information provided in confidence, OIPC will not proceed to a consideration of whether the information was provided explicitly in confidence.

[49] There will be a finding that PSC has properly applied section 31(2) of FOIP to the test scores and interviewers' notes in Records 5 and 6. There is a recommendation that PSC continue to withhold the information it redacted in Records 5 and 6 pursuant to section 31(2) of FOIP.

#### **IV FINDINGS**

[50] OIPC has jurisdiction to undertake this review.

[51] PSC has properly applied section 20(a) of FOIP to pages 16 to 26 (Record 5), 31 to 41 (Record 6), 44 to 47 (Record 7), and 50 to 60 (Record 8) of the records at issue

[52] PSC has properly applied section 31(2) of FOIP to pages 14 to 26 and 30 to 42 of the records at issue.

## **V RECOMMENDATIONS**

[53] I recommend that PSC continue to withhold the information previously withheld under section 20(a) of FOIP on pages 16 to 26 (Record 5), 31 to 41 (Record 6), 44 to 47 (Record 7), and 50 to 60 (Record 8).

[54] I recommend that PSC continue to withhold the information previously withheld under section 31(2) of FOIP on portions of pages 14 to 26 (Record 5) and 30 to 42 (Record 6).

Dated at Regina, in the Province of Saskatchewan, this 18<sup>th</sup> day of June, 2025.

Grace Hession David  
Saskatchewan Information and Privacy Commissioner