



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 066-2026**

### **Executive Council**

**October 5, 2026**

#### **Summary:**

The Applicant submitted an access to information request to Executive Council for records related to documents involving U.S. Secretary of Commerce, Howard Lutnick. Executive Council responded by providing the Applicant access to portions of records but withheld the remaining portions under sections 13(1)(a) (information obtained implicitly in confidence from the Government of Canada) and 17(1)(a) (advice or analyses developed by or for a government institution) of *The Freedom of Information and Protection of Privacy Act (FOIP)*. Executive Council also withheld some of the record as non-responsive to the Applicant's access to information request.

The Applicant was dissatisfied by the records provided and requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC).

During the course of the review, the Applicant indicated they were no longer interested in the non-responsive records. As some of the non-responsive information had also been withheld under section 17(1)(a) of *FOIP*, this removed section 17(1)(a) of *FOIP* from the scope of the review.

The Commissioner found that Executive Council properly withheld the information on page 2 of the record under section 13(1)(a) of *FOIP* and recommended that Executive Council continue to withhold this information pursuant to section 13(1)(a) of *FOIP*.

## I BACKGROUND

- [1] On December 18, 2025, the Applicant submitted the following access to information request to Executive Council for responsive records for the timeframe July 1, 2025, to the present date:

Any documents, including correspondence and briefing notes, concerning Howard Lutnick.<sup>1</sup>

- [2] On February 16, 2026, Executive Council issued its section 7 decision to the Applicant, granting partial access to records responsive to their request. Executive Council indicated that it was withholding some records pursuant to the mandatory exemption in section 13(1)(a) of *The Freedom of Information and Protection of Privacy Act (FOIP)* and the discretionary exemption in section 17(1)(a) of *FOIP*.<sup>2</sup> Executive Council indicated that it had also marked some information in the record as non-responsive to the Applicant's access to information request.
- [3] On February 24, 2026, the Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC).
- [4] On April 22, 2026, OIPC notified the Applicant and Executive Council that a review of the application of exemptions by Executive Council would commence. OIPC requested that Executive Council provide an unredacted copy of the records at issue, and an index of records (index) by May 22, 2026. Both parties were invited to provide submissions by June 22, 2026.
- [5] On May 22, 2026, Executive Council provided the index and record to OIPC. Executive Council indicated it did not wish to share the index with the Applicant.

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<sup>1</sup> Howard Lutnick was the Secretary of Commerce for the United States of America at the time of the access to information request and continues to hold this position currently. See [U.S. Department of Commerce](#) website.

<sup>2</sup> [The Freedom of Information and Protection of Privacy Act](#), SS 1990-91, c. F-22.01, as amended.

- [6] On June 22, 2026, Executive Council provided a submission to OIPC. Executive Council did not consent to the sharing of its submission with the Applicant.
- [7] The Applicant did not provide a submission.
- [8] On July 30, 2026, the Applicant confirmed that they were no longer interested in the portions of the record marked non-responsive. These records were removed from the scope of the review.

## **II RECORDS AT ISSUE**

- [9] The initial responsive record was nine pages in length. Executive Council released page 9 in full and withheld most of the information on pages 1 to 8 as non-responsive to the Applicant's request. Executive Council also withheld portions of information on pages 1 to 8 under section 17(1)(a) of *FOIP* and one portion of information page 2 under section 13(1)(a) of *FOIP*.
- [10] As indicated, the Applicant confirmed that they were no longer interested in the non-responsive portions of the record. The discretionary exemption in section 17(1)(a) of *FOIP* was also applied to many pages of non-responsive material. Because of the Applicant's concession that they were no longer interested in accessing the non-responsive material, Executive Council's application of section 17(1)(a) of *FOIP* to pages 1, 3, 4, 5, 6, 7 and 8 became moot and was removed from the scope of this review.
- [11] The scope of this review focuses on page 2 of the record. Page 2 is an Annotated Agenda for a virtual First Ministers' Meeting held on December 18, 2025. On August 13, 2026, Executive Council clarified that it had intended to apply section 13(1)(a) of *FOIP* to an entire paragraph on page 2. The focus of this review will therefore be on Executive Council's application of the mandatory exemption section 13(1)(a) of *FOIP* to this information.

### III DISCUSSION OF THE ISSUES

#### 1. Jurisdiction

[12] Executive Council qualifies as a “government institution” pursuant to section 2(1)(d)(i) of *FOIP*. *FOIP* is engaged and OIPC has jurisdiction under PART VII of *FOIP* to undertake this review.

#### 2. The application of section 13(1)(a) of *FOIP*

[13] Executive Council applied the mandatory exemption in section 13(1)(a) of *FOIP* to one paragraph on page 2. Section 13(1)(a) of *FOIP* states:

**Records from other governments**

**13(1)** A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

(a) the Government of Canada or its agencies, Crown corporations or other institutions;

...

unless the government or institution from which the information was obtained consents to the disclosure or makes the information public.

[14] Section 13(1)(a) of *FOIP* is a mandatory provision, meaning that a government institution cannot disclose a record unless the requirements of the provision are satisfied.<sup>3</sup> The provision is meant to protect information received in confidence both formally and informally from the Government of Canada unless those governments or organizations provide prior consent to release the information publicly. We speak here of any agency of the Government of Canada, federal Crown corporations or other such institutions.<sup>4</sup>

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<sup>3</sup> OIPC [Review Report 025-2026](#) at paragraph [11].

<sup>4</sup> OIPC [Review Report 289-2017](#) at paragraph [49].

[15] OIPC applies the following three-part test to determine if a government institution properly applied the exemption in section 13(1) of *FOIP*:<sup>5</sup>

1. Was the information obtained from the Government of Canada or its agencies, Crown corporations or other institutions?
2. Was the information obtained implicitly or explicitly in confidence?
3. Is there consent to disclose the information or has it been made public?

[16] In relation to the first part of the test, this office uses the following helpful definitions:<sup>6</sup>

- “Obtained” means to acquire in any way; to get possession of; to procure; or to get a hold of by effort.
- “Information” means facts or knowledge provided or learned because of research or study.

[17] Executive Council explained that the withheld information was obtained directly from a Federal Minister:

The information record redacted under 13(1)(a) is information that was shared within a previous Federal-Provincial context. The information was shared by the Federal Minister responsible for Canada-U.S. Trade, Intergovernmental Affairs, Internal Trade and One Canadian Economy.

[18] Executive Council clarified that although the annotated agenda was created by the Government of Saskatchewan in preparation for the meeting on December 18, 2025, the withheld information on page 2 was obtained directly from a Federal Minister during a previous meeting held on December 11, 2025.<sup>7</sup> Executive Council explained that the information was obtained during this meeting and subsequently written down by Executive Council staff and incorporated into the annotated agenda referenced above.

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<sup>5</sup> *Supra*, footnote 3.

<sup>6</sup> *Ibid*, at paragraph [13].

<sup>7</sup> [\*Minister Champagne meets with provincial and territorial Finance Ministers, deepens partnerships for a stronger economic future for Canada\*](#) news release from [\*Government of Canada \(Department of Finance\)\*](#), December 11, 2025.

- [19] It is important to note that section 13 of *FOIP* uses the term “information contained in a record” rather than “a record” like other exemptions in *FOIP*. This mandatory exemption can apply to information contained within a provincial record provided the information was obtained directly from the Government of Canada.<sup>8</sup>
- [20] Based on the above explanation and the nature of the withheld content, it is clear that the information withheld by Executive Council on page 2 of the record was obtained from a Federal Minister of the Government of Canada, so the first part of the test is met.
- [21] In order to meet the second part of the test, Executive Council must demonstrate that the withheld information on page 2 of the record was obtained implicitly, or explicitly, in confidence from the Government of Canada. For the second part of the test, this office uses the following helpful definitions:<sup>9</sup>
- “In confidence” describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the provider of the information has stipulated the conditions under which the information may be disseminated. For confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality between the parties.
  - “Implicitly” means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement or other physical evidence of the understanding that the information will be kept confidential.
  - “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated, or made definite. There may be documentary evidence that shows that the information was obtained with the understanding that it would be kept confidential.

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<sup>8</sup> OIPC [Review Report 060-2024](#) at paragraph [122].

<sup>9</sup> *Supra*, footnote 3 at paragraph [13].

[22] OIPC applies a contextual analysis involving several factors in determining confidentiality. Based on Executive Council's arguments of implicit confidence, the following factors are relevant:<sup>10</sup>

- The nature of the information itself makes it clear that the information obtained from other governments is to be kept inherently confidential;
- The information is treated consistently by the relevant governments in a manner that indicates it is confidential; and
- The context in which the information was created is an important consideration. Was the information created for a confidential purpose or for a purpose that would suggest disclosure?

[23] Executive Council submitted that the withheld information was shared during a closed-door meeting where discussions were kept confidential. It further explained that the expectations of confidentiality were assumed as the information was shared during a First Ministers' Meeting.

[24] On the face of the record, the withheld information obtained by Executive Council from the Government of Canada is sensitive in nature and relates to international trade issues. The context of this information reveals that it was provided by the Government of Canada in an effort to update the other levels of government that were present at the First Ministers' Meeting.

[25] In a past order, the Office of the Alberta Information and Privacy Commissioner (AB OIPC) considered a relevant section of Alberta's *Freedom of Information and Protection of Privacy Act*<sup>11</sup> in determining whether a public body appropriately withheld information

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<sup>10</sup> [\*Saskatchewan \(Ministry of Health\) v West\*](#), 2022 SKCA 18 at paragraph [27].

<sup>11</sup> [\*Freedom of Information and Protection of Privacy Act\*](#), R.S.A. 2000, c. F-25, (now repealed). This section of Alberta's Act was similar in nature to section 13 of *FOIP*.

that was supplied by the Quebec government during Federal-Provincial-Territorial (FPT) discussions.<sup>12</sup> This order considered relevant portions of section 21(1) of the Act:

**Disclosure harmful to intergovernmental relations**

**21(1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.

[26] Although the public body in the above case declined to provide further information regarding the context of the discussions, type of information generally discussed, and whether information shared at these discussions is usually expected to remain confidential, the Adjudicator found that the test had been met for the relevant section of the Act:<sup>13</sup>

...the context of the records and the information contained therein indicates the likelihood that they would have been implicitly supplied in confidence; further, there is no indication that they were disseminated outside the FPT discussions. The fact that Quebec did not consent to the disclosure of the records supports a finding of an expectation of confidentiality...

[27] Executive Council also provided a concise explanation that the Government of Canada did not consent to the disclosure of this information and has not made the specific information contained in the record available to the public. Both the second and third parts of the test have been met.

[28] Based on the above, it is apparent that the withheld information on page 2 of the record was obtained implicitly in confidence by Executive Council from the Government of

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<sup>12</sup> Federal/Provincial/Territorial (FPT) discussions are similar in nature to First Ministers' Meetings in that they involved multiple levels of government. FPT meetings also address specific issues of common interest and happen throughout the year at all levels of government from working level officials through to Ministerial. See *Federal, provincial, and territorial relations*, from the [Government of Canada](#) website.

<sup>13</sup> AB OIPC [Order F2014-25](#) at paragraphs [22], [29] and [30].

Canada and must continue to be withheld pursuant to the mandatory exemption in section 13(1)(a) of *FOIP*.

#### **IV FINDINGS**

[29] *FOIP* is engaged and OIPC has jurisdiction pursuant to PART VII of *FOIP* to undertake this review.

[30] Executive Council properly withheld the information on page 2 of the record under section 13(1)(a) of *FOIP*.

#### **V RECOMMENDATION**

[31] I recommend that Executive Council continue to withhold the information on page 2 of the record.

Dated at Regina, in the Province of Saskatchewan, this 5<sup>th</sup> day of October, 2026.

Grace Hession David  
Saskatchewan Information and Privacy Commissioner