



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 114-2025

Ministry of Education

November 26, 2025

Summary:

The Applicant asked the Ministry of Education (Education) for internal correspondence regarding school bathroom gender policies. Education denied access to records, either in full or in part, pursuant to sections 13(1)(b) (records from other governments), 15(1)(m) (security arrangements of particular systems), 16(1) (confidence of Executive Council), 17(1)(a) (advice, proposals, recommendations, analyses or policy options), 17(1)(b) (consultations or deliberations), 22(a) (solicitor-client privilege), 22(b) (prepared by or for legal counsel for a government institution), 22(c) (correspondence between legal counsel for a government institution and any other person) and 29(1) (third party personal information) of *The Freedom of Information and Protection of Privacy Act (FOIP)*. The Applicant asked the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) to review the application of the exemptions by Education.

The Commissioner found that Education established a *prima facie* case justifying the application of section 22(a) of *FOIP*. The Commissioner found that Education properly applied sections 15(1)(m), 16(1), and 17(1)(b) of *FOIP*, and for the most part sections 17(1)(a) and 29(1) of *FOIP*. The Commissioner also found that Education properly withheld information as non-responsive on one page. The Commissioner recommended that Education release or continue to withhold information as outlined in the Appendix to this Report. Where release is recommended, Education should do so within 30 days of this Report being issued.

The Commissioner further recommended that Education reconsider its exercise of discretion with respect to the public interest in releasing the substantive material where it was found that it properly applied sections 17(1)(a) and (b) of *FOIP*.

TABLE OF CONTENTS

I BACKGROUND.....	3
II RECORDS AT ISSUE.....	4
III DISCUSSION OF THE ISSUES.....	5
1. Jurisdiction	5
2. Has Education made a <i>prima facie</i> case for section 22(a) of <i>FOIP</i> to apply?	5
3. Did Education properly apply section 15(1)(m) of <i>FOIP</i> ?	9
4. Did Education properly apply section 17(1)(a) of <i>FOIP</i> ?.....	12
5. Did Education properly apply section 17(1)(b) of <i>FOIP</i> ?	19
6. Did Education properly apply section 16(1) of <i>FOIP</i> ?.....	23
7. Did Education properly apply section 29(1) of <i>FOIP</i> ?.....	27
8. Is there information in the record that is non-responsive?	28
9. Is there a public interest in dissemination of this material?	29
IV FINDINGS.....	31
V RECOMMENDATIONS	32
APPENDIX.....	34

I BACKGROUND

- [1] On December 17, 2024, the Ministry of Education (Education) received an access to information request from the Applicant, which included a specific timeframe for the request:

Please provide records all internal correspondence regarding school bathroom gender policies created since October 1, 2024.

- [2] On January 8, 2025, Education issued a fee estimate of \$330.00, and the Applicant complied on February 5, 2025. In correspondence dated February 26, 2025, Education issued a notice extending the 30-day response period pursuant to section 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act (FOIP)*.¹
- [3] In correspondence dated May 26, 2025, Education issued a section 7 decision to the Applicant, stating it was refunding the Applicant's deposit in full. Education further advised it was withholding certain parts of the record pursuant to sections 13(1)(b), 16(1), 17(1)(a), (b), 22(a), (b), (c) and 29(1) of *FOIP*.
- [4] On May 27, 2025, the Applicant asked the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) to review the application of the above exemptions on the part of Education.
- [5] On June 10, 2025, Education provided an updated section 7 decision to the Applicant, noting that it had inadvertently omitted mention of the application of the exemption in section 15(1)(m) of *FOIP* in the May 26, 2025 section 7 decision.
- [6] On June 17, 2025, OIPC sent notice of review to the Applicant and Education. Under review would be the application of the exemptions on the part of Education involving

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

sections 13(1)(b), 15(1)(m), 16(1), 17(1)(a), (b), 22(a), (b), (c) and 29(1) of *FOIP* to the record.

[7] On July 22, 2025, Education provided OIPC with two tranches of material. The first tranche included the unredacted records and an index of records (index). The second tranche pertained solely to the exemption in section 22(a) of *FOIP* (solicitor-client privilege). This package included a schedule of records and a sworn affidavit.

[8] Education agreed to share the index with the Applicant on July 22, 2025, in the hopes of an early resolution. On July 28, 2025, the Applicant indicated continuing dissatisfaction.

[9] On August 18, 2025, Education provided OIPC with two separate sets of documents in its submission: (1) a written submission/arguments with respect to most of the exemptions; and (2) a separate letter in support of its application of the exemptions in section 22 of *FOIP*. Education stipulated OIPC may share the written submission with the Applicant, but refused to permission to share the letter with respect to the application of the exemption in section 22 of *FOIP*. On August 19, 2025, the written submission was shared with the Applicant who remained dissatisfied. On August 21, 2025 the Applicant requested that the review proceed.

[10] The Applicant did not provide a submission.

II RECORDS AT ISSUE

[11] The record is 331 pages in length. Education applied exemptions to 305 pages in full, or in part. Education released 26 pages in full. The Appendix attached to this Report outlines the recommendations for the status of the pages of the record included in this review. Where release is recommended, Education should do so within 30 days of this Report being issued.

III DISCUSSION OF THE ISSUES

1. Jurisdiction

[12] Education is a “government institution” as defined by section 2(1)(d)(i) of *FOIP*. As there are reviewable grounds in the notices submitted to the parties, OIPC has jurisdiction and is undertaking this review pursuant to PART VII of *FOIP*.

2. Has Education made a *prima facie* case for section 22(a) of *FOIP* to apply?

[13] Education is relying on section 22(a) of *FOIP* to withhold the following pages in full: 1 to 3, 20 to 31, 56 to 58, 97 to 100, 153 to 160, 165 to 183, 185 to 187, 195 to 215, 231 to 243, 260 to 262, 264 to 268, 270 to 283, 285 to 299, 306 to 309 and 319 to 331. Pages 184, 269, 284 and 305 had only portions withheld in part pursuant to section 22(a) of *FOIP*. Where section 22(a) of *FOIP* is found to apply, there will be no need to review the other exemptions Education has applied alongside this provision.

[14] Section 22(a) of *FOIP* provides:

22 A head may refuse to give access to a record that:

(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

[15] Education exerted a *prima facie* claim of solicitor-client privilege over the above listed pages of the record. In support of this claim, Education provided an affidavit and schedule of records outlining the date of the record in each claim, the author, and the nature of the records in the claim. Education also provided a letter, dated August 18, 2025, that furnished context with respect to the application of section 22(a) of *FOIP* in each instance.

[16] Solicitor-client privilege under section 22(a) of *FOIP* applies to records that involve communications between solicitor and client, that entails the seeking or giving of legal

advice, and that is intended by the parties to be confidential.² Education explained in its index that three government lawyers were involved in the preparation and giving of solicitor-client advice in this matter. As stated both by the Supreme Court of Canada and by the Office of the Information and Privacy Commissioner of British Columbia (BC OIPC), this privilege applies equally to in-house counsel working on behalf of the government as to independent or private counsel.³

[17] Solicitor-client privilege can only be waived by the party in whom the privilege resides. In this case it is the stakeholder, Education, who was given the legal advice and who was engaged in discussions with respect to the legal advice. Education is duly asserting this privilege.

[18] In *University of Saskatchewan v Saskatchewan (Information and Privacy Commissioner)*,⁴ the Chief Justice of Saskatchewan warned that production of documents to which a claim of solicitor-client privilege is being asserted should only occur when there is some reason to believe the claim is either unfounded or wrongly applied. Chief Justice Richards underscored the importance of the “absolutely necessary” principle in the disclosure of documents properly subjected to solicitor-client privilege and within the context of provincial privacy legislation:

[49] The touchstone principle engaged by this branch of the University’s submission has been clearly established by the Supreme Court. A discretionary statutory authority to abrogate solicitor-client privilege must be exercised so as to interfere with the privilege only to the extent “absolutely necessary” to achieve the goal of the legislation in question.

...

² *Descôteux et al. v Mierzwinski*, [1982] 1 SCR 860 at pages 870-873; *Alberta (Information and Privacy Commissioner) v University of Calgary*, [2016] 2 SCR 555 at paragraphs [40] to [43]. See also OIPC [Review Report 263-2024](#) at paragraph [56].

³ *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 2004 SCC 31 at paragraphs [19] to [21]. BC OIPC [Order F23-107](#), at paragraph [29].

⁴ *University of Saskatchewan v Saskatchewan (Information and Privacy Commissioner)*, 2018 SKCA 34 at paragraphs [49] and [72].

[72] The knowledge of these various legal engagements no doubt indicated to the Commissioner that at least some documents subject to solicitor-client privilege would almost inevitably fall within the scope of the applicant's access to information request. In other words, there was certainly no basis in fact to suggest the University's claim of privilege was ill-founded in a general or overall sense. Moreover, there is no suggestion here that anyone, including the applicant, was arguing the University had inappropriately asserted its privilege in relation to particular records.

[Emphasis added]

- [19] Chief Justice Richards also relied on the guidance supplied by the Supreme Court of Canada when noting the "near absolute" status of the legal privilege attached to documents covered by a true claim of solicitor-client privilege:

[79] Justice Binnie, writing for a unanimous Court in *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44, observed that the Privacy Commissioner's position was grounded on an overly-broad conception of when it was appropriate for her to abrogate solicitor-client privilege. Justice Binnie said this:

[16] It is undisputed that the employer in this case properly asserted by affidavit its solicitor-client privilege. At that stage there was a "presumption of fact, albeit a rebuttable one, to the effect that all communications between client and lawyer and the information they shared would be considered *prima facie* confidential in nature."

[17] The only reason the Privacy Commissioner gave for compelling the production and inspection of the documents in this case is that the Employer indicated that such documents existed. She does not claim any necessity arising from the circumstances of this particular inquiry. The Privacy Commissioner is therefore demanding routine access to such documents in any case she investigates where solicitor-client privilege is invoked. Even courts will decline to review solicitor-client documents to adjudicate the existence of privilege unless evidence or argument establishes the necessity of doing so to fairly decide the issue.

[Emphasis added]

- [20] In sum then, a party asserting a claim of solicitor-client privilege must allege a presumption of fact, albeit rebuttable, that all communication between client and lawyer are *prima facie* confidential in nature. Any arguments supporting the privilege are to be made in the

hypothetical, and Courts are reluctant to peel back the privilege unless the party advocating otherwise can demonstrate that there is no basis in fact to apply the privilege or that the privilege is misapplied. If the threshold is met – it is a high threshold to pierce.

[21] The affidavit provided by Education was sworn by an affiant who had direct knowledge of the content of, and context associated with, the records to which the solicitor-client claim was asserted. Education indicated that some documents were attachments, and some were drafts. Attachments and drafts that appear within the continuum of the provision of legal advice are caught by the exemption in section 22(a) of *FOIP*.⁵

[22] Based on the schedule of records and the August 18, 2025 letter of explanation provided by Education, it is apparent that communications (such as email exchanges or exchanges of documents), involved Education and three Crown Counsel.⁶ Legal opinion and advice was provided. OIPC will not quote from the letter of explanation so as to preserve the confidentiality of the legal advice. However, to add context to our review of section 22(a) of *FOIP*, we do note that pages 184 to 187, for example, contain a correspondence between Education officials that discussed legal advice given by Crown Counsel. Disclosure would directly reveal the legal advice given. Education also explained that other records, such as those on pages 214 and 215, involve an attachment to an email thread on pages 199 to 203 that referenced the seeking of legal advice and the receipt of a summary opinion from Crown Counsel. Other records covered within the ambit of section 22(a) of *FOIP* are of a similar nature.

[23] The inquiry into the assertion of a claim of solicitor-client privilege is contextual and the party seeking to avoid disclosure must put the relevant context before the reviewing body

⁵ OIPC [Review Report 318-2023](#) at paragraph [43] speaks to draft policies being caught by the exemption when legal advice is provided on them. OIPC [Review Report 188-2019](#) at paragraph [17] speaks to attachments communicated for the purpose of giving or seeking legal advice.

⁶ The three Crown Counsel listed on the schedule are employees of the Ministry of Justice/ Attorney General of Saskatchewan. They are also members in good standing with the Law Society of Saskatchewan.

or face the possibility that the onus will not be met. The context must clearly establish the legal advice component of the privilege and if it does not, the records will not be held to be covered by solicitor-client privilege.⁷ We are satisfied that Education has met the required threshold.

[24] With respect to the pages noted in paragraph [13] of this Report, Education has established a *prima facie* case justifying the application of section 22(a) of *FOIP*. There is a finding to that effect. There is also no evidence before us that the privilege as alleged by Education was misapplied or unfounded. There will be a recommendation that Education continue to withhold these pages of the record.

[25] There is no need to review the exemptions Education applied alongside section 22(a) of *FOIP* for these pages, such as sections 16(1), 22(b) and (c) of *FOIP*.

3. Did Education properly apply section 15(1)(m) of *FOIP*?

[26] Education is relying on section 15(1)(m) of *FOIP* to withhold “file security protocols” or links to “an approval folder” in one of its internal computer drives. These appear on pages 104, 105 and 249. Section 15(1)(m) of *FOIP* provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[27] Section 15(1)(m) of *FOIP* allows a government institution to refuse access to information if disclosure would reveal the security arrangements of vehicles, buildings or other structures or systems, including in this case, computer or communication systems, or methods employed to protect the computer/communication systems. In this context,

⁷ [*Saskatchewan \(Ministry of Health\) v West*, 2022 SKCA 18](#) at paragraphs [82] and [83].

“including” means that the enumerated list given in the provision is not exhaustive. To determine if the exemption applies, one of the following questions should be answered in the affirmative, although both may be:⁸

1. Could the release of information reveal security arrangements (of particular vehicles, buildings, other structures, or systems)?
2. Could the release of information reveal security methods employed to protect the particular vehicles, buildings, other structures, or systems?

[28] This office has adopted the guidance given by the Saskatchewan Court of Appeal in that the threshold for “could” is somewhat lower than a “reasonable expectation”. The test involves whether release of the information “could” have the specified result. There does not need to be a likelihood of a happening, only an objective possibility, or a possibility based on the facts.⁹

[29] OIPC has also defined “with respect to” as having the widest possible scope.¹⁰

[30] Education claimed that release could reveal security arrangements or file security protocols. In its submission, Education noted that hackers are more sophisticated, and that governments are the most targeted sector and therefore quite vulnerable. Education’s prime concern was that a hacker could use the exempted information to send an “impersonated email to an unsuspecting government employee” and deliver malware or conduct illegal phishing attacks.

⁸ See OIPC [Review Report 005-2025](#) at paragraphs [11] to [15].

⁹ [Saskatchewan Government Insurance v Giesbrecht](#), 2025 SKCA 10 at paragraphs [73] and [80]. In this ruling the Court of Appeal considered the word “could” within the context of section 38(1)(f) of [The Health Information Protection Act](#), SS 1999, c. H-0.021, as amended, but the substance of the meaning is relevant to this analysis in that all that needs to be shown is an objective possibility of the happening. See also OIPC [Review Report 045-2025](#) at paragraph [39].

¹⁰ See OIPC [Review Report 045-2025](#) at paragraph [40].

- [31] A review of the material indicates that the file paths describe the drive where Education stores the documents in question on the internal server. The names of the documents, or the references to them, are included within the complete file path name.
- [32] In *Schiller v Saskatchewan Health Authority* (Schiller), Dawson J. considered similar arguments on the part of the Saskatchewan Health Authority (SHA). In that case data elements including file path addresses/links, database systems, usernames, passwords and barcodes used by SHA could facilitate a security breach of its systems if disclosed.¹¹ On review of those data elements, Dawson J. was satisfied that section 14(1)(m) of *The Local Authority Freedom of Information and Protection of Privacy Act*, the mirror provision of section 15(1)(m) of *FOIP*, would apply to exempt such data elements from disclosure. In instances such as this, disclosure would reveal security arrangements of a computer/communications system or the methods employed to protect them.
- [33] BC OIPC considered a rather complex set of “interconnected... databases, system flows, systems and data warehouses”, the disclosure of which could reasonably harm the security of the public body’s computer systems because it literally provides hackers with a “road map” of the system.¹² BC OIPC further acknowledged that hackers often use such information, in conjunction with social engineering techniques to launch a phishing attack.¹³
- [34] BC OIPC recently considered section 15(1)(l) of British Columbia’s *Freedom of Information and Protection of Privacy Act* as it applies to file path information. Having

¹¹ [Schiller v Saskatchewan Health Authority](#), 2025 SKKB 37 at paragraphs [43], [44] and [52].

¹² Section 15(1)(l) of British Columbia’s *Freedom of Information and Protection of Privacy Act*, is similar to section 15(1)(m) of *FOIP*, except that it carries the higher threshold of “could reasonably be expected to.” See [Freedom of Information and Protection of Privacy Act](#), RSBC 1996, c 165, as amended.

¹³ BC OIPC [Order F19-40](#), (November 8, 2019) at paragraphs [20] to [29]. BC OIPC described in the footnotes that a social engineering attack is one in which a person would obtain as much information about an authorized user, which could be found in online directories, to then masquerade as the user and gain unauthorized access to the system.

concern for how it may be used in a hacking attempt, BC OIPC found that this information should be withheld because the disclosure of server locations could be exploited by hackers.¹⁴ The Information and Privacy Commissioner of Ontario (ON IPC) in another very recent ruling with respect to privacy legislation similar to section 15(1)(m) of *FOIP*, that disclosure of URLs (internet addresses: [URL - Oxford Reference](#)) can identify where a public body stores sensitive information, and disclosure can assist hackers conduct cyber security attacks.¹⁵

[35] The concern with the disclosure of file path information is reasonable. Hackers leverage this information, along with publicly available information such as employee names and email addresses, to engineer phishing scams which are now common. There is, sadly, an objective possibility that this scenario “could” occur. These concerns are legitimate. Phishing attacks are not only more common but they have grown more sophisticated by the day. There is a finding that Education properly applied section 15(1)(m) of *FOIP* to the file path information on pages 104, 105 and 249, and a recommendation that it continue to withhold this information pursuant to section 15(1)(m) of *FOIP*. There is no need to review section 17(1)(a) of *FOIP* as applied alongside this information on pages 104 and 105 by Education.

4. Did Education properly apply section 17(1)(a) of *FOIP*?

[36] We now review the application of the exemption contained in section 17(1)(a) of *FOIP* to pages 32, 119, 142, 162 to 164, 216, 218, 219 to 230, 244 to 247, 249 to 253, 255 to 259, 263, 284, 300, 305, 310 and 313 and 316 (applied in part) and pages 143, 144, 219 to 230, 301 to 304, 311, 312, 314, 315, and 318 (applied in full).

[37] Section 17(1)(a) of *FOIP* provides as follows:

¹⁴ BC OIPC [Order F25-26](#), (March 27, 2025) at paragraphs [25] to [30].

¹⁵ ON OIPC [Order PO-4669](#), (June 24, 2025) at paragraphs [70] to [74].

17(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 a government institution or a member of the Executive Council.

[38] The following two-part test, as applied by OIPC, can help determine if a government institution properly applied section 17(1)(a) of *FOIP*:¹⁶

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council?

[39] Education submitted that the record included advice, proposals, recommendations, analyses and/or policy options. This office traditionally considers the following definitions to be helpful:¹⁷

- “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. The “pros” and “cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a government institution must make a decision for future action.
- A “proposal” is something offered for consideration or acceptance.
- A “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should

¹⁶ See OIPC [Review Report 038-2025](#) at paragraph [60].

¹⁷ *Ibid*, at paragraph [63].

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”.

- “Analyses” (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements.

[40] In 2014 the Supreme Court of Canada gave specific guidance on the issue of “policy options” and this office has always adopted that definition into any analysis under section 17 of *FOIP*:¹⁸

[26] Policy options are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant’s identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information.

[27] Records containing policy options can take many forms. They might include the full range of policy options for a given decision, comprising all conceivable alternatives, or may only list a subset of alternatives that in the public servant’s opinion are most worthy of consideration. They can also include the advantages and disadvantages of each option, as do the Records here. But the list can also be less fulsome and still constitute policy options. For example, a public servant may prepare a list of all alternatives and await further instructions from the decision maker for which options should be considered in depth. Or, if the advantages and disadvantages of the policy options are either perceived as being obvious or have already been canvassed orally or in a prior draft, the policy options might appear without any additional explanation. As long as a list sets out alternative courses of action relating to a decision to be made, it will constitute policy options.

[41] On review, the first part of the test is *not* met on the following pages for the reasons given by Education, and there is no need to consider the second part of the test:

Page in Record	Reason Test Not Met
Page 119 (email dated November 25, 2024)	There are two redactions on this page and we believe the redactions to be connected in that the subject line of the email notes a

¹⁸ [*John Doe v Ontario \(Finance\)*](#), [2014] 2 SCR 3 at paragraphs [26] and [27].

	request and the request is outlined by the direction that is given in the body of the email. This is a simple request/direction and cannot in any way be considered to be substantive advice to officials. ¹⁹
Pages 142 (subject, date and attachment lines in an email dated November 27, 2024)	On review, the withheld portions on the email do not qualify as a proposed course of action; they represent the email subject and names the draft attachments. In the body of the email there is a statement regarding how the attachment will be used in an upcoming meeting.
Page 216 (in part to email dated November 29, 2024) and 218 (in part to email dated November 1, 2024)	Education stated that the withheld portions record of changes to a draft document and that the changes reveal recommendations. On review, the withheld portions on these two pages is better described as consultations amongst Education employees and better fits within the exemption in section 17(1)(b) as we shall see.
Page 246 (redacted file path embedded in email dated December 3, 2024)	Education did not provide an argument for why the file path qualifies under section 17(1)(a), but on review, it does not qualify as advice, proposals, recommendations, analyses or policy options. Since the onus is always on the party establishing the exemption – we note that this exemption <i>may</i> have qualified under section 15(1)(m) of <i>FOIP</i> . However, this office is not at liberty to unilaterally apply a discretionary exemption.
Page 249 (redaction to a line of an email dated December 4, 2024)	Education stated that the withheld information constitutes advice or recommendations. On review, the withheld portion reflects a description.
Page 284 (attachment line in email dated December 13, 2024):	Education stated that the withheld information would reveal recommended

¹⁹ See OIPC [Review Report 182-2024](#) at paragraph [39] where it was stated that direction does not qualify as advice.

	changes. On review, the withheld portion does not qualify as a recommendation – it is simply states the name of the attachment and the date – both of which are available and have already been released in the subject line of the email.
Page 316 (redaction in an email dated December 16, 2024)	Education stated that a recommendation is given. On review, the withheld statement does not include a recommendation, but rather a statement that an unidentifiable change was recommended.

[42] There is a finding that Education has *not* properly applied section 17(1)(a) of *FOIP* to the redactions listed in paragraph [42] above such that the first part of the test is not met. There will be a recommendation that Education release this information to the Applicant within 30 days of the issuance of this Report. Pages 216 and 218 will be reviewed under section 17(1)(b) of *FOIP* in the next segment of this analysis.

[43] Education successfully provided arguments that the first part of the test is met on the following pages in the table below. Our review supports the claim of the exemption in section 17(1)(a) of *FOIP* as advice, proposals, recommendations, analyses or policy options are all discussed or referenced. The withheld information below meets the first part of the test:

Page in Record	Reason Test Met
Page 32 (subject line of email dated October 29, 2024 and part of the body of the email)	There is an analysis of elements or data required in a Cabinet document, which the subject line could reveal. The data informs the Cabinet document. ²⁰

²⁰ In [*Kasprick v Saskatchewan Power Corporation*](#), 2025 SKKB 139 at paragraph [38], Davis J. considered that raw data underpinning an official's analysis, advice, recommendations or proposals should be caught by this exemption.

Pages 143 and 144 (two attachments to the email in page 142)	These attachments include a meeting agenda and a slide deck of a draft presentation with respect to policy development. This information constitutes “government advice/consultation”. ²¹
Pages 162 to 164 (emails dated November 22, 25 and 26, 2024)	This email thread involves questions and advice given with respect to future media responses and the method of addressing those responses.
Pages 219 to 230 (in full); page 227 is blank	A draft Cabinet document that contains analysis, recommended actions and options including a jurisdictional summary.
Pages 244 to 246 (emails dated December 3, 2024)	Email chain where recommendations are given on language use; except for last redaction on page 246 where 17(1)(a) of <i>FOIP</i> is applied to a file path, which does not qualify as advice, proposals, recommendations, analyses or policy options.
Page 247 (instruction attached to a meeting invitation)	The withheld portion is a recommended course of action to employees that involves a consultation directive.
Pages 250 and 251 (in part to two emails dated December 5, 2024)	Education stated the withheld portions would reveal recommendations. On review, disclosure would reveal the stage at which certain policy changes were being considered or amended. These redactions qualify both as recommendations as well as policy options.
Page 252 (part of email dated December 9, 2024)	Email contains recommendations on what to use.
Pages 253, 255 to 258 (parts of emails dated December 10, 11 and 12, 2024); 259 (part of email dated December 12, 2024); 263 (part of email dated December 12, 2024)	Emails contain recommendations

²¹ [*Leo v Global Transportation Hub Authority*](#), 2019 SKQB 150 at paragraphs [42] to [44].

Page 300 (attachment line on email dated December 13, 2024) and attachments on pages 301 to 304 (draft document plus supporting information)	Education stated that the attachment line on page 300 would reveal policy options as set out in a Cabinet document. On review of each, OIPC agrees that disclosure would reveal recommendations and analysis.
Pages 305 (attachment line of email dated December 13, 2024) and attachment (pages 308 and 309 withheld in full)	Education stated these contain drafts or summaries. On review, OIPC agrees that disclosure would reveal analysis.
Pages 310 (attachment line of email dated December 16, 2024) and 311 to 312 (draft document)	Email with draft document attached that contain recommendations for language to include in draft document.
Pages 313 (attachment line of email dated December 16, 2024) and 314 and 315 (draft document from pages 311 and 312)	These are further recommended edits or recommendations to the document described above.
Page 318 (in full)	Draft letter with recommendations for language to use.

[44] In consideration of the second part of the test, information must be developed by or for the government institution, which means the advice, proposals, recommendations, analyses and/or policy options must have been created either within the government institution, or outside the government institution but developed for it and at its request, purely for internal use.²²

[45] On review, information that was disclosed to the Applicant makes it clear that officials from Education, including an executive director and the Assistant Deputy Minister, were involved in the creation of the records, and they were created for internal use by Education. Based on both parts of the test being met, there is a finding that Education properly applied section 17(1)(a) of *FOIP* to the redactions listed in the table in paragraph [43] above. There will be a recommendation that Education continue to withhold this information pursuant to section 17(1)(a) of *FOIP*. There is now no need to review section 17(1)(b) of *FOIP* as applied by Education to pages 303 and 304.

²² *Supra*, footnote 16 at paragraph [71].

5. Did Education properly apply section 17(1)(b) of *FOIP*?

[46] The application of the exemption in section 17(1)(b) of *FOIP* will now be considered with respect to the claim made for the redactions on pages 145 to 152, 184, 188 to 194, 216, 218 and 248.

[47] Section 17(1)(b) of *FOIP* provides:

17(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:

- (i) officers or employees of a government institution;
- (ii) a member of the Executive Council; or
- (iii) the staff of a member of the Executive Council;

[48] In determining whether section 17(1)(b) of *FOIP* applies, this office has traditionally considered a two-part test:²³

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of a government institution, a member of the Executive Council, or the staff of a member of the Executive Council?

[49] Education submitted that both consultations and deliberations formed the basis of the redactions in this material and that the consultations/deliberations invariably involved individuals amongst Education employees, Executive Council, or the staff of Executive Council. Some consultations were alleged to have occurred with stakeholders. With this in mind, we refer to the following helpful definitions:²⁴

²³ See OIPC [Review Report 241-2024](#) at paragraph [24].

²⁴ *Ibid*, at paragraph [25].

- “Consultation” means the action of consulting or taking counsel together: deliberation, conference; a conference in which the parties consult and deliberate. A consultation can occur when the views of one or more officers or employees of a government institution 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 action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision; 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.

[50] “Involving” means including. “Officers/Employees of a government institution” mean individuals employed by a government institution and can include individuals retained under a contract to perform specific services for the government institution. The definition of “employee of a government institution” is found at section 2(1)(b.1) of *FOIP*. *FOIP* does not define “officers”, but *Black’s Law Dictionary*²⁵ defines this term to mean “someone who holds an office of trust, authority or command”. In public affairs, this term may refer to a person holding public office or an individual who has been authorized by the government to exercise a specific function.²⁶

[51] The Saskatchewan King’s Bench recently interpreted the meaning of “consultations and deliberations” in the context of section 17(1)(b) *FOIP*’s mirror provision in *The Local Authority Freedom of Information and Protection of Privacy Act*.²⁷ In *Tarasoff v Saskatoon (City)*, Gerecke J. found that an earlier approach on the part of this office adopted too

²⁵ *Black’s Law Dictionary*, (12th edition), Thomson Reuters at p. 1307.

²⁶ See Office of the Information and Privacy Commissioner of Prince Edward Island [Order FI-23-001](#) (April 4, 2023) at paragraph [56].

²⁷ Section 16(1)(b) of [The Local Authority Freedom of Information and Protection of Privacy Act](#), SS 1990-1991, c. L-27.1, as amended, (*LA FOIP*).

narrow an interpretation of these terms. A broader approach was recommended such that a consultation may include the information gathering process prior to the actual deliberation and/or consultation:²⁸

[67] I accept that the concept of deliberation might suggest an intent to decide. Consultation appears to be a broader term, and need not have that objective, though the definition advanced by the Commissioner suggests that such an objective might be necessary. Consultation might reasonably occur at such an early stage of decision-making that it equates to information gathering to better inform proposal-development. If the Legislature intended to exclude discussions with persons that might not lead to decisions, it would have been a simple matter to include that notion in s.16. It did not do so.

[Emphasis added]

- [52] Education explained that the redactions on pages 145 to 152, the name of the attachment at the top of page 184 and the redactions on pages 188 to 194, are copies of two draft presentations that provide background materials leading up to the seeking of advice. The background materials would assist in the creation of documents to be put before Cabinet. Education added that the presentations, authored by government employees, were to be used in conjunction with consultations with Executive Council.
- [53] Given the instruction in *Tarasoff* that consultations can include the information gathering process, we agree that disclosure of these presentations would reveal consultations/deliberations or, at the very least, the background preparations that assist the consultations/deliberations. The first part of the test is met. Further, portions of emails already released to the Applicant clearly show that the background materials were prepared by, and distributed amongst, Education employees. Thus the second part of the test is met.
- [54] There is a finding that Education properly applied section 17(1)(b) of *FOIP* to pages 145 to 152, and the redactions on pages 188 to 194, and a recommendation that it continue to withhold these pages. The attachment on page 184 is not properly withheld pursuant to

²⁸ [*Tarasoff v Saskatoon \(City\)*](#), 2025 SKKB 41 at paragraph [67]. See also [*Leo v. Global Transportation Hub Authority*](#), 2019 SKQB 150 at paragraph [40].

section 17(1)(b). The redacted area is not a consultation or a deliberation. It is simply the name of the attachment and the date. There will be a finding that Education did not properly apply section 17(1)(b) to the top redaction on page 184 and a recommendation to release this information.

[55] Page 248 includes a list of questions for consideration to be included in a survey. The portion withheld by Education on this page is part of an email dated December 4, 2024. Portions disclosed to the Applicant on page 247 reveal that a meeting was being organized to discuss certain issues that involved some of the documents that went before Cabinet, information that Education properly withheld. This type of information, most certainly used in the process of early decision-making, undoubtably qualifies as being part of the consultation process.²⁹ Since this is the case here, the first part of the test is met. Portions of the email previously released to the Applicant reveal that the exchange occurred between Education employees. The second part of the test is met. There is a finding that Education properly applied section 17(1)(b) of *FOIP* to page 248, and there will be a recommendation this information continue to be withheld.

[56] Previously, our review found that Education did not properly apply section 17(1)(a) of *FOIP* to redactions to two emails on pages 216 (dated November 1, 2024) and one email on page 218 (dated November 1, 2024). Applying the lens of section 17(1)(b) of *FOIP* to these two pages, it is apparent that these emails entail a consultation amongst Education employees about proposed changes to a document.³⁰ OIPC finds that both parts of the test are met with the application of section 17(1)(b) of *FOIP*. There is a finding that Education properly applied section 17(1)(b) of *FOIP* to pages 216 and 218 and a recommendation that it continue to withhold this information pursuant to this provision.

²⁹ This is also supported by [*Kasprick v Saskatchewan Power Corporation*](#), *supra*, footnote 21, at paragraph [43] where Davis J. found that documents showing a government organization is weighing options and establishing criteria, or making plans for different phases of a project may well be subject to section 17 *FOIP* exemptions if they form part of the overall advice ultimately given to Executive Council. This is the case here.

³⁰ In OIPC [Review Report 073-2025](#) at paragraph [29], it was considered that this type of information qualifies as a consultation.

6. Did Education properly apply section 16(1) of *FOIP*?

[57] There were some records where Education applied sections 17(1)(a), (b) and 22(a) of *FOIP* alongside section 16(1) of *FOIP*. Where it has been found that the other provisions apply, there is no need for a review of 16(1) of *FOIP* on those records. At this phase of the analysis, we will simply review the application of section 16(1) of *FOIP* with respect to pages 5 to 19, 34 to 55, 61 to 66, 67 to 84, 86 to 96, 108 to 118, where the exemption was applied in full and to pages 4, 33, 59, 60, 85, 101 to 103, 107, and 216 to 218 where the exemption was applied in part.

[58] Section 16(1) of *FOIP* provides as follows:

Cabinet Documents

16(1) A head shall refuse to give access to a record that discloses a confidence of the Executive Council, including:

(a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;

(b) agendas or minutes of the Executive Council or any of its committees, or records that record deliberations or decisions of the Executive Council or any of its committees;

(c) records of consultations among members of the Executive Council on matters that relate to the making of government decisions or the formulation of government policy, or records that reflect those consultations;

(d) records that contain briefings to members of the Executive Council in relation to matters that:

(i) are before, or are proposed to be brought before, the Executive Council or any of its committees; or

(ii) are the subject of consultations described in clause (c).

[59] Section 16(1) of *FOIP* is a mandatory, class-based provision. Sub-clauses (a) through (d) and the use of the word “including” indicates that the list is not exhaustive.³¹ Further, even

³¹ See OIPC [Review Report 280-2020](#) at paragraph [10].

if none of the subclauses apply, the introductory wording of section 16(1) of *FOIP* must still be considered in the overall 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. This was recently articulated by the Supreme Court of Canada in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*:³²

[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. 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.

[Emphasis added]

[60] Executive Cabinet requires a sphere of confidentiality to fulfill its constitutional role.³³ Cabinet secrecy is essential to good government because it promotes deliberative candour, ministerial solidarity and government efficiency by protecting Cabinet’s debates and the discussion that eventually leads to final decisions.

[61] The minister’s letters in *Ontario AGO v. Ontario IPC* did not merely contain “topics” that for discussion or final conclusions on the part of the Premier. Rather, the letters reflected

³² [*Ontario \(Attorney General\) v. Ontario \(Information and Privacy Commissioner\)*](#), 2024 SCC 4 at paragraph [62]. (*Ontario AGO v Ontario IPC*). In this case the Court was dealing with s.12(1) of the Ontario privacy legislation but the very first footnote of the ruling referenced the applicability to s.16(1) of *FOIP*, which is the mirror provision in Saskatchewan.

³³ *Ibid*, at paragraphs [3] and [4].

the importance of certain policy priorities that marked the initiation of a fluid process of policy formulation within Cabinet. The letters revealed the *substance* of Cabinet deliberations both on their face and when compared against what the government chooses to do.³⁴

[62] The question of when Cabinet confidence ends or no longer applies was discussed at paragraphs [36] and [37] of *Ontario AGO v. Ontario IPC* and as follows.

[36] The prerogative to determine when and how to announce Cabinet decisions is grounded in the harmful impact that premature disclosure of policy priorities can have on the deliberative process. As Professor Campagnolo explains, as a matter of convention, the efficiency of the deliberative process justifies “keeping Cabinet proceedings confidential until a final decision is made and announced by ministers” (*Behind Closed Doors: The Law and Politics of Cabinet Secrecy* (2021), at p. 26). Publicizing Cabinet’s decision-making process before the formulation and announcement of a final decision “would increase the public pressure that stakeholders put on ministers and give rise to partisan criticism from their political opponents”; this scrutiny “would ultimately paralyze the collective decision-making process” (p. 26).

[37] Because the IPC largely did not engage with this important argument, he did not acknowledge Cabinet Office’s submission that determining “when and how” to communicate policy priorities to the public and opposition parties is itself an important part of Cabinet’s deliberative process (A.R., vol. III, at p. 103 (emphasis added); see also White, at pp. 22-23). Materials presented to Cabinet seeking a decision on a policy matter invariably include a communications strategy, which also requires Cabinet deliberation and approval (see, e.g., Privy Council Office, *A drafter’s guide to cabinet documents* (2013), at pp. 6, 11 and 27). Cabinet may charge individual ministers with public communications related to their respective portfolios. And as a matter of tradition, Cabinet often makes important announcements of policy decisions in the Legislative Assembly (Williams Report, at p. 286).

[Emphasis added]

[63] In its submission, Education articulated its reasons for its reliance on section 16(1) of *FOIP* and the process that Cabinet engaged when deliberating the topic at hand. The process was described is an iterative one involving preparatory work and consideration of both draft

³⁴ *Ibid*, at paragraphs [8] and [13].

and final documents. Education correctly submitted that attachments to draft documents should also be exempt from disclosure, as well as the discussions that resulted therefrom.

[64] A review of the withheld material pursuant to section 16(1) of *FOIP* reveals that a fluid process of policy formulation was followed and this included recommendations on a policy course. Different types of documents resulted, including a Cabinet Decision Item, draft policies and covering emails, all prepared for the use of Cabinet in its deliberations.³⁵ The documents were clearly addressed to and intended to go before the Premier and all Cabinet Ministers. They were prepared and approved by Education employees, including Assistant Deputy Ministers. The process followed is a common course of government decision making and policy formulation.

[65] In their access request, the Applicant clearly requested access to “all internal correspondence regarding school bathroom gender policies.” The Minister announced on January 23, 2025, that the Government of Saskatchewan (GOS) required all school divisions to “develop, implement, and make publicly available a policy on changeroom usage...”³⁶ School divisions were to have these policies “publicly available on their website” and clearly communicated to stakeholders by June 30, 2025. The GOS final decision was to delegate the responsibility to develop and implement changeroom policies to the school divisions as they were in the best position to do this “at a local level” and because “as elected representatives, they are to be responsive to constituents...”³⁷

³⁵ In OIPC [Review Report 044-2020](#) at paragraph [36], it was noted that a Cabinet Decision Item qualifies as a type of document that qualifies under section 16(1)(a) of *FOIP*.

³⁶ See [Government Requires School Divisions to Implement Changeroom Policies with Local Input | News and Media | Government of Saskatchewan](#).

³⁷ In [Alberta Energy v Alberta \(Information and Privacy Commissioner\)](#), 2024 ABKB 198, it was also considered at paragraph [39] by Justice K. J. Teskey that previously unraised items by Cabinet may disclose deliberations, while an area of publicly disclosed policy may not attract the same concerns of disclosing Cabinet deliberations.

[66] Cabinet confidence does not end when a final decision is made and announced by the Minister. The sphere of confidence extends to protect the deliberations for at least 25 years or unless consent to access is given according to the requirements of section 16(2) of *FOIP*. The Supreme Court of Canada also explained why the sphere of confidence does not end with the announcement of a final political decision:³⁸

[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).

[Emphasis added]

[67] There is a finding that Education has properly applied section 16(1) of *FOIP* to that pages as noted in paragraph [57] of this Report. Alongside section 16(1)(b) of *FOIP*, Education applied section 13(1)(b) of *FOIP* to pages 61 to 66, there is no need for a further review on this exemption.

7. Did Education properly apply section 29(1) of *FOIP*?

[68] Section 29(1) of *FOIP* as applied by Education will be reviewed on separate statements made in an email on page 102 dated November 1, 2024, and on an email on page 255 dated December 11, 2024.

[69] Section 29(1) of *FOIP* provides:

³⁸ *Supra*, footnote 32 at paragraph [53].

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[70] Section 29 of *FOIP* is a mandatory exemption that applies to personal information as defined by section 24(1) of *FOIP*. What qualifies as personal information is information that is about an identifiable individual, and that is personal in nature.³⁹

[71] On review, the instance on page 102 (November 1, 2024 email) describes a statement that a named individual made about themselves or that would be personal in nature to them. It qualifies as personal information pursuant to section 24(1) of *FOIP* and should be withheld pursuant to section 29(1) of *FOIP* because consent is not forthcoming. There is a finding that Education has properly applied section 29(1) of *FOIP* and there will be a recommendation that Education continue to withhold this information on that basis. The statement on page 255 (December 10, 2024 email) is not a statement that is personal in nature with respect to the individual who wrote it and cannot be defined as personal information pursuant to section 24(1) of *FOIP*. It therefore does not qualify as personal information pursuant to section 29(1) of *FOIP*, and there will be finding to this effect and a recommendation that Education release this information.

8. Is there information in the record that is non-responsive?

[72] There is a statement at the bottom of page 105, which is contained in an email dated October 24, 2024, that Education withheld as non-responsive. To be non-responsive means that the information is not relevant to the access request because it, for example, does not fit within the request's timeframe. It can also be a record or information that is entirely unrelated to the subject matter of the access request.⁴⁰

³⁹ See OIPC [Review Report 038-2025](#) at paragraphs [11] and [12].

⁴⁰ See OIPC [Review Report 078-2025](#) at paragraph [58].

[73] On review of the statement at the bottom of page 105, OIPC agrees that it is unrelated to the subject matter of the request. The writer provided an update on a separate work matter or responsibility. There will be a finding that Education properly withheld this information as non-responsive, and a recommendation that it continue to withhold this information.

9. Is there a public interest in dissemination of this material?

[74] The Supreme Court of Canada explained the importance of the public interest concept in the application of a discretionary exemption in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*.⁴¹ That case focused on the discretionary exemptions provided for in the Ontario privacy legislation dealing with section 14(2) of *Freedom of Information and Protection of Privacy Act (FIPPA)*⁴² (law enforcement investigations) and section 19 of FIPPA (solicitor/client privilege) of the same legislation. The Supreme Court of Canada instructed that section 23 of FIPPA, the “public interest override” section, did not specifically mandate 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.

[75] In other words, when a government head makes a decision to apply a discretionary exemption, a two-fold consideration has gone before. First, the head must determine whether the exemption applies. If it does, the head must go on to ask whether, having regard to all relevant interests, such as the public interest, disclosure should be ordered.⁴³

⁴¹ [*Ontario \(Public Safety and Security\) v. Criminal Lawyers' Association*](#), [2010], 1 SCR 815.

⁴² [*Freedom of Information and Protection of Privacy Act*](#), RSO 1990, c. F. 31, as amended (FIPPA).

⁴³ *Supra*, footnote 41 at paragraphs [66] and [67].

[76] The Supreme Court of Canada also explained that 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:⁴⁴

[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.

[77] We are content that Education has effected its duty to consider the public interest in its decision whether to withhold or release information in the application of the purely discretionary exemptions in sections 15(1)(m), 17(1)(a), (b) and 22(a) of *FOIP*.

[78] Withholding security arrangements pursuant to section 15(1)(m) of *FOIP* is critical for the protection of computer and security systems. It is obvious that this type of information should never be released by a Ministry to ensure the security and safety of its online functioning. It is also not information that would inform the public on the central issue that makes up the Applicant’s access request. It is not recommended that Education reconsider its discretion with respect to the application of section 15(1)(m) of *FOIP* to the material listed in paragraph [26] of this Report.

[79] Accepting that solicitor-client privilege is a “near absolute” privilege, it is not recommended that Education reconsider its discretion with respect to the public interest in the release of the records pursuant to section 22(a) of *FOIP* noted at paragraph [13] of this Report.

[80] This leaves sections 17(1)(a) and (b) of *FOIP* for consideration with respect to the public interest issue. We have found that Education properly applied these exemptions in some places but not all. The information in the record fits within the scope of the Applicant’s access request for records or information pertaining to “bathroom gender policies”, which

⁴⁴ *Ibid*, at paragraph [71]. That case arose out of Ontario, so the instruction was aimed specifically at the Ontario Information and Privacy Commissioner. Of course, this guidance applies across Canada by nature of the fact that it was delivered by the top court in the land and with respect to Ontario provisions that have equivalents in the privacy legislation of each province.

includes information withheld under these two exemptions. The GOS on January 23, 2025, announced its requirement that all school divisions develop and implement their own policy with respect to publicly available changerooms by June 30, 2025. This came on the heels of an election announcement by the Premier prior to the provincial election on October 28, 2024 that the first order of business, if newly elected, would be to establish a policy regarding changerooms. At the time, the issue was of great public importance and debate, which the media captured.

- [81] Could it be that information or records containing related information should be considered for release where it was found that Education properly applied sections 17(1)(a) and (b) of *FOIP*? There is likely still a considerable public interest in this information. We are not saying for a second that the exemption in section 17 of *FOIP* was applied in bad faith or for an improper purpose. We also do not believe that irrelevant considerations contributed to the application of this exemption on the part of Education. However, in the interests of transparency and to protect our precious democracy it may be of some assistance to the people of Saskatchewan that Education reconsider its exercise of discretion with respect to the public interest in releasing the substantive material where it was found that sections 17(1)(a) and (b) of *FOIP* were properly applied. The fact that there was considerable interest and public debate on this issue is surely a relevant consideration to factor into the disclosure of this information. Therefore, there will be a recommendation that Education reconsider its exercise of discretion with respect to the public interest in releasing the substantive material where section 17 of *FOIP* was properly applied.

IV FINDINGS

- [82] OIPC has jurisdiction and is undertaking this review pursuant to PART VII of *FOIP*.
- [83] Education has established a *prima facie* case justifying the application of section 22(a) of *FOIP* to pages 1 to 3, 20 to 31, 56 to 58, 97 to 100, 153 to 160, 165 to 183, 185 to 187, 195 to 215, 231 to 243, 260 to 262, 264 to 268, 270 to 283, 285 to 299, 306 to 309 and 319 to 331 (withheld in full) and to pages 184, 269, 284 and 305 (withheld in part).

- [84] Education properly applied section 15(1)(m) of *FOIP* to the file path information on pages 104, 105 and 249.
- [85] Education properly applied section 17(1)(a) of *FOIP* to pages 32, 162 to 164, 244 to 245, 246 (except the last redaction), 247, 250 to 253, 255 to 259, 263, 300, 305, 310 and 313 (applied in part) and pages 143, 144, 219 to 230, 301 to 304, 311, 312, 314, 315, and 318 (applied in full), *but has not properly applied section 17(1)(a) of FOIP to pages 119, 142, 216, 218, 246 (only the last redaction), 249, 284 and 316.*
- [86] Education properly applied section 17(1)(b) of *FOIP* to pages 145 to 152, the top of page 184, 188 to 194 and to 216 and 218.
- [87] Education properly applied section 16(1) of *FOIP* applies to pages 5 to 19, 34 to 55, 61 to 66, 67 to 84, 86 to 96, 108 to 118 (applied in full), and in to pages 4, 33, 59, 60, 85, 101 to 103, and 107, 216, 217 and 218 (in part).
- [88] Education properly applied section 29(1) of *FOIP* on page 102, *but has not properly applied section 29(1) of FOIP to page 255.*
- [89] Education has properly withheld information on the bottom of page 105 as non-responsive.

V RECOMMENDATIONS

- [90] I recommend that Education continue to withhold information as outlined in the Appendix to this Report.
- [91] I recommend that Education release information as outlined in the Appendix of this Report. Where release is recommended, it is recommended that Education do so within 30 days of this Report being issued.

[92] I recommend that Education reconsider its exercise of discretion with respect to the public interest in releasing the substantive material where it was found that Education properly applied sections 17(1)(a) and (b) of *FOIP*.

Dated at Regina, in the Province of Saskatchewan, this 26th day of November, 2025.

Grace Hession David
Saskatchewan Information and Privacy Commissioner

APPENDIX

Page Numbers	Description	FOIP Exemption Applied/Status	OIPC Recommendation
1 to 3	Email	Withheld in full pursuant to sections 22(a) and (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
4	Email	Withhold in part pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
5 to 19	Draft Cabinet Document	Withheld in full pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
20 to 22	Email	Withheld in full pursuant to sections 16(1), (22)(a), (b) and (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
23 to 31	Draft Cabinet Document	Withheld in full pursuant to sections 16(1), (22)(a), (b) and (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
32	Email	Withheld in part pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
33	Email	Withheld in part pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
34 to 55	Draft Cabinet Document	Withheld in full pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
56 to 58	Email	Withheld in full pursuant to section 22(a), (b) and (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
59 and 60	Email	Withheld in part pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
61 to 66	Draft Policy	Withheld in full pursuant to section 13(1)(b) and 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
67 to 84	Draft Cabinet Document	Withheld in full pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
85	Email	Withheld in part pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
86 to 96	Draft Cabinet Document	Withheld in full pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>

97 to 100	Email	Withheld in full pursuant to sections 22(a), (b) and (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
101 to 103	Email	Withheld in part pursuant to section 16(1); portions of 102 withheld pursuant to 29(1)	Withhold under section 16(1) of <i>FOIP</i> , and continue to withhold what was withheld under section 29(1) of <i>FOIP</i> on page 102
104 and 105	Email	Withheld in part pursuant to section 15(1)(m) and 17(1)(a); a portion of 105 withheld as non-responsive	Withhold pursuant to section 15(1)(m) of <i>FOIP</i> and as non-responsive at the bottom of page 105
106			Previously released in full by Education
107	Email	Withheld in part pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
108 to 118	Draft Cabinet Document	Withheld in full pursuant to section 16(1)	Withhold pursuant to section 16(1) of <i>FOIP</i>
120 to 141			Previously released in full by Education
119 and 142	Email	Withheld in part pursuant to section 17(1)(a)	Release
143 and 144	Draft discussion document mentioned in email on page 142	Withheld in full pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
145 to 152	Presentation that goes with draft discussion document and email on page 142	Withheld in full pursuant to section 17(1)(b)	Withhold pursuant to section 17(1)(b) of <i>FOIP</i>
153	Email	Withheld in full pursuant to sections 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>

154 and 155	Policy	Withheld in full pursuant to sections 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
156 to 160	Email	Withheld in full pursuant to sections 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
161			Previously released by Education
162 to 164	Email	Withheld in part pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
165	Email	Withheld in full pursuant to section 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
166,167, 170 to 175, and 178 to 180	Email	Withheld in full pursuant to sections 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
168 and 169	Policy	Withheld in full pursuant to sections 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
176 to 177	Draft	Attachment: Withheld pursuant to section 17(1)(b) Body of Page: Withheld in full pursuant to sections 16(1), 22(a), (c)	Withhold pursuant to section 17(1)(b) of <i>FOIP</i> Withhold pursuant to section 22(a) of <i>FOIP</i>
181 to 183	Draft Policy	Withheld in full pursuant to sections 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
184	Email	Withheld in part pursuant to section 16(1), 17(1)(b), 22(a), (c)	Release information where Education has not properly applied section 17(1)(b) of <i>FOIP</i> to information in attachment line of email. Rest of page: Withhold pursuant to section 22(a) of <i>FOIP</i>
185 to 187	Email	Withheld in full pursuant to 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
188 to 194	Draft	Withheld in full pursuant to section 17(1)(b)	Withhold pursuant to section 17(1)(b) of <i>FOIP</i>

195 and 196	Email	Withheld in full pursuant to 22(a) and (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
197 and 198	Draft Policy	Withheld in full pursuant to 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
199 to 203	Email	Withheld in full pursuant to 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
204 to 215	Draft	Withheld in full pursuant to sections 17(1)(a), (b), 22(a), (b), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
216 to 218	Email	Withheld in part pursuant to sections 16(1), 17(1)(a), (b). (Section 16(1) applied to page 217 only)	Withhold portions pursuant to section 17(1)(b) of <i>FOIP</i> Withhold portions pursuant to section 16(1) of <i>FOIP</i>
219 to 230	Draft Cabinet Document	Withheld in full pursuant to sections 16(1), 17(1)(a), (b)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
231 and 232	Email	Withheld in full pursuant to sections 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
233 to 243	Draft Cabinet Document	Withheld in full pursuant to 16(1), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
244 to 246	Email	Withheld in part pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i> except for the last redaction on page 246, which should be released because it is not properly covered by the exemption in section 17(1)(a) of FOIP.
247	Email	Withheld in part pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
248	Email	Withheld in part pursuant to section 17(1)(b)	Withhold pursuant to section 17(1)(b) of <i>FOIP</i>
249	Email	Withheld in part pursuant to section 15(1)(m) and 17(1)(a)	Withhold portion where section 15(1)(m) of <i>FOIP</i> is applied. However, release portion where Education has not properly applied section 17(1)(a) of FOIP.

250 and 251	Email	Withheld in part pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
252, 253, and 255 to 259	Email	Withheld in part pursuant to sections 17(1)(a), (b); portion of 255 withheld under 29(1)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i> . However, release information where Education has not properly applied section 29(1) of FOIP on page 255
254			Previously released in full by Education
260 to 262	Email	Withheld in full pursuant to sections 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
263	Email	Withheld in part pursuant to section 17(1)(a), (b)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
264 to 283	Email	Withheld in full pursuant to section 22(a), (c); except 269 withheld in part only	Withhold pursuant to section 22(a) of <i>FOIP</i>
284	Email	Withheld in part pursuant to section 17(1)(a) and 22(a), (c)	Release information where Education has not properly applied section 17(1)(a) of <i>FOIP</i> to information disclosed in subject line of email. Withhold pursuant to section 22(a) of <i>FOIP</i>
285 to 299	Email	Withheld in full pursuant to section 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
300	Email	Withheld in part pursuant to sections 17(1)(a), (b)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
301 and 302	Draft Document/Response	Withheld in part pursuant to sections 17(1)(a), (b)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
303 and 304	Draft	Withheld in full pursuant to section 17(1)(a), (b)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
305	Email	Withheld in part pursuant to sections 17(1)(a), (b), 22(a)	Withhold pursuant to section 17(1)(a) <i>FOIP</i>

			Withhold pursuant to section 22(a) of <i>FOIP</i>
306 and 307	Draft	Withheld in part full to sections 17(1)(a), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
308 and 309	Draft	Withheld in full pursuant to sections 17(1)(a), (b), 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>
310	Email	Withheld in part pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
311 to 312, 314 to 315, 318	Draft Document/ Response	Withheld in full pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
313	Email	Withheld in part pursuant to section 17(1)(a)	Withhold pursuant to section 17(1)(a) of <i>FOIP</i>
316	Email	Withheld in part pursuant to section 17(1)(a)	Release
317			Previously released in full by Education
319 to 331	Email	Withheld in full pursuant to sections 22(a), (c)	Withhold pursuant to section 22(a) of <i>FOIP</i>