



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 144-2024**

### **Ministry of Education**

**March 5, 2025**

#### **Summary:**

The Applicant submitted an access to information request to the Ministry of Education (Education). Education issued a fee estimate and the Applicant modified their request. Based on the Applicant's modified request, Education issued a revised fee estimate and the Applicant provided a deposit. Education applied a 30-day extension for its response pursuant to subsection 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Education released the responsive records, in part, withholding portions pursuant to subsections 15(1)(m), 17(1)(a), (b)(i) and 29(1) of FOIP. The Applicant requested a review of the exemptions applied by Education. During the review, the A/Commissioner's office discovered additional pages embedded in a hyperlinked attachment of an email that Education did not identify or release to the Applicant. When advised of this, Education released the attachment, withholding only one page, which then also came under review. The A/Commissioner found it would be an absurd result to withhold portions of records that Education had released to the Applicant on other pages of the record. The A/Commissioner found that Education properly applied subsection 29(1) of LA FOIP to the record. The A/Commissioner also found that Education did not properly apply subsection 15(1)(m) of LA FOIP. Finally, the A/Commissioner found that Education properly applied subsection 17(1)(a) of LA FOIP in some instances, but not others, and that it did not properly apply subsection 17(1)(b)(i) of FOIP. The A/Commissioner recommended that Education continue to withhold or release records accordingly. Where he recommended release, the A/Commissioner recommended that Education do so within 30 days of the issuance of this Report.

## **I BACKGROUND**

- [1] On February 7, 2024, the Ministry of Education (Education) received the Applicant's access to information request for "all correspondence regarding the public posting of the Education Sector Staffing Profile" for the time period of September 2022 to February 6, 2024.
  
- [2] On February 15, 2024, Education issued a fee estimate to the Applicant in the amount of \$1,560.00. Education advised the Applicant the deposit required was \$780.00, or that, alternatively, Education would work with the Applicant to reduce fees if they modified their request.
  
- [3] On February 15, 2024, the same day the fee estimate was issued, the Applicant emailed Education asking that it change the timeframe for the request to "September 1, 2023 to February 6, 2024." Education then issues a revised fee estimate on February 26, 2024, for \$1,110.00 with a deposit of \$555.00. On March 19, 2024, Education emailed the Applicant to let them know they had received their deposit.
  
- [4] On March 22, 2024, Education notified the Applicant that it was extending the 30-day time to respond pursuant to subsection 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Education stated the reason was because "there is a large number of requests and completing the work within the original period would unreasonably interfere with the operations of the government institution."
  
- [5] By letter dated May 22, 2024, Education provided its section 7 decision to the Applicant, withholding portions of the record pursuant to subsections 15(1)(m), 17(1)(a), (b)(i) and 29(1) of FOIP.
  
- [6] On May 23, 2024, the Applicant requested a review of Education's decision.

- [7] On May 29, 2024, my office notified Education and the Applicant that my office would be undertaking a review.
- [8] On June 21, 2024, Education provided a copy of the responsive records and index of records. On July 16, 2024, Education provided its submission to my office. In its covering email to my office, Education stated that it did not object to its submission being shared with the Applicant. My office did so, and the Applicant responded that the information in the submission didn't affect their request. The Applicant did not provide a submission to my office.

## **II RECORDS AT ISSUE**

- [9] Education applied exemptions to 139 pages of records: 24 pages are briefing notes and attachments to the briefing notes that Education withheld in full pursuant to subsection 17(1)(a) of FOIP; and the other 115 pages, are emails that Education withheld in part pursuant to subsections 15(1)(m), 17(1)(a), (b)(i) and 29(1) of FOIP.
- [10] Education noted in its submission that it had inconsistently applied redactions to information on pages 182 and 220 of the record. On February 13, 2025, Education released additional portions of pages 182 and 220 to the Applicant and therefore, those portions are not under review.
- [11] I note that on page 14, there are two attachments to the email on that page that my office could access by selecting the attachment names. The attachments are a 58-page PDF document and an Excel workbook with 30 worksheets. It did not appear, however, that the Applicant would be able to open the attachments with the copy of the records they received.
- [12] My office followed up with Education to inquire why these attachments were not included with its response. Education responded on February 12, 2025, advising this was an oversight and there was no intent to withhold the attachments from the Applicant. Regarding each attachment, Education stated:

- The PDF document was included in the responsive record multiple times, beginning with pages 18 to 71.
- For the Excel workbook, the first worksheet was withheld in full pursuant to subsection 17(1)(a) of FOIP on page 153 of the record and the remaining tabs were identical to pages 18 to 71, just in a different format.

[13] As a result, Education combined the additional records into one PDF document and released the PDF to the Applicant by email on February 12, 2025. Education released all pages in full, except for page 59, which it withheld in full. I will consider the application of subsection 17(1)(a) of FOIP to this page later in this Report.

### **III DISCUSSION OF THE ISSUES**

#### **1. Do I have jurisdiction?**

[14] Education is a “government institution” as defined by subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

#### **2. Did Education properly apply subsection 29(1) of FOIP?**

[15] Education applied subsection 29(1) of FOIP to pages 238 (redaction 1), 239 (redaction 2), 240 (redaction 2), 429 (redaction 1), 430 (redactions 2 and 4), 440 (redaction 1), 441 (redactions 1 and 4), 453 (redaction 1) and 454 (redactions 2 and 4).

[16] Subsection 29(1) of FOIP provides:

**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.

[17] For subsection 29(1) of FOIP to be found to apply, the information must constitute “personal information” as defined by subsection 24(1) of FOIP.

- [18] Education did not reference a specific provision in subsection 24(1) of FOIP; however, it stated in its submission as follows:

...the redacted information is in relation to individual employees' annual leave plans. Annual leave is the allotted number of days that an employee may be absent from work. If an employee is absent from work, the information related to those days falls outside of their professional capacity. This is about an employee's personal time spent away from their job and would qualify as personal information under the Act.

- [19] In my office's [Review Report 007-2020](#) at paragraphs [47] to [49], I found that "the date an employee would be away from the office" would form part of the individual's employment history (i.e., their time away from work) pursuant to subsection 23(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). This provision is equivalent to subsection 24(1)(b) of FOIP, which provides as follows:

**24(1)** Subject to subsections (1.1) and (2), "**personal information**" means personal information about an identifiable individual that is recorded 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 financial transactions in which the individual has been involved;

- [20] Therefore, the information withheld by Education pursuant to subsection 29(1) of FOIP on these pages would qualify as employment history which is personal information pursuant to subsection 24(1)(b) of FOIP. As such, I find that Education has properly applied subsection 29(1) of FOIP to pages 238 (redaction 1), 239 (redaction 2), 240 (redaction 2), 429 (redaction 1), 430 (redactions 2 and 4), 440 (redaction 1), 441 (redactions 1 and 4), 453 (redaction 1) and 454 (redactions 2 and 4). I recommend that Education continue to withhold this information pursuant to subsection 29(1) of FOIP.

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

- [21] Education applied subsection 15(1)(m) of FOIP to portions of pages 12 and 16. The portions withheld are hyperlinks to access a folder where documents being discussed in an email are stored. The hyperlinks contain the file paths where the documents are stored.

[22] Subsection 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.

[23] Page 90 of the *Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated April 8, 2024 (*Guide to FOIP*, Ch. 4) states that subsection 15(1)(m) of FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems.

[24] My office uses the following test to determine if subsection 15(1)(m) of FOIP applies. Only one of the questions needs to be answered in the affirmative for the exemption to apply.

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

(*Guide to FOIP*, Ch. 4, pp. 90-91)

[25] Pages 90 and 91 of the *Guide to FOIP*, Ch. 4, provide that section 15 of FOIP uses the word *could* versus “*could reasonably be expected to*” as seen in other provisions in FOIP. The threshold for *could* is somewhat lower than a reasonable expectation. The requirement for *could* is simply that the release of the information *could* have the specified result. There would still have to be a basis for the assertion. If it is fanciful or exceedingly remote, the exemption should not be invoked. For this provision to apply, there must be objective grounds for believing that disclosing the information *could* reveal security arrangements of particular vehicles, buildings, other structures, or systems. It also provides the following definitions:

- “Reveal” means to make known; cause or allow to be seen.

- “Security” means a state of safety or physical integrity. The security of a building includes the safety of its inhabitants or occupants when they are present in it.
- “Method means a mode of organizing, operating, or performing something.
- “Other structures of systems” includes computer and communication systems. An example of a communication system could be a radio communication system such as two-way radios.

[26] In its submission, Education stated regarding its application of subsection 15(1)(m) of FOIP, the following:

For the first part of the test, it must be determined if the release of the information could release security arrangements of vehicles, buildings, other structures or systems. In the case of the exemptions used on pages 12 and 16 of the responsive records, the redaction is used on a link to an approval folder in the G drive system within the ministry. This link is not an open link to the entirety of the ministry – on page 16, it is only available to some employees within the Information Management Services (IMS) Branch and the Deputy Minister’s Office (DMO) of the ministry. On page 12, the information is only accessible by Communications and Sector Relations (CSR) and the DMO. There is a level of confidentiality that is inherent to all file sharing of this kind, as access is limited. This is an access control method that is in use within the Ministry of Education.

Second, it must be determined if the release of information could reasonably be expected to reveal security methods employed to protect the particular vehicles, buildings, other structure or systems. This method of file sharing with the Deputy Minister’s Office is employed specifically to protect records from unauthorized access. Emails can be inadvertently sent to the wrong individual – this is a common enough occurrence. In this case of the email sent in this responsive record, if the wrong person had been chosen, the security of the file remains intact, as access to the files within the link is limited to only those with a need to know from within the IMS or CSR branches respectively.

The file security protocols in place at the Ministry of Education work to protect both the privacy of any personal information and the confidentiality of government records. Access to the folders is limited to those with an active need to know. However, hackers are more sophisticated now than ever before. Cyber security threats are on the rise in Canada. According to the Canadian Anti-Fraud Centre, government is the most impersonated sector. A hacker could use the information that has been exempted and use it to send an impersonated email to an unsuspecting government employee. This could lead to catastrophic results within the government network.

[27] In past reports (e.g. [Review Report 132-2023](#), [Review Report 173-2020](#), [190-2020](#), [157-2021](#)), I have considered the application of subsection 14(1)(m) of LA FOIP, the equivalent

provision of subsection 15(1)(m) of FOIP, to file paths/links. In those reports, it was recommended that the file paths/links be released to the Applicant.

[28] In line with previous findings, I find that Education has not properly applied subsection 15(1)(m) of FOIP to the portions of the record withheld on pages 12 and 16. I recommend that Education release these portions of the record within 30 days of the issuance of this Report. If Education has concerns that an active link could be used to access documents saved in a folder, it could consider disabling the hyperlink before releasing these portions of the record.

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

[29] Education applied subsection 17(1)(a) of FOIP to portions of pages 1, 2, 5, 9, 11, 13, 14, 73 to 75, 134, 136 to 146, 150 to 153, 155 to 166, 170 to 173, 175 to 190, 192, 193, 195 to 210, 212 to 236, 238 to 244, 362 to 364, 425 to 427, 429 to 434, 436 to 438, 440 to 445, 447, 450, 451 and 453 to 459.

[30] From my office's review of the responsive records, it is noted that Education inconsistently redacted duplicate information within the record as follows:

- Education withheld a portion of the record on pages 137, 158, 178, 184 and 207. This same information was also withheld in the second redaction of pages 143, 163 and 190. Education released this same information on page 72.
- Education withheld information in the fourth redaction on page 155 and on the last sentence of the first redaction on page 183. Education released this same information on pages 141, 162, 177, 189 and 206.
- Education withheld information in the first redaction of page 235. Education released this same information on pages 230, 241, 443 and 456.
- Education withheld information in the second redaction on pages 438 and 451. Education released this same information on page 427.

[31] An absurd result occurs when a government institution withholds information from an applicant that they have supplied to the government institution, that they were present for



when the information was supplied to the government institution, or where the information would clearly be within the applicant's knowledge (see my office's [Review Report 203-2024](#) regarding the Ministry of Labour Relations and Workplace Safety for a further explanation). As Education has released the information as described in the preceding paragraph to the Applicant in other portions of the record, it would be information that is within their knowledge. I find it would be an absurd result, then, for Education to withhold the duplicate information. I will not consider the application of subsections 17(1)(a) of LA FOIP to the redactions on the pages mentioned above. As Education also applied subsection 17(1)(b)(i) of LA FOIP to the second redaction of page 163, I will also not consider subsection 17(1)(b)(i) of LA FOIP to those portions of the record. I recommend that Education release the information to the Applicant, as outlined at paragraph [30] of this Report, within 30 days of the issuance of this Report.

[32] Subsection 17(1)(a) 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:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[33] My office uses the following two-part test to determine if subsection 17(1)(a) of FOIP applies:

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

(*Guide to FOIP*, Ch. 4 pp. 128-131)

- 1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?***

[34] In its submission, Education noted that “the records in this file are repetitious, and the same emails are found throughout. As a result, identical information is found on multiple pages.” Education identified the pages of the record that contain duplicate information. I will address those pages below. Education also stated that these pages contain advice, proposals, recommendations, analysis and policy options. Education provided a page-by-page explanation for how the information on these pages qualify as each. Pages 128 to 130 of the *Guide to FOIP*, Ch. 4, provide the following definitions:

- “Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts.

Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. 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 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.
- “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.

[35] Page 133 of the *Guide to FOIP*, Ch. 4, further notes the following regarding the bare recitation of facts and factual material:

The provision is not meant to protect the bare recitation of facts, without anything further. The provision should be reserved for the opinion, policy, or normative elements

of advice, and should not be extended to the facts on which it is based. The exception is where the advice and facts may be so intertwined as to preclude release.

“Factual material” means a cohesive body of facts, which are distinct from advice, proposals, recommendations, analyses and/or policy options. A government institution can only withhold factual material or assertions of fact under subsection 17(1) of FOIP if the factual information is sufficiently interwoven with other advice, proposals, recommendations, analyses and/or policy options so that it cannot reasonably be considered separate and distinct. In other words, where factual information is intertwined with advice or recommendations in a manner whereby no reasonable separation can be made, then the information is not factual material and can be withheld.

[36] Based on a review, my office identified the following pages contain advice or analyses:

- Page 14 (redaction 1) is part of an email thread between Education employees. Education indicated that the information is “an analysis conducted by the Executive Director of IMS [Information Management Services] related to the results found in the Education Staffing Sector Report.” In the redacted portions of the email, the employee breaks down the data in the report and their insights regarding that data. This information qualifies as analyses.
- Pages 226, 231 (redaction 2), 235 (redaction 3), 242, 432 (redaction 2), 434, 444 and 457 are parts of an email thread between Education employees. The same statement is withheld in the body of these emails. Education indicated that this is “advice... on next steps for an access to information request.” The withheld information is the Privacy Officer’s opinion on how a request could be responded to depending on certain factors to allow the government institution to make a decision for future action. This information qualifies as advice.

[37] The first part of the test is met for the pages described above at paragraph [37] and I will consider if the second part of the test is met for them.

[38] For the following pages, the first part of the two-part test for subsection 17(1)(a) of FOIP would not be met. That is, the following redacted information does not qualify as advice, proposals, recommendations, analyses or policy options:

- Pages 1, 2, 9 and 13 are emails between Education employees. The same statement is withheld in the body of each email. Education indicated this is a “suggested course of action...” Based on my review, the statement is direction provided to staff. In [Review Report 182-2024](#) at paragraph [39], my office found that direction does not qualify as advice, recommendations, analyses or policy options. The

information withheld on these pages are direction to staff and does not qualify as a recommendation.

- Pages 5 and 11 are emails between Education employees. The statement is similar to the statement on pages 1, 2, 9 and 13. As noted, this appears to be direction provided to staff. Direction does not qualify as recommendations.
- Page 14 (redaction 2) is an email thread between education employees. Education stated that it is “recommendations about what to do, because of the decision made by government.” The redacted information is a statement of a task being completed by an employee. This does not qualify as recommendations.
- Pages 73, 138, 144, 145 (redaction 1), 159 (redaction 1), 164, 165 (redaction 1), 179, 185 (redaction 1), 192 (redaction 1) and 208 are parts of email threads between Education employees. The same statement is withheld in the body of each email. Education indicated that “the statement is a series of questions... It is a list of alternative courses of action that can be accepted or rejected...” The redacted information does not appear to be an alternative course of action; rather it appears to be a question about a document. This does not qualify as policy options.
- Pages 74 (redaction 1), 139 (redaction 1), 145 (redaction 2), 159 (redaction 2), 165 (redaction 2), 180 (redaction 1), 185 (redaction 2), 192 (redaction 2) and 209 (redaction 1) are parts of an email thread amongst Education employees. The same statement is withheld in the body of each email. Education indicated that it is a “proposal... on the amount of time... required to produce the record.” The redacted information does not appear to be something offered for consideration or acceptance. Rather, it appears to be a factual statement regarding the amount of time required. This does not qualify as a proposal.
- Pages 74 (redactions 2-5), 75, 139 (redactions 2-5), 140, 146, 160, 161, 166, 180 (redactions 2-5), 181, 185 (redaction 3), 186, 193, 209 (redaction 2) and 210 are parts of emails threads amongst Education employees. The same statement is withheld in the body of each email. Education indicated that this information “provides advice and guidance to branches on how to handle an Access to Information request...” From a review of the information, it appears the information is the presentation of facts related to the request and direction on how to process the request. The presentation of facts and direction to employees does not qualify as advice.
- Page 134 (redaction 1) is part of an email thread between Education employees. Education indicated “this statement would be a proposal... on next steps.” From a review, it does not appear this is a proposal presented to anyone. The statement is about an action the employee will take to determine next steps in the process. This does not qualify as a proposal.

- Page 134 (redaction 2) is part of an email thread between Education employees. The same statement is withheld in the body of these emails. Education indicated “this is a policy option presented to the Director...” From a review, it appears the information is a statement of fact regarding a document that is being discussed. This does not qualify as policy options.
- Page 136 (redaction 1) is part of an email thread between Education employees. Education indicated that “redaction one, is a request... regarding policy options posted by his staff on what to provide.” The information does not appear to be alternative courses of action to be accepted or rejected. Rather, it appears the statement is providing direction. Direction does not qualify policy options.
- Page 136 (redaction 2) is part of an email thread between Education employees. Education indicated that “redaction two outlines the policy options provided by his employee.” The information does not appear to be alternative courses of action to be accepted or rejected. Rather, it appears the employee is seeking advice. However, the seeking of advice does not qualify as advice.
- Pages 141 (redactions 1-3), 155 (redactions 2-3), 162 (redactions 1, 3-4), 176 (redaction 5), 177 (redaction 1), 183 (redaction 1), 187 (redaction 1), 189 (redactions 2-3), 203 (redaction 1) and 206 (redactions 2-3) email thread amongst Education employees. The first redactions on pages 141, 162, 187 and 203 is the same name of an attachment in the email header. The remaining redactions are the same statements in the body of the emails about the attachment. Education indicated these are “references to attachment to an email created... for the Minister’s Office. This document itself provides advice and recommendations.” The name of the attachment does not reveal any advice or recommendations. The statements made in the body of the email are general descriptions about the document attached. This does not qualify as advice or recommendations.
- Pages 141 (redaction 4) and 156 (redaction 1) are parts of email threads between Education employees. The same statement is withheld in the body of each email. Education indicated this statement is a recommendation. From a review, the statement is direction being provided to Education employees. Direction does not qualify as a recommendation.
- Pages 142 (redaction 1) and 156 (redaction 2) are parts of email threads between Education employees. The same statement is withheld in the body of each email. Education indicated that “this statement would fall within the definition of advice.” From a review of the information, it does not appear that it is presentation for future action. It appears the statement is from one Education employee to another asking them to complete a task. This does not qualify as advice.
- Pages 142 (redaction 2), 157 (redaction 1), 162 (redaction 5), 177 (redaction 2), 183 (redaction 2), 189 (redaction 4) and 206 (redaction 4) are parts of email threads between Education employees. The same statement is withheld in the body of these

emails. Education indicated that “this statement would fall within the definition of advice.” From a review of the information, it does not appear that it is presentation for future action. It appears the statement is from one Education employee to another asking them to complete certain tasks. This does not qualify as advice.

- Pages 143 (redaction 1), 157 (redaction 2), 163 (redaction 1), 177 (redaction 3), 183 (redaction 3), 190 (redaction 1) and 206 (redaction 5) are parts of email threads between Education employees. The same statement is withheld in the body of each email. Education indicated that it is a “recommendations on the next step in the process.” From a review of the information, it does not appear this statement is a suggested course of action. Rather, it is a statement regarding what needs to occur before they can complete a task. This does not qualify as a recommendation.
- Pages 150 to 153, 170 to 173, 195 to 202 and 212 to 219 are briefing notes with attachments that were withheld in full. Education indicated that these pages “contains advice, recommendations, analyses and policy options, as that is the intent of a briefing note.” Education has not, however, indicated what portions of these pages are advice, recommendations, analyses or policy options and has not provided any other arguments to support its position. Section 61 of FOIP provides the burden of establishing that access to a record may or must be refused is on the head of the government institution. As Education has failed to identify what portions of the record qualify as advice recommendations, analyses or policy options and has not provided any further arguments to support its position, the first part of the test is not met.
- Page 155 (redaction 1) is part of an email thread between Education employees. Education indicated that the statement is to “provide advice.” From a review of the information, the Education employee is making a statement of fact regarding the information provided. This does not qualify as advice.
- Pages 162 (redaction 2), 176 (redaction 4), 182 (redaction 5), 189 (redaction 1) and 206 (redaction 1) are parts of email threads between Education employees. The same statement is withheld in the body of each email. Education indicated the statement is a recommendation. From a review of the information, the statement regards the routing of a document. This does not qualify as a recommendation, rather it is a factual statement.
- Page 175 (redaction 1) is part of an email thread between Education employees. Education has indicated that the statement withheld is a recommendation. From a review of the record, this statement is regarding a task that will be completed. This does not qualify as a recommendation.
- Pages 175 (redaction 2), 176 (redaction 1), 182 (redaction 2), 188 (redaction 2) and 205 (redaction 2) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated this statement is a recommendation. From a review of the information, the statement is

a description of a task to be completed, the next steps in the process and a comment about the timing of the next step. This does not qualify as a recommendation.

- Pages 176 (redaction 2), 182 (redaction 3), 188 (redaction 3) and 205 (redaction 3) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is a recommendation. The information withheld includes a statement acknowledging a response and a statement about the status of information in a document. This does not qualify as a recommendation.
- Pages 176 (redaction 3), 182 (redaction 4), 188 (redaction 4) and 205 (redaction 4) are parts of an email thread between Education employees. The same statement is withheld in the body of these emails. Education indicated that this statement is a recommendation. The information withheld is requesting a task be completed. This does not qualify as a recommendation.
- Pages 182 (redaction 1), 188 (redaction 1) and 205 (redaction 1) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is a recommendation. The information withheld is a general statement about a document and a task. This does not qualify as a recommendation.
- Pages 187 (redactions 2 and 3), 203 (redaction 2) and 204 are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is a recommendation. The statement is general in nature and it is not clear how this could qualify as a recommendation.
- Page 220 are parts of an email thread that Education indicates qualifies as a policy option. Education noted that this is the same information withheld pursuant to subsection 15(1)(m) of FOIP on other pages of the record, but did not apply subsection 15(1)(m) of FOIP to this page of the record. The withheld information is a hyperlink that contains a file path name. This does not qualify as a policy option.
- Page 221 (redaction 1) are parts of an email thread between Education employees. Education indicated that this statement is advice. The statement withheld is requesting a task be completed. It does not qualify as advice.
- Page 221 (redaction 2) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is a recommendation. The statements refer to a document that is being forwarded and a change that will be made to the document. However, this appears to be a factual change, rather than a recommended action. It is not a recommendation.

- Pages 224, 229 (redactions 2 and 3) and 230 (redaction 1) are parts of an email thread between Education employees. Education made three redactions to duplicate statements to the emails on these pages. Education indicated that these statements are all advice. The statements appear to be clarifying a process and seeking direction on how to proceed. The seeking of advice does not qualify as advice.
- Page 225 (redaction 1) are parts of an email thread between Education employees. Education indicated that this statement is advice. The statement withheld appears to be informing an employee of the next step in a process. This does not qualify as advice.
- Pages 225 (redaction 2), 231 (redaction 1), 235 (redaction 2), 241 (redaction 2), 432 (redaction 1), 443 and 456 are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is a recommendation. The statement withheld contains the seeking of confirmation when a task can occur. This does not qualify as a recommendation.
- Pages 227, 228, 232, 233, 236, 243, 244, 433 (redaction 2), 434, 445, 458 and 459 are parts of an email thread between Education employees. Education withheld hyperlinked file path and a statement. The same file path links and statements are withheld in the body of each email. Education indicated that the links are to locations on Education's network. The hyperlinked file path itself does not reveal any advice or recommendations. The statements accompanying the hyperlinked file paths are general comments about a task for the employee to complete and a factual statement regarding the document. This does not qualify as advice or recommendations.
- Page 229 are parts of an email thread between Education employees. Education has made three redactions to this page. Education indicated that these statements are all proposals. These statements were not something offered for consideration or acceptance. The statements appear to be discussing the steps of a process before a task can be completed. This does not qualify as a proposal.
- Pages 234 (redaction 1), 240 (redaction 3), 431 (redaction 1), 442 (redaction 1) and 455 (redaction 1) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is a recommended response. The statement withheld regards who will complete a task and who will be notified when the task is complete. This does not qualify as a recommendation.
- Pages 234 (redaction 2), 241 (redaction 1), 431 (redaction 2), 442 (redaction 2) and 455 (redaction 2) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is "from the Executive Assistant to the Deputy Minister providing advice



for action.” The withheld information is a comment providing direction. This does not qualify as advice.

- Pages 238 (redaction 2), 429 (redaction 2), 440 (redaction 2) and 453 (redaction 2) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that the statement “outlines the next steps to be taken” for a task and is from an employee “who’s [sic] role it is to provide that advice.” The withheld information simply provides information about the next steps and requests a document to proceed. This does not qualify as advice.
- Pages 239 (redaction 1), 430 (redaction 1), 441 (redaction 1) and 454 (redaction 1) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is “a recommendation... on next steps.” The statement is an acknowledgement of information received and communicates the next steps in the process. This does not qualify as a recommendation.
- Page 239 (redaction 3), 240 (redaction 1), 430 (redaction 3), 441 (redaction 3) and 454 (redaction 3) are parts of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that the information is “advice and guidance, as well as a suggested course of action... on timelines and requirements for the processing of the access request.” The information regards the status of a document and some requirements. This does not qualify as advice or recommendations.
- Page 362 is part of an email thread between Education and Executive Council. Education indicated this statement is “a proposal to Brand EC, who is responsible for approving the course of action proposed.” The information advises of an action being taken. This does not qualify as advice or recommendations.
- Pages 363 and 364 are part of an email thread between Education and Executive Council. Education indicated it is about “follow up questions to gain context related to a proposal made...” The statements appear to be questions about actions being taken. This does not qualify as a proposal.
- Pages 425 and 436 are part of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this information is a “suggested courses of action.” From a review of the record, it appears that it is an acknowledgement of comments received regarding the document being reviewed. This does not qualify as advice or recommendations.
- Pages 426 and 437 are part of an email thread between Education employees. Education withheld 5 statements, stating that “each of these would be considered advice or recommendations.” The last two redactions are requests for a document to be reviewed and next steps. The third redaction is a general statement that does

not reveal any details of the review. The first two redactions conceal thoughts and opinions on certain details in the record. It does not appear there is specific guidance on the information or a suggestion to choose a particular action. This does not qualify as advice or recommendations.

- Pages 427, 438 and 451 are part of emails threads between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is “a recommendation for a suggested course of action.” The information is acknowledgement of a response and communication about the next steps of the process. This does not qualify as a recommendation.
- Page 447 is an email thread. Education indicated that the redacted statement is “a course of action to be taken.” The email is in response to an email requesting review/approval before the document is posted. This does not qualify as advice or recommendations.
- Page 450 is part of an email thread between Education employees. Education indicated that the withheld statement is “a course of action that will be taken.” The information is regarding the status of a document and action that will be taken. This does not qualify as advice or recommendations.

[39] Lastly, I want to address page 59 of the additional records, as mentioned in the Records at Issue section of this Report. Education withheld this page pursuant to subsection 17(1)(a) of FOIP. As noted earlier, Education has identified the information on this page as the same information on page 153 of the record, just in a different format. As described above, page 153 is an attachment to a briefing note. Education did not indicate, what portions of the page 153 contained advice, recommendations, analyses or policy options and did not provide any other arguments to support its position. Consistent with my analysis for page 153, the information on page 59 does not qualify as advice, recommendations, analyses or policy options.

[40] As the first part of the test is not met for the pages outlined at paragraphs [38] and [39] above, I find that Education has not properly applied subsection 17(1)(a) of FOIP to this information. Education has also applied subsection 17(1)(b)(i) of FOIP to pages 1, 2, 5, 9, 11, 13, 134, 143 (redaction 1), 157 (redaction 2), 162 (redaction 2), 163 (redaction 1), 175 (redaction 1), 176 (redaction 4), 176 (redaction 4), 177 (redaction 3), 183 (redaction 3), 189 (redaction 1), 190 (redaction 1), 206 (redaction 5) and 229 (redaction 1), and so I will consider these portions of the record under this provision later in this Report. As Education

has not applied any other exemptions to the remaining portions, I recommend that Education release pages 14, 73 to 75, 136, 138 to 140, 141 (redactions 1, 2 and 4), 142, 144 to 146, 150 to 153, 155, 156, 157 (redaction 1), 159 to 161, 162 (redactions 1 and 3 to 5), 163 to 166, 170 to 173, 175 (redaction 2), 176 (redactions 1 to 3 and 5), 177 (redactions 1-2), 179 to 182, 183 (redactions 1-2), 184 to 188, 189 (redactions 2 to 4), 192, 193, 195 to 205, 206 (redactions 1-4), 208 to 210, 212 to 221, 224 to 228, 229 (redactions 2 to 3), 203 to 236, 238 (redactions 2), 239 (redactions 1 and 3), 240 (redactions 1 and 3), 241 to 244, 362 to 364, 425 to 427, 429 (redaction 2), 430 (redactions 1 and 3), 431 to 434, 436 to 438, 440 (redaction 2), 441 (redactions 2 and 3), 442 to 445, 447, 450, 451, 453 (redaction 2), 454 (redactions 1 and 3), 455 to 459 and page 59 of the additional records within 30 days of the issuance of this Report.

***2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?***

[41] Pages 131 to 133 of my office's *Guide to FOIP*, Ch. 4, provides that the advice, proposals, recommendations, analyses and/or policy options can be developed by or for a government institution as follows:

“Developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the government institution, or 2) outside the government institution but for a government institution and at its request (for example, by a service provider or stakeholder).

[42] For information to be developed by or for a government institution, the person developing the information should be an official, officer or employee of the government institution, be contracted to perform services, be specifically engaged in an advisory role (even if not paid) or otherwise have a sufficient connection to the government institution (*Guide to FOIP*, Ch. 4, p. 131).

[43] To be put another way, in order to be “developed by or for” the government institution, the advice, proposals, recommendations, analyses and/or policy options should:

- Be either sought, be expected or be part of the responsibility of the person who prepared the record.
- Be prepared for the purpose of doing something, for example, taking an action or making a decision.
- Involve or be intended for someone who can take or implement the action.

*(Guide to FOIP, Ch. 4, pp. 131-132)*

[44] The exemption does not generally apply to records or parts of records that in themselves reveal only the following:

- That advice was sought or given;
- That particular persons were involved in the seeking or giving of advice; or
- That advice was sought or given on a particular topic or at a particular time.

*(Guide to FOIP, Ch. 4, pp. 131-132)*

[45] In its submission, Education also described page-by-page who was involved or who developed the information for Education. For example, they cited that records were created by Education employees for individuals such as various internal Executive Directors. Upon review, I note the following:

- Page 14 (first redaction) - Education indicated that the analyses was prepared by the Executive Director of IMS and provided to the Assistant Deputy Minister. Upon review, I note this is the case.
- Pages 226, 231 (redaction 2), 235 (redaction 3), 242, 432 (redaction 2), 434 (redaction 1) 444 and 457 - Education indicated that the advice was prepared by the Director of Legislative Services and Privacy and provided in response to a question posed by the Assistant Deputy Minister. Upon review, I am satisfied that this is the case.

[46] Because the first and second parts of the test are met for the records identified at paragraph [45] above, I find that Education properly applied subsection 17(1)(a) of FOIP to the redacted portions of the pages outlined at paragraph [45]. I recommend that Education

continue to withhold the portions of these pages as outlined pursuant to subsection 17(1)(a) of FOIP.

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

[47] Education applied subsection 17(1)(b)(i) of FOIP to portions of pages 1, 2, 5, 9, 11, 13, 134, 143, 157, 162, 163, 175 to 177, 183, 189, 190, 206 and 229.

[48] Subsection 17(1)(b)(i) 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;

[49] My office uses the following two-part test to determine if subsection 17(1)(b) of FOIP applies:

1. Does the record contain consultation 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?

(*Guide to FOIP*, Ch. 4, pp. 136-138)

***1. Does the record contain consultation or deliberations?***

[50] In its submission, Education stated that the portions of pages under review are “consultations” between various individuals at Education and the Minister’s Office. My office’s *Guide to FOIP*, Ch. 4, provides the following definitions on pages 136 to 138:

- “Consultation” means the act of consulting or taking counsel together: deliberation, conference. 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.

- “Involving” means including.
- “Officers or employees of a government institution”: “Employee of a government institution” means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution.

[51] Subsection 17(1)(b) of FOIP deals with the protection of the decision-making process. There needs to be a decision and a decision-maker. If government officials or employees are involved in an advisory role in the decision-making process, then their roles need to be clearly understood. A government institution needs to lay out these elements.

[52] Regarding the first part of the test, upon my office’s review of the portions of the records where Education is relying on subsection 17(1)(b)(i) of FOIP:

- Pages 1, 2, 9 and 13 are part of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this “is a consultation between them on the posting of the staffing profile.” The statement withheld is direction to staff. In [Review Report 182-2024](#) at paragraph [57], my office found that direction does not qualify as consultations or deliberations. The information withheld is direction to staff, which does not qualify as a consultation.
- Pages 5 and 11 are part of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this “is a consultation between the two branches on the posting of the staffing profile.” The statement is similar to the statement on pages 1, 2, 9 and 13. As noted, this appears to be direction provided to staff and so does not qualify as a consultation.
- Page 134 is part of an email thread between Education employees. Education indicated that this is “a consultation to occur between the Director and the Assistant Deputy Minister on how to proceed.” The statements are describing information in a document and an action an employee will take to determine next steps in the process. It does not appear this action is a proposal or suggestion, rather it is the employee communicating how they will proceed. This is not a consultation.
- Pages 143 (redaction 1), 157 (redaction 2), 177 (redaction 3), 183 (redaction 3), 190 (redaction 1) and 206 (redaction 5) is part of an email thread between Education

employees. A similar statement is withheld in the body of each email. Education indicated that it is an email regarding the posting of the staffing profile, but it did not indicate if the information was consultations (or deliberations). From a review of the information, it is a statement regarding what needs to occur before they can complete a task. This would not qualify as either a consultation or deliberation.

- Pages 162 (redaction 2), 176 (redaction 4) and 189 (redaction 1) is part of an email thread between Education employees. The same statement is withheld in the body of each email. Education indicated that this statement is “regarding the decision-making process for the posting of the staffing profile.” It appears the statement is related to the routing of a document. This would not qualify as a consultation.
- Page 175 (redaction 1) is part of an email thread between Education employees. Education indicated that this is “regarding the preparation of documentation for the Minister’s Office, as it will be a consultation between the two branches.” The statement is regarding a task that will be completed. This would not qualify as a consultation.
- Page 229 (redaction 1) is part of an email thread between Education employees. Education indicated that this statement is “regarding a consultation between the branches and the Minister’s Office.” The statement appears to be discussing the steps of a process before a task can be completed. This would not qualify as a consultation.

[53] As the first part of the test is not met for the pages described at paragraph [52] above, I find that Education has not properly applied subsection 17(1)(b)(i) of FOIP as outlined at paragraph [52] of this Report. I recommend that Education release these records to the Applicant within 30 days of the issuance of this Report.

#### **IV FINDINGS**

[54] I find that I have jurisdiction to conduct this review.

[55] I find that Education has properly applied subsection 29(1) of FOIP to the records, as outlined at paragraph [20] of this Report.

[56] I find that Education has not properly applied subsection 15(1)(m) of FOIP to the records, as outlined at paragraph [28] of this Report.

[57] I find that it would be an absurd result for Education to withhold the information outlined at paragraph [30] of this Report.

[58] I find that Education has properly applied subsection 17(1)(a) of FOIP to portions of the record, as outlined at paragraph [45] of this Report but has not properly applied this exemption to the remaining portions of the record, as outlined at paragraph [40] of this Report.

[59] I find that Education has not properly applied subsection 17(1)(b)(i) of FOIP to the records as outlined at paragraph [52] of this Report.

## **V RECOMMENDATIONS**

[60] I recommend that Education withhold the portions of the record where subsection 29(1) of FOIP applies, as outlined in paragraph [20] of this Report.

[61] I recommend that Education release the portions of the record where it was found subsection 15(1)(m) of FOIP does not apply, as outlined in paragraph [28] of this Report.

[62] I recommend that Education withhold the portions of the record where subsection 17(1)(a) of FOIP applies, as outlined in paragraph [45] of this Report.

[63] I recommend that Education release the portions of the record where it would be an absurd result to withhold the information, as outlined at paragraph [30] of this Report, within 30 days of the issuance of this Report.

[64] I recommend that Education release the portions of the records where it was found that subsections 17(1)(a) or (b)(i) of FOIP do not apply, as outlined at paragraphs [40] and [52] of this Report, within 30 days of the issuance of this Report.



Dated at Regina, in the Province of Saskatchewan, this 5th day of March, 2025.

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