



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 154-2024

Ministry of Environment

November 22, 2024

Summary:

The Applicant made an access to information request to the Ministry of Environment (Environment). Environment withheld portions of the records, pursuant to subsections 16(1)(a), (d)(i), 17(1)(a), (b)(i), (b)(ii), 19(1)(b), (c)(ii), (c)(iii), 22(a), and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested the Commissioner review Environment's application of the above exemptions. First, the A/Commissioner found Environment did not properly use white space redactions and recommended Environment use grey or black-out redactions when redacting in the future. Second, the A/Commissioner found Environment properly considered some of the information withheld as non-responsive to the Applicant's access to information request. Third, the A/Commissioner found Environment's applications of subsections 16(1)(a) and 17(1)(a) of FOIP applied in some, not all, cases. In addition, the A/Commissioner found Environment did not properly apply subsections 19(1)(c)(iii) and 22(a) of FOIP to information withheld from the Applicant. Further, the A/Commissioner found the records at issue were not exempt pursuant to subsections 19(1)(b) and (c)(ii) of FOIP, as claimed by a third party. The A/Commissioner recommended that Environment continue to withhold the non-responsive information and some information redacted pursuant to subsections 16(1)(a) and 17(1)(a) of FOIP. Finally, the A/Commissioner recommended releasing information redacted pursuant to subsections 19(1)(b), (c)(ii), (c)(iii), 22(a), and 29(1) of FOIP to the Applicant within 30 days of issuance of this Report.

I BACKGROUND

[1] On April 26, 2024, the Applicant made an access to information request via email to the Ministry of Environment (Environment) for the following:

All materials (correspondence, reports, briefing notes) regarding Cam Swan's review and mediation of issues regarding procurement with Shermco [sic] ... January 1, 2022 - December 31, 2023

[2] On April 29, 2024, Environment emailed the Applicant to confirm that the Applicant sought records related to Shercom Industries and not Shermco Industries. The same day, the Applicant confirmed via email this clarification was accurate to their intended request.

[3] On May 3, 2024, Environment emailed the Applicant to see if the Applicant wished to narrow the scope of the access to information request to avoid potential fees. The Applicant responded on May 7, 2024, confirming "correspondence" could be excluded.

[4] On May 30, 2024, Environment sent a letter to the Applicant via email extending the response time up to thirty days, pursuant to subsection 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[5] By way of letter dated June 7, 2024, Environment issued its section 7 decision to the Applicant. In its section 7 decision, it indicated it was withholding records in part. It applied subsections 16(1)(a), (d)(i), 17(1)(a), (b)(i), (b)(ii), 19(1)(b), (c)(ii), (c)(iii), 22(a), and 29(1) of FOIP. It also indicated that one record was publicly available, and it provided a link.

[6] On June 10, 2024, the Applicant emailed my office to request a review of Environment's application of the above exemptions.

[7] Between June 14 and June 21, 2024, my office emailed Environment to seek contact information for any third parties involved, as Environment had applied subsections

19(1)(b) and (c) of FOIP. Environment identified two third parties and provided my office with copies of notification letters (issued pursuant to section 52 of FOIP) it had provided those third parties. At that time, Environment also notified my office that some information withheld in the records was considered not responsive to the Applicant's access to information request.

[8] On June 21, 2024, my office notified Environment, the Applicant, and two third parties (Cam Swan Leadership Consulting, Incorporated, and Tire Stewardship of Saskatchewan, Incorporated (TSS)) that my office would be undertaking a review of the exemptions applied. All parties were invited to provide a submission by August 20, 2024. In addition, my office requested Environment provide my office with an index of records and a copy of the records by July 22, 2024.

[9] On July 17, 2024, Environment provided my office with an index of records and unredacted and redacted copies of the records at issue. On August 17, 2024, Environment provided its submission.

[10] On August 20, 2024, a lawyer representing TSS provided a submission on its behalf.

[11] No additional representations were submitted to my office by any of the other parties.

II RECORDS AT ISSUE

[12] The records at issue consist of 40 pages from which Environment withheld portions of information pursuant to subsections 16(1)(a), (d)(i), 17(1)(a), (b)(i), (b)(ii), 19(1)(b), (c)(ii), (c)(iii), 22(a), and 29(1) of FOIP. Environment referred to 10 distinct records:

- Records 1, 2, 5, and 9: "Media Inquiry Key Messages",
- Record 3: "Cam Swan Leadership, Incorporated report",
- Records 4 and 6: "Briefing Notes",

- Record 8: “Speaking Notes”, and
- Record 10: “Summary” of the Cam Swan Leadership, Incorporated report.

(Note: Record 7 was a media statement released in full to the Applicant. Also see the Appendix of this Report for more details on Records 1 to 6, and 8 to 10.)

[13] From a review of the records provided to my office, Environment exclusively employed white space redactions in its severing of information. White space redacting is the use of software to remove the content of a record in such a way it renders the redacted content indistinguishable from the blank background of the document. This is problematic because the Applicant may experience uncertainty as to what, if anything, has been redacted.

[14] My office strongly discourages the use of white space redacting, as evident in [Review Report 290-2023](#), [Review Report 288-2023](#), and [Review Report 133-2020](#). Government institutions have a duty to assist each applicant by responding openly, accurately, and completely to the access to information request, as emphasized on page 69 of my office’s *Guide to FOIP*, Chapter 3: “Access to Records”, updated May 5, 2023 (*Guide to FOIP*, Ch. 3). Further, my office strongly recommends government institutions use grey or black-out redacting to provide an applicant with sufficient visual context to discern the length and general nature of the information in the record (*Guide to FOIP*, Ch. 3, pp. 26-27).

[15] As such, I recommend, going forward, Environment use grey or black-out redaction in fulfilling its duty to assist each applicant, pursuant to subsection 5.1(1) of FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[16] Environment is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP; therefore, I have jurisdiction to undertake this review.

2. Did Environment properly consider some records non-responsive?

[17] Environment considered some portions of 12 pages from five separate records non-responsive. These included portions of Records 1, 2, and 5 (Key Messages Media Inquiries) as well as Records 4 and 6 (Briefing Notes).

[18] My office's *Guide to FOIP*, Ch. 3, establishes at pages 26 to 27 that, when a government institution receives an access to information request, it must determine what information is responsive to the access request. "Responsive" means relevant; anything reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant's request will be considered "not responsive."

[19] The Applicant requested the following information:

All materials (correspondence, reports, briefing notes) regarding Cam Swan's review and mediation of issues regarding procurement with Shermco Industries [sic] ... January 1, 2022 - December 31, 2023

[20] Environment considered some information as non-responsive and, subsequently, redacted that information on 12 pages of the record. Environment also applied subsections 16(1)(a), (d)(i), 17(1)(a), (b)(i), (b)(ii) of FOIP to the same information it has considered not responsive. Therefore, I will first deal with whether the information withheld is non-responsive.

[21] The following should be taken into consideration when considering information as non-responsive:

- The request sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as responsive.
- A government institution can remove information as not responsive only if the applicant has requested specific information, such as the applicant's personal information.

- The government institution may treat portions of a record as not responsive if they are separate, distinct, and entirely unrelated to the access request. However, use it sparingly and only where necessary.
- If it is just as easy to release the information as it is to claim not responsive, the information should be released (i.e., releasing the information will not involve time consuming consultations nor considerable time weighing discretionary exemptions).
- The purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If it is unclear what the applicant wants, a government institution should contact the applicant for clarification. Generally, ambiguity in the request should be resolved in the applicant's favour.

(Guide to FOIP, Ch. 3, pp. 26-27)

[22] In its submission to my office, Environment asserted:

In the present case, the request was very specific, materials regarding Cam Swan's review and mediation of issues regarding procurement with Shercom, and as such, sets out the boundaries of relevancy and circumscribes the information that will ultimately be identified as being responsive. The information removed as non-responsive is clearly distinct from the scope of the access request. It is submitted that anything outside of this scope is non-responsive.

The ministry submits that any information in the Key Messages relating to shipments of tires, or other tire recycling plants is outside the specific scope of the request and therefore non-responsive. Furthermore, in the Briefing Notes, any information to other tire processors or information regarding other waste stewardship programs offered by the province falls is non-responsive as it is outside the scope of the request. This is the case even with a liberal interpretation of the request.

[23] Based on a review of the withheld information in Records 1, 2, and 5, information not relevant to the Applicant's request is evident in the Media Inquiry Key Messages. For example, Environment's current partnership with a processor who is not Shercom Industries is separate, distinct, and entirely unrelated to the access request because the Applicant was seeking information regarding "Cam Swan's review and mediation of issues regarding procurement with [Shercom Industries]."

[24] As such, I find the information withheld on Records 1, 2, and 5 is non-responsive.

[25] Further, based on a review of the information withheld in Records 4 and 6, information not relevant to the Applicant's request is again evident in the Briefing Notes. For example, Environment's established methods for partnering with a processor who is not Shercom Industries is, again, separate, distinct, and unrelated to what the Applicant seeks in their access to information request.

[26] As such, I find the information withheld in Records 4 and 6 is also non-responsive.

[27] Therefore, I find Environment properly considered the information withheld in these records as non-responsive to the Applicant's access to information request.

[28] Typically, I would suggest the release of non-responsive information where there is no harm in doing so. However, in this case, Environment has also applied exemptions to this information, so I will not recommend release.

[29] I will next consider additional redactions unrelated to the non-responsive information on some of these pages, along with other records noted in the Appendix.

3. Did Environment properly apply subsection 29(1) of FOIP?

[30] Environment applied subsection 29(1) of FOIP to information on five pages of the records (Records 1, 2, and 3). In its submission to my office, Environment identified the affected Records 1 and 2, as the Media Inquiry Key Messages, and Record 3, as the Cam Swan Leadership, Incorporated report.

[31] 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.

[32] 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. Environment asserted in its submission to my office that the information at issue constitutes personal information pursuant to subsections 24(1)(b) and (e) of FOIP. Subsections 24(1)(b) and (e) of FOIP provide:

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;

...

(e) the home or business address, home or business telephone number or fingerprints of the individual

[33] The list of what constitutes personal information is not exhaustive at subsection 24(1) of FOIP. Information can still qualify, provided it has two elements. These two elements are that the information must:

- 1) be about an identifiable individual; and
- 2) be personal in nature.

(Guide to FOIP, Chapter 6: “Protection of Privacy,” updated February 27, 2023, [Guide to FOIP, Ch. 6], p. 32).

[34] Information is about an “identifiable individual” if the individual can be identified from the information (e.g., their name is provided) or if the information, when combined with information otherwise available, could reasonably allow the individual to be identified (*Guide to FOIP, Ch. 6, pp. 32-33*).

[35] To be “personal in nature” means the information provides something identifiable about the individual. “Personal” means of, affecting or belonging to a particular person; of or concerning a person’s private rather than professional life. Therefore, information that

relates to an individual in a professional, official, or business capacity could only qualify if the information revealed something personal about the individual (*Guide to FOIP*, Ch. 6, at pp. 32-33).

[36] In its submission to my office, Environment asserted the names, job titles, email addresses and telephone numbers in Records 1 and 2 (Media Inquiry Key Messages) constituted personal information:

The reporters mail and phone number were removed as this constitutes a home or businesses address or a home or business telephone number under subsection 24(1)(e). Furthermore, it is noted that the phone number of the reporter in [Record 1] does not appear in the online byline.

[37] Based on a review of Records 1 and 2, the information withheld appears to be names, job titles, work email addresses and work telephone numbers. This type of information is generally what my office would refer to as “business card” information as defined on page 36 of my office’s *Guide to FOIP*, Ch. 6. It is generally what can be found on a business card and is typically contact information.

[38] Previously, my office has found that “business card” information is not personal information, as evident in [Review Report 137-2024](#) at paragraph [40], [Review Report 053-2024](#) at paragraph [56] and [Review Report 333-2023](#) at paragraph [76].

[39] Consistent with these reports, I find subsection 29(1) of FOIP was not properly applied to the names, job titles, work email addresses and work telephone numbers in Records 1 and 2. I recommend the release of this “business card” information.

[40] Environment also severed names and job titles on page 13 of Record 3. In its submission to my office, Environment asserted the following rationale for withholding the list of names and job titles of individuals who were consulted for the Cam Swann Leadership Consulting, Incorporated Report (Record 3):

The ministry submits that the names of the individuals consulted, along with their job title is their personal information pursuant to subsection 24(1)(b) and should not be released. The ministry submits that the individuals who participated did so knowing that they were participating and providing information for what would be a confidential report.

[41] Whether the individuals consulted had the understanding the report would be confidential is not a factor in determining whether the information constitutes personal information. For subsection 29(1) of FOIP to have been appropriately applied, the names (along with the fact that they were consulted) must constitute personal information pursuant to subsection 24(1) of FOIP.

[42] Based on a review of page 13 of Record 3, the information withheld appears to be a list of the names and job titles of individuals associated with businesses or other organizations. For example, in one instance, the name of an official with a rural municipality was withheld; only the name of the rural municipality was released. I note that Environment released the names, job titles and places of employment for all officials representing government institutions. For example, the name of a Deputy Minister of Environment was released.

[43] For the withheld names and job titles, this information is, again, considered “business card” information. Further, these individuals appear to have been consulted because of their professional affiliations and provided their opinions in their professional, not personal, capacities.

[44] Therefore, this information would not constitute personal information as defined at subsection 24(1)(b) of FOIP. This conclusion is in alignment with my previous findings in [Review Report F-2010-001](#) at paragraph [124] and [Review Report 145-2022](#) at paragraph [51], which also addressed whether the names, job titles and contact details of stakeholders giving submissions in a consultation process was personal information. In both cases, I found that, where individuals are consulted or engaged on behalf of the organizations with which they are affiliated, the information was not personal in nature and, therefore, not personal information, pursuant to subsection 24(1) of FOIP.

[45] As such, consistent with my past findings, I find Environment did not appropriately apply subsection 29(1) of FOIP to the names and job titles on page 13 of Record 3, and I recommend the release of this information within 30 days of the issuance of this Report. See Appendix for details.

4. Did Environment properly apply subsection 16(1)(a) of FOIP?

[46] Environment applied subsection 16(1)(a) of FOIP to 30 pages of the record in part. In its submission to my office, Environment identified these records as:

- Records 1, 2, 5, 6, and 9 (Media Inquiry Key Messages),
- Record 3 (Cam Swann Leadership Consulting, Incorporated Report),
- Records 4 and 6 (Briefing Notes),
- Record 8 (Speaking Notes), and
- Record 10 (Summary).

[47] Subsection 16(1)(a) of FOIP provides:

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

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

[48] As a mandatory, class-based exemption, subsection 16(1)(a) of FOIP permits refusal of access in situations where release of a record could disclose a confidence of Cabinet including records created to present advice, proposals, recommendations, analyses, or policy options to Cabinet or any of its committees.

[49] In my office's [Review Report 016-2024](#), at paragraph [122], I refer to the Supreme Court of Canada decision *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 (CanLII), which states at paragraph [3]:

Just as legislative privilege protects the ability of elected representatives to act on the will of the people ... and deliberative secrecy preserves the independence of the judiciary, ... Cabinet confidentiality grants the executive the necessary latitude to govern in an effective, collectively responsible manner. ... Cabinet secrecy is “essential to good government” ... as it promotes deliberative candour, ministerial solidarity, and governmental efficiency by protecting Cabinet’s deliberations.

[50] In my office’s *Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated May 5, 2023 (*Guide to FOIP*, Ch. 4) at pages 100 to 101, the following two-part test is set out for determining if subsection 16(1)(a) of FOIP applies:

1. Does the record contain advice, proposals, recommendations, analyses, or policy options?
2. Was the record created to present to Cabinet or any of its committees?

[51] As noted in my office’s *Guide to FOIP*, Ch. 4, on page 133:

This 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 [16(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.**

[Emphasis added]

[52] In [Review Report 280-2020](#) at paragraphs [15] through [17], my office has previously pointed to factual information present in records to which Environment applied subsection 16(1) of FOIP. As such, the presence of any factual material is a factor in my analysis.

[53] I will now consider each part of the above test.

1. Does the record contain advice, proposals, recommendations, analyses, or policy options?

[54] In its submission to my office, Environment asserted:

The Key Messages in [Record 1], [Record 2], and [Record 5] were prepared for the Minister in response to media inquiries. They include recommendations and proposals for the Minister's response. The IPC guide to FOIP defines a proposal as "something offered for consideration and acceptance." The high level of public interest and complex history of the scrap tire program in Saskatchewan means that the consideration of whether to use the proposed messaging was scrutinized by a member of Executive Council.

[55] My office's *Guide to FOIP*, Ch. 4, defines the following terms on pages 101 and 102:

- A "recommendation" is a specific piece of advice about what to do, especially when given officially; a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious.
- A "proposal" is something offered for consideration or acceptance.

[56] Based on a review of Records 1, 2 and 5, recommendations and proposals appear to be in the Media Inquiry Key Messages. In particular, the purpose of the documents appears to be to present specific, official recommendations or proposals, offered for consideration to the Minister on how to respond if asked certain questions by media.

[57] As such, I find the first part of the test is met for Records 1, 2 and 5.

[58] In its submission to my office, Environment asserted:

The Report [Record 3] contains advice and recommendations as indicated on page 6 of the record. In addition, the Report contains an analysis regarding multi-processor feasibility on page 6, and a proposal regarding the re-set of the relationship between TSS and the tire processing industry on page 7.

[59] My office's *Guide to FOIP*, Ch. 4, defines the following terms on page 100 and 102:

- "Advice" is guidance offered by one person to another.³⁵⁸ 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.

- “Analyses” are detailed examinations of the elements or structure of something; the process of separating something into its constituent elements.

[60] Based on a review of Record 3, analyses, proposals, recommendations, and advice for the Minister’s consideration of tire stewardship methodologies appear to be present in Record 3. In particular, the analyses appear to be a detailed examination of procurement practices, payment methodologies, industry relationships, and more. The proposals, recommendations, and advice appear to be offerings for consideration, specific advice, and guidance that follows each analysis.

[61] As such, I find the first part of the test is met for Record 3.

[62] Environment also withheld information in Records 4, 6, and 8. The records are three and four-page Briefing Notes (Records 4 and 8, respectively), and a four-page set of Speaking Notes (Record 6). Environment asserted:

The briefing notes and speaking notes contain recommendations, analyses, and policy options prepared for the Minister. For example, the Briefing Note ([Record 4]) and Speaking Notes ([Record 8]) were updates for Cabinet. They include analyses.

[63] Based on a review of Records 4 and 8, it appears recommendations are present in these Briefing Notes and Speaking Notes. In particular, the recommendations appear under the heading “Speaking Points” (in the case of Record 4) and “Speaking Notes” (in the case of Record 8).

[64] As such, I find the first part of this test is met for Records 4 and 8.

[65] My office’s *Guide to FOIP*, Ch. 4, defines “policy options” on page 102:

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.

[66] Based on a review of Record 6, it appears analyses is present in the Briefing Notes. In particular, the analyses appear to be a close examination of the recycling program, its implications, and its desired outcomes. Further, it appears policy options are present in the Briefing Notes, given the presence of suggested alternative courses of action for pending decisions.

[67] As such, I find the first part of the test is met for Record 6.

[68] Environment withheld information in Record 10, which is a ten-page Summary of the report by Cam Swan Leadership, Incorporated. Environment asserted in its submission to my office that:

[Record 10] provides a summary of the Report ([Record 3]) and includes policy options, identifying a suggested approach and the benefits and risks associated with the same.

[69] Based on a review of Record 10, policy options appear to be present. In particular, the policy options appear to be throughout the document in the forms of named possible courses of action, decision-making considerations, suggested implementation approaches, and evaluations of risks.

[70] As such, I find the first part of the test is met for Record 10.

2. Was the record created to present to Cabinet or any of its committees?

[71] My office's *Guide to FOIP*, Ch. 4, defines "Cabinet" on page 103:

"Cabinet" has been defined as the committee of senior ministers (heading individual provincial government ministries) which acts collectively with the Premier to decide matters of government policy.

[72] In its submission to my office, Environment asserted that the information withheld in Records 2 and 5: "was carefully scrutinized by a member of Executive Council."

[73] Based on a review of the Records 1, 2 and 5, the Media Inquiry Key Messages appear to have been prepared by Environment staff for the Minister to share with the media. In my office's [Review Report 161-2023](#), I stated at paragraph [125] that key messages are meant to be communicated to the public. On the face of the record, these documents appear to have been created to present publicly to the media, not Cabinet. There is no evidence that they were created to present to Cabinet or any of its committees. Of note is the inclusion of the sentence (in the information released to the Applicant): "These are three to five distinct key messages about this issue/topic that the public should know." It seems clear that the records were to be shared publicly by the Minister, not for Cabinet as a confidence.

[74] As such, I find the second part of the test is not met for Records 1, 2, and 5.

[75] Section 61 of FOIP provides that the government institution has the burden of proof in demonstrating access should or must be refused under FOIP. In other words, it is incumbent upon Environment to present persuasive arguments to substantiate its application of subsection 16(1)(a) of FOIP.

[76] My office's *Guide to FOIP*, Chapter 2: "Administration of FOIP", updated March 7, 2024, (*Guide to FOIP*, Ch. 2) at page 44 emphasises, "it would not be sufficient to provide the Commissioner with records and leave it up to the Commissioner to draw from the records the facts on which the decisions will be based."

[77] In concrete terms, my office's notification email (sent July 22, 2024) communicated the following specific requests to Environment:

In your submission, please explain

- how part of the record qualifies for exemption under subsections 16(1)(a), ... 17(1)(a), ... 19(1)(c)(iii) and 22(a) of FOIP. Please refer to [Chapter 4](#) of our [IPC Guide to FOIP](#) for the tests for these subsections.

[78] It is worth noting that the hyperlink to Ch. 4 of our office's *Guide to FOIP*, was active and functional in the email. In this way, my office explicitly guided Environment to formulate arguments to defend their applications of exemptions under FOIP.

[79] Further, my office's notification email also stated:

Please note, section 61 of FOIP requires you to demonstrate that the exemptions apply. This includes explaining how each part of the subsection applies. Please refer to the [IPC Guide to FOIP](#) for more information as to what this office is looking for.

For additional guidance on preparing your submission, please refer to our resources, [A Guide to Submissions](#). Your submission should address every exemption claimed in the head's decision (section 7).

[80] Again, the hyperlinks to our office's [IPC Guide to FOIP](#) and [A Guide to Submissions](#) were both active and functional in the email. As demonstrated here, Environment was directed a second time in the same correspondence that it must meet the burden of proof. Further, my office provided Environment with straightforward instructions on how to approach presenting its arguments.

[81] Despite these directives from my office, Environment provided no assertions in its submission specifically regarding its application of subsection 16(1)(a) of FOIP to Record 3. In its submission, it stated generally:

The Report ([Record 3]) contains advice and recommendations as indicated on page 6 of the record. In addition, the report contains an analysis regarding multi-processor feasibility on page 6, and a proposal regarding the re-set of the relationship between TSS and the tire processing industry on page 7.

That the Report was not prepared from a source outside the Executive Council does not mean subsection 16(1)(a) does not apply. This was the case in [Review Report 301-2023](#) where the commissioner found at paragraph 92 that records that contain advice, proposals, recommendations, analyses, or policy options. [sic] from sources outside the Executive council for presentation to the Executive Council are covered by subsection 16(1)(a).

[82] The submission from Environment provided no justification for Record 3, itself, being created to present to Cabinet. Based on a review of Record 3, the cover page indicates the following title, released to the Applicant: "Confidential Advice for the Minister of Environment." However, nothing on the face of the record answers the second part of the test.

- [83] As such, the second part of the test is not met for the application of subsection 16(1)(a) of FOIP to Record 3.
- [84] In its submission to my office, Environment asserted: “The Briefing Notes [Records 4 and 6] and Speaking Notes [Record 8] were updates for Cabinet.”
- [85] Based on a review of Records 4 and 6, the Briefing Notes, it appears that the materials were prepared by Ministry staff for the Minister. However, nothing on the face of the record indicates the records were created to present to Cabinet; Environment’s mere assertion they were is not sufficient. I would expect to see additional details such as who created the records and when they were presented to Cabinet, as well as the date of a Cabinet meeting.
- [86] As such, the second part of the test is not met for the application of subsection 16(1)(a) of FOIP to Records 4 and 6.
- [87] On the face of Record 8, it appears that the materials were prepared by Ministry staff for the Minister as updates for Cabinet. I draw this conclusion based on language within Record 8 that clearly indicates it was intended for presentation to Cabinet.
- [88] As such, I find the second part of the test is met for Record 8. As both parts of the test have been met, I find Environment appropriately applied subsection 16(1)(a) of FOIP to the information withheld in Record 8.
- [89] In its submission to my office, Environment provided no justification for Record 10 being created to present to Cabinet.
- [90] Nothing on the face of Record 10 indicates it was created to present to Cabinet.
- [91] As such, I find the second part of the test is not met for the application of subsection 16(1)(a) of FOIP to Record 10. Environment applied subsection 22(a) of FOIP to some portions of Record 10, which I will consider later in this Report.

[92] In summary, I have found Environment did not properly apply subsection 16(1)(a) of FOIP to portions of Records 1, 2, 3, 4, 5, 6, and 10. However, Environment did properly apply subsection 16(1)(a) of FOIP to Record 8. As no other exemptions were applied to Record 8, I recommend Environment withhold Record 8 pursuant to subsection 16(1)(a) of FOIP.

[93] Environment also applied subsection 17(1)(a) of FOIP to Records 1, 2, 3, 4, 5, and 6, which I will now consider. Note, I will consider the application of subsection 22(a) of FOIP to Record 10 later.

5. Did Environment properly apply subsection 17(1)(a) of FOIP?

[94] Environment applied subsection 17(1)(a) of FOIP to portions of information on Records 2, 3, 4, 5, and 6.

[95] 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

[96] As a discretionary, class-based provision, subsection 17(1)(a) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses, or policy options developed by or for a government institution or a member of the Executive Council.

[97] The Supreme Court of Canada addressed the purpose of the equivalent provision in Ontario's *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 13(1) in *John Doe v. Ontario (Finance)*, (2014):

[43] The purpose of this provision is to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice... Failing to exempt such material risks having advice or recommendations that are less candid and

complete, and the public service no longer being perceived as neutral ... Political neutrality, both actual and perceived, is an essential feature of the civil service in Canada.

[98] As established in this Report at paragraph [51], this 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.

[99] In [Review Report 047-2018](#) at paragraph [16] and [Review Report 017-2018](#) at paragraph [13], my office has previously pointed to factual information present in records to which Environment applied subsection 17(1)(a) of FOIP. As such, the presence of any factual material is a factor in my analysis.

[100] My office uses the following two-part test when determining 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 and 131)

[101] I will now consider each part of the above test.

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

[102] My office's *Guide to FOIP*, Ch. 4, defines the following terms on pages 100 and 101:

- “Advice” is guidance offered by one person to another.
- 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; a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious.
- “Analyses” refers to a 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 about a decision that is to be made.

[103] In its submission to my office, Environment asserted Records 1, 2, and 5: “contain recommendations for the Minister’s response.” It does not present any further arguments to defend this assertion.

[104] Based on a review of Records 1, 2, and 5, recommendations and proposals are evident in these Media Inquiry Key Messages. In particular, on the face of the record, the purpose of the documents appears to be to present specific, official suggestions offered for consideration to the Minister on how to respond if asked certain questions by media. This would constitute recommendations.

[105] As such, I find the first part of the test is met for Records 1, 2, and 5.

[106] In its submission to my office, Environment asserted Record 3 contained “advice, recommendations, analysis and a proposal.” It did not present any further arguments to defend this assertion.

[107] Based on a review of Record 3, there appears to be advice, recommendations, analysis, and a proposal in the Cam Swan Leadership, Incorporated report. In particular, on the face of the record, the analyses appear to be a detailed examination of procurement practices, payment methodologies, industry relationships, and more. The proposals, recommendations, and advice are evident in the offerings for consideration, specific advice, and guidance that follows each analysis.

[108] As such, I find the first part of the test is met for Record 3.

[109] In its submission to my office, Environment asserted Records 4 and 6: “contain analyses and proposals.” It did not present any further arguments to defend this assertion.

[110] Based on a review of Records 4 and 6, it appears analyses and proposals are evident in these Briefing Notes. On the face of Record 4, Environment released the title, “Speaking Points,” the redacted content of which offers subject matter for consideration or acceptance, thereby constituting proposals. In Record 6, there appears to be a close examination of the recycling program, its implications, and its desired outcomes, thereby constituting analyses.

[111] As such, I find the first part of the test is met for Records 4 and 6.

[112] In its submission to my office, Environment asserted for Record 9:

R-9 [Record 9] was a draft only and was not released. This is a similar situation to [Review Report 286-2023](#), where the Commissioner found at paragraph 81 that the drafts were “opinions from Communications regarding media updates” and subsection 17(1)(a) was appropriately applied.

[113] Based on a review of Record 9, recommendations and proposals appear to be present. On the face of the record, it appears the purpose of the document is to present specific, official suggestions (recommendations) or subject matter for consideration (proposals), offered to a speaker on how to respond if asked certain questions by media.

[114] As such, I find the first part of the test is met for Record 9.

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?

[115] My office’s *Guide to FOIP*, Ch. 4, defines the following terms on page 131:

“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).

[116] Previously, my office has referenced [Order-F2013-13](#), made by Alberta’s Office of the Information and Privacy Commissioner (AB IPC) as it addresses subsections 24(1)(a) and (b) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP). Subsection 24(1)(a) and (b) of AB FOIP is comparable to subsections 17(1)(a) and (b) of FOIP. The following excerpt from AB IPC’s Order clarifies the need for the employee giving the advice, recommendations, or analyses to be in an advisory role or for it to be part of the employee’s responsibilities to do so:

[146] ... 24(1)(a) is intended to protect communications developed for a public body by an advisor ... Information that is the subject of section 24(1)(a) may be voluntarily or spontaneously provided to a decision maker for the decision maker’s use because it is the responsibility of an employee to provide information of this kind.

[117] Employees of government institutions communicate back and forth regularly. Not every communication containing advice, recommendations or analyses is captured by subsection 17(1)(a) of FOIP. Moreover, my office’s *Guide to FOIP*, Ch. 4, also states that, 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 (pp. 126-127).

[118] In other words, to be “developed by or for” the government institution, the advice, proposals, recommendations, analyses and/or policy options should:

- be either sought, be expected by, or be part of the responsibility of the person who prepared the record;
- be prepared for the purpose of doing something, such as taking an action or making a decision;

- involve or be intended for someone who can take or implement the action.

[119] In its submission to my office, Environment asserted Records 1, 2, and 5: “contain recommendations for the Minister’s response ... prepared by ministry employees with the Communication and Client Service branch.”

[120] Based on a review of Records 1 and 2, it appears the information was prepared by Environment staff for the Minister to respond to media inquiries. I draw this conclusion based on the following:

- the name of an Environment employee who prepared Records 1 and 2 is present on the record, and
- the Environment employee who prepared Records 1 and 2 is, in fact, an executive director affiliated with Environmental Assessment and Stewardship for Environment. My office confirmed their name and job title within the directory of the Ministry of Environment’s Environmental Assessment and Stewardship branch.

[121] Therefore, I find Records 1 and 2 were developed by Environment to respond to media inquiries. As such, I find the second part of the test is met for Records 1 and 2.

[122] As both parts of the test have been met, I find Environment appropriately applied subsection 17(1)(a) of FOIP to the information withheld in Records 1 and 2.

[123] For Record 5, Environment provided no arguments for how the second part of the test is met. Further, on the face of the record, there is no indication of the author or who created the record. As such, the second part of the test is not met for the application of subsection 17(1)(a) of FOIP to Record 5.

[124] As both parts of the test must be met, I find Environment did not meet the burden of proof in specifically demonstrating subsection 17(1)(a) of FOIP applies to Record 5 and, subsequently, did not appropriately apply subsection 17(1)(a) of FOIP to the information withheld in Record 5.

[125] Given that, in its section 7 decision, Environment did not apply any other exemptions to the redacted information in Record 5, there are no further exemptions to consider for this record, and I recommend release within 30 days of issuance of this Report. See the Appendix for details.

[126] In its submission to my office, Environment asserted Record 3 was developed by a contracted consultant engaged in an advisory role with Environment:

...The Report was **prepared by a consultant, contracted to perform certain services, and through this, engaged in an advisory role.** While prepared for a different purpose, the ministry argues that this Report possesses similarities to the records addressed in [Review Report 286-2023](#) at paragraph 84, which contained policy options presented to respond to the issue, advice, analyses, and proposals including a scan of other provinces, and options. The Commissioner stated at paragraph 85:

[85] based on a review of the records above, the records describe an issue, propose options for a decision that need to be made, list the pros and cons to those options presented and identifies which of the options are recommended for Social Services to implement. Based on my review of these records, I am satisfied that the information would qualify as advice and policy options. As such, the first part of the test is met.

And at paragraph 88:

[88] Based on review of the records, the records were developed by or for Social Services to make a decision about how to proceed regarding an issue.... As such, I am satisfied that the advice and policy options in these records were developed by or for Social Services; therefore, the second part of the test is met and find that Social Services properly applied subsection 17(1)(a)...

[Emphasis added]

[127] Based on a review of Record 3, it is clear a non-government institution (specifically, Cam Swan Leadership, Incorporated) created the report at the behest of the Minister. Further, on the face of the record, it appears the report was prepared for the purpose of offering advice, recommendations, analysis, and a proposal to the Minister, who is imbued with the authority to implement those actions. As I have noted earlier, to meet the second part of the test, the person developing the information can be a contracted employee that is performing

services for the government institution. As such, I find the second part of the test is met for Record 3.

[128] As both parts of the test have been met, I find Environment appropriately applied subsection 17(1)(a) of FOIP to the information withheld in Record 3.

[129] In its submission to my office, Environment asserted Records 4 and 6: “were prepared by a ministry employee whose name appears at the bottom of the page.”

[130] Based on a review of Records 4 and 6, it appears the name and contact information of the Environment employee who prepared the analyses and proposals are evident in these “Briefing Notes.” The individual’s name was released to the Applicant. To verify the individual is a ministry employee, my office verified the individual’s name and work title in Environment’s online directory. It is clear the employee worked at the time of the document’s creation (September 6, 2023) with the Environmental Assessment and Stewardship branch. Therefore, I find Records 4 and 6 were developed by Ministry staff for the Minister to take the action of addressing Environment-related work.

[131] As such, I find the second part of the test is met for Records 4 and 6. As both parts of the test have been met, I find Environment appropriately applied subsection 17(1)(a) of FOIP to the information withheld in Records 4 and 6. Therefore, I recommend Environment continue to withhold the information withheld in Records 4 and 6.

[132] In its submission to my office, Environment asserted the following for Record 9:

The ministry advises that R-9 was a draft only and was not released. This is a similar situation to [Review Report 286-2023](#), where the Commissioner found at paragraph 81 that the drafts were ‘opinions from Communications regarding media updates and subsection 17(1)(a) was properly applied.

[133] Based on a review of Record 9, it appears the document was prepared by an individual outside of, but affiliated with, Environment. I draw this conclusion based on the presence

of the individual's name and organizational title immediately following the subheading: "Spokesperson/attributed to:"

[134] Also, in its submission to my office, Environment points to paragraph [81] of my office's [Review Report 286-2023](#). This paragraph of that report focuses on the possibility of an applicant drawing inferences about advice, or recommendations based on changes from a draft to a final version. No content in this paragraph supports Environment's arguments as to whether Record 9 was developed by or for a government institution.

[135] In the case of Record 9, Environment did not meet the burden of proof in specifically demonstrating how Record 9 was developed by or for Environment. Although the face of the record may connote implications to this end, the submission by Environment failed to address whether it was sought, expected, or part of the responsibility of the person who prepared the record, prepared for the purpose of taking an action or making a decision, or intended for someone to take or implement an action. Again, as stated on page 44 of my office's *Guide to FOIP*, Ch. 2, "it would not be sufficient to provide the Commissioner with records and leave it up to the Commissioner to draw from the records the facts on which the decisions will be based".

[136] As both parts of the test must be met, I find Environment did not meet the burden of proof in demonstrating that subsection 17(1)(a) of FOIP applies to Record 9 and, subsequently, did not appropriately apply subsection 17(1)(a) of FOIP to the information withheld in Record 9.

[137] I have found subsection 17(1)(a) of FOIP was properly applied to portions of Records 1, 2, 3, 4, and 6. I have considered all exemptions Environment applied to Records 1, 2 and 4. As I have found subsection 17(1)(a) of FOIP applies to Record 3, I do not have to consider Environment's applications of subsections 19(1)(b), 19(1)(c)(ii) of FOIP to the same information. As I have found subsection 17(1)(a) of FOIP applies to Record 6, I do not have to consider Environment's applications of subsections 16(1)(d)(i), 17(1)(b)(i) and (ii)

of FOIP to the same information. Therefore, I recommend Environment continue to withhold the information in Records 1, 2, 3, 4, and 6. See the Appendix for details.

[138] I will now consider if Environment properly applied subsection 19(1)(c)(iii) of FOIP to Record 9.

6. Did Environment properly apply subsection 19(1)(c)(iii) of FOIP?

[139] Environment applied subsection 19(1)(b)(iii) of FOIP information redacted on Record 9.

[140] Subsection 19(1)(b)(iii) of FOIP provides:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...
(c) information, the disclosure of which could reasonably be expected to:

...
(iii) interfere with the contractual or other negotiations of;

...
a third party

[141] As a mandatory, harm-based exemption, subsection 19(1)(c)(iii) of FOIP permits refusal of access in situations where disclosure of information could reasonably be expected to interfere with the contractual or other negotiations of a third party.

[142] Subsection 2(1)(j) of FOIP defines a “third party” as

2(1) In this Act:

...
(j) “**third party**” means a person, including an unincorporated entity, other than an applicant or a government institution.

[143] Environment identified Record 9 as containing the third-party information of TSS, which qualifies as a third party based on the above definition in FOIP.

[144] My office uses the following two-part test when determining if subsection 19(1)(c)(iii) of FOIP applies:

1. Are there contractual or other negotiations occurring involving a third party?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations of a third party?

(Guide to FOIP, Ch. 4, pp. 226-227)

[145] I will now consider each part of the above test.

1. Are there contractual or other negotiations occurring involving a third party?

[146] My office's *Guide to FOIP*, Ch. 4, defines "negotiation" on page 226:

A "negotiation" is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than "consultation." It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion.

[147] My office's *Guide to FOIP*, Ch. 4, also emphasizes on page 227:

Prospective or future negotiations could be included within this exemption if they are foreseeable. It may be applied even though negotiations have not yet started at the time of the access to information request. ... **Once a contract is executed, negotiation is concluded. The exemption would generally not apply unless, for instance, the same strategy will be used again, and it has not been publicly disclosed. However, a vague possibility of future negotiations is not sufficient. There must be a reasonable fact-based expectation that the future negotiations will take place.**

[Emphasis added]

[148] In its submission to my office, Environment asserted the following for Record 9:

It is submitted that in the present case, negotiations with a northern processor are ongoing. Releasing the information as to the offer to another processor and identifying the payment model would interfere with TSS's ongoing negotiations with a northern processor.

[149] Further, on August 20, 2024, TSS provided a submission to my office, which asserted:

... TSS is not aware of who is requesting the information in this specific instance. However, the request itself specifically references a "mediation of issues regarding procurement with Shercom Industries." By their very nature, mediations are confidential. Further a plain reading of the mediation notes indicates that contractual information relative to Shercom Industries, TSS, and other third parties, is captured in the responsive records. It appears that in preparing for the mediation, the Ministry was summarizing confidential negotiation information provided by TSS. This information would have become available to the Ministry as part of its oversight role in the PSP which TSS runs. We presume that in order to engage in meaningful mediation discussions, specific information relating to the contractual negotiations with Shercom Industries relative to other TSS contractual parties was incorporated into the Ministry's preparations.

...

... **Disclosure of the information may undermine negotiations with other TSS partners in the future** and compromise the confidentiality which those partners expect when they become a part of the PSP [Product Stewardship Program] ...

[Emphasis added]

[150] The respective submissions from Environment and TSS do not illuminate what contractual or other negotiations are occurring that involve TSS. It appears the information withheld in Record 9 relates to the executions of previous contracts. TSS has suggested future negotiations may be undermined but has not provided any arguments to convince me that such negotiations are foreseeable, which is the threshold I have outlined for future negotiations in my office's *Guide to FOIP*, Ch. 4, as noted above. A vague possibility of future negotiations is not sufficient.

[151] Therefore, I find the presence of contractual or other negotiations involving a third party is not evident for Record 9.

[152] Further, on the face of Record 9, identified by Environment as “Tire Stewardship of Saskatchewan Key Messages,” the portion of the record released to the Applicant not only includes that title (which denotes the third party) but also identifies the following information, provided in a bulleted list:

- Date: November 21, 2023,
- Topic: Response to Shercom news release,
- Spokesperson/attributed: [name redacted], and
- Media outlets: CTV Saskatoon.

[153] The presence of this information in the redacted version released to the Applicant causes me to conclude the document was created to suggest key messages for a speaker to address the media. Information designated to be shared with media is, inherently, content for the public. As previously noted, my office’s [Review Report 161-2023](#) establishes at paragraph [125], that key messages are meant to be communicated to the public. This contradicts the assertions by Environment and TSS that Record 9 contains information about contractual or other negotiations involving a third party that must remain confidential.

[154] In conclusion, I find the first part of the test is not met. As both parts of the test must be met, there is no need to go further. I find Environment and the TSS did not meet the burden of proof in specifically demonstrating that subsection 19(1)(c)(iii) of FOIP applies to Record 9 and, subsequently, did not appropriately apply subsection 19(1)(c)(iii) of FOIP to the information withheld in Record 9.

[155] Although Environment applied to no further exemptions to Record 9, TSS claims subsections 19(1)(b) and 19(1)(c)(ii) of FOIP are engaged. Therefore, I will now consider these two exemptions with respect to Record 9, but first, subsection 19(1)(b) of FOIP.

7. Does subsection 19(1)(b) of FOIP apply to Record 9?

[156] TSS asserted subsection 19(1)(b) of FOIP is also engaged in relation to information redacted in Record 9.

[157] Subsections 19(1)(b) of FOIP provides:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(b) financial, commercial, scientific, technical, or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

...

a third party

[158] As a mandatory, class-based exemption, subsection 19(1)(b) of FOIP permits refusal of access in situations where a record contains financial, commercial, scientific, technical, or labour relations information that was supplied in confidence to a government institution by a third party.

[159] In my office's *Guide to FOIP*, the following tests are laid out for this provision.

1. Is the information financial, commercial, scientific, technical, or labour relations information of a third party?
2. Was the information supplied by the third party to a government institution?
3. Was the information supplied in confidence implicitly or explicitly?

(*Guide to FOIP*, Ch. 4, pp. 203-205)

[160] I will now consider each part of the above test for the application of subsection 19(1)(b) of FOIP to Record 9.

1. Is the information financial, commercial, scientific, technical, or labour relations information of a third party?

[161] TSS asserted the information redacted in Record 9 was “financial,” as follows:

...TSS engages with sensitive financial information such as the competitive financial information with respect to competitive contracts for services...

...

...the TSS works with retailers, collectors, and processors (among others) throughout the province to fulfill the PSP [Produce Stewardship Program] goals. Not only does the TSS work with them on issues of compliance, the TSS must also set remuneration attached to such operations. In this role, the TSS engages with sensitive financial information such as competitive financial information with respect to competitive contracts for services. Confidentiality plays a major role in TSS operations.

...

Further, disclosure of the information would be prejudicial not only to TSS, but also to the southern processor which is referenced in the materials. Disclosure of the information may undermine negotiations with other TSS partners in the future, and compromise the confidentiality which those partners expect when they become a part of the PSP.

[162] My office’s *Guide to FOIP*, Ch. 4, defines “financial information” of a third party on page 204:

“Financial information” is information regarding monetary resources, such as financial capabilities, assets, and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets and profit and loss statements.

[163] Based on a review of Record 9, there does not appear to be TSS’ financial information in the record. In assessing the presence of financial information, my office seeks to identify reference to specific monetary resources, such as the examples provided with the definition above. Moreover, I defer to former Commissioner Dickson’s discussion of financial information in [Review Report F-2005-003](#):

[25] A broader explanation of what constitutes “financial information” is offered in Ontario/IPC, Order MO-1246. It reads, in part as follows: **“Financial information relates to money and its use or distribution and must contain or refer to specific data.** Examples of “financial” information include cost accounting method, pricing practices, profit and loss data, overhead and operating costs (Orders P-47, P-87, P-113, P-228, P-295 and P-394).

[Emphasis added]

[164] As outlined in the above excerpt, to determine the presence of the financial information of a third party, my office must see evidence of what constitutes explicit monetary matters. For example, for TSS to claim the presence of its financial information, I might expect to see specific references to specific income amounts, specific expenditure amounts, or specific budget allotments. However, TSS's submission to my office does not "contain or refer to specific data," as emphasized by former Commissioner Dickson, nor does the face of the record offer apparent evidence. Rather, on the face of the record, the redacted information of Record 9 generally summarizes TSS's engagement in contract negotiations and broadly references its proposed payment models.

[165] Further, it is unclear how this information could constitute third-party financial information, given Record 9 was identified by Environment as "Tire Stewardship of Saskatchewan Key Messages," developed for the purpose of speaking with the media. As established earlier at paragraph [165] and in [Review Report 161-2023](#) at paragraph [125], these kinds of key messages are intended to be communicated to the public. This contradicts the assertions by Environment and TSS that Record 9 contains sensitive financial information of TSS.

[166] As it is unclear how the information in Record 9 constitutes the financial information of TSS, I find the first part of the test is not met. As both parts of the test must be met, there is no need for me to go further in considering the engagement of subsection 19(1)(b) of FOIP in relation to Record 9. I find subsection 19(1)(b) of FOIP does not apply.

[167] I will now consider whether subsection 19(1)(c)(ii) of FOIP is engaged for Record 9.

8. Does subsection 19(c)(ii) of FOIP apply to Record 9?

[168] TSS asserted subsection 19(1)(c)(ii) of FOIP is also engaged in relation to information redacted in Record 9.

[169] Subsection 19(1)(c)(ii) of FOIP provides:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

...

(ii) prejudice the competitive position of;

...

a third party

[170] As a mandatory, harm-based provision, subsection 19(1)(c)(ii) of FOIP permits refusal of access in situations where disclosure could reasonably be expected to negatively impact a third party's capacity to compete.

[171] In my office's *Guide to FOIP*, the following tests are laid out for this provision.

1. What is the prejudice to a third party's competitive position that is being claimed?
2. Could release of the record reasonably be expected to result in the prejudice?

(*Guide to FOIP*, Ch. 4, pp. 221-222)

[172] I will now consider each part of the above test for the application of subsection 19(1)(c)(ii) of FOIP to Record 9.

1. What is the prejudice to a third party's competitive position that is being claimed?

[173] For subsection 19(1)(c)(ii) of FOIP, TSS has asserted the following:

By express policies, and implicit in the contexts of a mediation as well as negotiations in general, such information is confidential in nature. Further, disclosure of the information would be prejudicial not only to TSS, but also to the southern processor which is referenced in the materials. Disclosure of the information may undermine

negotiations with other TSS partners in the future, and compromise the confidentiality which those partners expect when they become a part of the PSP.

[174] My office's *Guide to FOIP*, Ch. 4, defines the following terms on page 221:

- “Prejudice” refers to detriment to the competitive position of a third party.
- “Competitive position” means the information must be capable of use by an existing or potential business competitor, whether that competitor currently competes for the same market share. For example:
 - information that discloses the profit margin on a private company's operations,
 - marketing plans, including market research surveys, polls, or
 - information that reveals the internal workings of a private company.

[175] On the face of the record and based on TSS' submission to my office, it is unclear what prejudice to competitive position is being put forward. Once again, Record 9 was developed, according to Environment, as “Tire Stewardship of Saskatchewan Key Messages,” created for the purpose of speaking with the media. This is further validated by the presence, on the face of the record, of the identification of a “Spokesperson” and “Media outlets: CTV Saskatoon” in the information released to the Applicant. An organization which prepares these key messages for media inquiry can harbour no reasonable expectation that disclosure of those key messages could prejudice its competitive position.

[176] As it is unclear what prejudice to TSS' competitive position is being claimed, I find the first part of the test is not met. As both parts of the test must be met, there is no need for me to go further in considering the application of subsection 19(1)(c)(ii) of FOIP in relation to Record 9. I find subsection 19(1)(c)(ii) of FOIP does not apply to Record 9.

[177] In conclusion, I recommend release of the redacted information of Record 9 to the Applicant within 30 days of the issuance of this Report. See the Appendix for details.

9. Did Environment properly apply subsection 22(a) of FOIP?

[178] Environment applied subsection 22(a) of FOIP to portions of information on Record 10. See the Appendix for more details.

[179] Subsection 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;

[180] As a discretionary, class-based provision, subsection 22(a) of FOIP permits refusal of access in situations where a record contains information that is subject to any legal privilege, including solicitor-client privilege.

[181] My office uses the following three-part test when determining if subsection 22(a) of FOIP applies:

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Did the parties intend for the communication to be treated confidentially?

(*Guide to FOIP*, Ch. 4, pp. 263-267)

[182] I will now consider each part of the above test.

1. Is the record a communication between solicitor and client?

[183] My office's *Guide to FOIP*, Ch. 4, defines the following terms on pages 263 and 264:

- A "communication" is the process of bringing an idea to another's perception; the message or ideas so expressed or exchanged; the interchange of messages or ideas by speech, writing, gestures, or conduct.

- The government institution should make it clear who the solicitor is and who the client is.
- “Solicitor” means a lawyer who is duly admitted as a member and whose right to practice is not suspended.
 - “Lawyer” means a member of the Law Society and includes a law student registered in the Society’s pre-call training program.
- “Client” means a person who:
 - Consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or
 - Having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client’s work.

[184] In its submission to my office, Environment asserted the following regarding Record 10:

The information removed under subsection 22(a) speaks to a prior legal opinion the ministry received. The legal opinion was relevant to the facts at issue in the present case, and as such, it is submitted that subsection 22(a) was appropriately applied as this fell within the continuum of legal advice. The information speaks to communication between the Minister and their legal representative that contains legal advice on a specific issue, namely liability of the Crown. Finally, the ministry argues that the parties intended that the communication be treated confidentially. This is evident by the title of the document and the confidential watermark on the face of each page of the record, and the fact that the intended audience was the Executive Council, and not the public.

[185] My office’s *Guide to FOIP*, Ch. 4, provides at page that written communications between officials or employees of a government institution, quoting the legal advice given orally by the government institution’s solicitor, or employee’s notes documenting the legal advice given orally by the solicitor, could qualify. This includes notes “to file” in which legal advice is quoted or discussed. The privilege does not attach to advice provided by someone who is not a lawyer; the advice must be sought from a professional legal advisor in his or her capacity as such.

[186] Based on a review of Record 10, the redacted portion to which subsection 22(a) of FOIP was applied appears to suggest advice was previously given in 2024. However, it is unclear who gave that advice and who received it. In other words, the identities of the solicitor and the client are unclear. Environment did not provide clarification on this in its submission to my office.

[187] As established in my office's *Guide to FOIP*, Ch. 4, page 263, the government institution should make it clear who the solicitor is and who the client is. In the case of Record 10, Environment does not effectively present information to satisfy this element.

[188] As such, I find the first part of the test is not met for Record 10.

[189] I find Environment did not meet the burden of proof in specifically demonstrating subsection 22(a) of FOIP applies to the information in Record 10. As such, I recommend release of the information in Record 10 to the Applicant within 30 days of issuance of this Report. See the Appendix for details.

IV FINDINGS

[190] I find I have jurisdiction to undertake this review.

[191] I find Environment did not engage in best practices when it severed information using white space redaction.

[192] I find Environment properly considered information withheld in these records as non-responsive to the Applicant's access to information request.

[193] I find Environment properly applied subsection 16(1)(a) of FOIP to Record 8 but did not properly apply it to other records. See the Appendix for more details.

[194] I find Environment properly applied subsection 17(1)(a) of FOIP to Records 2, 3, 4, and 6 but did not properly apply it to other records. See the Appendix for more details.

[195] I find Environment did not properly apply subsection 19(1)(c)(iii) of FOIP to Record 9.

[196] I find subsections 19(1)(b) and (c)(iii) of FOIP do not apply to Record 9, as asserted by TSS.

[197] I find Environment did not properly apply subsection 22(a) of FOIP for Record 10.

V RECOMMENDATIONS

[198] I recommend, going forward, Environment use grey or black-out redaction when severing.

[199] I recommend Environment continue to withhold the non-responsive information.

[200] I recommend Environment release information as outlined in the Appendix within 30 days of issuance of this Report.

[201] I recommend Environment continue to withhold information as outlined in the Appendix.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of November 2024.

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

Appendix

Record 1 – KM Tire Recycling Star Phoenix (Media Inquiry Key Messages)				
Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
1	1	29(1)	29(1) does not apply	Release
	2	29(1)	29(1) does not apply	Release
	3	29(1)	29(1) does not apply	Release
	4	Not responsive, 16(1)(a), 17(1)(a)	Non-responsive	Withhold
	5	29(1)	29(1) does not apply	Release
2	1	Not responsive, 17(1)(a)	Non-responsive	Withhold
	2	29(1)	29(1) does not apply	Release
	3	29(1)	29(1) does not apply	Release
	4	29(1)	29(1) does not apply	Release
Record 2 – KM Tire Recycling All Saskatchewan (Media Inquiry Key Messages)				
Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
1	1	29(1)	29(1) does not apply	Release
	2	29(1)	29(1) does not apply	Release
	3	Non-responsive, 16(1)(a), 17(1)(a)	Non-responsive	Withhold
	4	17(1)(a)	17(1)(a) does apply	Withhold
	2	1	29(1)	29(1) does not apply
	2	Non-responsive, 17(1)(a)	Non-responsive	Withhold
	3	29(1)	29(1) does not apply	Release
	4	29(1)	29(1) does not apply	Release
Record 3 – Confidential Advice to the Minister (Report from Can Swan Leadership Consulting, Inc.)				
Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
6	1	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
6	2	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
6	3	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
7	1	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
7	2	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold

7	3	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
7	4	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
7	5	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
8	1	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
8	2	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
8	3	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
8	4	17(1)(a), 16(1)(a), 19(1)(b), 19(1)(c)	17(1)(a) does apply	Withhold
8	5	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
8	6	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
9	1	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
9	2	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
10	1	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
10	2	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
10	3	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
11	1	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
11	2	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
11	3	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
12	1	17(1)(a), 16(1)(a)	17(1)(a) does apply	Withhold
13	1	29(1)	29(1) does not apply	Release
13	2	29(1)	29(1) does not apply	Release
13	3	29(1)	29(1) does not apply	Release
13	4	29(1)	29(1) does not apply	Release
13	5	29(1)	29(1) does not apply	Release
13	6	29(1)	29(1) does not apply	Release
13	7	29(1)	29(1) does not apply	Release
13	8	29(1)	29(1) does not apply	Release
13	9	29(1)	29(1) does not apply	Release
13	10	29(1)	29(1) does not apply	Release
13	11	29(1)	29(1) does not apply	Release
13	12	29(1)	29(1) does not apply	Release
13	13	29(1)	29(1) does not apply	Release
13	14	29(1)	29(1) does not apply	Release
13	15	29(1)	29(1) does not apply	Release
13	16	29(1)	29(1) does not apply	Release
13	17	29(1)	29(1) does not apply	Release
13	18	29(1)	29(1) does not apply	Release
13	19	29(1)	29(1) does not apply	Release
13	20	29(1)	29(1) does not apply	Release
13	21	29(1)	29(1) does not apply	Release
13	22	29(1)	29(1) does not apply	Release
13	23	29(1)	29(1) does not apply	Release

13	24	29(1)	29(1) does not apply	Release
13	25	29(1)	29(1) does not apply	Release
13	26	29(1)	29(1) does not apply	Release
13	27	29(1)	29(1) does not apply	Release
Record 4 – Product Stewardship Programs (Briefing Note)				
Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
1	1	16(1)(a)	16(1)(a) does not apply	Release
1	2	Non-responsive, 16(1)(a), 17(1)(a)	Non-responsive	Withhold
1	3	Non-responsive, 16(1)(a), 17(1)(a)	Non-responsive	Withhold
2	1	Non-responsive, 16(1)(a), 17(1)(a)	Non-responsive	Withhold
3	1	Non-responsive, 16(1)(a), 17(1)(a)	Non-responsive	Withhold
Record 5 – KM QAs – Tire Recycling (Media Inquiry Key Messages)				
Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
1	1	16(1)(a)	16(1)(a) does not apply	Release
2	1	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	2	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	3	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	4	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	5	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	6	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release

2	7	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	8	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	9	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	10	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	11	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	12	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	13	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
2	14	Non-responsive, 17(1)(a), 16(1)(a)	Non-responsive	Withhold
3	1	Non-responsive, 17(1)(a), 16(1)(a)	Non-responsive	Withhold
3	2	17(1)(a), 16(1)(a)	17(1)(a) and 16(1)(a) do not apply	Release
3	3	Non-responsive, 17(1)(a), 16(1)(a)	Non-responsive	Withhold

**Record 6 – 2023-318
(Briefing Note)**

Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
1	1	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold
1	2	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold
1	3	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold
1	4	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold

1	5	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold
1	6	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold
1	7	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold
2	1	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold
2	2	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
2	3	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
2	4	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
2	5	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
3	1	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
3	2	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
3	3	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
3	4	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
	5	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
3	6	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
3	7	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
3	8	Non-responsive, 16(1)(a), (d)(i), 17(1)(a), (b)(i), (ii)	Non-responsive	Withhold
3	9	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold
4	1 and 2	17(1)(a), (b)(i), (ii), 16(1)(a), (d)(i)	17(1)(a) does apply	Withhold

Record 7 – Media Statement

Released in full

Record 8 – Cabinet Update (Speaking Notes)				
Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
1	1	16(1)(a)	16(1)(a) does apply	Withhold
2	1	16(1)(a)	16(1)(a) does apply	Withhold
Record 9 – TSS Key Messages (Key Messages)				
Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
1	1	17(1)(a)	17(1)(a) does not apply	Release
1	2	17(1)(a)	17(1)(a) does not apply	Release
1	3	17(1)(a), 19(1)(b), (c)(ii), (c)(iii)	17(1)(a), 19(1)(b), (c)(ii), and (c)(iii) do not apply	Release
1	4	17(1)(a)	17(1)(a) does not apply	Release
1	5	17(1)(a), 19(1)(b), (c)(ii), (c)(iii)	17(1)(a), 19(1)(b), (c)(ii), and c(iii) do not apply	Release
1	6	17(1)(a)	17(1)(a) does not apply	Release
Record 10 – Confidential – Ministry Advice on Tire Recycling and Processing Review (Summary)				
Page Number	Redaction Number	FOIP Exemptions Applied	IPC Findings	IPC Recommendations
1	1	16(1)(a)	16(1)(a) does not apply	Release
1	2	16(1)(a)	16(1)(a) does not apply	Release
1	3	16(1)(a)	16(1)(a) does not apply	Release
1	4	16(1)(a)	16(1)(a) does not apply	Release
2	1	16(1)(a)	16(1)(a) does not apply	Release
2	2	16(1)(a)	16(1)(a) does not apply	Release
2	3	16(1)(a)	16(1)(a) does not apply	Release
2	4	16(1)(a)	16(1)(a) does not apply	Release

2	5	16(1)(a)	16(1)(a) does not apply	Release
2	6	16(1)(a)	16(1)(a) does not apply	Release
2	7	16(1)(a)	16(1)(a) does not apply	Release
2	8	16(1)(a)	16(1)(a) does not apply	Release
3	1	16(1)(a)	16(1)(a) does not apply	Release
3	2	16(1)(a)	16(1)(a) does not apply	Release
3	3	16(1)(a)	16(1)(a) does not apply	Release
3	4	16(1)(a)	16(1)(a) does not apply	Release
3	5	16(1)(a), 22(a)	16(1)(a) and 22(a) do not apply	Release
3	6	16(1)(a)	16(1)(a) does not apply	Release
4	1	16(1)(a)	16(1)(a) does not apply	Release
5	1	16(1)(a)	16(1)(a) does not apply	Release
5	2	16(1)(a)	16(1)(a) does not apply	Release
5	3	16(1)(a)	16(1)(a) does not apply	Release
5	4	16(1)(a)	16(1)(a) does not apply	Release
5	5	16(1)(a)	16(1)(a) does not apply	Release
5	6	16(1)(a)	16(1)(a) does not apply	Release
5	7	16(1)(a)	16(1)(a) does not apply	Release
6	1	16(1)(a)	16(1)(a) does not apply	Release
6	2	16(1)(a)	16(1)(a) does not apply	Release
6	3	16(1)(a)	16(1)(a) does not apply	Release
6	4	16(1)(a)	16(1)(a) does not apply	Release
6	5	16(1)(a)	16(1)(a) does not apply	Release

6	6	16(1)(a)	16(1)(a) does not apply	Release
6	7	16(1)(a)	16(1)(a) does not apply	Release
7	1	16(1)(a)	16(1)(a) does not apply	Release
8	1	16(1)(a)	16(1)(a) does not apply5	Release
8	2	16(1)(a)	16(1)(a) does not apply	Release
10	1	16(1)(a)	16(1)(a) does not apply	Release