



REVIEW REPORT 168-2023

Public Service Commission

November 7, 2023

Summary:

The Applicant submitted an access to information request to the Public Service Commission (PSC) regarding the Conservation Officer wage supplementation related to the formation of the Provincial Protection and Response Team. PSC responded indicating it was releasing some of the records but refusing the Applicant access to other records pursuant to subsections 17(1)(a), (b), 19(1)(b), 20(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the Commissioner. In the course of the review, PSC indicated it was no longer relying on subsection 19(1)(b) of FOIP but it was relying on another mandatory exemption to withhold information, subsection 13(1)(b) of FOIP. The Commissioner found that subsections 17(1)(a), (b), 13(1)(b) and 29(1) of FOIP applies to some, but not all, of the records to which PSC applied the exemptions. He also found that subsection 20(a) of FOIP does not apply. The Commissioner summarized his findings and recommendations in an Appendix to the Report.

I BACKGROUND

[1] On April 14, 2023, the Public Service Commission (PSC) received the following access to information request from the Applicant:

[Name of Organization] is looking to obtain any and all documents and correspondence on the topic of Conservation Officer wage supplementation in relation to the formation of the Provincial Protection and Response Team (PRT) dating back to 2017. Documents and correspondence is also requested on the wage supplement annual review process from implementation to current day.

The PSC has indicated that market research was conducted to form a determination final report that resulted in the 15% wage supplement for Conservation Officers. We

would like to review this market research and final report. As such we are specifically requesting access to those documents and reports.

Finally, and in conclusion, our association is requesting access and release to all market research, compensation research, relevant correspondence between the employer, branch and Saskatchewan Government and General Employees Union (SGEU), along with the final report that formed the determination of the 15% supplement value.

- [2] The Applicant specified the time period is from August 22, 2017 to the date of the access request.
- [3] In a letter dated May 12, 2023, PSC indicated to the Applicant that it was extending the 30-day time period to respond by an additional 30 days pursuant to subsection 12(1)(a)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [4] Then, in a letter dated June 12, 2023, PSC responded to the Applicant's access request. It said it would provide the Applicant access to portions of the records but refused access to some of the information. It cited subsections 17(1)(a), (b), 19(1)(b), 20(a), and 29(1) of FOIP as its reasons for refusing the Applicant to some of the information in the records.
- [5] On June 26, 2023, the Applicant requested a review by my office.
- [6] In the course of my office's intake process, PSC clarified it meant to rely on subsection 13(1)(b) of FOIP instead of subsection 19(1)(b) of FOIP.
- [7] On August 11, 2023, my office notified both PSC and the Applicant that it would be undertaking a review.
- [8] On October 31, 2023, PSC provided a submission to my office.
- [9] The Applicant did not provide a submission in this review.

II RECORDS AT ISSUE

[10] In total, there are 99 records at issue, withheld in part. However, due to a numbering error, the records at issue are numbered 1 to 110 where numbers 81 to 89, 100, and 109 were skipped. I note this error in the Appendix.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] PSC qualifies as a “government institution” as defined by subsection 2(1)(d)(ii) of FOIP and subsection 3(a) and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I find that I have jurisdiction to conduct this review.

2. Did PSC properly apply subsection 17(1)(a) of FOIP?

[12] PSC applied subsection 17(1)(a) of FOIP to records 2 to 9, 11, 12, 14, 15, 18 to 21, 23 to 25, 27 to 30, 32 to 41, 45 to 49, 51, 53, 54, 57, 61 to 68, 71 to 76, 79, 80, 91 to 99, 101 to 103, 105, 107, 108, and 110.

[13] 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;

[14] 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*, Chapter 4: “Exemptions from the Right of Access”, Updated April 30, 2021 [*Guide to FOIP*, Ch. 4], p. 125)

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

[15] Pages 124 to 125 of Chapter 4 of my office’s *Guide to FOIP* provides 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 “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”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.
- A “proposal” is something offered for consideration or acceptance.
- “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.

[16] Based on a review, the track changes in Record 9 and redaction 1 of Record 51 qualified as “advice” as they contained guidance from one PSC employee to another.

- [17] Further, I note that redaction 4 (the second last paragraph of page 2) of Records 12, 18, 27, and 32 qualify as recommendations regarding next steps.
- [18] Also, Records 45 to 48 (“Competitive Market Analysis: Supplemented Salary Range Review (2022)”), Record 49 (market research analysis), and Records 72 (Analysis of variance of wages), 79 (“2022 Supplement Survey Data Analysis”), and 80 (Analysis of variance of wages) qualify as analysis.
- [19] Finally, Record 99 features two scenarios and the “risks and considerations” involved in each scenario. The contents qualify as “advice” as it provides pros and cons for each scenario.
- [20] Therefore, I find that portions of Records 9, 12, 18, 27, 32, 45 to 48, 51, 72, 79 to 80 and 99 meet the first part of the two-part test.
- [21] However, I note that PSC broadly applied subsection 17(1)(a) of FOIP to the majority of the records. In its submission, PSC provided arguments for each record to which it applied the exemption. In other words, PSC argued why the majority of the records contain advice, proposals, recommendations, analyses or policy options. However, after reviewing the records, my office found the majority of the records did not contain advice, proposals, recommendations, analyses or policy options. For example:
- Record 8 contains a table entitled “Human Resource Plan”. The table outlines key actions, who the lead is, a date for the completion, and the status. PSC asserted in its submission that the record “contains recommendations for a course of action, which also include the identification of the lead and support.” I disagree. The record is a Human Resource Plan that identifies key actions that need to be taken in order to complete the plan. The key actions are not recommendations.
 - Record 12 (redactions 1 and 2) is an email that explains the methodology undertaken to conduct analysis. However, the email does not contain the analysis itself.
 - Record 14 is a meeting invitation from the Chair of PSC to staff. The Chair requested a briefing from staff. PSC asserted in its submission that the record

“contains advice of the Chair of the PSC at the time to several senior leaders of the PSC.”. However, based on a review, the record contains direction from the Chair, not advice.

- Record 39 contains an email dated June 6, 2022 (timestamped 4:10pm) from a Manager and Senior Compensation Consultant to an Executive Director. The email contains background information regarding a particular matter. PSC’s submission asserted that a bullet point within the email contains advice. However, upon review by my office, the bullet point contains a finding resulting from market research – not advice. Further, PSC asserted that another bullet point contained a recommendation by “Compensation” (which is a part of PSC). However, based on a review by my office, the bullet point at issue contains the position of “Compensation” and a description of direction given to “Compensation”. Such information does not qualify as a recommendation.
- Records 96 and 97 contain emails from the Manager and Senior Compensation Consultant. PSC’s submission asserted that the emails contained advice. However, upon review, the emails summarize the conclusion of a review of supplemented salary ranges. The email in Record 96 also contains a description of methodology used. However, the conclusion of a review and a description of methodology does not qualify advice, proposals, recommendations, analyses, or policy options.

[22] Therefore, I find that PSC did not properly apply subsection 17(1)(a) of FOIP to the majority of the Records to which it applied the exemption. My findings and recommendations are set out in the Appendix.

[23] I will continue to determine if Records 9, 51, 12, 18, 27, 32, 45 to 48, 51, 72, 79, 80, and 99 meet the second part of the two-part test.

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?*

[24] Page 126 of Chapter 4 of my office’s *Guide to FOIP* provides the following definitions:

- “Executive Council” means the Executive Council appointed pursuant to The Executive Government Administration Act. It consists of the Premier and Cabinet Ministers. Executive Council is also referred to as “Cabinet”. Cabinet has also 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.

- “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 the government institution and at its request (for example, by a service provider or stakeholder).

[25] Regarding Record 99, on its face, I cannot determine who developed the advice or who the advice was for. PSC’s submission does not identify who developed the advice or who the advice was for. Therefore, the second part of the two-part test is not met. Therefore, I find that PSC has not demonstrated that subsection 17(1)(a) of FOIP applies to Record 99.

[26] Based on a review of portions of Records 9, 12, 18, 27, 32, 45 to 48, 51, 72, 79 and 80 that have already met the first part of the two-part test, I note the following:

- The track changes (advice) in Record 9 was developed by an Executive Director at PSC.
- Redaction 4 in Records 12, 18, 27, and 32 (recommendation) was developed by an Executive Director at PSC.
- The analysis in records 45 to 48 and 49 was developed by Total Rewards at PSC.
- Redaction 1 in Record 51 (advice) was developed by a Senior Compensation Consultant at PSC.
- The analysis in Records 79 and 80 were developed by Total Rewards at PSC.

[27] Therefore, I find that portions of Records 9, 12, 18, 27, 32, 45 to 48, 51, 72, 79 and 80 meet the second part of the two-part test. I find that PSC properly applied subsection 17(1)(a) of FOIP to portions of Records 9, 51, 12, 18, 27, 32, 45 to 48, 51 72, 79 and 80.

[28] My findings and recommendations are set out in the Appendix.

3. Did PSC properly apply subsection 17(1)(b) of FOIP?

[29] PSC applied subsection 17(1)(b) of FOIP to Records 9, 10, 12, 13, 15, 17, 18, 20, 23, 25, 27, 29, 31, 32, 34, 37, 38, 41, 50, 51, 53, 57, 59, 60, 67, 96, 97, and 106.

[30] Subsection 17(1)(b) of FOIP provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

(ii) a member of the Executive Council; or

(iii) the staff of a member of the Executive Council;

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

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

(*Guide to FOIP*, Ch. 4, pp. 132-133)

1. Does the record contain consultations or deliberations?

[32] Pages 132 and 133 of Chapter 4 of my office's *Guide to FOIP* provide the following definitions:

- "Consultation" means the action of consulting or taking counsel together: deliberation, conference; a conference in which the parties consult and deliberate. A consultation can occur when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation.
- "Deliberation" means the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision; A deliberation can occur when there is a discussion or

consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

[33] Based on a review, a consultation appears on Record 51 in an email dated October 18, 2021 (timestamped 1:24pm) (“redaction 2”) when one employee sought the view of another employee regarding the proposed wording of a response.

[34] However, I do not find that the other records to which PSC applied subsection 17(1)(b) of FOIP to contain consultations or deliberations. There appears to be confusion as to what constitutes a “consultation” or “deliberation”. In past reports, I have quoted [Order F2013-13](#) by an adjudicator from Alberta’s Office of the Information and Privacy Commissioner (AB IPC) that speaks to subsections 24(1)(a) and (b) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP), which is very similar to subsections 17(1)(a) and (b) of FOIP. The Order clarifies what a consultation and deliberation are:

[para 146] I agree with the interpretation Commissioner Clark assigned to the terms “consultation” and “deliberation” generally. However, as I stated in Order F2012-10, section 24(1)(b) differs from the section 24(1)(a) in that section 24(1)(a) is intended to protect communications developed for a public body by an advisor, while **section 24(1)(b) protects communications involving decision makers.** That this is so is supported by the use of the word deliberation: **only a person charged with making a decision can be said to deliberate that decision.** Moreover, **“consultation” typically refers to the act of seeking advice regarding an action one is considering taking,** but not to giving advice in relation to it. 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; however, such information cannot be described as a “consultation” or a “deliberation”. Put simply, section 24(1)(a) is concerned with the situation where advice is given, **section 24(1)(b) is concerned with the situation where advice is sought or considered.**

[Emphasis added]

[35] The following are examples of where PSC applied subsection 17(1)(b) of FOIP but the contents do not qualify as consultations or deliberations:

- Record 12 (redactions 1 and 2) is an email that explains the methodology undertaken to conduct analysis. In its submission, PSC explained that the information was “used for deliberation/internal consultation”. Information “used

for deliberation/internal consultation” does not transform the information into deliberations or consultations.

- Record 20 (redaction 3) is an email from a Senior Compensation Consultant to a Senior HR Business Partner. The Senior Compensation Consultant asks if the Senior HR Business Partner is aware of a ministry’s position on a matter and if there is a particular requirement for a process. As such, the Senior Compensation Consultant is seeking information, not advice. Therefore, redaction 3 in Record 20 does not qualify as a consultation.
- Record 20 (redaction 4) is an email from an Executive Director to a Senior Human Resource Business Partner. The Executive Director provides their understanding of how a particular process works. As such, the Executive Director is providing information, not advice. Therefore, redaction 4 in Record 20 does not qualify as a consultation.
- Record 20 (redaction 5) is an email from the Senior Compensation Consultant to an Executive Director. The Senior Compensation Consultant provides their understanding of how a particular process works. As such, the Senior Compensation Consultant is providing information, not advice. Therefore, redaction 5 in Record 20 does not qualify as a consultation.
- Record 51 (redactions 3 and 4) is an email from a Human Resource Business Partner to a Manager and Senior Compensation Consultant. PSC asserted that the Human Resource Business Partner was seeking the view of the Senior Compensation Consultant regarding two documents and a question raised by the Compensation Branch of PSC. Based on a review, the email contains information about a process. Then, the Human Resource Business Partner seeks information from the Manager and Senior Compensation Consultant, not advice. Therefore, redactions 3 and 4 in Record 51 does not qualify as a consultation.
- Record 51 (redaction 7) is an email from the Human Resource Business Partner to the Manager and Senior Compensation Consultant. The Human Resource Business Partner is seeking information on a process (not advice). Therefore, redaction 7 in Record 51 does not qualify as a consultation.
- Record 96 is an email dated October 6, 2020 (timestamped 9:20am). PSC applied subsection 17(1)(b) of FOIP to two sentences in the email. The email is by the Manager and Senior Compensation Consultant to the Acting Executive Director. PSC’s submission asserted that that the Manager and Senior Compensation Consultant was consulting with the Acting Executive Director. However, after considering the context and the response of the Acting Executive Director, it appears that the Manager and Senior Compensation Consultant sought the approval (and not advice) of the Acting Executive Director. Therefore, the contents of Record 96 does not qualify as a consultation.

[36] Therefore, I find that PSC did not properly apply subsection 17(1)(b) of FOIP to the majority of the Records to which it applied the exemption. My findings and recommendations are set out in the Appendix.

[37] I will continue to determine if redaction 2 in Record 51 meet the second part of the two-part test.

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?

[38] Page 133 of Chapter 4 of my office's *Guide to FOIP* provides the following definitions:

- “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.

[39] Based on a review of redaction 2 of Record 51, the consultation involves employees of PSC. Therefore, the second part of the two-part test is met. I find that PSC properly applied subsection 17(1)(b) of FOIP redaction 2 of Record 51. See the Appendix for my recommendation.

4. Did PSC properly apply subsection 13(1)(b) of FOIP?

[40] PSC applied subsection 13(1)(b) of FOIP to Record 77.

[41] Subsection 13(1)(b) of FOIP provides:

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

...

(b) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;

[42] My office uses the following three-part test to determine if subsection 13(1)(b) of FOIP applies:

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

(*Guide to FOIP*, Ch. 4, pp. 22-25)

- 1. *Was the information obtained from the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions?***

[43] Page 22 of Chapter 4 of my office's *Guide to FOIP* provides the following definitions:

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

[44] Record 77 contains three tables. PSC applied subsection 13(1)(b) of FOIP to the first table (not the second or third table). This table contains salary information for the following:

- Government of Saskatchewan.
- Government of British Columbia.
- Government of Alberta.
- Government of Manitoba.
- Government of Ontario.

[45] In its submission, PSC said information was provided by the Government of British Columbia, Government of Alberta and the Government of Manitoba. I am satisfied that PSC obtained salary information from the Government of British Columbia, Government of Alberta and the Government of Manitoba.

[46] However, PSC did not speak to the information about the Government of Saskatchewan, the Government of Ontario that is in the table. Therefore, I find that the rows in the table with information about the Government of Saskatchewan and the Government of Ontario do not meet the first part of the three-part test. In other words, I find that subsection 13(1)(b) of FOIP does not apply to the rows of the table about the Government of Saskatchewan or the Government of Ontario.

2. *Was the information obtained implicitly or explicitly in confidence?*

[47] Pages 23 and 24 of Chapter 4 of my office's *Guide to FOIP* provide the following definitions:

- “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the provider of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the government institution and the party that provided the information.
- “Implicitly” means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential.
- “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was obtained with the understanding that it would be kept confidential.

[48] In its submission, PSC asserted it obtained the information in confidence. In the course of this review, the Government of British Columbia, Government of Alberta and Government of Manitoba indicated that it provided the information in confidence.

[49] Based on a review of the information in the record as well the information received from the other governments, I find that PSC obtained the information in confidence.

3. *Is there consent to disclose the information or has the information been made public?*

[50] Page 25 of Chapter 4 of my office's *Guide to FOIP* provides the following definitions:

- “Consent” in this context means there is an agreement, approval or permission to disclose the information.
- “Public” in this context means the information in the record is open to view by the public.
- “Released to the public” means made available to the public at large either through active dissemination channels or through provision of the information at specific locations (e.g. public libraries, posted to a website).

[51] Based on the correspondence from the Government of British Columbia, Government of Alberta, and Government of Manitoba, each indicated it does not consent to the disclosure of the information. Further, there is no indication that this information has been made public.

[52] Therefore, I find that PSC properly applied subsection 13(1)(b) of FOIP to the rows in the table with information about the Government of British Columbia, Government of Alberta and Government of Manitoba in Record 77. My findings and recommendations are set out in the Appendix.

5. Did PSC properly apply subsection 20(a) of FOIP?

[53] PSC applied subsection 20(a) of FOIP to Records 25, and 45 to 49.

[54] Subsection 20(a) of FOIP provides:

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

(a) testing or auditing procedures or techniques;

...

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

[55] My office uses the following two-part test to determine if subsection 20(a) of FOIP applies:

1. Does the record contain information relating to testing or auditing procedures or techniques?
2. Could disclosure reasonably be expected to prejudice the use or results of particular tests or audits?

(*Guide to FOIP*, Ch. 4, pp. 244-245)

- 1. *Does the record contain information relating to testing or auditing procedures or techniques?***

[56] Pages 243 and 244 of Chapter 4 of my office's Guide to FOIP provide:

- “Relating to” should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as “substantial connection”) for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. “Relating to” requires some connection between the information and the testing or auditing procedures or techniques.
- A “test” is a set of questions, exercises, or practical activities that measure either what someone knows or what someone or something is like or can do.
- An “audit” is the formal examination of an individual’s or organization’s accounting records, financial situation, or compliance with some other set of standards. It is the systematic identification, evaluation, and assessment of an organization’s policies, procedures, acts, and practices against pre-defined standards.
- “Procedures” are the manner of proceeding; a system of proceeding; conduct, behavior.
- “Techniques” are the manner of execution or performance in relation to mechanical or formal details; a skillful or efficient way of doing or achieving something.
- The terms “testing” and “auditing” cover a wide range of activities. Examples include environmental testing, language testing, personnel audits, financial audits, staffing examinations and program audits. The exemption applies to testing and auditing carried out by government institutions, consultants and contractors.

[57] PSC had applied subsection 20(a) of FOIP to redaction 18 of Record 25. However, in its submission PSC did not offer arguments as to why subsection 20(a) of FOIP applies. On the face of the record, I cannot identify any testing or auditing procedures or techniques. Therefore, redaction 18 of Record 25 does not meet the first part of the test. I find that PSC did not properly apply subsection 20(a) of FOIP to Record 25.

[58] As described earlier, Records 45 to 48 are versions of a document entitled “Competitive Market Analysis: Salary Range Review (2022)”. In its submission, PSC asserted that the portions redacted pursuant to subsection 20(a) of FOIP describe analysis methodology. It said:

20(a) was used to redact details of the market research methodology and recruitment and retention analysis methodology. Testing procedures, understood broadly, would include methodology as it talks about procedures associated with research and analysis. We also argue that the disclosure of this information can reasonably be expected to prejudice the use or results of these analysis and research.

[59] Based on a review of the redacted portions of Records 45 to 48, the description of the analysis methodology does not reveal any testing or auditing procedures. The description of analysis methodology is not the same as testing or auditing procedures. For example, redaction 1 of Records 45 to 48 is a description of the methodology undertaken to analyze the Government of Saskatchewan’s market competitiveness in terms of salary for certain occupations. Government of Saskatchewan’s market competitiveness is not being tested or audited. Rather, it is being analyzed to determine how the Government of Saskatchewan’s salaries for certain occupations compare to those of similar organizations in the Canadian market.

[60] Therefore, I find that Records 45 to 48 do not contain information relating to testing or auditing procedures or techniques and that PSC did not properly apply subsection 20(a) of FOIP to them.

[61] See the Appendix for my recommendations.

6. Did PSC properly apply subsection 29(1) of FOIP?

[62] PSC applied subsection 29(1) of FOIP to Records 13, 24, and 25.

[63] 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.

[64] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains to, consents to its disclosure or if the disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP (*Guide to FOIP*, Chapter 6, “Protection of Privacy”, updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 183).

[65] In order to withhold information pursuant to subsection 29(1) of FOIP, the information must qualify as “personal information” as defined by subsection 24(1) of FOIP. To qualify as personal information as defined by subsection 24(1) of FOIP, the information must: 1) be about an identifiable individual; and 2) be personal in nature. 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. To be “personal in nature” means the information provides something identifiable about the individual (*Guide to FOIP*, Ch. 6, pp. 32-33).

[66] Relevant to this review are subsections 24(1)(b), (e) and (f) of FOIP, which provide 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;

...

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

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

[67] Record 13 is transcript of questions asked during a virtual town hall meeting. Employees of the Ministry of Environment were able to submit questions electronically. The transcript shows the name of the employee and the time in which they submitted the question. Environment indicated that the names of the individuals who submitted a question should be redacted (except for the Applicant's name) and a cell phone number that appears in the transcript. PSC said:

Upon further review, the PSC would like to redact the names of the individuals on pp. 2-3 under 29(1), except for the name of the FOI applicant. The names should be redacted since the individuals shared their personal opinions and asked questions as part of a townhall meeting. In addition, the PSC would like to redact a cell phone number on p. 2 under 29(1) as this number can potentially be a personal cell number. All other information can be released to the applicant.

[68] An "absurd result" occurs when a government institution applies an exemption to withhold records that contradicts the purpose of FOIP. Past reports by my offices (such as [Review Report 047-2022](#)) state that the absurd result principle applies in the following circumstances:

- The requester provided the information to the government institution;
- The requester was present when the information was presented to the government institution; and/or
- The information is clearly within the requester's knowledge.

[69] In this case, it appears that the Applicant was present and participated in the virtual town hall meeting. Therefore, it would be an absurd result to withhold information in Record 13. Also, I note that the cell phone number appears to be the business cell number of a government employee (and not a personal cell number). In many past reports, I have stated

that telephone numbers used in a professional or business capacity are not personal in nature, and therefore not personal information. As such, I find that PSC did not properly apply subsection 29(1) of FOIP to Record 13.

[70] Record 24 is an email by a Senior Compensation Consultant to another PSC employee. The name of a specific employee and hiring period appears in the Attachments field. The name of the specific employee also appears in the opening paragraph of the email. I find that such information qualifies as personal information as defined by subsection 24(1)(b) of FOIP. Therefore, I find that PSC properly applied subsection 29(1) of FOIP to these two portions in Record 24.

[71] Record 25 is a 6-page document that provides the history of a specific employee's salary calculations. It includes copies of correspondence between the employee and the Ministry they worked for, including letters of offer (which includes the employee's mailing address). Such information qualifies as personal information as defined by subsection 24(1)(b), (e), and (f) of FOIP. I find that PSC properly applied subsection 29(1) of FOIP to Record 25.

[72] See the Appendix for my recommendations.

7. Are there non-responsive records?

[73] PSC identified that Record 10, 90, and 110 are non-responsive. In its submission, PSC asserted that additional records, such as Record 99, is non-responsive. However, for those additional records, I considered the exemptions it originally applied to the record instead of determining if they are responsive or not. I also note that PSC determined that Record 110 is actually responsive. However, it determined that subsection 17(1)(a) of FOIP applied to it. Therefore, in this section of the Report, I am only considering whether Records 10 and 90 are responsive or not to the access request.

[74] When determining what information is responsive, a government institution should consider the following:

- The request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.
- A government institution can remove information as not responsive only if the applicant has requested specific information, such as the applicant's own personal information.
- The government institution may treat portions of a record as not responsive if they are clearly separate and 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*, Chapter 3: "Access to Records", Updated May 5, 2023 [Guide to FOIP, Ch. 3], pp. 26-27)

[75] Record 10 contains an arbitration decision regarding a wage supplement for Conservation Officers related to the formation of a new Protection and Response Team in 2017, and email exchanges between PSC employees. I find the arbitration decision and email exchanges to not be separate and distinct and entirely unrelated to the access request. In other words, I find Record 10 to be responsive to the access request. I note that PSC also applied subsection 17(1)(b) of FOIP to Record 10. I have already considered subsection 17(1)(b) of FOIP earlier in this Report. My findings and recommendations are set out in the Appendix.

[76] Record 90 includes tables regarding supplemented salary ranges in Information and Technology (IT) positions. Given that the access request is regarding the wage supplement for Conservation Officers, I find that record 90 related to IT positions to be non-responsive. However, in my blog post, "What About the Non-Responsive Record?", I encourage government institutions to release non-responsive records where an exemption does not

apply. Therefore, I recommend that PSC consider releasing Record 90 to the Applicant subject to any exemptions found to apply.

IV FINDINGS

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

[78] I find that PSC properly applied subsection 17(1)(a) of FOIP to portions of Records 9, 12, 18, 27, 32, 45 to 48, 51, 72, 79 and 80.

[79] I find that PSC did not properly apply subsection 17(1)(a) to the majority of the Records to which it applied the exemption.

[80] I find that subsection 17(1)(b) of FOIP applies to redaction 2 of Record 51.

[81] I find that PSC properly applied subsection 13(1)(b) of FOIP to the rows in the table with information about the Government of British Columbia, Government of Alberta and Government of Manitoba in Record 77.

[82] I find that subsection 13(1)(b) of FOIP does not apply to the rows of the table in Record 77 about the Government of Saskatchewan or the Government of Ontario.

[83] I find that PSC did not properly apply subsection 20(a) of FOIP to Records 25, and 45 to 48.

[84] I find that PSC did not properly apply subsection 17(1)(b) to the majority of the Records to which it applied the exemption.

[85] I find that PSC did not properly apply subsection 29(1) of FOIP to Record 13.

[86] I find that PSC properly applied subsection 29(1) of FOIP to the two mentions of an individual's name in Record 24.

[87] I find that PSC properly applied subsection 29(1) of FOIP to Record 25.

[88] I find Record 10 to be responsive to the access request.

[89] I find that record 90 related to IT positions to be non-responsive.

V RECOMMENDATION

[90] I recommend that PSC comply with the recommendations set out in the Appendix.

Dated at Regina, in the Province of Saskatchewan, this 7th day of November, 2023.

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

Appendix

Record	Exemptions applied by PSC	IPC Findings	IPC Recommendations
1	Released		
2	17(1)(a) of FOIP	PSC indicated it was no longer relying on subsection 17(1)(a) of FOIP to withhold this record.	Release.
3	17(1)(a) of FOIP	PSC indicated it would disclose this record.	Release.
4	17(1)(a) of FOIP	PSC indicated it would disclose this record.	Release.
5	17(1)(a) of FOIP	PSC indicated it would disclose this record.	Release.
6	17(1)(a) of FOIP	PSC indicated it would disclose this record.	Release.
7	17(1)(a) of FOIP	PSC indicated it would disclose this record.	Release.
8	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
9	17(1)(a) and (b) of FOIP	17(1)(a) of FOIP applies to the track changes but not remainder of record.	Continue to withhold track changes pursuant to subsection 17(1)(a) of FOIP. Release remainder.
10	17(1)(b) of FOIP; non-responsive.	The record is responsive. 17(1)(b) of FOIP does not apply.	Release.
11	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
12	17(1)(a) and (b) of FOIP	17(1)(a) of FOIP applies to redaction 4 (second last paragraph on page 2). 17(1)(b) of FOIP does not apply.	Continue to withhold redaction 4 (second last paragraph on page 2). Release remainder.
13	17(1)(b); 29(1) of FOIP	17(1)(b) of FOIP does not apply. 29(1) of FOIP does not apply.	Release.

14	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
15	17(1)(a) and (b) of FOIP	PSC is no longer relying on subsections 17(1)(a) and (b) of FOIP.	Release.
16	Released		
17	17(1)(b) of FOIP	PSC is no longer relying on subsection 17(1)(b) of FOIP.	Release.
18	17(1)(a) and (b) of FOIP	17(1)(a) of FOIP applies to redaction 4 (second last paragraph on page 2). 17(1)(b) of FOIP does not apply.	Continue to withhold redaction 4 (second last paragraph on page 2). Release remainder.
19	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
20	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
21	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
22	Released		
23	17(1)(a) and (b) of FOIP	PSC is no longer relying on subsections 17(1)(a) and (b) of FOIP.	Release.
24	17(1)(a); 29(1) of FOIP	29(1) of FOIP applies to the name of the individual in the Attachments field and in the opening paragraph of the email. 17(1)(a) of FOIP does not apply.	Continue to withhold the name of the individual in the Attachments field and in the opening paragraph of the email. Release remainder.
25	17(1)(a) and (b); 29(1); 20(a) of FOIP	29(1) of FOIP applies.	Continue to withhold.
26	Released		
27	17(1)(a) and (b) of FOIP	17(1)(a) of FOIP applies to redaction 4 (second last paragraph on page 2). 17(1)(b) of FOIP does not apply.	Continue to withhold redaction 4 (second last paragraph on page 2). Release remainder.
28	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.

29	17(1)(a) and (b) of FOIP	PSC is no longer relying on subsections 17(1)(a) and (b) of FOIP.	Release.
30	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
31	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
32	17(1)(a) and (b) of FOIP	17(1)(a) of FOIP applies to redaction 4 (second last paragraph on page 2). 17(1)(b) of FOIP does not apply.	Continue to withhold redaction 4 (second last paragraph on page 2). Release remainder.
33	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
34	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
35	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
36	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
37	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
38	17(1)(a) and (b) of FOIP	PSC is no longer relying on subsection 17(1)(a) and (b) of FOIP.	Release.
39	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
40	17(1)(a) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
41	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
42	Released		
43	Released		
44	Released		
45	17(1)(a); 20(a) of FOIP	17(1)(a) of FOIP applies to redactions 3, 5, 6, 9, 10, 11, 12. 20(a) of FOIP does not apply.	Continue to withhold redactions 3, 5, 6, 9, 10, 11, 12 pursuant to 17(1)(a) of FOIP. Release remainder.
46	17(1)(a); 20(a) of FOIP	17(1)(a) of FOIP applies to redactions 3, 5, 6, 9, 10. 20(a) of FOIP does not apply.	Continue to withhold redactions 3, 5, 6, 9, 10 pursuant to 17(1)(a) of FOIP. Release remainder.

47	17(1)(a); 20(a) of FOIP	17(1)(a) of FOIP applies to redactions 3, 5, 6, 9, 10, 11, 12, 13, 14. 20(a) of FOIP does not apply.	Continue to withhold redactions 3, 5, 6, 9, 10, 11, 12, 13, 14 pursuant to 17(1)(a) of FOIP. Release remainder.
48	17(1)(a); 20(a) of FOIP	17(1)(a) of FOIP applies to redactions 3, 5, 6. 20(a) of FOIP does not apply.	Continue to withhold redactions 3, 5, 6 pursuant to 17(1)(a) of FOIP. Release remainder.
49	17(1)(a) of FOIP	17(1)(a) of FOIP applies to redactions 1, 2, 3.	Release.
50	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
51	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
52	Duplicate of Record 17		Release.
53	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
54	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
55	Released		
56	Released		
57	17(1)(a) and (b) of FOIP	17(1)(a) of FOIP applies to redaction 4 (second last paragraph on page 2). 17(1)(b) of FOIP does not apply.	Continue to withhold redaction 4 (second last paragraph on page 2). Release remainder.
58	Released		
59	17(1)(b); 29(1) of FOIP	Neither 17(1)(b) nor 29(1) of FOIP does not apply.	Release.
60	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
61	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
62	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
63	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
64	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
65	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.

66	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
67	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
68	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
69	Released		
70	Released		
71	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
72	17(1)(a) of FOIP	17(1)(a) of FOIP applies.	Continue to withhold pursuant to subsection 17(1)(a) of FOIP.
73	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
74	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
75	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
76	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
77	13(1)(b) of FOIP	13(1)(b) of FOIP applies to the rows in Table 1 about the Government of British Columbia, Government of Alberta, and Government of Manitoba.	Continue to withhold the rows in Table 1 about the Government of British Columbia, Government of Alberta, and Government of Manitoba pursuant to subsection 13(1)(b) of FOIP. Release remainder.
78	Released		
79	17(1)(a) of FOIP	17(1)(a) of FOIP applies.	Continue to withhold pursuant to subsection 17(1)(a) of FOIP.
80	17(1)(a) of FOIP	17(1)(a) of FOIP applies.	Continue to withhold pursuant to subsection 17(1)(a) of FOIP.
81 to 89	Misnumbering; no records are numbered 81 to 89		
90	Non-responsive	This record is responsive.	Release subject to exemptions.
91	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
92	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
93	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
94	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.

95	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
96	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
97	17(1)(a) and (b) of FOIP	Neither 17(1)(a) nor (b) of FOIP apply.	Release.
98	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
99	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
100	Misnumbering; there is no Record 100		
101	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
102	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
103	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
104	Released		
105	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
106	17(1)(b) of FOIP	17(1)(b) of FOIP does not apply.	Release.
107	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
108	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.
109	Misnumbering; there is no Record 109		
110	17(1)(a) of FOIP	17(1)(a) of FOIP does not apply.	Release.