



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 199-2025

Saskatchewan Marshals Service

March 17, 2026

Summary:

The Applicant submitted an access to information request to the Ministry of Corrections, Policing and Public Safety (Corrections) for the total number of allegations of misconduct/investigations involving the Saskatchewan Marshals Service (SMS) and all related information. In the course of processing the access request, *The Freedom of Information and Protection of Privacy Regulations (FOIP Regulations)* were amended and SMS was established as a government institution under *The Freedom of Information and Protection of Privacy Act (FOIP)* with the Chief Marshal identified as the prescribed head of the government institution. SMS responded to the access request by providing heavily redacted records to the Applicant.

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

The Commissioner found that SMS: (1) properly applied the exemption in sections 15(1)(c) (disclose information with respect to a lawful investigation) and 15(1)(k) (disclose information respecting a law enforcement matter) of *FOIP* to some but not all the pages; (2) properly applied the exemption in section 13(2) (information obtained in confidence from a local authority) of *FOIP*; (3) properly applied the exemption in section 29(1) (third party personal information) of *FOIP* to personal information; and (4) established a *prima facie* case in justifying the application of the exemption in section 22(a) (solicitor-client privilege) of *FOIP*.

The Commissioner recommended that SMS:

- 1) Within 30 days of the issuance of this Report, release pages of the record where it was found that SMS did not properly apply sections 15(1)(c) and 15(1)(k) of *FOIP*.
- 2) Redact the personal information on some pages of the record and release the remainder to the Applicant.

The Commissioner recommended that SMS reconsider its discretion with respect to the material that is currently properly withheld pursuant to the discretionary exemptions in sections 13(2), 15(1)(c) and 15(1)(k) of *FOIP* and release this material within 30 days of the issuance of this Report subject to the application of section 29(1) of *FOIP*.

The Commissioner recommended that SMS continue to withhold the pages of the record that is currently withheld as non-responsive or pursuant to the exemptions in sections 22(a) and 29(1) of *FOIP*.

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I BACKGROUND

[1] On May 22, 2025, the Ministry of Corrections, Policing and Public Safety (Corrections)¹ received the following access to information request from the Applicant:

Total number of allegations of misconduct or investigations into Saskatchewan Marshal's and all information relating to submitted complaints.

[2] The Applicant specified the time period for the sought records to be November 22 to the present date.

[3] On June 23, 2025, Corrections wrote the Applicant and indicated that it was extending the 30-day time period set out in section 7 of *The Freedom of Information and Protection of Privacy Act*² (FOIP) by an additional 30 days pursuant to section 12(1)(a)(i) of FOIP.

[4] On June 27, 2025, section 4 and PART I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*,³ (FOIP Regulations) were amended pursuant to Order in Council 274/2025. As a result, the Saskatchewan Marshals Service (SMS) was qualified as a government institution under FOIP, and the Chief Marshal was identified as the prescribed head of SMS. As such, the access request was transferred from Corrections to SMS.

[5] On August 12, 2025, SMS wrote to the Applicant and enclosed 290 pages of records responsive to the Applicant's request. SMS indicated it relied on the exemptions contained within sections 13(1)(a), 13(2), 15(1)(c), (e), (k), 17(1)(d), 22(a), (b), (c) and 29(1) of FOIP to withhold access to most of the information in the records. No further reasons were given for the application of the exemptions.

¹ As of December 11, 2025 this governmental ministry was renamed to the Ministry of Community Safety.

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

³ [The Freedom of Information and Protection of Privacy Regulations](#) (FOIP Regulations) R.R.S. c. F-22.01 Reg 1 (April 1, 1992), as amended.

- [6] On August 14, 2025, the Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC).
- [7] On October 28, 2025, SMS released additional information, but this did not satisfy the Applicant.
- [8] On November 27, 2025, OIPC notified both SMS and the Applicant that a review would be conducted.
- [9] On December 24, 2025, SMS provided this office with a copy of the records as well as an index of records. SMS did not provide consent for OIPC to share its index of records with the Applicant.
- [10] On January 26, 2026, SMS provided a submission to OIPC. SMS did not provide consent for OIPC to share its submission with the Applicant.
- [11] The Applicant did not provide a submission.

II RECORDS AT ISSUE

- [12] On August 12, 2025, SMS indicated to the Applicant that it had identified 290 pages of records to be responsive to the access request. This 290 page tranche of documents will hereafter be referred to as the “Responsive Records”. As noted, SMS applied sections 13(1)(a), 15(1)(c), (e), (k), 17(1)(d), 22(a), (b) and (c) and 29(1) of *FOIP* to these pages, in part and in full.
- [13] SMS also identified three separate sets of records as fully non-responsive to the Applicant’s access request. The first set of non-responsive records is 1 page in length, the second is 40 pages, and the third is 15 pages. These pages were withheld in full. We have reviewed these documents and they are fully non-responsive. Non-responsive documents should not be released and do not assist in an access to information request. Pursuant to the guidance in *Kasprick v Saskatchewan Power Corporation*, non-responsive material is irrelevant and

should not be subject to disclosure.⁴ The nature of these documents are discussed at a later segment of this Report.

[14] Finally, SMS identified two sets of records that originated from, and were the property of, a third party - the Saskatoon Police Service (SPS). The first set of SPS records is 16 pages, and the second is 21 pages. These pages were withheld in full pursuant to the discretionary exemption contained in section 13(2) of *FOIP* and the mandatory exemption in section 29(1) of *FOIP*.

[15] In total, there are 383 pages of records at issue and most of these pages were redacted in full.

III DISCUSSION OF THE ISSUES

1. Jurisdiction

[16] SMS is a government institution as defined by section 2(1)(d)(ii) of *FOIP* and section 3(a) and Part I of the Appendix of *FOIP Regulations*. OIPC has jurisdiction to undertake this review under PART VII of *FOIP*.

2. Did SMS properly apply section 15(1)(c) of *FOIP*?

[17] SMS applied section 15(1)(c) of *FOIP* to the following pages in part or in full of the Responsive Records: 1, 13 to 41, 43 to 54, 56 to 69, 71 to 83, 85 to 87, 89 to 91, 93 to 101, 103 to 109, 111 to 112, 114 to 125, 127 to 140, 142 to 143, 145 to 147, 149 to 151, 153 to 154, 156 to 160, 162 to 163, 165, 167 to 169, 171 to 173, 175 to 176, 178, 180 to 183, 185 to 187, 189, 191 to 195, 197, 207, 214, 271, and 279 to 290.

⁴ [*Kasprick v Saskatchewan Power Corporation*](#), 2025 SKKB 139 at paragraphs [62] to [64].

[18] These pages contain information about investigations involving one marshal and contain information with respect to that marshal alone.⁵ Many of the pages in this tranche of documents involve duplicates and this contributed to the volume of pages in this phase of the review.

[19] Section 15(1)(c) of *FOIP* allows for the application of the discretion of the head and provides:

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

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[Emphasis added]

[20] OIPC uses the following two-part test to determine if section 15(1)(c) of *FOIP* applies:⁶

1. Does the government institution's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
 - (a) Could the release of the information interfere with a lawful investigation?
 - (b) Could the release of the information disclose information with respect to a lawful investigation?

[21] Below is an analysis of the application of section 15(1)(c) of *FOIP* to the Responsive Records.

⁵ At least nine marshals were sworn into SMS set to start on May 5, 2025: [First class of Sask. marshals recruits sworn in, start job May 5 | CBC News](#). As of December 4, 2025 three more marshals were added to the team: [Three members hired ahead of Sask. Marshals Service regional HQ launch in North Battleford | battlefordsNOW](#).

⁶ OIPC [Review Report 330-2023, 334-2023](#) at paragraph [57].

1. Does the government institution's activity qualify as a "lawful investigation"?

- [22] A "lawful investigation" is an investigation that is authorized or required and permitted by law.⁷ The government institution should always identify the legislation that authorizes the investigation. An investigation can be concluded or ongoing for this exemption to apply.⁸
- [23] SMS noted that many of the records reflect an investigation undertaken by the Saskatchewan Public Complaints Commission (PCC).⁹ SMS noted that section 45 of *The Police Act, 1990*, provided PCC with the authority to investigate a complaint concerning the actions of a "member" which includes a marshal of SMS.¹⁰
- [24] Upon review, OIPC noted that the following pages (in part or in full) involve the PCC investigation regarding the marshal in question: 14 to 37, 39, 43 to 54, 56 to 57, 76 to 83, 101, 103 to 104, 111 to 112, 119 to 125, 127 to 140, 142 to 143, 145 to 147, 149 to 151, 153 to 154, 156 to 160, 162 to 163, 165, 167 to 169, 171 to 173, 175 to 176, 178, 180 to 183, 185 to 187, 189, 191 to 195, 271, 279 to 286 of the Responsive Records. These pages include information such as transcripts of audio witness statements and an investigation report prepared by PCC.
- [25] Also, OIPC noted that pages 58 to 69, 71 to 75, 287 to 290 contain information regarding an investigation undertaken by the Alberta Serious Incident Response Team (ASIRT)

⁷ OIPC [Review Report 064-2025](#) at paragraph [13].

⁸ *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, [2010] 1 SCR 815 at paragraph [44]; *Leo v. Global Transportation Hub Authority*, 2019 SKQB 150 at paragraph [24], as affirmed by *Saskatchewan Government Insurance v Giesbrecht*, 2025 SKCA 10 at paragraphs [55] and [58]; *Evenson v Saskatchewan (Ministry of Justice)*, 2013 SKQB 296 at paragraphs [40] to [44].

⁹ For more information about PCC, see: <https://www.saskatchewan.ca/residents/justice-crime-and-the-law/your-rights-and-the-law/make-a-complaint-about-the-police-service>

¹⁰ As defined by section 2(k)(v.2) of *The Police Act, 1990*, S.S. 1990-91, c. P-15.01, as amended.

which is a body that investigates, among other things, serious allegations of police misconduct pursuant to the authority afforded by the Alberta *Police Act*.¹¹

[26] Therefore, the first part of the two-part test is met for the pages set out at paragraphs [24] and [25] of this Report. OIPC will next consider whether these pages meet the second part of the two-part test.

[27] Before proceeding, it should be noted that SMS applied section 15(1)(c) of *FOIP* to pages 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109 and 114 to 118 of the Responsive Records. The withheld portions of these pages contain information regarding a leave undertaken by the marshal. While the leave may have coincided with a lawful investigation undertaken by PCC and the investigation may even be the main reason for the leave, the information about the leave is separate and apart from the information connected to the lawful investigation. The redacted portions on pages 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109 and 114 to 118 of the Responsive Records do not meet the first part of the two-part test for the application of the exemption in section 15(1)(c) of *FOIP*. In the analysis of the application of the exemption in section 15(1)(k) of *FOIP*, we will later consider pages 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109 and 114 to 118 of the Responsive Records.

2. Does one of the following exist?

(a) Could the release of the information interfere with a lawful investigation?

(b) Could the release of the information disclose information with respect to a lawful investigation?

[28] SMS argued that the release of the records set out in paragraphs [24] and [25] above could disclose information with respect to a lawful investigation.

¹¹ *Police Act*, RSA 2000, c. P-17. For more information about ASIRT, check out: <https://www.alberta.ca/alberta-serious-incident-response-team>.

[29] Section 15 of *FOIP* features the word “could” instead of the phrase “could reasonably be expected to” as seen in other provisions of *FOIP*. A “could” standard generally invokes the threshold of objective possibilities, not probabilities.¹² A government institution must demonstrate that the release of the redacted portions of the record would have an objective possibility of disclosing information with respect to a lawful investigation. If there is a connection between releasing the redacted portions and an objective possibility that the redacted portions will disclose information with respect to a lawful investigation, then the application of section 15(1)(c) of *FOIP* by a government institution is appropriate.¹³

[30] SMS did not provide a convincing argument as to how the release of the redacted portions of the records could disclose information with respect to a lawful investigation. However, it is obvious on the face of the records that the release of the redacted portions would disclose information in contravention of this exemption. For example, the release of the transcripts of witness audio statements would reveal information gathered by the PCC investigator in the course of the PCC investigation and the ASIRT investigation, as well as the personal information connected to the witnesses. The second part of the two-part test is met for the pages set out at paragraphs [24] and [25].

[31] Since SMS also applied the exemptions in sections 13(1)(a) and 15(1)(e) and 15(1)(k) of *FOIP* to pages in paragraphs [24] and [25] other than the leave materials listed in paragraph [27], there is no need to provide further analysis because the exemption in section 15(1)(c) was properly applied by SMS.

3. Did SMS properly apply section 15(1)(k) of *FOIP*?

[32] In the course of its review, SMS applied section 15(1)(k) of *FOIP* to the following pages: 1, 3 to 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109, 114 to 118, and 197 to 223 of the Responsive Records. These pages involve the leave taken by the marshal as well as

¹² *Saskatchewan Government Insurance v. Giesbrecht*, 2025 SKCA 10 at paragraphs [73] and [78]; and see *supra*, footnote 4 at paragraph [30].

¹³ *Supra* footnote 7 at paragraph [18].

other documents that include drafts of documents prepared for a hearing officer appointed pursuant to section 17 of *The Police Act, 1990*.¹⁴

[33] Section 15(1)(k) of *FOIP* provides:

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

...
(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[34] OIPC find the following two-part test helpful in determining whether section 15(1)(k) of *FOIP* applies:¹⁵

1. Is there a law enforcement matter involved?
2. Does one of the following exist?
 - (a) Could the release of information interfere with a law enforcement matter?
 - (b) Could the release disclose information with respect to a law enforcement matter?

[35] Below is an analysis to determine if SMS properly applied section 15(1)(k) of *FOIP*.

1. Is there a law enforcement matter involved?

[36] “Law enforcement” means:¹⁶

- (a) policing, including criminal intelligence operations;
- (b) investigations that lead or could lead to a penalty or sanction being imposed;
or
- (c) proceedings that lead or could lead to a penalty or sanction being imposed.

¹⁴ *Supra*, footnote 10, see section 2(h).

¹⁵ *Supra*, footnote 6 at paragraph [65].

¹⁶ OIPC [Review Report 063-2025](#) at paragraph [20].

- [37] In its submission, SMS asserted that the pages to which it applied section 15(1)(k) of *FOIP* contain information regarding “policing.” It noted that in Review Report 254-2022, OIPC defined “policing”, meaning the activities of a police service. This means activities carried out under the authority of a statute regarding the maintenance of public order, detection and prevention of crime or the enforcement of law.¹⁷
- [38] In paragraph [27] of this Report, we noted that pages 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109 and 114 to 118 of the Responsive Records speak to a leave taken by the marshal in question. An employee’s leave is not a law enforcement matter or a matter connected to policing. Therefore, pages 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109 and 114 to 118 of the Responsive Records do not meet the first part of the two-part test for section 15(1)(k) of *FOIP* and should be released to the Applicant.
- [39] Pages 1, 3 to 12, and 197 to 223 of the Responsive Records are drafts of documents prepared for a hearing officer, such as a notice of application for review pursuant to section 53(3) of *The Police Act, 1990*.¹⁸ The contents of these pages appear to be regarding the enforcement of *The Police Act, 1990*, as well as *The Municipal Police Discipline Regulations, 1991*.¹⁹ Pages 1, 3 to 12, and 197 to 223 of the Responsive Records meets the first part of the two-part test. OIPC will consider if these pages meet the second part of the two-part test.²⁰

¹⁷ OIPC [Review Report 254-2022](#) at paragraph [15].

¹⁸ Section 53(3) of [The Police Act, 1990](#) provides:

53(3) On the application of the chief or board, as the case may be, an order pursuant to subsection (1) or (2) may be continued after 30 days from the date of the order if:

(a) the order is reviewed by a hearing officer; and

(b) the review is commenced within 30 days after the date of the order.

¹⁹ [The Municipal Police Discipline Regulations, 1991](#), RRS c P-15.01 Reg 4 (January 1, 1992).

²⁰ Section 56 of [The Police Act, 1990](#) provides that hearings pursuant to PART IV of *The Police Act, 1990* are open to the public. Further, section 59(1) of *The Police Act, 1990* provides that the Saskatchewan Police Commission shall make the decisions of a hearing officer public. However,

2. Does one of the following exist?

(a) Could the release of information interfere with a law enforcement matter?

(b) Could the release disclose information with respect to a law enforcement matter?

[40] In its submission, SMS did not distinguish between whether the release of information could *interfere* with a law enforcement matter or *disclose* information with respect to a law enforcement matter. It merely stated that the records to which it applied section 15(1)(k) of *FOIP related* to investigations by PCC, Royal Canadian Mounted Police and SPS.

[41] Our review of pages 1, 3 to 12, and 197 to 223 revealed that the pages involve proceedings that lead, or could have led, to the imposition of a penalty or sanction as the result of a law enforcement matter. The release of these pages could *disclose* information with respect to the law enforcement matter. The second part of the two-part test is met.

[42] It should be noted that SMS applied section 17(1)(d) of FOIP to pages 1, 3 to 12 and 197 to 223. Since OIPC has found that section 15(1)(k) of FOIP applies to these pages, there is no need to consider section 17(1)(d) of FOIP.

4. Did SMS properly apply section 29(1) of FOIP?

[43] Earlier, OIPC found that SMS did not properly apply section 15(1)(c) and (k) of *FOIP* to the leave material contained within pages 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109 and 114 to 118 of the Responsive Records. Of these pages, SMS applied section 29(1) of *FOIP* to pages 13, 40 to 41, 85 to 87, 90 to 91, 93 to 98, 100, 107 to 109, 114 to 118 of the Responsive Records. OIPC will consider whether SMS properly applied section 29(1) of *FOIP* to these pages.

[44] SMS also applied section 29(1) of *FOIP* to the documents in SPS 1 and SPS 2, in full.

these documents appear to be in draft form and do not appear to be the actual documents filed at a hearing pursuant to PART IV of *The Police Act, 1990*. They do not also appear to be the decision of a hearing officer.

[45] Section 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.

[46] Section 29(1) of *FOIP* is a mandatory exemption. Prior to a consideration of section 29(1), the first determination must be whether the information qualifies as “personal information” as defined by section 24(1) of *FOIP*. In order for information to be “personal information”, it must be (1) be about an identifiable individual; and 2) be personal in nature.

[47] Sections 24(1)(a), (b), (e) and (k)(i) of *FOIP*, which are all relevant in this review, 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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(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;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual;

a. Responsive Records

[48] The name of the marshal appears on pages 13, 41, 85 to 87, 90 to 91, 93 to 98, 100, 107 to 109, 114 to 118 of the Responsive Records. The name of the marshal combined with other information qualifies as their personal information as defined by section 24(1)(k)(i) of

FOIP. As there does not appear consent was supplied, the identified portions of these pages should be withheld.

b. SPS 1 and SPS 2

[49] SMS applied section 29(1) of *FOIP* to SPS 1 and SPS 2 in their entirety. Information about individuals, including name, possible criminal history, telephone number, address, date of birth and physical description of individuals involved in incidents are documented on all pages of the *General Occurrence Reports* in SPS 1 and SPS 2. Such information qualifies as the personal information of individuals as defined by sections 24(1)(a), (b), (e), (k)(i) of *FOIP*. Since consent has not been supplied from these individuals to share this information, the portions of SPS 1 and SPS 2 that contain this information must be withheld. Finally, we will consider whether section 13(2) of *FOIP* applies to the remaining portions of SPS 1 and SPS 2.

5. Did SMS properly apply section 13(2) of *FOIP*?

[50] SMS applied section 13(2) of *FOIP* to the two sets of SPS records. As noted earlier, the first set of records is 16 pages (“SPS 1”). The second set of records is 21 pages (“SPS 2”).

[51] Section 13(2) of *FOIP* provides:

13(2) A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from a local authority as defined in the regulations.

[52] OIPC uses the following two-part test to determine if section 13(2) of *FOIP* applies:²¹

1. Was the information obtained from a local authority?
2. Was the information obtained implicitly or explicitly in confidence?

²¹ OIPC [Review Report 317-2023](#) at paragraph [114].

[53] Relevant definitions are helpful:²²

- “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.
- “In confidence” describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the provider of the information has stipulated the conditions under which the information may be disseminated. 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 at the time the information was obtained.
- “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.

[54] In its submission, SMS said it obtained the records explicitly in confidence from SPS, a local authority. SPS qualifies as a “local authority” as defined by section 2(2) of the *FOIP Regulations*²³ and section 2(1)(f)(viii.1) of *The Local Authority Freedom of Information and Protection of Privacy Act*²⁴ (LA FOIP).

²² *Ibid*, at paragraph [96].

²³ *Supra*, footnote 3 at section 2(2) provides:

2(2) For the purposes of these regulations and subsection 13(2) of the Act, “local authority” means a local authority as defined in *The Local Authority Freedom of Information and Protection of Privacy Act*.

²⁴ Section 2(1)(f)(viii.1) of [The Local Authority Freedom of Information and Protection of Privacy Act](#), SS 1990-91, c. L-27.1, as amended, provides:

2(1) In this Act:

...
(f) “local authority” means:

[55] The face page of the General Occurrence Reports revealed:

- a bold confidentiality notice specifying that the information is confidential and strictly reserved for the sole use of the intended recipients; and
- a select group of intended recipients within SPS.

[56] A review of the “confidentiality notice” on the front page of the General Occurrence Reports in SPS 1 and SPS 2 suggests that the document was prepared, and is to be used, only by the intended recipients under terms of strict confidentiality. In *Government of Saskatchewan (Ministry of Health) v West*, the Saskatchewan Court of Appeal noted that to invoke the mandatory confidentiality exemption associated with section 13 of *FOIP*, a party must simply establish that the record had been obtained in confidence.²⁵ To that effect, the terms of confidentiality as set out in that case involved a Memorandum of Understanding, which was worded to convey a similar concept of confidentiality that we are dealing with here. As such, the notice alone is a significant identifier of confidentiality. A further indicia of confidentiality in *West* was the fact that the document was not obtainable within the public domain, as is the case here. Finally, the language of the confidentiality notice in *West* did not suggest that the obligation of confidentiality was subject to a time limit or to expire, which is again the situation with the SPS records.

[57] An examination of confidentiality will also involve a contextual analysis of several factors. Of the list supplied by the Saskatchewan Court of Appeal in paragraph [27] of the *West* ruling, we note that the nature of the information itself may impute confidentiality. Here, and without going into tortuous detail, the records involve serious investigations carried out by officers of SPS that are clearly linked to allegations that may be the subject of *Criminal Code* offences. Another factor for examination is the context in which the information was created. Without a doubt, these general occurrence reports were created within a confidential sphere and to be viewed by the detective constables at SPS and the

...
(viii.1) a police service or regional police service as defined in *The Police Act, 1990*;

²⁵ [*Government of Saskatchewan \(Ministry of Health\) v West*, 2022 SKCA 18 at paragraphs \[25\] to \[29\]. \[West\]](#)

investigatory authorities within SMS. There is a thread of continuity between the matters investigated by the SPS and the subject matter of the SMS inquiry.

[58] There is a finding that SMS obtained the SPS documents in explicit confidentiality.

6. Did SMS properly apply section 22(a) of FOIP?

[59] SMS applied section 22(a) of FOIP to pages 224 to 270 and 272 to 278 of the Responsive Records.

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;

[60] SMS exerted a *prima facie* claim of solicitor-client privilege over pages 224 to 270 and 272 to 278 of the Responsive Records. In support of this claim, SMS provided an affidavit and schedule of records outlining the date of the record, the author and recipients, and the nature of the records in each claim. SMS provided a letter of explanation dated February 13, 2026, that furnished the context with respect to the application of section 22(a) of FOIP in each instance.

[61] Solicitor-client privilege under section 22(a) of FOIP applies to records that involve communications between solicitor and client, that entails the seeking or giving of legal advice, and that is intended by the parties to be confidential. SMS explained in its letter and schedule of records, that two government lawyers were involved in the preparation of, and relaying of, solicitor-client advice in this matter.²⁶ The disclosure of such records would directly reveal the legal advice given.

²⁶ In *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 2004 SCC 31 at paragraphs [19] to [21], the Supreme Court of Canada said that solicitor-client applies equally to in-house counsel working on behalf of the government as it does to independent or private counsel.

[62] Further, the affidavit provided by SMS was sworn by an affiant who had direct knowledge of the content of, and context associated with, the records to which the solicitor-client claim was asserted.

[63] The inquiry into the assertion of a claim of solicitor-client privilege is contextual and the party seeking to avoid disclosure must put the relevant context before the reviewing body or face the possibility that the onus will not be met. The context must clearly establish the legal advice component of the privilege and if it does not, the records will not be held to be covered by solicitor-client privilege.²⁷ OIPC is satisfied that SMS has met the required threshold.

[64] With respect to the pages noted in paragraph [60], SMS has established a *prima facie* case and justified the application of section 22(a) of *FOIP*.

7. Are records non-responsive?

[65] As described earlier, SMS identified three sets of pages as non-responsive. The first set of non-responsive records is one page (“Non-responsive 1”), the second set is 40 pages (“Non-responsive 2”) and the third set is 15-pages (“Non-responsive 3”).

[66] 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 relevant to the request. It follows that any information or records that do not reasonably relate to an applicant’s access request will be considered “non-responsive”.²⁸

[67] Non-responsive 1 is an email dated June 9, 2025. As described in the background of this Report, Corrections received this access request on May 22, 2025, and the Applicant

²⁷ *Supra*, footnote 25 at paragraphs [82] and [83].

²⁸ OIPC [Review Report 148-2024, 163-2024](#) at paragraph [39].

wanted records up to that date. Therefore, it fell outside the parameters of the Applicant’s access request and is non-responsive.

[68] Non-responsive 2 are records about training undertaken by SMS employees. The Applicant requested records regarding allegations of misconduct or investigations into Saskatchewan Marshals. Therefore, the subject matter of the records in Non-responsive 2 are not responsive to the Applicant’s access request.

[69] Non-responsive 3 are records related to the organization of SMS, including organizational charts. The subject matter of the records in Non-responsive 3 are not responsive to the Applicant’s access request.

[70] Non-responsive 1, Non-responsive 2 and Non-responsive 3 should be continued to be withheld as non-responsive.

8. Preliminary Conclusions

[71] At this point in our analysis, we provide the following table as a framework for our conclusions which will lead to the final recommendations in this case:

| | Pages of Responsive Record | Description of Material | FOIP Exemption Applied | Conclusions and paragraph number of Review Report |
|----|---|--|-------------------------------|--|
| 1. | 14 to 37, 39, 43 to 54, 56 to 57, 71 to 83, 101, 103 to 104, 111, 112, 119 to 125, 127 to 140, 142 to 143, 145 to 147, | Investigation materials and Investigation Report (PCC) | 15(1)(c) | Properly applied [30] |

| | | | | |
|----|---|--|----------|--|
| | 149 to 151, 153 to 154, 156 to 160, 162 to 163, 165, 167 to 173, 175 to 176, 178, 180 to 183, 185 to 187, 189, 191 to 195, 271, 279 to 286 | | | |
| 2. | 58 to 75, 287 to 290 | Investigation materials (ASIRT) | 15(1)(c) | Properly applied [30] |
| 3. | 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109, 114 to 118 | Leave materials | 15(1)(c) | Not properly applied [27] |
| 4. | 1, 3 to 12, 197 to 223 | Drafts of documents for hearing officer | 15(1)(k) | Properly applied [41] |
| 5. | 13, 38, 40 to 41, 85 to 87, 89 to 91, 93 to 100, 105 to 109, 114 to 118 | Leave materials | 15(1)(k) | Not properly applied [38] |
| 6. | 13, 41, 85 to 87, 90 to 91, 93 to 98, 100, 107 to 109, | Leave materials | 29(1) | Properly applied [48] thus the leave materials should be redacted for section 29(1) personal |

| | | | | |
|----|--------------------------|--|-------|--|
| | 114 to 118 | | | information of the marshal and released. |
| 7. | SPS1 SPS2 | Materials from Saskatoon Police Service | 29(1) | Properly applied [49] |
| 8. | SPS1 SPS2 | Materials from Saskatoon Police Service | 13(2) | Properly applied [58] |
| 9. | 224 to 270 272 to 278 | Documents over which Solicitor-Client Privilege were invoked | 22(a) | <i>Prima facie</i> case established [64] |

9. Is there a public interest in the dissemination of any of the properly withheld material?

[72] In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, the Supreme Court of Canada explained the importance of the public interest in the application of a discretionary exemption by the head of an organization. That case focused on the discretionary exemptions provided for in the Ontario privacy legislation, *Freedom of Information and Protection of Privacy Act (FIPPA)*,²⁹ with section 14(2) of *FIPPA* (law enforcement investigations) and section 19 of *FIPPA* (solicitor/client privilege). The Supreme Court outlined the nature of the obligation upon an Information and Privacy Commissioner in reviewing the exercise of discretion where a head fails to give reasons for the refusal to release a large volume of material to which a discretionary exemption is applied.³⁰

[71] The Commissioner may quash the decision not to disclose and return the matter for reconsideration where: the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or the decision failed to take into account relevant considerations.

²⁹ [Freedom of Information and Protection of Privacy Act](#), RSO 1990, c. F-31, as amended.

³⁰ [Ontario \(Public Safety and Security\) v Criminal Lawyers' Association](#), [2010] 1 SCR 815 at paragraphs [71] to [74].

[72] In the case before us, the Commissioner concluded that since s.23 was inapplicable to ss. 14 and 19, he was bound to uphold the Minister's decision under those sections. Had he interpreted ss.14 and 19 as set out earlier in these reasons, he would have recognized that the Minister had a residual discretion under ss.14 and 19 to consider all relevant matters and that it was open to him, as Commissioner, to review the Minister's exercise of discretion.

[73] The Commissioner's interpretation of the statutory scheme led him to not review the Minister's exercise of discretion under s.14, in accordance with the review principles discussed above.

[74] Without pronouncing on the propriety of the Minister's decision, we would remit the s. 14 claim under the law enforcement exemption to the Commissioner for reconsideration. *The absence of reasons and the failure of the Minister to order disclosure of any part of the voluminous documents sought at the very least raise concerns that should have been investigated by the Commissioner.* We are satisfied that had the Commissioner conducted an appropriate review of the Minister's decision, he might well have reached a different conclusion as to whether the Minister's discretion under s.14 was properly exercised.

[Emphasis added]

[73] As the Commissioner in this province, I have a duty to review situations that involve the application of a discretionary exemption with the public interest in mind. In this case the 290 pages of the responsive record were heavily redacted and records SPS 1 and SPS 2 were withheld in full. There were two section 7 letters to the Applicant and other than a bare recitation of the exemptions themselves, there were no reasons given for their application.

[74] The public interest in this matter is considerable. There have been several reports in the media. The public has a right to know and debate the outcome of allegations involving a marshal who is appointed to act in the public trust when allegations arise otherwise. Items 1, 2, 4 and 8 in the table in paragraph [71] of this Report involve the proper application of a discretionary exemption. OIPC urges the head to reconsider its discretion in this matter and release these materials. Item 8 is however subject to the mandatory exemption in 29(1) of *FOIP* so those materials must be redacted for personal information such as: information about individuals such as name, telephone number, address, date of birth and physical descriptions, prior to any release.

[75] Finally, the materials for which SMS has established a prima facie case for solicitor-client privilege will not be subject to a discretionary review. While section 22(a) is a discretionary exemption with in the *FOIP* legislative scheme, the law recognizes this privilege as “near absolute”, and as such, it is difficult to see how those records could ever be disclosed.³¹

IV FINDINGS

[76] OIPC has jurisdiction to undertake this review under Part VII of *FOIP*.

[77] SMS properly applied section 15(1)(c) of *FOIP* to the pages listed in the table in paragraph [71] - items 1 and 2.

[78] SMS did not properly apply sections 15(1)(c) and (k) of *FOIP* to the pages listed in the table in paragraph [71] – items 3 and 5.

[79] SMS properly applied section 15(1)(k) of *FOIP* to the pages listed in the table in paragraph [71] – item 4.

[80] SPS properly applied section 13(2) of *FOIP* to the pages listed in the table in paragraph [71] – item 8.

[81] SMS properly applied section 29(1) of *FOIP* to the name of the marshal to the pages listed in the table in paragraph [71] – item 6.

[82] SMS properly applied section 29(1) of *FOIP* to information about individuals such as name, telephone number, address, date of birth and physical description to the pages listed in the table in paragraph [71] – item 7.

[83] SMS properly applied section 22(a) of *FOIP* to the pages listed in the table in paragraph [71] – item 9.

³¹ *Ibid*, at paragraph [75].

[84] SMS properly identified records Non-responsive 1, Non-responsive 2, and Non-responsive 3 as non-responsive to the Applicant's access request.

V RECOMMENDATIONS

[85] Even though items 1, 2, 4 and 8 in the table in paragraph [71] involve the proper application of a discretionary exemption, I recommend that the head reconsider its discretion and release these materials within 30 days of this Report being issued. Item 8 is subject to the mandatory exemption in 29(1) of *FOIP* so those materials must be redacted for personal information such as: information about individuals such as name, telephone number, address, date of birth and physical descriptions, prior to any release.

[86] I recommend that SMS release the pages in the table in paragraph [71] – item 6 after an application of section 29(1) of *FOIP* that redacts the name of the marshal, within 30 days of this Report being issued.

[87] I recommend that SMS release the pages in the table in paragraph [71] – items 3 and 5, within 30 days of this Report being issued.

[88] I recommend that SMS continue to withhold the pages in the table in paragraph [71] – item 9.

[89] I recommend that SMS continue to withhold Non-responsive 1, Non-responsive 2 and Non-responsive 3.

Dated at Regina, in the Province of Saskatchewan, this 17th day of March, 2026.

Grace Hession David
Saskatchewan Information and Privacy Commissioner