



REVIEW REPORT 216-2025

Executive Council

January 27, 2026

Summary: The Applicant submitted an access to information request to Executive Council for recent listings of nation-building projects which the Government of Saskatchewan sought funding from the Government of Canada.

Executive Council withheld the record in full under section 14(a) (information injurious to intergovernmental relations) and in part under sections 17(1)(a) (proposals from Executive Council), 17(1)(b)(i) (consultations and deliberations with officers of a government institution), and 17(1)(c) (plans for negotiations by the Saskatchewan Government developed for consideration) of *The Freedom of Information and Protection of Privacy Act (FOIP)*.

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

The Commissioner found that: (1) Executive Council properly applied section 14(a) of *FOIP* to the records in full; (2) the exercise of discretion by Executive Council for section 14(a) of *FOIP* was reasonable; and (3) Executive Council fulfilled its obligations under section 8 of *FOIP*.

The Commissioner recommended that Executive Council continue to withhold the records, in full, under section 14(a) of *FOIP*.

I BACKGROUND

[1] At a First Ministers' Meeting on June 2, 2025, Prime Minister Mark Carney and provincial and territorial leaders discussed the intentions of the Government of Canada to remove

trade barriers and advance major projects of national interest through the tabling of the *One Canadian Economy Act*.¹ The Act, also known as *Bill C-5*,² has two parts:

- Part 1: An Act to enact the *Free Trade and Labour Mobility in Canada Act*.
- Part 2: *Building Canada Act*.

[2] *Bill C-5* came into force with Royal Assent on June 26, 2025.³ In the course of tabling *Bill C-5*, the Government of Canada publicized its intentions to cultivate a stronger national economy by:⁴

- **Removing federal barriers to internal trade and labour mobility**, helping goods, services, workers, and businesses move freely across provinces and territories.
- **Expediting nation-building projects** that will connect and transform our country and unleash economic growth while ensuring environmental protections and Indigenous rights are upheld.
- **Working with Indigenous Peoples** through consultation and engagement to build shared prosperity.

[Emphasis in original]

[3] Amidst the tabling of *Bill C-5*, on June 19, 2025, the Applicant submitted the following access to information request via the [Form A – Access to Information Request Form](#), emailed to Executive Council, for the date range of February 9, 2025 to June 19, 2025:

Please provide the most recent document listing projects the provincial government has asked the federal government to approve.

¹ [First Ministers' statement on building a strong Canadian economy and advancing major projects](#) article from the [Prime Minister of Canada](#) website. June 2, 2025.

² [Bill C-5: An Act to enact the Free Trade and Labour Mobility in Canada Act and the Building Canada Act](#). First reading, June 6, 2025.

³ [Implementation of Bill C-5: One Canadian Economy](#) article from the Government of Canada [Intergovernmental Affairs](#) website. June 26, 2025.

⁴ [House of Commons passes the One Canadian Economy Act](#) article from the [Prime Minister of Canada](#) website. June 20, 2025.

- [4] On July 16, 2025, Executive Council confirmed receipt of the access to information request. In the same correspondence, Executive Council advised the Applicant that it was extending the 30-day response time under section 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act (FOIP)*.⁵
- [5] On August 18, 2025, Executive Council informed the Applicant in a section 7 decision letter that it was withholding the responsive records, in full, under section 14(a) of *FOIP*.
- [6] On August 28, 2025, the Applicant requested a review by submitting a completed [Form B – Request for Review Form](#) to the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) of the decision by Executive Council to withhold the responsive records in full.
- [7] On September 8, 2025, Executive Council informed OIPC that it had also intended to apply sections 17(1)(a), (b)(i) and (c) of *FOIP* to parts of the responsive records. Between September 9, 2025 and September 11, 2025, OIPC clarified with Executive Council and accepted that sections 17(1)(a), (b)(i), and (c) of *FOIP* were intended to have been applied to the record.
- [8] On September 15, 2025, OIPC notified Executive Council and the Applicant that a review would be commenced of the decision to withhold the responsive records. OIPC requested that Executive Council provide OIPC with an unredacted copy of the records and an index of records by October 15, 2025. Both Executive Council and the Applicant were invited to provide submissions by November 14, 2025.
- [9] On October 15, 2025, Executive Council provided an index of records and unredacted records. On September 16, 2025, the Applicant provided a submission to OIPC. On November 14, 2025, Executive Council provided a submission to OIPC.

⁵ [The Freedom of Information and Protection of Privacy Act](#), SS 1990-91, c. F-22.01, as amended.

II RECORDS AT ISSUE

[10] Executive Council withheld three records in full:

- Record 1: a two-page letter from Premier Scott Moe (Government of Saskatchewan) to Prime Minister Mark Carney (Government of Canada).
- Record 2: a nine-page table (attached to the above-noted letter) created by the Government of Saskatchewan that lists proposed projects for federal investment.
- Record 3: a three-page email chain involving representatives of the Government of Saskatchewan and the Government of Canada with respect to priority major projects.

III DISCUSSION OF THE ISSUES

1. Jurisdiction

[11] Executive Council is a “government institution” as defined by section 2(1)(d)(i) of *FOIP*. Therefore, OIPC has jurisdiction to conduct a review of this matter under PART VII of *FOIP*.

2. Did Executive Council properly apply section 14(a) of *FOIP*?

[12] Executive Council withheld the entirety of the responsive record, in full, under section 14(a) of *FOIP*, which states:

14 A head may refuse to give access to a record, the release of which could reasonably be expected to prejudice, interfere with or adversely affect:

- (a) relations between the Government of Saskatchewan and another government;

[13] OIPC accepts that the Government of Canada may be considered “another government” for the purposes of section 14(a) of *FOIP*.

[14] Section 14(a) of *FOIP* is a discretionary, harm-based exemption that features the phrase “could reasonably be expected.” In *Kasprick v. Saskatchewan Power Corporation*, Davis J. considered another discretionary, harm-based exemption under *FOIP*. Davis J. found that the phrase, “could reasonably be expected” means a threshold is lower than “probability” but at least somewhat higher than “mere possibility.”⁶

[30] ...The “could reasonably” language is incorporated directly into the applicable provisions in the *FOIP Act*. A “could” standard generally invokes reasonable possibilities – not probabilities: *Giesbrecht* at para 44, *FOIP Act* at s 17. When combined with the word “expectation” the Legislature appears to be instituting a standard lower than probability, but at least somewhat higher than mere possibility: *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 at para 196, [2012] 1 SCR 23 [*Merck Frosst*]. It should be noted that the Supreme Court in *Merck Frosst* was dealing with a standard involving a “reasonable expectation of probable harm” – something which I consider to be higher than the “could reasonably be expected” standard in the *FOIP Act*.

[15] In other words, the expectation of harm needs to be reasonable, though not a certainty. With that said, harms are not self-evident and, therefore, the burden of proof is borne by the government institution to demonstrate that the formulation set out by the Supreme Court of Canada has been met.

[16] More specifically, section 14(a) of *FOIP* allows the head to withhold records in situations where the release of those records could reasonably be expected to prejudice, interfere with, or adversely affect relations between the Government of Saskatchewan and another government.⁷ Subsequently, OIPC must reflect on the following definitions:⁸

- “Prejudice” refers to a detriment to intergovernmental relations.
- “Relations” covers both formal negotiations and more general exchanges, as well as associations, between the Government of Saskatchewan and other governments.

⁶ [*Kasprick v Saskatchewan Power Corporation*](#), 2025 SKKB 139 at paragraph [30].

⁷ OIPC [Review Report 274-2021](#) at paragraph [33].

⁸ *Ibid*, at paragraphs [34] to [37].

- “Interfere with” means to obstruct or make much more difficult.
- “Adversely affect” is to have a harmful or unfavorable impact.

[17] The burden is clearly upon Executive Council to substantiate (with precise and specific facts) that release of these records “could reasonably be expected to” prejudice, interfere with, or adversely affect intergovernmental relations (harm).

[18] Finally, OIPC must consider decisions made by other information and privacy commissioners across Canada about similar circumstances. In Review Report 20-227,⁹ the Information and Privacy Commissioner of the Northwest Territories contemplated section 16(1)(a)(i) of its *Access to Information and Protection of Privacy Act*,¹⁰ a provision parallel to our own section 14(a) of *FOIP*. In that report, the Commissioner emphasized that the general context of a situation can provide some evidence to support the claims of a government institution that disclosure of a record is reasonably likely to “degrade relationships with significant impacts on the ability of all parties to reach valid and stated business objectives.” In other words, the situations surrounding the records themselves offer meaningful insight into the veracity of claims by a government institution of potential harm from disclosure of particular records.

[19] With that in mind, we turn to examine the circumstances related to the withheld records in this matter. Executive Council provided, in the submission, a timeline of relevant events:

- On September 11, 2025, the federal government launched the Major Projects Office (MPO) and unveiled a first set of major projects intended to fast-track nation-building projects.¹¹
- On November 10, 2025, the MPO announced a “living list” of new projects to be considered and announced, described as, “Projects deemed to be of

⁹ Northwest Territories Information and Privacy Commissioner [Review Report 20-227](#) at page 13.

¹⁰ [Access to Information and Protection of Privacy Act](#), SNWT 1994, c.20. In force December 31, 1996; SI-016-96.

¹¹ [Prime Minister Carney announces first projects to be reviewed by the new Major Projects Office](#) from the [Prime Minister of Canada](#) website.

national importance and significance are referred to the MPO,¹² which will work with proponents, provinces, territories and Indigenous Peoples to find the right way forward for these projects.”¹³

- On November 13, 2025, the MPO unveiled a second set of major projects.¹⁴

[20] This office notes that the access to information request was made in July 2025, prior to these announcements. In other words, since the access to information request was made, some information has come to light about the spectrum and scale of major projects to be funded by the MPO, one of them being the McIlvenna Bay Foran Copper Mine Project in east-central Saskatchewan.¹⁵ But this does not really assist in the final determination of this access to information request.

[21] Referring back to the language of section 14(a), we must determine whether the records in question involve “relations between the Government of Saskatchewan and another government”. In the submission, Executive Council asserted that the records consist of intergovernmental correspondence. On the face of the records, it is apparent that two governments (provincial and federal) are engaged, illustrated as follows:

- Record 1 (a letter) is addressed to Prime Minister Mark Carney from Premier Scott Moe. This engages the Government of Canada (Carney) and the Government of Saskatchewan (Moe).
- Record 2 (a table of proposed projects for investment) is included as an attachment to the above-noted letter.
- Record 3 (an email chain) reflects correspondence between representatives of the Government of Saskatchewan and the Government of Canada.

¹² [Major Projects Office: Second tranche of projects under consideration](#) article from the Government of Canada [One Canadian Economy](#) website.

¹³ [Advancing Nation-Building Projects](#) from the Government of Canada [Major Projects Office](#) website.

¹⁴ [Prime Minister Carney announces second tranche of nation-building projects referred to the Major Projects Office](#) article from the [Prime Minister of Canada](#) website.

¹⁵ [Projects referred to the MPO](#) article from the Government of Canada [Major Projects Office](#) website.

Specifically, the email is from the Deputy Minister of Intergovernmental Affairs for the Government of Saskatchewan, Ashley Metz, to the Deputy Minister of Intergovernmental Affairs for the Government of Canada, Christiane Fox.

- [22] Therefore, OIPC agrees that intergovernmental relations are at issue with these records.
- [23] Next, OIPC must evaluate whether the release of these records could reasonably be expected to prejudice, interfere with, or adversely affect those intergovernmental relations. This office accepts the arguments as supplied by Executive Council. Without a doubt there are three avenues of potential harm that may come to the Province of Saskatchewan by way of a premature release of the records.
- [24] To begin with, the Government of Canada has every right to request and expect frank, confidential exchanges with the Government of Saskatchewan in order to negotiate the funding for these projects. The premature release of these records could easily be interpreted as a “breach of trust” that could endanger the viability of future negotiations between the two governments.
- [25] Second, the release of the records could result in unfair public and media scrutiny that would be detrimental to the negotiations and discussions around the possible projects. Executive Council argued a valid concern that the release of these records to the public would place undue political pressure on the federal government while projects are still being determined and prior to their announcement.
- [26] Finally, premature release of these records would surely threaten the ongoing and future negotiations between the two governments and detract from discussions and the adoption of unimpeded positions on either side with respect to infrastructure funding, regulatory approval and project details.
- [27] Based on a review of the records, OIPC can confirm that the concerns as alleged by Executive Council are valid and confirmed:

- Record 1 clearly indicates the intention of the Government of Saskatchewan to advocate for federal investment in provincial infrastructure priorities. Disclosure of the letter would surely reveal negotiation strategies by signalling preferences and pursuits.
- Record 2 reflects the provincial infrastructure funding priorities on the part of the Government of Saskatchewan. Disclosure of the table would surely interfere with ongoing and future negotiations.
- Record 3 establishes the foremost provincial infrastructure priorities, the disclosure of which, again, could reasonably be expected to reveal negotiation strategies and interfere with ongoing and future negotiations.

[28] Although nothing on the face of the records explicitly conveys that the Government of Canada would interpret disclosure of the records as a breach of trust, it is implicit within the communications that their contents are to be treated in the strictest of confidence. We note the following indicators of such:

- The number of individuals copied in the letter in Record 1, the attachment in Record 2, and the subsequent email correspondence were significantly limited.
- A reasonable person would regard the records as information mutually understood to be kept confidential as a part of ongoing negotiations. This is further underpinned by the fact that the information is not yet available to the public simply because they involve future negotiations and not established facts.

[29] In Order PO-2247,¹⁶ an Ontario Information and Privacy Commissioner adjudicator considered section 15(a) of the Ontario *Freedom of Information and Protection of Privacy Act*¹⁷ (again, an equivalent provision to our section 14(a) of *FOIP*). In that appeal, the adjudicator underlined the sacral nature of confidential intergovernmental relations:

The fundamental purpose of the ... exemption under the [Act] is to protect the confidentiality of intergovernmental discussions, and the integrity of intergovernmental relations. Issues of common interest are discussed by the federal, provincial and territorial governments ... in order to compare and develop policy in respect of such issues. The frank and open discussions that

¹⁶ Ontario Information and Privacy Commissioner [Order PO-2247](#) at page 2.

¹⁷ Ontario [Freedom of Information and Protection of Privacy Act](#), R.S.O. 1990, c. F.31.

are necessary to the success of such meetings can be supported and promoted only if the confidentiality of the discussions is assured. Participants ... not only expect, but actively depend on the confidential nature ... when expressing their views or describing their government's policies on a given issue. If confidentiality is not assured, governments and their representatives will be less forthcoming at these meetings.

- [30] Executive Council has demonstrated that the disclosure of these records could reasonably be expected to prejudice, interfere with, or adversely affect a relationship between the Government of Saskatchewan and the Government of Canada.
- [31] There will be a finding that Executive Council properly applied section 14(a) of *FOIP* to the records in full. Given that section 14(a) of *FOIP* has been found to apply to the records in full, this Report will not consider sections 17(1)(a), (b)(i) or (c) of *FOIP*. Subsequently, there will be a recommendation that Executive Council continue to withhold the records, in full, under section 14(a) of *FOIP*.

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

- [32] The Applicant's submission was concise - they asserted that release of these records are in the public interest.
- [33] *FOIP* does not contain an overarching public interest override. This means that the head may apply an exemption to deny access even in cases where there is general public interest, with sections 19(3) and 29(2)(o) of *FOIP* being exceptions. Even then, public interest disclosure in relation to sections 19(3) and 29(2)(o) of *FOIP* must be assessed on a case-by-case basis.
- [34] In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, the Supreme Court of Canada outlined that an Information and Privacy Commissioner is always free to

review a head's exercise of discretion when it is alleged that discretion has been inappropriately applied:¹⁸

[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

[35] It is evident that Executive Council has taken into consideration a myriad of relevant factors in withholding the records at issue. As noted previously in this Report, the confidentiality of relations between governments must be ensured when the economic future of this province is at stake. There is a finding that the exercise of discretion by Executive Council for section 14(a) of *FOIP* was reasonable. There will *not* be a recommendation that Executive Council reconsider its exercise of discretion.

4. Did Executive Council fulfill its obligations under section 8 of *FOIP*?

[36] A government institution is required to adopt a line-by-line review of a record to comply with the principle of severability set out in section 8 of *FOIP*, which states:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[37] Applicants have a right of access to records from which material can reasonably be severed. However, the interests of *FOIP* are not best served by providing the Applicant with innocuous (but irrelevant) snippets within an otherwise fully severed page. This may include releasing publicly available mailing and email addresses, salutations, closings, and signatures, which would be the extent of disclosable content in the present case. In the submission, Executive Council asserted (and this office agrees) that, because it had demonstrated that the exemptions were properly applied to the record, it, therefore, showed that it had complied with section 8 of *FOIP*.

¹⁸ *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23 at paragraph [71].

[38] There will be a finding that Executive Council fulfilled its obligations under section 8 of *FOIP*. There will *not* be a recommendation that Executive Council take any further action regarding the fulfillment of its obligations under section 8 of *FOIP*.

IV FINDINGS

[39] *FOIP* is engaged and OIPC has jurisdiction under PART VII of *FOIP* to undertake this review.

[40] Executive Council properly applied section 14(a) of *FOIP* to the records in full.

[41] The exercise of discretion by Executive Council for section 14(a) of *FOIP* was reasonable.

[42] Executive Council fulfilled its obligations under section 8 of *FOIP*.

V RECOMMENDATION

[43] I recommend that Executive Council continue to withhold the records, in full, under section 14(a) of *FOIP*.

Dated at Regina, in the Province of Saskatchewan, this 27th day of January, 2026.

Grace Hession David
Saskatchewan Information and Privacy Commissioner