



REVIEW REPORT 232-2024

Ministry of Health

April 3, 2025

Summary:

The Applicant submitted an access to information request to the Ministry of Health (Health) for a copy of a briefing note regarding the estimated cost of the Administrative Information Management System (AIMS) project. Health responded by providing the Applicant with partial access to a two-page briefing note but withheld portions pursuant to subsections 16(1), 17(1)(a), (b), 19(1)(b) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the A/Commissioner. The A/Commissioner found that Health properly applied subsection 16(1) of FOIP where it claimed this exemption. Because of this, he did not need to review Health's reliance on subsections 17(1)(a), (b)(i), 19(1)(b) and (c) of FOIP to these same portions. He further found that Health did not properly apply subsections 17(1)(a) and (b) of FOIP to the remaining portions of the record. Therefore, the A/Commissioner recommended that Health continue to withhold the portions of the briefing note where Health applied subsection 16(1) of FOIP and release the remainder of the briefing note to the Applicant within 30 days of the issuance of this Report.

I BACKGROUND

[1] On September 24, 2024, the Ministry of Health (Health) received the following access to information request from the Applicant:

Please provide all documentation (correspondence, briefing notes, status reports) summarizing the estimate and/or actual total cost of the AIMS IT project.

[2] The Applicant had specified the time period for the records they sought was January 1, 2021, to the present.

[3] Then, on July 22, 2024, the Applicant narrowed the access request to the following:

Please provide the most recent briefing note on the estimate [sic] cost of the AIMS project.

[4] The Applicant specified the time period for the records they sought was from January 1, 2023, to the present.

[5] On August 12, 2024, Health notified the Applicant that it (Health) was extending the 30-day response period by an additional 30 days pursuant to subsections 12(1)(a)(i) and (ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[6] In its section 7 decision letter dated September 24, 2024, Health responded to the Applicant. Health provided the Applicant with a two-page record, withholding portions pursuant to subsections 16(1)(a), 17(1)(a), (b)(i), 19(1)(b) and 19(1)(c) of FOIP.

[7] On September 26, 2024, the Applicant requested a review by my office.

[8] On October 10, 2024, my office notified Health, the Applicant, and the Third Party (3sHealth) that my office would be undertaking a review.

[9] On November 13, 2024, Health provided my office with the record at issue.

[10] On December 16, 2024, Health provided my office with another copy of the record at issue because it had determined it was releasing an additional portion of the record to the Applicant. On this date, Health provided the Applicant with a newly revised redacted record.

[11] Also on December 16, 2024, Health provided my office with its submission. Health stated in its submission that it did not consent to sharing it with the Applicant.

[12] Neither the Applicant nor the third party provided a submission to my office.

II RECORD AT ISSUE

[13] The record at issue is a two-page briefing note. The briefing note is broken into four parts. All parts, except the first part, has a subheading. The subheading for each part is as follows:

- The first part has no subheading.
- The second part's subheading is "Background".
- The third part's subheading is "Analysis/Implications".
- The fourth part's subheading is "Confidential/Sensitive information".

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[14] Health qualifies as a "government institution" as defined by subsection 2(1)(d)(i) of FOIP. Therefore, I find that I have jurisdiction to undertake this review.

[15] 3sHealth qualifies as a "third party" as defined by subsection 2(1)(j) of FOIP.

2. Did Health properly apply subsection 16(1) of FOIP?

[16] Although Health had cited subsection 16(1)(a) of FOIP in its letter dated September 24, 2024 to the Applicant, Health clarified in its submission that it was relying on subsection 16(1) of FOIP to withhold bullet points under the subheading "Analysis/Implications" as well as the content under the subheading "Confidential/Sensitive Information" in the record at issue. Specifically, Health applied subsection 16(1) of FOIP to the following:

- The first bullet point under the subheading "Analysis/Implications" on page 1 of the briefing note;
- The second bullet point on page 2 of the briefing note;
- Portions of the third bullet point on page 2 of the briefing note;

- The fourth bullet point on page 2 of the briefing note; and
- The contents under the subheading “Confidential/Sensitive Information”.

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

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

- (a) records created to present advice, proposals, recommendations, analyses or policy options to the Executive Council or any of its committees;
- (b) agendas or minutes of the Executive Council or any of its committees, or records that record deliberations or decisions of the Executive Council or any of its committees;
- (c) records of consultations among members of the Executive Council on matters that relate to the making of government decisions or the formulation of government policy, or records that reflect those consultations;
- (d) records that contain briefings to members of the Executive Council in relation to matters that:
 - (i) are before, or are proposed to be brought before, the Executive Council or any of its committees; or
 - (ii) are the subject of consultations described in clause (c).

[18] My office says at page 94 of my office’s *Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated April 8, 2024 [*Guide to FOIP*, Ch. 4] that subsection 16(1) of FOIP is a mandatory class-based provision. Subsections 16(1)(a) through (d) of FOIP are not an exhaustive list. Therefore, even if none of the subsections are found to apply, the introductory wording of subsection 16(1) of FOIP must still be considered. In other words, is the information a confidence of Executive Council?

[19] At page 100 of the *Guide to FOIP*, Ch. 4, my office has defined the following terms:

- “Cabinet confidences” are generally defined as, in the broadest sense, the political secrets of Ministers individually and collectively, the disclosure of which would make it very difficult for the government to speak in unison before Parliament and the public.

- “Including” means that the list of information that follows is not complete (non-exhaustive). The examples in the provision are the types of information that could be presumed to disclose a confidence of the Executive Council (Cabinet).

[20] In its submission, Health said:

The information redacted on page 1 under “Analysis/Implications”, bullet point 1 of the BN refers to a decision of the Executive Council and indicates Cabinet’s expectation regarding the funding allocation of AIMS and how current systems would be operated and maintained.

The information redacted under “Analysis/Implications” on page 2, bullet points 2-4 refers to a Cabinet Decision Item on the project implementation plan, with capital costs and operational costs including funding to evaluate any remediation requirements relating to legacy systems that are currently in place. Release of this information would disclose a confidence of the Executive Council. When this record was provided to the applicant, all three bullets were redacted but, on further reflection, we have decided that we can release the dollar figures in the third bullet for which an appropriation has been made. We are enclosing a revised copy of the record, with this reflected, and are providing a copy to the applicant.

The first bullet under “Confidential/Sensitive Information” on page 2 refers to a Cabinet Decision Item, which indicates that a new implementation approach was before Cabinet for deliberation and decision.

The Ministry submits the above-mentioned information meets the requirements for an exemption from disclosure pursuant to section 16(1) and was withheld appropriately.

[21] Based on a review, the portions that Health redacted pursuant to subsection 16(1) of FOIP appear to be a summary of Cabinet decisions. In [*Ontario \(Attorney General\) v. Ontario \(Information and Privacy Commissioner\)*, 2024 SCC 4 \(CanLII\)](#) at paragraph [62], the Supreme Court of Canada (SCC) determined that outcomes or decisions of Cabinet’s deliberative process is a part of Cabinet deliberations:

[62] Such an approach reflects the opening words of s. 12(1), which mandate a substantive analysis of the requested record and its substance to determine whether disclosure of the record would shed light on Cabinet deliberations, rather than categorically excluding certain types of information from protection. **Thus, “deliberations” understood purposively can include outcomes or decisions of Cabinet’s deliberative process.** topics of deliberation, and priorities identified by the Premier, even if they do not ultimately result in government action. And decision makers should always be attentive to what even generally phrased records could reveal

about those deliberations to a sophisticated reader when placed in the broader context. The identification and discussion of policy priorities in communications among Cabinet members are more likely to reveal the substance of deliberations, especially when considered alongside other available information, including what Cabinet chooses to do.

[Emphasis added]

[22] Therefore, in line with the SCC decision, I find that Health properly applied subsection 16(1) of FOIP. I recommend that Health continue to withhold the following pursuant to subsection 16(1) of FOIP:

- The first bullet point under the subheading “Analysis/Implications” on page 1 of the briefing note;
- The second bullet point on page 2 of the briefing note;
- Portions of the third bullet point on page 2 of the briefing note;
- The fourth bullet point on page 2 of the briefing note; and
- The contents under the subheading “Confidential/Sensitive Information”.

[23] I should also note that Health applied subsections 17(1)(a), (b)(i), 19(1)(b) and (c) of FOIP to the same portions it applied subsection 16(1) of FOIP. Since I have found that Health properly applied subsection 16(1) of FOIP to these redacted portions, then I will not need to consider whether Health properly applied subsections 17(a), (b)(i), 19(1)(b) and (c) of FOIP to these same portions.

3. Did Health properly apply subsection 17(1)(a) of FOIP?

[24] Health applied subsection 17(1)(a) of FOIP to all redacted portions of the record at issue. However, since I have found that Health properly applied subsection 16(1) of FOIP to some of the redacted portions, I am only considering the portions to which Health did not apply subsection 16(1) of FOIP here. That is, I am considering whether Health properly applied subsection 17(1)(a) of FOIP to:

- the last bullet point in the first part of the briefing note (no subheading);

- the last bullet point in the second part of the briefing note (under the subheading “Background”); and
- the fifth bullet point on the second page of the briefing note (under the subheading “Analysis/Implications”).

[25] Before I proceed, I note that Health also applied subsection 17(1)(b)(i) of FOIP to the above bullet points. Therefore, if I find that subsection 17(1)(a) of FOIP does not apply, then I will consider whether subsection 17(1)(b)(i) of FOIP applies to these bullet points.

[26] 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;

[27] In its submission, Health referred to paragraph [83] of [Britto v. University of Saskatchewan, 2018 SKQB 92 \(CanLII\)](#) (*Britto*), where Danyliuk J. found that my office’s former three-part test for subsection 17(1)(a) of FOIP was too narrow. As such, Health indicated it was not adopting the three-part test.

[28] Since *Britto*, my office has modified its test for subsection 17(1)(a) of FOIP to a two-part test, which is outlined at pages 128 to 131 of the *Guide to FOIP*, Ch. 4, as follows:

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?

[29] I will use the above two-part test to determine if Health properly applied subsection 17(1)(a) of FOIP.

[30] At pages 128 to 130 of the *Guide to FOIP*, Ch. 4, the following definitions are outlined:

- “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”.
- “Analyses” (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements.

[31] In its submission, Health provided the following arguments:

The information redacted on page 1, bullet 7, of the BN reveals the recommendations and/or advice...which form the basis for the direction. The information in this briefing note was compiled and provided by [Name], Director, Strategic Systems Delivery, an employee of the Ministry, to inform senior management within the Ministry about directives and decisions regarding the AIMS project. However, the advice or recommendation that formed the basis of the direction would have been developed for the benefit of the Ministry of Health (a government institution) and its decision-makers.

The information withheld on page 1, bullet 4, under “Background” reveals the advice or a recommendation that formed the basis for the direction regarding the launching of AIMS. This BN was prepared by [Name], Director, Strategic Systems Delivery, as part of her job responsibilities to provide direction regarding a policy decision. The advice or recommendation that formed the basis of the direction would have been developed for the benefit of the Ministry of Health and its decision-makers.

...

The information redacted on page 2, sub-bullet 1 under “October 2022 Go-Live” constitutes analysis for a government institution (the Ministry of Health) on funding for the AIMS project, as calculations would have had to be made to arrive at the figure cited.

[32] The last bullet point in the first part of the briefing note and the last bullet point in the second part of the briefing note (as described as “page 1, bullet 7” and “page 1, bullet 4,

under ‘Background’” in Health’s submission) are directions, not advice or recommendations. Health argued that by revealing the directions, they would reveal the advice or recommendations that formed the basis of the directions. I do not agree. After reviewing the directions, I cannot decipher what advice or recommendations were given that resulted in the directions. The direction could be squarely in line with any advice or recommendations. Or it may not be. The direction could be the opposite of the advice or recommendations that were given. The directions themselves do not reveal any advice or recommendation that were given. A direction is just that – a direction. It is not advice or recommendations. Health has not provided any evidence to support the notion that the direction would reveal the advice or recommendations. As such, I find Health did not properly apply subsection 17(1)(a) of FOIP to the last bullet point in the first part of the briefing note and to the last bullet point in the second part of the briefing note.

- [33] Finally, Health asserted that the fifth bullet point on the second page of the briefing note under the subheading “Analysis/Implications” (described as the “page 2, sub-bullet 1 under “October 2022 Go-Live” in Health’s submission) as “analysis”. However, based on a review, the redacted content is merely a fact, not an analysis. Health asserted that the redacted content qualifies as an analysis because “calculations would have had to be made to arrive at the figure cited.” Earlier, I defined “analyses” as the detailed examination of the elements or structure of something. The end result of calculations does not qualify as “analyses”. The redacted content is not the detailed examination of the elements or structure of something. Therefore, I find that Health did not properly apply subsection 17(1)(a) of FOIP to the fifth bullet point on the second page of the briefing note under the subheading “Analyses/Implications”.

4. Did Health properly apply subsection 17(1)(b)(i) of FOIP?

- [34] Health applied subsection 17(1)(b)(i) of FOIP to all redacted portions of the record at issue. However, since I have found that Health properly applied subsection 16(1) of FOIP to some of the redacted portions, I am only considering the portions to which Health did not apply subsection 16(1) of FOIP here. That is, I am considering whether Health properly applied subsection 17(1)(b)(i) of FOIP to:

- the last bullet point in the first part of the briefing note (no subheading);
- the last bullet point in the second part of the briefing note (under the subheading “Background”); and
- the fifth bullet point on the second page of the briefing note (under the subheading “Analysis/Implications”).

[35] 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;

[36] 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. 136-138)

[37] At pages 136 to 138 of the *Guide to FOIP*, Ch. 4, the following definitions are provided:

- “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.
- “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.

[38] In past reports, I cited [Order F2023-13](#) by 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). Subsection 24(1)(a) and (b) of AB FOIP is similar to subsections 17(1)(a) and (b) of FOIP. In this case, I am citing the Order to clarify what a consultation and deliberation are for the purposes of subsection 17(1)(b) of FOIP:

[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 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]

[39] In its submission, Health said:

The information withheld on page 1, bullet point 7 of the BN and on page 1, bullet 4 under “Background”, reveals the substance of consultations and deliberations among

individuals who would have included Ministry of Health employees, and that resulted in the directive on the administration of AIMS.

...

The information redacted on page 2, bullet point 1, under “October 2022 Go-Live” provides updates that would reveal the content of consultations and deliberations that involved Ministry employees.

[40] Earlier, I already described the last bullet point in the first part of the briefing note and the last bullet point in the second part of the briefing note as directions (described as “page 1, bullet point 7” and “page 1, bullet 4 under ‘Background’” in Health’s submission). Directions are not consultations or deliberations as defined earlier. That is, directions are not the seeking of advice (consultations) nor are they a consideration of the reasons for or against an action (deliberations). As such, I find that Health did not properly apply subsection 17(1)(b)(i) of FOIP to the last bullet point in the first part of the briefing note and the last bullet point in the second part of the briefing note.

[41] Further, the fifth bullet point on the second page of the briefing note is factual information. It does not qualify as consultations or deliberations. That is, there is no seeking of advice (consultations) nor is there a consideration of the reasons for or against an action (deliberations). Health has not demonstrated how disclosing this bullet point would reveal the substance of any consultations or deliberations. As such, I find that Health did not properly apply subsection 17(1)(b)(i) of FOIP to the fifth bullet point on the second page of the briefing note.

[42] Since I have found that Health has not properly applied subsections 17(1)(a) and (b)(i) of FOIP, then I recommend that Health release to the Applicant within 30 days of the issuance of this Report:

- the last bullet point in the first part of the briefing note (no subheading);
- the last bullet point in the second part of the briefing note (under the subheading “Background”); and
- the fifth bullet point on the second page of the briefing note (under the subheading “Analysis/Implications”).

IV FINDINGS

- [43] I find that I have jurisdiction to undertake this review.
- [44] I find that Health properly applied subsection 16(1) of FOIP.
- [45] I find that Health did not properly apply subsection 17(1)(a) of FOIP.
- [46] I find that Health did not properly apply subsection 17(1)(b)(i) of FOIP.

V RECOMMENDATIONS

- [47] I recommend that Health continue to withhold the following portions pursuant to subsection 16(1) of FOIP:
- The first bullet point under the subheading “Analysis/Implications” on page 1 of the briefing note;
 - The second bullet point on page 2 of the briefing note;
 - Portions of the third bullet point on page 2 of the briefing note;
 - The fourth bullet point on page 2 of the briefing note; and
 - The contents under the subheading “Confidential/Sensitive Information”.
- [48] I recommend that Health release the following portions to the Applicant within 30 days of the issuance of this Report:
- The last bullet point in the first part of the briefing note (no subheading);
 - The last bullet point in the second part of the briefing note (under the subheading “Background”); and
 - The fifth bullet point on the second page of the briefing note (under the subheading “Analysis/Implications”).

Dated at Regina, in the Province of Saskatchewan, this 3rd day of April, 2025.

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