



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 250-2025

Ministry of Health

February 9, 2026

Summary:

The Ministry of Health (Health) received an access to information request regarding studies undertaken on the need for a replacement hospital in Yorkton, Saskatchewan. Health responded by refusing the Applicant access to two records (Record 1 and Record 2) pursuant to the following sections of *The Freedom of Information and Protection of Privacy Act (FOIP)*:

- 13(2) (information obtained in confidence from a local authority);
- 19(1)(b) (financial, commercial, scientific, technical or labour relations information supplied in confidence by a third party);
- 17(1)(a) (advice, proposals, recommendations, analyses or policy options developed by or for a government institution);
- 17(1)(c) (positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of a government institution);
- 17(1)(g) (information the disclosure of which could reasonably be expected to result in the disclosure of a pending policy or budgetary decision);
- 18(1)(d) (could reasonably be expected to interfere with contractual or other negotiations); and
- 29(1) (personal information of a third party).

The Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner. During the review, Health also raised section 16(1)(a) of *FOIP* (cabinet confidences) as a further reason for refusing access to the records.

The Commissioner found that Health properly applied section 16(1) of *FOIP* to Record 1 and Record 2 in the entirety.

The Commissioner recommended that Health continue to withhold access to Record 1 and Record 2 in their entirety pursuant to section 16(1) of *FOIP*.

I BACKGROUND

- [1] On September 9, 2025, the following access to information request was received by the Ministry of Health (Health):

Please provide copies of all the studies that have been undertaken on the need for a replacement for the Yorkton Hospital.

- [2] By letter dated September 24, 2025, Health provided its response to the Applicant. Health refused access to 840 pages of records in their entirety under sections 13(2) and 19(1)(b) of *The Freedom of Information and Protection of Privacy Act (FOIP)*.¹ Health indicated it was also withholding portions of the records pursuant to sections 17(1)(a), (c), (g), 18(1)(d) and 29(1) of *FOIP*.
- [3] On the same day, the Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC).
- [4] On November 6, 2025, OIPC notified Health and the Applicant that OIPC would be undertaking a review. It also notified three third parties of the review: Third Party 1; Third Party 2; and Third Party 3.² We preserve the identities of the third parties because they contributed written materials to Records 1 and 2 and we are upholding the application of the exemptions in this matter. To reveal the identities of the third parties would be to disclose material that we agree was properly withheld.
- [5] On November 10, 2025, Third Party 1 and Third Party 2 each provided a submission to OIPC. Each indicated that they did not object to the release of records. Third Party 3 chose not to respond to our notification.

¹ [*The Freedom of Information and Protection of Privacy Act*](#), S.S., 1990-91 c F-22.01, as amended.

² Section 2(1)(j) of *FOIP* defines “third party” as “a person, including an unincorporated entity, other than an applicant or a government institution”.

- [6] On December 8, 2025, Health provided the unredacted records and an index of records to OIPC. Health did not provide consent for OIPC to share the index of records with the other parties to the review.
- [7] On January 15, 2026, Health provided its written submission to this office. It refused permission to share the submission with the other parties to the review. OIPC noted that Health raised a further exemption in its written submission, section 16(1)(a) of *FOIP* (cabinet confidence), as a reason for refusing access to all the pages of the record in their entirety. Since section 16(1)(a) of *FOIP* is a mandatory exemption, it will be considered in this review.
- [8] The Applicant did not provide a submission.

II RECORDS AT ISSUE

- [9] There are two records at issue.
- [10] Record 1 is 441 pages. A breakdown of the pages of Record 1 is as follows:
- Pages 1 to 79 is a report by Third Party 2.
 - Pages 80 to 225 are appendices to the report.
 - Pages 226 to 295 are the PowerPoint slides to a presentation by Third Party 2.
 - Pages 296 to 441 (146 pages) are duplicates of the appendices.
- [11] Health applied sections 13(2), 16(1)(a) and 19(1)(b) of *FOIP* to the entirety of Record 1. It also applied sections 17(1)(a), (c) and 29(1) of *FOIP* to portions of Record 1. A late application of the mandatory exemption in section 16(1)(a) of *FOIP* was determinative.
- [12] Record 2 is 545 pages. It is a report by Third Party 1. Health applied sections 13(2), 16(1)(a) and 19(1)(b) of *FOIP* to the entirety of Record 2. It also applied sections 17(1)(a), (c), (g),

18(1)(d) and 29(1) of *FOIP* to portions of Record 2. Once again, a late application of the mandatory exemption in section 16(1)(a) of *FOIP* was determinative.

[13] In its letter dated September 24, 2025, Health indicated to the Applicant it was refusing access to 840 pages of records. Record 1 is 441 pages while Record 2 is 545, which is a total of 986 pages. Since pages 296 to 441 of Record 1 are duplicates of the appendices, Health correctly did not include these pages in its final page count as per the guidance given in *Kasprick v Saskatchewan Power Corporation*.³

III DISCUSSION OF THE ISSUES

1. Jurisdiction

[14] Health is a “government institution” as defined by section 2(1)(d)(i) of *FOIP*. As there are reviewable grounds in the notices submitted to the parties, OIPC has jurisdiction and is undertaking this review pursuant to PART VII of *FOIP*.

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

[15] Health applied section 16(1)(a) of *FOIP* to both Records 1 and 2 in their entirety.

[16] Section 16(1)(a) of *FOIP* provides:

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

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

[17] Section 16(1) of *FOIP* is a mandatory, class-based provision. Sub-clauses (a) through (d) and the use of the word “including” indicate that the list is not exhaustive.⁴ Further, even

³ [*Kasprick v Saskatchewan Power Corporation*](#), 2025 SKKB 139 at paragraph [65]

⁴ OIPC [Review Report 280-2020](#) at paragraph [10].

if none of the subclauses apply, the introductory wording of section 16(1) of *FOIP* must still be considered in the overall consideration. Put simply, the information in question needs to be a confidence of Executive Council. Cabinet confidence is broadly defined as the privileged communications of Ministers either individually or collectively, the disclosure of which would make it difficult for government to speak in front of Parliament and the public.

- [18] Section 12(1) of the Ontario *Freedom of Information and Protection of Privacy Act*⁵ (ON FOIP) is similar to section 16(1) of *FOIP*. The Supreme Court of Canada (SCC) said the following regarding section 12(1) of ON FOIP in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)* 2024 SCC 4⁶:

[29] Cabinet secrecy derives from the collective dimension of ministerial responsibility...Collective ministerial responsibility requires that ministers be able to speak freely when deliberating without fear that what they say might be subject to public scrutiny...This is necessary so ministers do not censor themselves in policy debate, and so ministers can stand together in public, and be held responsible as a whole, once a policy decision has been made and announced. These purposes are referred to by scholars as the “candour” and “solidarity” rationales for Cabinet confidentiality...At base, Cabinet confidentiality promotes executive accountability by permitting private disagreement and candour in ministerial deliberations, despite public solidarity...

[61] In approaching assertions of Cabinet confidentiality, administrative decision makers and reviewing courts must be attentive not only to the vital importance of public access to government-held information but also to Cabinet secrecy’s core purpose of enabling effective government, and its underlying rationales of efficiency, candour, and solidarity. They must also be attentive to the dynamic and fluid nature of executive decision making, the function of Cabinet itself and its individual members, the role of the Premier, and Cabinet’s prerogative to determine when and how to announce its decisions.

[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.

⁵ [*Freedom of Information and Protection of Privacy Act*](#), R.S.O. 1990, c. F.31

⁶ [*Ontario \(Attorney General\) v. Ontario \(Information and Privacy Commissioner\)*](#) 2024 SCC 4 at paragraphs [29], [61] to [62].

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]

- [19] While Health claimed section 16(1)(a) of *FOIP* to apply to Records 1 and 2, OIPC will also consider the opening words of section 16(1) of *FOIP* and determine if the contents of Records 1 and 2 qualify as Cabinet confidence. Determining whether section 16(1) of *FOIP* applies to Records 1 and 2 will require substantive analysis of the contents of the record to determine whether the disclosure of the records will shed light on Cabinet deliberations.
- [20] In its submission, Health indicated that while Records 1 and 2 were not directly prepared for Cabinet *per se*, the contents of Records 1 and 2 were to be used by Health to prepare materials for a subcommittee of the Executive Council and if the records were disclosed before the information had been presented to Cabinet, then the Cabinet process would be undermined. As such, the contents of Records 1 and 2 will be used for Cabinet education and debate. Our review of the documents proved this to be the case, and as such, the contents are subject to Cabinet confidence.
- [21] Cabinet confidence involves a lengthy deliberative process. The Premier, individual ministers and Cabinet as a whole must be informed by civil servants every step of the way. There must be time for discussion and repeated sessions of consultation. Policy formulation can involve false starts, blind alleys, wrong turns and the change of direction. Consultation and education may result in the re-evaluation of priorities and the re-weighing of factors over a period of time. The process is dynamic, fluid and evolves with time and the solicitation of steady input from civil servants:⁷

⁷ *Ibid*, at paragraphs [46] to [49].

[49] The dynamic and fluid nature of Cabinet's deliberative process also means that not all stages of the process take place sitting around the Cabinet table behind a closed door. The decision-making process in Cabinet extends beyond formal meetings of Cabinet or its committees, and encompasses "[o]ne-on-one conversations in the corridors . . . , in the [first minister's] office . . . , over the phone, or however and wherever they may take place"... As Professor Brooks writes, "[n]o organization chart can capture this informal but crucial aspect" of the deliberative process, nor the centrality of the first minister's role within it (*ibid.*).

[22] When civil servants seek information and then use the information to prepare materials to advise Cabinet, the Cabinet confidence exemption must apply to the materials. In Order PO-4598, the Office of the Information and Privacy Commissioner of Ontario (ON OIPC) considered whether section 12(1) of ON FOIP applied to the contents of reports prepared by a consulting company for the Ontario Ministry of Finance. The ministry used the reports in preparing materials submitted to Cabinet. ON OIPC said:⁸

[38] I have reviewed the records at issue. I find that all of the records were prepared by the consulting company for the ministry to assist the ministry in preparing its sector strategies which were eventually presented to the Recovery Committee via the Recovery Planning Centre.

[39] In the records I find to be exempt in full, the information includes expansive jurisdictional scans, surveys, and detailed analyses and options to be considered by the ministry when preparing its sector strategies to be presented to the Recovery Committee. It is my view that the information contained in these records, both in its nature and scope, is sufficiently detailed that it is reasonable to conclude that the information in some form would have been included in materials submitted to the Recovery Committee. I have reached this conclusion on the basis of the ministry's representations and my review of the records. Accordingly, while the ministry does not argue that these actual records were placed before the Recovery Committee, I find that the disclosure of this information would permit the drawing of accurate inferences with respect to the material that was considered and deliberated by the Recovery Committee.

[23] In this case, Health argued that the contents of Records 1 and 2 are being used by civil servants within the ministry to prepare materials to be presented to the subcommittee of the Executive Council.

⁸ Office of the Information and Privacy Commissioner of Ontario (ON OIPC) [Order PO-4598](#) at paragraphs [38] to [39].

[24] OIPC noted that the Minister of Health made a statement in the Legislative Assembly on November 20, 2025, that the government was committed to building a hospital in Yorkton.⁹ As noted, a review of the materials clearly supports the claim that these records are covered by Cabinet confidence. As such, it is reasonable to believe that civil servants at Health will, or have, used Records 1 and 2 to prepare materials to advise Cabinet.

[25] There is a finding that Health properly applied section 16(1) of *FOIP* to Record 1 and Record 2 in their entirety. Given that section 16(1) of *FOIP* has been found to apply to Record 1 and Record 2 in their entirety, this Report will not consider sections 13(2), 17(1)(a), (c), (g), 18(1)(d), 19(1)(b) and 29(1) of *FOIP*. Subsequently, there will be a recommendation that Health continue to withhold Record 1 and Record 2 in their entirety pursuant to section 16(1) of *FOIP*.

IV FINDINGS

[26] OIPC has jurisdiction and is undertaking this review pursuant to PART VII of *FOIP*.

[27] Health properly applied section 16(1) of *FOIP* to Record 1 and Record 2 in their entirety.

V RECOMMENDATION

[28] I recommend that Health continue to withhold to Record 1 and Record 2 in their entirety pursuant to section 16(1) of *FOIP*.

Dated at Regina, in the Province of Saskatchewan, this 9th day of February, 2026.

Grace Hession David
Saskatchewan Information and Privacy Commissioner

⁹ [Second Session – Thirtieth Legislature of the Legislative Assembly of Saskatchewan. Debates and Proceedings. Saskatchewan Hansard.](#) November 20, 2025. Page 1442.