



REVIEW REPORT 264-2024

Executive Council

April 30, 2025

Summary:

The Applicant submitted an access to information request to Executive Council. In its section 7 decision, Executive Council provided responsive records redacted pursuant to subsections 22(b), 22(c), and 29(1) 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 Executive Council did not meet the burden of proof in establishing that subsections 22(b) and 22(c) of FOIP applied to portions of the withheld record. In addition, the A/Commissioner found that subsection 29(1) of FOIP was not properly applied to other portions of the withheld record. The A/Commissioner recommended that, within 30 days of issuance of this Report, Executive Council release all information redacted pursuant to subsections 22(b), 22(c), and 29(1) of FOIP to the Applicant. The A/Commissioner recommended that, within 30 days of issuance of this Report, Executive Council create, implement, and provide his office with a *Responsive Records Search Checklist*, informed by the resources outlined in this Report. Finally, he recommended that, within 30 days of the issuance of this Report, Executive Council conduct a new search for records alluded to by the Applicant in this Report, and provide to the Applicant any additional records located, subject to exemptions under FOIP.

I BACKGROUND

- [1] On May 29, 2024, Executive Council received an access to information request from the Applicant for the following:

I was [employment title]. I was fired [date], I was reappointed [date]. I was never notified of my firing or reappointment. I was again fired [date]. I seek all files associated with these three Orders in Council.

On [date] [Minister Jeremy Harrison] writes expressing serious concerns about my conduct. He copies his letter to the [name of body's] Board, making these allegations public. In that same letter, [Harrison] ordered a review of [name of body]. [Former Deputy Minister Swan] was asked to conduct the review. Neither Harrison nor Swan shared the review with the Board or myself. No information on the wrongdoings of the Chair was provided to the Board or myself. I seek the report, a product of Executive Council and Justice action, and all documents speaking to the allegation of wrongdoing of the [employment title].

In summary, the [employment title] was fired twice for attempting to ensure [name of body] had effective governance and management controls to safeguard public resources. The [Swan] report was not shared and no reason for the firing was given. To be perfectly clear, I am requesting access to all documents related to my firing.

- [2] On June 28, 2024, by way of letter, Executive Council informed the Applicant of an extension of an additional 30 days to its response period, pursuant to subsection 12(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] On July 29, 2024, Executive Council emailed its section 7 decision to the Applicant, accompanied by responsive records. Some responsive records were released in full, and others were redacted pursuant to subsections 22(b), (c), and 29(1) of FOIP.
- [4] On November 11, 2024, the Applicant submitted a request for review to my office regarding Executive Council's search efforts for the responsive records, indicating that they did not believe that all records responsive to their request were located and released. In addition, the Applicant requested a review regarding Executive Council's application of exemptions to the redacted information within the responsive records that were provided to the Applicant.
- [5] On December 10, 2024, my office notified Executive Council and the Applicant that my office would be undertaking a review of Executive Council's search efforts and application of exemptions. My office requested Executive Council provide a copy of the records and

its index of records by January 9, 2025, and invited both parties to provide submissions by February 10, 2025.

[6] On January 9, 2025, Executive Council provided an index of records, accompanied by unredacted and redacted copies of the responsive records. Both parties provided submissions to my office on February 10, 2025.

II RECORDS AT ISSUE

[7] Executive Council identified nine responsive records, which equates to 11 total pages. Seven records (the equivalent of nine pages) were released in full, whereas two records (the equivalent of two pages) were withheld in part.

[8] Executive Council described the two redacted responsive records at issue as follows:

- Record 2: “Attachment to Record One: Letter” (one page), to which subsections 22(b) and (c) of FOIP were applied; and
- Record 3: “Email” (one page), to which subsection 29(1) of FOIP was applied.

[9] This review will also consider the Applicant’s concern that Executive Council did not provide all responsive records. To address this concern, this Report will also analyze the search efforts conducted by Executive Council.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] Executive Council is a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did Executive Council properly apply subsection 22(b) of FOIP?

[11] Executive Council redacted two portions of Record 2:

- The first redaction was to the entire second paragraph of the letter; and
- The second redaction was to the second half of the third paragraph of the letter.

[12] My initial objective is to consider if Executive Council properly applied subsection 22(b) of FOIP to portions of Record 2. Subsection 22(b) of FOIP provides:

22 A head may refuse to give access to a record that:

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;

[13] To determine if subsection 22(b) of FOIP applies to Record 2, I will consider submissions from both the Applicant and Executive Council in relation to the following two-part test:

1. Were the records “prepared by or for” an agent or legal counsel for a government institution?
2. Were the records prepared in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

(*Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access”, Updated October 18, 2023 [*Guide to FOIP*, Ch. 4], pp. 290-291)

1. ***Were the records “prepared by or for” an agent or legal counsel for a government institution?***
2. ***Were the records prepared in relation to a matter involving the provision of advice or other services by the agent or legal counsel?***

[14] Record 2 is addressed to the Deputy Minister of Justice and Deputy Attorney General. The redactions in Record 2 relate to specific types of information requested by the Deputy Minister to initiate a review of a public body.

[15] In its submission, Executive Council asserted:

Record 2 was prepared to confirm the direction provided and outline the scope of the review. ... The governance review was part of a broader legal strategy to manage the allegations against [the public body's] leadership, assess compliance with relevant statutes, and mitigate legal risks. ... to ensure the review met statutory obligations and minimized exposure to future litigation or regulatory breaches.

[16] If these legal services were going to be provided, Executive Council should have been explicit in terms of what those legal services entailed and what statutes were at issue. In addition, it should have directly linked what was redacted in the records in question to the provision of those legal services. It did not. Section 61 of FOIP clearly places the burden of proof on the government institution to establish that access to a record must be denied. Thus, the first part of the test for subsection 22(b) of FOIP is not met. I find that Executive Council did not meet the burden of proof in establishing that subsection 22(b) of FOIP applies to the two redactions on Record 2.

[17] Executive Council also applied subsection 22(c) of FOIP to the same information in Record 2, which I will now consider.

3. Did Executive Council properly apply subsection 22(c) of FOIP?

[18] Subsection 22(c) of FOIP provides:

22 A head may refuse to give access to a record that:

...

(c) contains correspondence between an agent of the Attorney General for Saskatchewan or legal counsel for a government institution and any other person in relation to a matter involving the provision of advice or other services by the agent or legal counsel

[19] To determine if subsection 22(c) of FOIP applies to Record 2, I will consider submissions from both the Applicant and Executive Council in relation to the following two-part test:

1. Is the record a correspondence between the government institution's legal counsel (or an agent of the Attorney General) and any other person?

2. Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?

(Guide to FOIP, Ch. 4, pp. 292-293)

1. ***Is the record a correspondence between the government institution's legal counsel (or an agent of the Attorney General) and any other person?***
2. ***Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?***

[20] To assess if the first part of the test of subsection 22(c) of FOIP is met, I must begin with a contemplation of key words central to the test question:

- “Correspondence” means letters sent or received. It is an interchange of written communication.
- “Attorney General,” in this context, is the chief law officer of Saskatchewan responsible for advising the government on legal matters and representing it in litigation.
- “Any other person” was an intentional and inclusive phrase to capture just that – any other person. The government institution must make it sufficiently clear, as to what the nature of that other person’s role in the correspondence was.

[21] In its submission to my office, Executive Council asserted: “Record 2 is a letter between the Deputy Minister to the Premier and the Deputy Minister of Justice and Deputy Attorney General.”

[22] As I already concluded above, Executive Council has not made the necessary argument/connection to the withheld information in the record at issue to the provision of specific legal services; therefore, I find that Executive Council did not meet the burden of proof in establishing that subsection 22(c) of FOIP applies to the two redactions on Record 2.

[23] Given that no additional exemptions were applied to the same information, I recommend that, within 30 days of issuance of this Report, Executive Council release to the Applicant the information withheld in Record 2 pursuant to subsection 22(c) of FOIP.

4. Did Executive Council properly apply subsection 29(1) of FOIP?

[24] Executive Council redacted Record 3, an email within which Executive Council withheld eight email addresses pursuant to subsection 29(1) of FOIP. Subsection 29(1) of FOIP provides:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[25] In order to apply subsection 29(1) of FOIP, the information in question must first be found to qualify as “personal information,” as defined by subsection 24(1) of FOIP. Executive Council asserted that subsections 24(1)(b), (e) and (k)(i) of FOIP apply to the withheld information on Record 3. These subsections provide as follows:

24(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

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

...

(k) the name of the individual where:

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

[26] In their submission to my office, the Applicant asserted:

The issue of privacy is a red herring. The people involved with the [name of body] Board review were employees or former employees of [name of body]. They had no reasonable privacy expectation. ...

[27] In its submission to my office, Executive Council asserted the following:

...

An email address, whether personal or business-related, allows for direct contact with the individual and often contains identifying information, such as the individual's name or workplace ...

...

The three business email addresses redacted in Record 3 reveal the individual's employment history because they indicate that the individual was employed by a specific organization at a specific time (i.e. date of the email). ...

...

Additionally, the business email addresses in question contain the individual's name (full or partial) and employment information/history, which falls within the scope of clause 24(1)(k)(i).

... Unlike Ontario's FIPPA, FOIP does not exclude business identity information from its definition of personal information. ...

[28] I now turn to a review of Record 3. In it, Executive Council redacted eight email addresses in the "cc" section of the header of an email, and it released the remainder of the email in full to the Applicant.

[29] Executive Council has asserted that redactions one, two, five, six, and eight are personal emails that constitute personal information; however, I am not persuaded. Based on a review of the government's publicly available resource, a former or current board member for the body appears to correspond with each severed email address. Regardless of the board members' use of personal email addresses, given the content of the communication (a memo regarding the review of the body's governance and leadership), it appears the recipients of the email were included to invite their participation in their professional capacities, rather than in their personal capacities. In other words, it seems that current members of the body's board were recipients of Record 3 due to their professional roles within the crown corporation as board members. As a result, I conclude that these individuals are using their personal email for professional or business purposes.

[30] My office's [Review Report 138-2021, 185-2021](#), states at paragraph [51]: "business card information, including personal email addresses used in a business context, are not personal information."

[31] It is noted that redactions three, four, and seven in Record 3 appear to be three individuals' work email addresses. Contrary to the assertions made by Executive Council in its submission, my office has clearly established that work email addresses do not constitute personal information, because they are considered "business card information." As I stated in [Review Report 203-2024](#), at paragraph [54]:

My office has consistently stated that business card information (contact information on a business card) does not constitute personal information because it is not personal in nature (*Guide to FOIP*, Ch. 6, p. 48). Rather, if the record is within the professional context, then business card information within the record is professional in nature. Business telephone numbers and addresses would qualify as personal information only if the record was personal in nature.

[32] I take the same approach here. As set out in [Review Report 137-2024](#) at paragraph [40], [Review Report 053-2024](#) at paragraph [56] and [Review Report 333-2023](#) at paragraph [76], "business card" information is not personal information.

[33] Therefore, I find that Executive Council did not appropriately apply subsection 29(1) of FOIP to the eight email addresses withheld on Record 3. I recommend that, within 30 days of issuance of this Report, Executive Council release to the Applicant the information in Record 3.

[34] Given that subsection 29(1) of FOIP was the final exemption applied by Executive Council, I now turn to consider its search efforts, as the Applicant believes that records exist that were not provided.

5. Did Executive Council conduct a reasonable search for records?

[35] A government institution should make reasonable efforts to not only identify and seek out responsive records to fulfill access requests, but also to explain its steps in the process of

fulfilling those requests. This expectation is established in subsection 5.1(1) of FOIP, which provides:

5.1(1) Subject to this Act and the regulations, a government institution shall respond to a written request for access openly, accurately and completely.

[36] When an applicant requests a review of a government institution's search efforts, both the applicant and the public body are invited to provide submissions.

[37] First, I will consider the submission provided by the Applicant. In a submission for a review analyzing search efforts, an applicant must demonstrate a plausible suspicion that a government institution has failed to:

- Release a responsive record, and/or
- Conduct a thorough search in order to retrieve a responsive record.

(Guide to FOIP, Chapter 3, "Access to Records," Updated May 5, 2023 [Guide to FOIP, Ch. 3], p. 13)

[38] To substantiate their claim, an applicant must submit more than just the suggestion that a document ought to exist. For example, an applicant may:

- Prove that they are in possession of a copy of a responsive record not released by the government authority, and/or
- Attest that they had previous interaction with a copy of a responsive record not released by the government authority.

(Guide to FOIP, Ch. 3, p. 13)

[39] In their submission, the Applicant asserted:

... In May 2024, I requested information related to my firing / reappointment and firing to Executive Council in late May 2024. These were OC actions. Messages from [name of body] and Minister Harrison's move through EC. The generation of these OC involved approximately 20 employees were involved including Assistant Cabinet Secretary & Clerk of EC, Cabinet Secretary, Cabinet Officers and Senior Crown Counsel. EC members were copied on that correspondence. **EC did not disclose these communications.**

Cam Swan, a member of EC, led the review. He had access to information on OC. Swan linked Harrison and Bilson. He controlled all review documents. Communications with Justice were redacted and attachments withheld. **While I participated in the review, I have no idea how the review was conducted or how evidence in the public domain were ignored. I requested EC's report and associated correspondence. ...**

[Emphasis added]

[40] The Applicant attests to the existence of Orders of Council, a report conducted by Cam Swan, and associated correspondence, none of which were released to the Applicant.

[41] In a submission for a review analyzing search efforts, government institutions must demonstrate that it conducted a “reasonable search,” defined by my office as follows:

A “reasonable search” is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

(Guide to FOIP, Ch. 3, p. 12).

[42] To substantiate its claims, a government institution must document details of its search efforts. For example, a government institution may:

- For personal information requests – explain how the individual is involved with the government institution (i.e., client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by:

- Alphabet
 - Year
 - Function
 - Subject
- Consider providing a copy of your organization’s record schedule and screen shots of the electronic directory (folders & subfolders).
 - If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
 - Explain how you have considered records stored off-site.
 - Explain how records that may be in the possession of a third party but in the government institution’s control have been searched such as a contractor or information management service provider.
 - Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).
 - Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
 - Indicate the calendar dates each employee searched.
 - Indicate how long the search took for each employee.
 - Indicate what the results were for each employee’s search.
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see [*Using Affidavits in a Review with the IPC*](#).

(*Guide to FOIP*, Ch. 3, pp. 14-15).

[43] The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

[44] I will now consider the submission provided by Executive Council. In its submission, Executive Council described its search efforts as follows:

Executive Council maintains a combination of electronic and paper records.

...

Since the Applicant's request specifically referenced Cam Swan, who was the Deputy Minister to the Premier at the time the records were created, **it was determined that the records in question would be located in the Deputy Minister's Office (DMO) within Executive Council.**

...

Upon receipt of the access request, Executive Council took the following steps:

1. **Initial Search:** An email was sent to [Deputy Minister's Office] staff requesting a search of electronic records (see Appendix A). Staff conducted a thorough search of electronic files.
2. **Archived Email Search:** As Cam Swan was no longer in his role when the request was received, Executive Council submitted a request to Information Technology Division (ITD) to activate his archived emails. These emails were also searched for relevant records.

... During the review of the responsive records, it was noted that some documentation may have been missed. This was addressed by conducting a second search of the DMO's electronic records. However, no additional records were found.

[Emphasis added]

[45] In its submission, Executive Council did not substantiate how it considered Orders of Council or documentation of the review of the body's governance. Yet, it appears such documentation must exist. I draw this conclusion based on the fact that a letter from Minister Harrison to the Applicant, released to them in full, clearly states, "I have asked Deputy Minister to the Premier, Cam Swan, to oversee a review of the governance and leadership of the [name of body]. I have requested that an update be provided to me by February 17, 2022." I find that Executive Council did not demonstrate that it conducted a reasonable search for responsive records.

[46] I recommend that, within 30 days of issuance of this Report, Executive Council create, implement, and provide my office with a [Responsive Records Search Checklist](#), informed by the following resources:

- My office’s blog, [How to Conduct an Effective Search for Records](#).
- My office’s blog, [Search Checklist](#).
- My office’s, [Sample Search Checklist](#).
- My office’s blog, [3 Minutes for a Search \(updated\)](#).
- My office’s, [Guide to FOIP, Ch. 3 on “Access to Records”](#) from pages 13-29.
- My office’s resource, [Best Practices for Responding to Access Requests](#).

[47] I recommend that, within 30 days of the issuance of this Report, Executive Council conduct a new search for records, alluded to by the Applicant at paragraph [39] of this Report, and provide to the Applicant any additional records located, subject to exemptions under FOIP.

IV FINDINGS

[48] I find that Executive Council did not meet the burden of proof, pursuant to section 61 of FOIP, that subsections 22(b) and (c) of FOIP apply.

[49] I find that Executive Council did not appropriately apply subsection 29(1) of FOIP to redactions on Record 3.

[50] I find that Executive Council did not demonstrate that it conducted a reasonable search for responsive records.

V RECOMMENDATIONS

[51] I recommend that, within 30 days of the issuance of this Report, Executive Council release the information in Record 2 to the Applicant.

[52] I recommend that, within 30 days of the issuance of this Report, Executive Council release the information in Record 3 to the Applicant.

[53] I recommend that, within 30 days of issuance of this Report, Executive Council create, implement, and provide my office with a [*Responsive Records Search Checklist*](#), informed by the resources outlined in this Report.

[54] I recommend that, within 30 days of the issuance of this Report, Executive Council conduct a new search for records, alluded to by the Applicant in this Report, and provide to the Applicant any additional records located, subject to exemptions under FOIP.

Dated at Regina, in the Province of Saskatchewan, this 30th day of April 2025.

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