Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 243-2025

Ministry of Trade and Export Development

November 4, 2026

Summary: The Applicant submitted an access to information request under *The Freedom of Information and Protection of Privacy Act* (*FOIP*) to the Ministry of Trade and Export Development (TED) for employment records.

Upon fulfillment of the request, the Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC). The review addresses whether TED complied with legislated timelines and whether it properly applied exemptions.

The Commissioner found:

(1) TED properly identified portions of the record as non-responsive.

(2) TED sufficiently substantiated the need for a time extension and provided adequate notice but exceeded the statutory response timeline by 45 days.

(3) TED properly applied section 15(1)(d) of *FOIP* (information injurious to the government institution in the conduct of existing or anticipated legal proceedings) to the withheld information.

(4) TED did not properly apply section 16(1) of *FOIP* (Cabinet confidence) to the withheld information.

(5) TED properly applied section 17(1)(a) of *FOIP* (proposals from Executive Council) to some, but not all, withheld information.

(6) TED properly applied section 17(1)(b)(i) of *FOIP* (consultations and deliberations with officers of a government institution) to the withheld information.

(7) TED established a *prima facie* case justifying the application of section 22(a) of *FOIP* to the record and this presumption has not been rebutted.

(8) TED properly applied section 29(1) of *FOIP* (third party personal information) to some, but not all, of the withheld information.

(9) TED did not properly apply section 31(2) of *FOIP* (individual personal information that is prepared for the purpose of determining suitability, eligibility or qualifications for employment) to some, but not all, of the withheld information.

The Commissioner recommended that TED continue to withhold information where it has been found an exemption was properly applied and the portions of the record properly identified as non-responsive. The Commissioner also recommended that TED release the information to which the exemptions did not apply. Where release is recommended, the Commissioner recommended that TED should do so within 30 days of the issuance of this Report.

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I BACKGROUND

[1] On May 28, 2025, the Applicant submitted the following access to information request under *The Freedom of Information and Protection of Privacy Act* (*FOIP*)[1] to the Ministry of Trade and Export Development (TED), for the date range of May 1, 2024 to May 28, 2025, inclusive:[2]

> All e-mails, texts, Teams messages, meeting invitations, meeting notes/documentation (handwritten and electronic) and documents from [the former Executive Director of Corporate Services for TED], [the former Assistant Deputy Minister for Strategic Policy and Competitiveness for TED], [the former Assistant Deputy Minister of TED], [the former Deputy Minister for TED], [the former Executive Coordinator to the ED for Corporate Services] and Caitlin Lane-Graham, [the current Director, International Engagement at TED], pertaining to or discussing:
>
> - [The Applicant]'s medical appointments and absences.
> - Disciplinary action or performance concerns involving [the Applicant].
> - The Conflict of Interest Forms provided by [the Applicant].
> - The unpaid leave by [the Applicant] in October 2024 and November 2024.
> - [The Applicant]'s campaign for [a locally elected community position] and [their] work as a [person in that elected position].
>
> Emails, information and documents from [the Applicant] or already shared with [the Applicant] need not be included.

[2] In a letter dated June 27, 2025, TED informed the Applicant of its intention to apply section 12(1)(a)(ii) of *FOIP* and extend the 30-day response period a further 30 days.[3] TED failed to respond by July 27, 2025. Instead, TED communicated with the Applicant on three

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

[2] The use of square brackets in this Report are amendments to preserve the identity of former employees of TED and the Applicant.

[3] Section 12(1)(a)(ii) of *FOIP* allows a government institution to extend the response deadline to a maximum of 60-days in total. This may occur in situations where that government institution has received a large number of access-to-information requests and completing them within the original 30-days would unreasonably interfere with the operations of the public body.

subsequent dates and indicated the following anticipated response dates – all well outside the 60 day time period:

Date of TED Communication with the Applicant	Anticipated Response Dates
July 31, 2025	August 14, 2025
August 14, 2025	August 28, 2025
August 29, 2025	September 11, 2025

[3] On September 11, 2025, still having not received a response from TED, the Applicant emailed the Assistant Deputy Minister for TED (ADM). The ADM replied to the Applicant that same day. The ADM indicated that TED had attempted to email the record earlier in the day, but that the attempt had been unsuccessful. Shortly after the email exchange, TED provided the Applicant with the record and a section 7 decision letter, informing that some records were withheld, in full or in part, pursuant to the exemptions in sections 15(1)(d), 16(1), 17(1)(a), (b)(i), 22(a), (b), (c), 29(1), and 31(2) of *FOIP*.

[4] On September 23, 2025, the Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC).

[5] On January 14, 2026, OIPC notified TED and the Applicant that a review would commence. OIPC requested that TED provide our office with an unredacted copy of the record and an index of record by February 13, 2026. Both TED and the Applicant were invited to provide submissions by March 16, 2026.

[6] On January 23, 2026, the Applicant provided a submission. On March 31, 2026, TED provided a submission.

II RECORD AT ISSUE

[7] The responsive record consists of 315 pages. TED released 232 pages in full. At issue are 83 pages of the record, 62 pages withheld in part and 21 pages withheld in full.

III DISCUSSION OF THE ISSUES

1. Jurisdiction

[8] TED 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. Compliance with section 12 of FOIP

[9] Section 7(2) of *FOIP* requires a government institution to respond to an applicant within 30 calendar days of the receipt of an access request. The government institution may extend the response deadline once under section 12 of *FOIP* for a further 30 calendar days. TED engaged section 12(1)(a)(ii) of *FOIP* to extend the deadline an additional 30 days:

> **Extension of time**
> **12**(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:
>
> (a) where:
>
> …
> (ii) there is a large number of requests;
>
> and completing the work within the original period would unreasonably interfere with the operations of the government institution;
>
> (2) A head who extends a period pursuant to subsection (l) shall give notice of the extension to the applicant within 30 days after the application is made.
>
> (3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[10] TED provided notice of the time extension on June 27, 2025. The calculation of 30 calendar days is informed by section 2-28 of *The Legislation Act*.[4] TED was obligated to provide a

[4] *The Legislation Act*, SS 2019, c. L10.2, as amended. OIPC Review Report 057-2025 at paragraph [16].

notice of time extension by June 27, 2025 in order to comply with section 12(2) of *FOIP* and the *Background* of this Report shows that TED met this obligation successfully.[5]

[11] Our review does not end here. We must consider the bases upon which TED invoked the time extension. TED submitted that the reason for the extension was because there were a high number of access requests. TED submitted that completing the work connected with this access request within the original time period would unreasonably interfere with operations:

> At the time TED received this access request, it was in the process of reviewing four other access requests. Multiple of these access requests had hundreds of pages of responsive records. TED also received eight additional access requests in the same week it received [this request].

[12] To fulfill an access to information request, it is incumbent upon a government institution to coordinate internal consultations, where necessary. Even though an extension of time should be outside the norm of a government institution's approach,[6] in this case we note that TED had to consult with the six individuals specified in the Applicant's request. Five of these individuals were no longer employed at TED. The Applicant's extended demand clearly transcended "standard considerations".[7]

[13] Unfortunately, TED lagged in its duty to respond to the access to information request within the 60-calendar day extension. Paragraph [2] of this Report reveals that TED *should have* provided a decision to the Applicant *by July 27, 2025,* but because this day was a Sunday, the response due date would shift to the Monday, July 28, 2025. The table at paragraph [2] of this Report reveals that TED did not do so until *September 11, 2025*. This is a period of 45 days *after* the statutory timeline required by *FOIP*. The legislation leaves

[5] The Applicant submitted their access to information request on May 28, 2025. According to section 2-28 of *The Legislation Act*, the 30-day timeline begins *the day after* the access to information request was received. Therefore, TED was obligated to provide a section 7 decision letter or notification of a time extension within 30 days of May 29, 2025.

[6] OIPC Review Report 137-2021 at paragraph [29].

[7] OIPC Review Report 244-2025 at paragraph [13].

no room for a further extension. TED sufficiently substantiated the need for a time extension and provided adequate notice of such but fell outside of the legislated response timeline by 45 days.

3. Information deemed non-responsive

[14] When a government institution receives an access to information request, it must cull the responsive information from the non-responsive. "Responsive" means anything reasonably relevant to the request. It follows that any information that does not reasonably relate to an applicant's access request will be considered "non-responsive".[8] TED withheld pages 107 to 109 in part and pages 296 to 315 in full, identifying the information therein as non-responsive. In the submission, TED asserted:

> [Pages 107 to 109] - … the remaining items/ information on these pages listed details of assignment headquarters, location address, location city, location postal code, location province, and supervisor name. As this information is not regarding the employee, TED determined this information to be non-responsive to the applicant's access request.
>
> Pages 296 to 315 - … all pages that were determined as non-responsive to the applicant's access request, were either beyond the scope of the applicant's requested timeline or they were duplicates of some pages within 297 to 315.

[15] The Applicant clearly stipulated in the access to information request that emails, information and documents from, or already shared with, the Applicant need not be included. The OIPC review confirms that pages 299 and 309 appear to be records provided by the Applicant and, therefore, were properly identified as non-responsive.

[16] In addition, the Applicant expressly outlined the date range of "May 1, 2024 to May 28, 2025 inclusive" in the access request. OIPC confirms that pages 296 to 298, 300 to 305, 307 to 308, and 313 to 315 all include a timeline that is outside the specified timeline as requested by the Applicant. These pages were properly identified as non-responsive.

[8] OIPC Review Report 199-2025 at paragraph [66].

[17] TED noted that page 306 was a duplicate of page 296 and pages 310 to 312 were duplicates of pages 300 to 302. The OIPC reveal confirms that these page duplicates are non-responsive.

[18] TED was correct in determining pages 107 to 109 in part and the entirety of pages 296 to 315 to be non-responsive. This information should continue to be withheld.

4. The application of section 29(1) of FOIP

[19] TED withheld portions of pages 108, 112, 113, 117, 118, 119 and 206 pursuant to the mandatory exemption in section 29(1) of *FOIP*:

> **Disclosure of personal information**
> **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.

[20] Section 29(1) of *FOIP* applies to "personal information", as defined by section 24(1) of *FOIP*. What qualifies as "personal information" is information that is about an "identifiable individual," and that is "personal in nature:" [9]

- An "identifiable individual" means that a person can reasonably be identified through the disclosure of the information. The information must reasonably be capable of identification either directly or by inference. "By inference" means that the information allows for an accurate conclusion to be made as to their identity due to the context of the information or because it is taken in combination with other available sources of information.

- "Personal in nature" means that the information reveals something personal about the individual. Information that relates to an individual in a professional, official, or business capacity could only qualify *if* the information revealed something personal about the individual, such as an individual's employment history.

[21] Sections 24(1)(b), (e) and (f) of *FOIP* merit our attention:

[9] OIPC Review Report 033-2017 at paragraph [12].

> **Interpretation**
> **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;
>
> (f) the personal opinions or views of the individual except where they are about another individual;

[22] The OIPC review confirmed that TED properly applied section 29(1) of *FOIP* to the following information that should continue to be withheld for these reasons:

Pages	Descriptions and Conclusions
Page 108: (redaction #'s 3, 5, 6, 7, 10, and 18)	Page 108 is a portion of spreadsheet attached to an email. The spreadsheet headers were released to the Applicant. The information under the headers "Eligibility for Performance Rating", "Eligibility Rationale for Performance Rating," and "Rating" was withheld under section 29(1) of *FOIP* and engaged sections 24(1)(b) and (f) of *FOIP*. This information is properly withheld because it reveals employment information of individuals and opinions about individuals other than the Applicant.[10]
Page 118	Page 118 is part of the spreadsheet described directly above. The sole redaction on page 118 engages section 24(1)(b) of *FOIP* as it reveals the employment history of an individual other than the Applicant.
Page 190: (redaction #2)	The information withheld on page 190 is a telephone number that is a personal telephone number of a third party that is not publicly available, thereby engaging section 24(1)(e) of *FOIP*.[11]

[23] The OIPC review revealed that TED did not properly apply section 29(1) of *FOIP* in the following cases:

[10] OIPC Review Report 099-2024 at paragraph [74].

[11] OIPC Review Report 078-2018 at paragraph [47].

Page(s)	Description and Conclusion
Page 112: (redaction #'s 1 and 2) **Page 113** **Page 117** (redaction #'s 1 and 2)	Pages 112, 113, and 117 are part of a spreadsheet used by the Public Service Commission (PSC) to gather information about Ministry staff. The content withheld under section 29(1) of *FOIP* on these pages engages section 24(2)(a) of *FOIP*. The withheld information reveals the classification and salary of employees of a government institution, which is not personal information:[12] **Interpretation** **24(2) "Personal information"** does not include information that discloses: (a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a government institution or a member of the staff of a member of the Executive Council;
Page 206	TED withheld a statement made by a TED employee that invited feedback from an employee of another government institution. OIPC does not agree with the TED submission that this comment is a personal opinion. This comment is a *request* for a personal opinion. Section 29(1) of *FOIP* does not apply to the sole redaction on the page. However, TED also applied section 17(1)(a) of *FOIP* to the same redaction, which will be considered later in this Report.

[24] As TED did not properly apply section 29(1) of *FOIP* to the information withheld on pages 112, 113, and 117, it should release this information to the Applicant within 30 days of the issuance of this Report. We will review the application of section 17(1)(a) of *FOIP* to the withheld material on page 206 later in this Report.

5. The application of section 15(1)(d) of FOIP

[25] TED withheld portions of pages 54, 108, 114 to 116, 119 to 121, 123, 124, 126 to 128, 139, 140, 163, 165, 169 to 174, 176, 178 to 179, and 181 to 191 pursuant to the exemption in section 15(1)(d) of *FOIP*, which states:

[12] OIPC Review Report 211-2025 at paragraph [35].

> **Law enforcement and investigations**
> **15**(1) A head may refuse to give access to a record, the release of which could:
>
> …
> (d) be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal proceedings.

[26] OIPC uses the following two-part test to determine whether the exemption applies:[13]

1. Do the proceedings qualify as existing or anticipated legal proceedings?

2. Could disclosure of the records be injurious to the government institution in the conduct of the legal proceedings?

Existing or anticipated legal proceedings

[27] The Courts of Saskatchewan have supplied a broad interpretation of the term "legal proceedings":[14]

> [44] **"Legal proceedings"** have been defined and considered in the context of privacy law:
>
> > [10] Legal *proceedings* are proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgment of a court or a ruling by a tribunal. Legal proceedings include all proceedings authorized or sanctioned by law and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of a remedy. *Saskatoon (City) (Re)* 2015 CanLII 6098 (SK IPC).
>
> [45] In *The Evidence Act*, SS 2006, c E-11.2, the Saskatchewan Legislature has defined legal proceeding in two portions of s. 2:
>
> > **"action"** means:
> >
> > > (a) a civil proceeding commenced by statement of claim or in any other manner authorized or required by statute or rules of court; or

[13] OIPC Review Report 074-2025 at paragraph [40].

[14] *Britto v University of Saskatchewan*, 2018 SKQB 92 at paragraphs [44] to [48]. In that case the mirror provision to section 15(1)(d) of *FOIP*, section 14(1)(d) of *The Local Authority Freedom of Information and Protection of Privacy Act,* SS 1990-91, c. L-27.1, as amended, *(LA FOIP),* was considered by Justice Danyliuk.

> (b) any other original proceeding between a plaintiff and a defendant; …
> …
> **"matter"**, in relation to proceedings in a court, means every civil proceeding that is not an action; …
>
> [46] In the *Canada Evidence Act*, RSC, 1985, c C-5, s. 30(12) defines "legal proceeding" as "any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration".
>
> [47] Labour grievances have been acknowledged to be "legal proceedings" for statutory purposes: *Park v Canada*, 2022 TCC 306.
>
> [48] Thus the modern definition of "legal proceeding" is relatively expansive and inclusive. It is not limited to the traditional lawsuit in a court. It can include matters taken before alternative boards and tribunals.

[28] Section 15(1)(d) of *FOIP* applies expansively to existing or anticipated legal proceedings where evidence may be given or an arbitration held. Civil or criminal proceedings are also included in the definition of "legal proceedings" in section 15(1)(d) of *FOIP*. The exemption may also apply to proceedings governed by rules of court or quasi-judicial tribunals that can result in a judgement of a court or a ruling of a tribunal. The exemption includes all proceedings authorized by law and brought or instituted in a court or legal tribunal for acquiring a right or the enforcement of a remedy. To anticipate the legal proceeding means that it is more than merely possible.[15]

[29] TED submitted that legal proceedings related to workplace matters were in progress and more were likely to follow:

> In this matter, the Applicant had filed a complaint against TED with the Human Rights Commission of Saskatchewan (HRCS) in 2025, under The Saskatchewan Human Rights Code, 2018. This complaint relates to workplace matters including the conflict of interest and the applicant's performance issues. As this complaint has still not been resolved, this matter constitutes to ongoing and future anticipated legal proceedings.

[30] The Applicant made a similar access request to PSC that was the subject of OIPC Review Report 244-2025 issued on September 11, 2026. At paragraph [45] of that Report, the

[15] *Ibid*, *(Britto)* at paragraphs [44] to [51] and [57] to [58].

Applicant confirmed that the Saskatchewan Human Rights Commission (SHRC) has been engaged in the matter between the Applicant and TED. Proceedings before the SHRC constitute legal proceedings. We confirm the existence of ongoing legal proceedings in connection to this workplace matter.[16]

Could disclosure be injurious to the government institution in the conduct of legal proceedings

[31] TED submitted that the release of this information could be deleterious to the legal proceedings currently engaged:

> …it is evident that the redacted information contains management consultations, opinions, assessments, evaluation and decisions to address conflict of interest and performance matters regarding an employee (the applicant). As such, disclosure of the redacted records could be injurious to TED in its defence of the ongoing and/ or any future legal proceedings with the applicant, in front of the HRCS. Additionally, if the matter was to proceed to the King's Bench of Saskatchewan, such disclosure would affect TED's defense adversely…

[32] The OIPC review reveals that the withheld content in this section of the Report consists of material that could be injurious to a government institution in the course of legal proceedings.[17] Given that the Applicant is engaged in a workplace dispute involving TED and the SHRC, the withheld portions could be relevant to those proceedings, making it an objective possibility that disclosure could be injurious to TED.[18] We provide a very general assessment of these pages:

Pages	Descriptions of Redactions
54	Page 54 is an email, withheld in part. In the sole redaction on this page, TED withheld a comment from a PSC employee that showcases internal analysis and management considerations.

[16] *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2, as amended, at section 34.

[17] *Supra*, footnote 7 at paragraph [50].

[18] OIPC Review Report 261-2025 at paragraphs [32] to [35].

108	Page 108 is part of a spreadsheet used by TED to document employment information about (and performance ratings of) TED employees. At redaction 20 on page 108, an entry in a column entitled "Eligibility 'Other' Explanation", which includes an internal assessment related to the Applicant.
114 to 116, 119 to 121	Pages 114 to 116 and 119 to 121 are part of a document that outlines information provided to PSC from a particular branch of TED. The portion of the document at issue poses questions related to employee performance. Each of the responses to the questions posed in the document outlines targeted assessments with details.
123, 124, 126 to 128	Pages 123, 124, and 126 to 128 compile responses to standardized questions posed to TED employees about the support provided by their supervisor, who in this case was the Applicant. The questions were released to the Applicant, but the responses were withheld.
139 to 140	Pages 139 to 140 show a TED employee's responses to questions regarding topics such as the Applicant's accomplishments and strengths. The responses from the TED employee who was asked the questions were withheld.
163, 165, 169 to 174, 176, 178, 179, 181 to 191	These pages are part of an "HR Performance Package". The assessment prompts within the "HR Performance Package" were released to the Applicant. TED withheld the supervisor's responses to the prompts, as they relate to the Applicant.

[33] TED properly applied section 15(1)(d) of *FOIP* to the pages outlined in the table above and should continue to withhold this information.

6. The application of section 31(2) of FOIP

[34] Pages 34, 86, and 89 were withheld in part by TED pursuant to the exemption in section 31(2) of *FOIP*:

> **Individual's access to personal information**
> **31**(2) A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability, eligibility or qualification for employment or for the awarding of government contracts and other benefits, where the information is provided explicitly or implicitly in confidence.

[35] The provision was drafted to address two competing interests: the right of an individual to have access to their own personal information versus the need to protect the flow of frank information to ensure correct decisions can be made with respect to the award of jobs, contracts, and other benefits.[19]

[36] OIPC uses the following three-part test to determine whether the exemption applies:[20]

1. Is the information personal information that is evaluative or opinion material?
2. Was the personal information compiled solely for one of the enumerated purposes?
3. Was the personal information provided explicitly or implicitly in confidence?

Is the information personal information that is evaluative or opinion material

[37] To qualify as personal information, the information must be about an individual, in this case the Applicant, and must be personal in nature. This type of information includes opinions about the Applicant, which is defined as their personal information at section 24(1)(h) of *FOIP*, which states:

> **Interpretation**
> **24**(1) Subject to sections (1.1) and (2), **"personal information"** means personal information about an identifiable individual that is recorded in any form, and includes:
>
> …
> (h) the views or opinions of another individual with respect to the individual;

[19] OIPC Review Report 013-2023 at paragraph [17].

[20] *Ibid*, at paragraph [18].

[38] However, for section 31(2) of *FOIP* to apply, it is not sufficient for the content to qualify as personal information; it must be personal information *that is evaluative or opinion material.*[21] In the submission, TED asserted:

> [For pages 34, 86, and 89], the redacted information on all these three pages is the same. The redacted information discusses the applicant's factual attendance in the office and the impact of this on their team and duties. Such information qualifies as evaluative in nature because it determines the employee's suitability and eligibility for the current employment position with the Ministry and the Government of Saskatchewan (GoS).
>
> [Emphasis added]

[39] The second redaction on page 34 consists of one sentence that must be broken into two segments. The first half of the sentence *before the parenthesis*, is an observation with respect to the Applicant's attendance at the workplace. The withheld first part of this sentence is factual. It is neither evaluative nor opinion information. The first part of the test is not met for the first half of this sentence *before the parenthesis*.

[40] The second part of the sentence *after the parenthesis* contains an opinion with respect to the Applicant. This opinion is highly evaluative in nature. Therefore, the first part of the test is met for the second part of the sentence in the second redaction on page 34.

[41] The sole redactions on pages 86 and 89 are exact duplicates of the second redaction on page 34.

[42] TED applied no additional exemptions to the same content. Therefore, the first part of the test is not met for the first part of the sentence *before the parenthesis* on pages 34, 86 and 89. TED did not properly apply section 31(2) of *FOIP* to this information. As no other exemptions were applied to this information, within 30 days of the issuance of this Report, TED should release the first part of the sentence *before the parenthesis* on pages 34, 86

[21] "Opinion material" is a belief or assessment based on grounds short of proof; a view held as probable for example, a belief that a person would be a suitable employee, based on that person's employment history. An opinion is subjective in nature and may or may not be based on facts. OIPC Review Report 280-2025 at paragraph [45].

and 89 to the Applicant. However, the second part of the sentence *after the parenthesis* on pages 34, 86 and 89 contains opinion material that meets the first part of the test.

Was the personal information compiled solely for one of the enumerated purposes?

[43] The purpose and intent of subsection 31(2) of *FOIP* is to allow individuals, other than the subject of the information, to provide candid feedback during an evaluation. Section 31(2) of *FOIP* also requires that the personal information be compiled solely for one of the enumerated purposes, which can include one of the following:[22]

- Evaluations to determine an individual's suitability, eligibility, or qualifications for employment.
- Evaluations for the award of contracts with the government institution.
- Evaluations for the award of other benefits.

[44] The following definitions are helpful:[23]

- "Compiled" means that the information is drawn from several sources or extracted, extrapolated, calculated or obtained in some other way.
- "Suitability" means whether an individual is the right candidate or appropriate for a particular purpose or situation.
- "Qualifications" means the possession of qualities or properties inherently or professionally necessary to make one eligible for a position or office, or to perform a public duty or function.
- "Employment" means the selection for a position as an employee of a government institution.
- "Employment reference" means personal information that is evaluative, or opinion material compiled solely for the purpose of describing an individual's suitability, eligibility or qualifications for employment.

[22] *Supra*, footnote 19 at paragraphs [24] and [39].

[23] *Ibid,* at paragraphs [23] and [25] to [28].

[45] TED submitted that this information was compiled specifically for the purpose of determining the Applicant's suitability and eligibility for their current employment.

[46] Based on a review of the information within the second half of each of the redacted sentences on pages 34, 86, and 89, OIPC can confirm that the withheld information clearly relates to the first enumerated purpose. As such, the second part of the test is met for the second half of each of the redacted sentences on pages 34, 86, and 89.

Was the personal information provided explicitly or implicitly in confidence?

[47] Finally, the personal information must be provided explicitly or implicitly in confidence, which OIPC defines as follows:[24]

- "Explicitly" means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that proves the information was provided on the understanding that it would be kept confidential.
- "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.
- "In confidence" usually describes a situation of mutual trust in which private matters are relayed or reported. Information provided in confidence means that the supplier of the information has stipulated how the information can be disseminated.

[48] To determine if confidence is implicitly understood, we consider an array of variables, such as:[25]

- What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the party providing it or by the government institution?

[24] *Ibid*, at paragraphs [32] to [35].

[25] *Ibid*, at paragraph [36].

- Was the information treated consistently in a manner that indicated a concern for its protection by the party providing it and the government institution from the point at which it was provided until the present time?

- Does the government institution have any internal policies or procedures that speak to how records or information such as that in question are to be handled confidentially?

[49] TED submitted that the withheld information was always intended to remain confidential:

> …The redacted information…qualifies as evaluative in nature because it determines the employee's suitability and eligibility for the current employment position with the Ministry...
>
> …All the pages noted above are…confidential records of assessment used to support performance review decisions. … The reason that supervisors can candidly assess their employees without concern is with the understanding of implicit confidentiality, that their evaluative comments will not be disclosed to the employee.

[50] The OIPC review confirms that the withheld information consists of a statement provided by a TED supervisor to another TED employee about the Applicant's ability or inability to the fulfill the work role. It is clear from the nature of the candid assessment, that the content of the second half of the target sentences on pages 34, 86 and 89 was intended to be given in a situation of implied confidence. The third and final part of the test is met. TED properly applied section 31(2) of *FOIP* to the second half of the sentences *after the parenthesis* on pages 34, 86, and 89 and should continue to withheld this information.

[51] To summarize, TED should release the first part of the sentence *before the parenthesis* on pages 34, 86 and 89 within 30 days of the issuance of this Report.

[52] TED should continue to withhold the evaluation opinion provided in confidence in the second half of the same sentence after the parenthesis on pages 34, 86 and 89 pursuant to the exemption contained in section 31(2) of *FOIP*.

7. The application of section 17(1)(a) of FOIP

[53] TED withheld pages 16, 17, 18, 20, 24, 25, 33, 34, 59, 93, 97, 102, 195, 206, and 268 in part under section 17(1)(a) of *FOIP*, which states:

> **Advice from officials**
> **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;

[54] Section 17(1)(a) of *FOIP* employs the "could reasonably be expected" phrase. For the exemption to be found to apply, the party asserting the exemption must demonstrate that harm "could reasonably be expected" to happen if the information is disclosed. OIPC refers to the standard as being that of an objective possibility. This usually means that the expectation of harm needs to be reasonable, but not a given.[26] The burden of proof is with TED.

[55] The following two-part test to determine if section 17(1)(a) of *FOIP* applies is useful:[27]

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, proposals, recommendations, analyses or policy options developed by or for a government institution?

Does the information qualify as advice, proposals, recommendations, analyses or policy options?

[56] TED submitted that the withheld information constituted advice, recommendations, and analyses. OIPC is grateful for the guidance from the Saskatchewan King's Bench Court in defining these terms:[28]

[26] *Kasprick v Saskatchewan Power Corporation*, 2025 SKKB 139 at paragraph [30].

[27] OIPC Review Report 196-2025 at paragraph [18].

- "Advice" refers to guidance or recommendations offered with regard to future action; opinions or analysis related to a situation which may require action.

- "Recommendations" include suggestions as to a course of action, and the rationale for such suggestions.

- "Analyses" refers to the concise setting out of the advantages and disadvantages of particular courses of action.

[57] The following redactions made under section 17(1)(a) of *FOIP* do *not* involve advice, recommendations, and/or analysis. Given that the first part of the test is not met for these redactions, TED should, within 30 days of the issuance of this Report, release to the Applicant the following, with the exception of the redactions that have other exemptions yet to consider:

Page(s)	Description and Conclusion
Page 16 (redaction #2)	The second redaction on page 16 is released at the top of page 24. Having released this information, there can be no claim to the exemption in section 17(1)(a) of *FOIP*.
Page 20 (redaction #2)	The second redaction on page 20 is request for direction. This does not constitute advice, recommendations, and/or analyses and thereby does not engage section 17(1)(a) of *FOIP*.[29]
Page 25 (redactions #'s 1 and 2)	The first and second redactions on page 25 are released on page 17. Having released this information, there can be no claim to the exemption in section 17(1)(a) of *FOIP*.
Page 33 **Page 34** (redaction #1)	The redaction on page 33 that continues over to page 34 is released in full on pages 86 and 88. Having released this information, there can be no claim to the exemption in section 17(1)(a) of *FOIP*.
Page 59	The redaction on page 59 is an email thread between a TED employee and a PSC employee that invites feedback.

[28] *Leo v. Global Transportation Hub Authority*, 2019 SKQB 150 at paragraph [29].

[29] OIPC Review Report 004-2022 at paragraph [68].

	This does not constitute advice, recommendations, and/or analyses and thereby does not engage section 17(1)(a) of *FOIP*. TED also applied section 17(1)(b)(i) of *FOIP* to the same information, which will be considered later in this Report.
Page 93	The redaction on page 93 was released on page 95. Having released this information, there can be no claim to the exemption in section 17(1)(a) of *FOIP*.
Page 97	On page 97 a TED employee conveys a recommendation to another TED employee. However, the exact same recommendation was released in full on page 95 by the TED employee who had received the recommendation on page 97. The essence of the information conveyed on page 97 has been fully released on page 95. Having released this information, there can be no claim to the exemption in section 17(1)(a) of *FOIP* on page 97.
Page 102	Page 102 is an email thread between a TED employee and a PSC employee that invites feedback. This does not engage section 17(1)(a) of *FOIP*. TED also applied section 17(1)(b)(i) of *FOIP* to the same information, which will be considered later in this Report.
Page 206	Page 206 is an email thread between a TED employee and a PSC employee in which an opinion is sought. This does not engage section 17(1)(a) of *FOIP*.
Page 268	Page 208 is an email thread between a TED employee and a PSC employee in which advice is sought. This does not engage section 17(1)(a) of *FOIP*. TED also applied section 17(1)(b)(i) of *FOIP* to the same information, which will be considered later in this Report.

[58] The following withheld content qualifies as advice, recommendations, and/or analyses and should continue to the second phase of the analysis pursuant to section 17(1)(a):

Pages	Description and Conclusion
Page 16 (redaction #1) **Page 17** **Page 18**	Pages 16 to 18 involve an email discussion thread between an employee of TED and an employee of PSC with respect to a conflict-of-interest issue related to the Applicant. The first redaction on page 16 withholds feedback provided by the PSC employee to the TED employee about a draft response to the former Chair of PSC about the matter. This constitutes advice. The draft message to the former Chair of PSC about the Applicant's conflict-of-interest matter begins on page 17 and ends on page 18. The sole redaction on page 17 establishes the writer's purpose in communicating with the former Chair of PSC and outlines bases for a decision being made. This constitutes analyses.[30] The sole redaction on page 18 elaborates on the benefits of particular course of action. This constitutes a recommendation.
Page 20 (redaction #1)	Page 20 is an email message between the former Chair of PSC with a PSC employee and a TED employee. The first redaction on page 20 provides a suggestion from one employee to another about preferred next steps. This constitutes a recommendation.
Page 24 (redaction #1)	Page 24 is a duplicate of the email thread found in pages 16 to 18. As such, the first redaction on page 24 is the same as the sole redaction on page 17 and constitutes analyses.
Page 195	Page 195 is a draft letter provided by a TED employee to a PSC employee for their review. The redaction contains an analysis and a recommendation.

Was the advice, proposals, recommendations, analyses or policy options developed by or for a government institution?

[59] To be considered "developed by or for" a government institution, the advice, recommendations, and analyses must have been created either: *within* the government institution or *outside* the government institution but *for* the government institution and at its request.[31] TED confirmed that the records were created by TED staff or as a result of communication with another government institution (PSC) within the scope of official

[30] *Supra*, footnote 7 at paragraph [29] regarding pages 90 and 91 of the record.

[31] OIPC Review Report 267-2025 at paragraph [20].

duties. As the central human resource agency for the Government of Saskatchewan, PSC provides guidance and support personnel related matters within government institutions like TED.[32] Based on a careful review of the record, it is apparent that the advice, recommendations, and analyses confirmed in the first part of the test were developed by *and* for TED.

[60] The second part of the test is met. TED properly applied section 17(1)(a) of *FOIP* to the information listed in paragraph [58] of this Report and should continue to withhold this information.

8. The application of section 17(1)(b)(i) of FOIP

[61] TED withheld pages 59, 85, 102, and 268 in part under section 17(1)(b)(i) of *FOIP*, which states:

> **Advice from officials**
> **17**(1) Subject to section (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;

[62] The following two-part test is helpful in the determination of the applicability of section 17(1)(b)(i) of *FOIP*:[33]

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?

[32] Website: Government of Saskatchewan, Public Service Commission

[33] *Supra*, footnote 27 at paragraph [35].

[63] A "consultation" occurs 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. A "deliberation," on the other hand, is a discussion or a consideration, by officers or employees of a government institution, of the reasons for and against an action.[34] The term "deliberation" might suggest an intent to decide while "consultations" may occur at an early stage of decision-making:[35]

> [67] I accept that the concept of deliberation might suggest an intent to decide. Consultation appears to be a broader term, and need not have that objective, though the definition advanced by the Commissioner suggests that such an objective might be necessary. Consultation might reasonably occur at such an early stage of decision-making that it equates to information gathering to better inform proposal-development. If the Legislature intended to exclude discussions with persons that might not lead to decisions, it would have been a simple matter to include that notion in s. 16. It did not do so.
>
> [Emphasis added]

[64] TED submitted that the redacted portions on pages 59, 85, 102 and 268 all contained consultations between a senior management member of TED and a senior management member of PSC.

[65] The OIPC review reveals this to be the case. The redaction on page 59 qualifies as a consultation. The sole redactions on pages 102 and 268 also withhold questions that would qualify as the basis for consultations. We also agree that the redacted information on page 85, which is an email between senior employees of PSC and TED, qualifies as a deliberation because it outlines considerations regarding a decision to be made. Because the content was clearly developed by employees of government institutions (chiefly, PSC and TED), the second part of the test is also met.

[66] TED may continue to withhold the withheld content outlined on pages 59, 85, 102, and 268 under section 17(1)(b)(i) of *FOIP*, as this exemption applies.

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[34] OIPC Review Report 056-2017 at paragraph [81].

[35] *Tarasoff v City of Saskatoon*, 2025 SKKB 41 at paragraph [67].

9. The application of section 16(1) of *FOIP*

[67] Section 16(1) of *FOIP* is a mandatory exemption that requires a government institution to withhold information that is a "Cabinet confidence".

[68] The Saskatchewan provincial Cabinet, also known as Executive Council, is a decision-making body that determines the provincial government's policies, priorities, legislative agenda, and budget. The Premier appoints Cabinet Ministers, each with responsibility for a Ministry. These Ministers lead Cabinet committees which, with the assistance of civil servants, aggregate and analyze information and, ultimately, recommend appropriate action to Cabinet as a whole.[36] Ministers perform these duties with the assistance of civil servants and Cabinet committees may establish advisory committees to achieve their goals.[37]

[69] Information that constitutes a "Cabinet confidence" may be broadly defined as the privileged communications of Cabinet Ministers (either individually or collectively), the disclosure of which would make it difficult for Cabinet Ministers to address the legislature and the public.[38]

[70] TED withheld a portion of page 138 of the record pursuant to the exemption in section 16(1) of *FOIP*: which states:

> **Cabinet documents**
> **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;

[36] See the "Cabinet" article on the *Government of Saskatchewan* website.

[37] Pursuant to section 16 of *The Executive Government Administration Act*, SS 2014, c E-13.1, as amended.

[38] *Supra,* footnote 7 at paragraph [57].

> (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).

[71] The word "including" in section 16(1) of *FOIP* suggests that the list established by the subclauses is not exhaustive.[39] In the event that none of the subclauses bear relevance, the introductory wording of section 16(1) of *FOIP* must still be considered in the overall evaluation. Ultimately, the exemption maintains that Cabinet (Executive Council) confidences must be withheld for the following reasons: [40]

> [29] …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. …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

[39] OIPC Review Report 308-2025 at paragraph [10].

[40] *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 at paragraphs [29] and [61].

> Cabinet itself and its individual members, the role of the Premier, and Cabinet's prerogative to determine when and how to announce its decisions.
>
> [Emphasis added]

[72] We reproduce the TED submissions below:

> TED submits that the part of the record redacted pursuant to subsection 16(1) of FOIP, discusses advice and proposals regarding multiple Cabinet approved government projects and initiatives which are ongoing for TED. These Cabinet approved projects involve a Ministry of the Government of Saskatchewan (GoS), other than TED, and a committee involved in a government-wide initiative for GoS. …

[73] The portions withheld under section 16(1) of *FOIP* on page 138 are from an email sent by a TED employee to a PSC employee. The redactions are of content related to the work of the Red Tape Reduction Committee. The withheld content on page 138 discusses specific work intended by the committee. The burden of establishing this exemption is upon TED and TED submitted the work of the Red Tape Reduction Committee was approved by Cabinet.

[74] That may very well be, but OIPC was not provided with any evidence to suggest that the withheld content on page 138 was created to present advice, proposals, recommendations, analyses or policy options to Executive Council or any of its committees, as per section 16(1)(a) of *FOIP*. The email is plainly not an agenda, minutes, or a record of deliberations of actual decisions made by Executive Council or its committees, as per section 16(1)(b) of *FOIP*. It does not overtly constitute a record of consultation among members of Executive Council on matters related to government policy, as per section 16(1)(c) of *FOIP*. Moreover, the email does not contain briefings to members of Executive Council, as per section 16(1)(d) of *FOIP*.

[75] Instead the redacted content appears to be nothing more than planned talking points for a conversation between the Applicant and their supervisor that references something called "The Red Tape Reduction Committee". While the subject matter of the talking points alludes generally to projects approved by Cabinet, in practical terms, the substance within

the redactions reveals only the Ministry's own internal work directives and outcomes delegated specifically to the Applicant. Release of the information withheld on page 138 does not "shed light on Cabinet deliberations", nor would it imperil "candour in ministerial deliberations". We conclude that no confidence of Executive Council would be disclosed through release of the withheld information on page 138, to which TED did not properly apply section 16(1) of *FOIP*.

[76] Given that it applied no other exemptions to the same information, TED should release the withheld content on page 138 to the Applicant within 30 days of the issuance of this Report.

10. The application of section 22(a) of FOIP

[77] TED withheld page 19 in full under section 22(a) of *FOIP*, which states:

> **Solicitor-client privilege**
> **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;

[78] Under section 22(a) of *FOIP*, solicitor-client privilege applies to records that involve communications between a solicitor and a client that entail the seeking or giving of legal advice and that are intended by the parties to be confidential.[41] Only the party with whom the solicitor-client privilege resides is entitled to waive that privilege.[42] In this case, the privilege belongs to and is asserted by TED, which sought and was provided legal advice, and which engaged in communications about legal advice.

[79] TED alleged a presumption of fact that all communications in which it engaged with legal counsel are, *prima facie,* confidential in nature. That presumption has not been rebutted. In

[41] *Descôteux et al. v Mierzwinski,* [1982] 1 SCR 860 at pages 870-873; *Alberta (Information and Privacy Commissioner) v University of Calgary,* 2016 SCC 53, [2016] 2 SCR 555 at paragraphs [40] to [43].

[42] OIPC Review Report 114-2025 at paragraph [17].

support of the claim of solicitor-client privilege, TED provided the following to OIPC: an affidavit,[43] a schedule of record,[44] and a letter of explanation.[45] TED explained and identified the government lawyer involved in the preparation of, and relaying of, solicitor-client advice in this matter. OIPC confirmed that the government lawyer was in good standing in Saskatchewan at the material time. TED conveyed that in addition to the legal advice itself, the withheld page also contained responses in relation to the advice provided.

[80] TED has met the required threshold. TED has established a *prima facie* case and justified the application of section 22(a) of *FOIP* to page 19. Given that section 22(a) of *FOIP* is found to apply, other bases for exempting the same information will not be considered in this Report.

IV FINDINGS

[81] OIPC has jurisdiction under PART VII of *FOIP* to undertake this review.

[82] TED sufficiently substantiated the need for a time extension and provide adequate notice but exceeded the statutory timeline by 45 days.

[83] TED properly identified portions of pages 107 to 109 and the entirety of pages 296 to 315 as non-responsive.

[84] TED properly applied section 29(1) of *FOIP* to the information listed in the table in paragraph [22] of this Report but did not properly apply section 29(1) of *FOIP* to the information listed in the table in paragraph [23] of this Report.

[43] The affidavit, dated March 30, 2026, 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.

[44] The schedule of records outlined the type of record, the date of the record, and the type of privilege claimed (solicitor-client privilege).

[45] The letter of explanation, dated March 30, 2026, provided details about the application of section 22(a) of *FOIP* to page 19.

[85] TED properly applied section 15(1)(d) of *FOIP* to that information listed in the table in paragraph [32] of this Report.

[86] TED did not properly apply section 31(2) of *FOIP* to the first part of the sentence *before the parenthesis* on pages 34, 86 and 89 of the record.

[87] TED properly applied section 31(2) to the second half of the sentence after the parenthesis on pages 34, 86 and 89 of the record.

[88] TED did not properly apply section 17(1)(a) of *FOIP* to the information listed in the table in paragraph [57] of this Report. TED properly applied section 17(1)(a) of FOIP to the information listed in the table in paragraph [58] of this Report.

[89] TED properly applied section 17(1)(b)(i) of *FOIP* to portions of pages 59, 85, 102, and 268 of the record.

[90] TED did not properly apply section 16(1) of *FOIP* to a portion of page 138 of the record.

[91] TED established a *prima facie* case justifying the application of section 22(a) of *FOIP* to page 19 of the record. That presumption was not rebutted.

V RECOMMENDATIONS

[92] Where TED properly applied the exemptions, I recommend that TED continue to withhold the redacted information. That includes the information listed in paragraphs [22], [58], [87], [89], [91] of this Report and the non-responsive information listed in paragraph [83] of this Report.

[93] Where TED did not properly apply the exemptions, I recommend that within 30 days of the issuance of this Report, TED release to the Applicant the information listed in paragraphs [23], [57], [86], and [90] of this Report.

Dated at Regina, in the Province of Saskatchewan, this 4th day of November, 2026.

Grace Hession David
Saskatchewan Information and Privacy Commissioner