



## REVIEW REPORT 360-2025

### Saskatchewan Human Rights Commission

May 26, 2026

#### Summary:

The Applicant made an access request for records to the Saskatchewan Human Rights Commission (SHRC). The SHRC denied access to the record in its entirety under section 15(1)(c) (interfere with a lawful investigation or disclose information with respect to a lawful investigation), section 15(1)(d) (injurious to a government institution in the conduct of existing or anticipated legal proceedings), section 22(a) (solicitor client privilege) and section 22(c) (correspondence between 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) of *The Freedom of Information and Protection of Privacy Act (FOIP)*.

The Applicant asked the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) to undertake a review of the exemptions applied by the SHRC.

The Commissioner found that the SHRC properly applied section 15(1)(d) of *FOIP* to the record in its entirety. The Commissioner recommended the SHRC continue to withhold the record pursuant to section 15(1)(d) of *FOIP*.

#### I BACKGROUND

[1] On October 15, 2025, the Saskatchewan Human Rights Commission (SHRC) received an access request from the Applicant that read as follows:

Harassment Investigation Report completed in or around October 2025 by [name of investigator] regarding by February 26, 2025 harassment complaint against [names of three individuals from the SHRC].

- [2] The SHRC advised the Applicant by letter on November 13, 2025, that it was withholding the record, in its entirety, under sections 15(1)(c), (d), 22(a) and (c) of *The Freedom of Information and Protection of Privacy Act (FOIP)*.<sup>1</sup>
- [3] Dissatisfied with the SHRC's decision, the Applicant asked the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) to undertake a review of the exemptions as applied by the SHRC.
- [4] On February 10, 2026, OIPC provided notice of a review to the Applicant and the SHRC. Both parties were invited to provide submissions.
- [5] On March 16, 2026, the SHRC provided its index of record (index) and the record to OIPC. The SHRC did not consent to sharing the index with the Applicant.
- [6] On April 13, 2026, the Applicant provided their submission to OIPC.
- [7] On April 14, 2026, the SHRC provided its submission to OIPC. The SHRC did not consent to sharing its submission with the Applicant.

## **II RECORD AT ISSUE**

- [8] The record, which will be referred to as the "Investigation Report", is 190 pages in total and was completed by an independent investigator, external to the SHRC. The Investigation Report consisted of three parts: an analysis and summary of findings accompanied by two sets of appendices. The appendices included documentation compiled by the investigator. The SHRC withheld all 190 pages of the report in its entirety pursuant to the exemptions in sections 15(1)(c), (d), 22(a) and (c) of *FOIP* as follows:

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

| Number of Pages | Description                                      |
|-----------------|--|
| 97              | Analysis and summary of findings (formal report) |
| 44              | Appendix 1                                       |
| 49              | Appendix 2                                       |

### III DISCUSSION OF THE ISSUES

#### 1. Jurisdiction

[9] The SHRC qualifies as a “government institution” pursuant to section 2(1)(d)(ii) of *FOIP* and section 3 of *The Freedom of Information and Protection of Privacy Regulations*.<sup>2</sup> OIPC has jurisdiction and is conducting this review under PART VII of *FOIP*.

#### 2. The application of the exemption in section 15(1)(d) of *FOIP*

[10] The historical background to this matter is relevant because it explains the reason the SHRC commissioned the Investigation Report. The background also is essential to understand whether the exemption in section 15(1)(d) of *FOIP* was properly applied.

[11] The Applicant requested the second of two investigation reports commissioned with respect of this matter. The reports were commissioned after the Applicant submitted a harassment complaint (the complaint) to the SHRC on February 26, 2025. The subject matter of the complaint focussed on two SHRC executives and one member of the SHRC human resources department. The SHRC hired an external investigator in March of 2025 to undertake an initial investigation. This resulted in the first investigation report (initial investigation report). The Corporate Secretary to the Board of Governors for the SHRC (the Corporate Secretary) and outside legal counsel were tasked with managing the matter on a going forward basis. For reasons not relevant to this review, a second external

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<sup>2</sup> [\*The Freedom of Information and Protection of Privacy Regulations\* \(FOIP Regulations\)](#) R.R.S. c. F-22.01 Reg 1 (effective April 1, 1992), as amended. Section 3 of the *FOIP* Regulations refers to Part I of the Appendix which is a long list of other bodies prescribed as government institutions. The Saskatchewan Human Rights Commission is on this list.

investigator was engaged, and this resulted in the Investigation Report which is the subject matter of this review.

- [12] This access request comes amid a history of sporadic litigation on the part of the Applicant. Besides the initial complaint filed with the SHRC on February 26, 2025, the Applicant filed a grievance with the union on March 27, 2025. The union declined to pursue this grievance. The Applicant also filed two separate complaints with the Law Society of Saskatchewan against two SHRC executives in early 2025. The Applicant later withdrew both complaints. The SHRC submitted that the Investigation Report in issue contains privileged legal advice in the context of the litigious history of this entire matter and with respect to future legal matters:

The SHRC reasonably anticipates that the Applicant's Complaint and the findings of the Subsequent Investigation may give rise to legal proceedings against the SHRC, including potential human rights complaints, grievances, or civil litigation arising from the subject matter of the Complaint. The Applicant has already filed numerous complaints and an unsuccessful union grievance against the SHRC. The nature of the allegations and the parties involved create a reasonable expectation that further legal proceedings are probable. This reasonable apprehension of litigation is the foundational requirement for litigation privilege to attach...

- [13] The Applicant simply submitted that they have "no knowledge of any existing or anticipated legal proceedings." The Applicant confirmed membership in the local union while employed at the SHRC. The Applicant confirmed filing three grievances with the union but submitted that two of the prior grievances were later withdrawn, and the third was declined by the union. The Applicant also supplied confirmatory documentary evidence with respect to the union's refusal to pursue the grievance that was filed on March 27, 2025.

- [14] The Applicant filed a claim for psychological injury in the workplace with the Saskatchewan Workers' Compensation Board (WCB). The claim was approved by WCB on April 28, 2026. The mechanism of injury was found to be "workplace harassment and interpersonal conflict."

[15] The Applicant referred us to three cases but failed to state the relevance: *Weber v. Ontario Hydro* [1995]<sup>3</sup>, *St. Anne Nackawic Pulp & Paper v. CPU* [1986]<sup>4</sup> and *Northern Regional Health Authority v. Horrocks* [2021]<sup>5</sup>. None of these cases serve to bar the Appellant from the pursuit of future civil litigation. From the evidence before us, there is no reason to believe that this dispute has arisen from a collective agreement and binding arbitration that could deprive a court of concurrent jurisdiction.

[16] The SHRC submitted that the Investigation Report consists of findings, conclusions, witness statements, documentary evidence and a detailed analysis of the allegations. These all form the 190 pages. The entire document was withheld under section 15(1)(d) of *FOIP*. This discretionary exemption provides:

**Law enforcement and investigation**

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;

[17] OIPC uses a two-part test to determine if section 15(1)(d) of *FOIP* applies. We proceed with the first aspect of that test now:<sup>6</sup>

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

[18] The spectre of litigation had existed for years in *Britto v University of Saskatchewan*, prior to the filing of the access to information request with this office.<sup>7</sup> The documents in that case were created well after 2014, when Mr. Britto first commenced legal proceedings

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<sup>3</sup> [Weber v. Ontario Hydro](#), [1995] 2 SCR 929.

<sup>4</sup> [St. Anne Nackawic Pulp & Paper v. CPU](#), [1986] 1 S.C.R. 704.

<sup>5</sup> [Northern Regional Health Authority v. Horrocks](#), 2021 SCC 42, [2021] 3 SCR 107.

<sup>6</sup> OIPC [Review Report 074-2025](#) at paragraph [40].

<sup>7</sup> [Britto v University of Saskatchewan](#), 2018 SKQB 92.

against the University of Saskatchewan. “Legal proceedings” were expansively defined in that case.<sup>8</sup>

[47] Labour grievances have been acknowledged to be “legal proceedings” for statutory purposes: *Park v Canada*, 2012 TCC 306.

[48] Thus the modern definition of “legal proceedings” 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.

[19] The history of this matter provides ample factual background for a conclusion that the Applicant is not afraid to file complaints/grievances and is currently engaged in litigation with the WCB against the SHRC. We conclude that existing legal proceedings have been engaged.

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

[20] On the second part of the test, section 15(1)(d) of *FOIP* uses the term “could” instead of the phrase “could reasonably be expected to” as seen in other provisions of *FOIP*. The requirement setting out that an injury “could” happen is that there be a “mere possibility of an injurious effect.” The threshold of “mere possibility” was recently refined by the Saskatchewan Court of Appeal in *Saskatchewan Government Insurance v Giesbrecht (Giesbrecht)* as being an “objective possibility”.<sup>9</sup> The SHRC is only obligated to show that it is *objectively possible* that disclosure of the record could cause injury.

[21] The SHRC submitted that disclosure of the Investigation Report could reveal how the evidence related to the Applicant’s complaint was assessed, including the legal strengths and weaknesses of the allegation. The SHRC also posited that disclosure would reveal witness statements and other evidence the SHRC may need to rely on in legal proceedings in the future. There was also a fear that disclosure of this document might discourage

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<sup>8</sup> *Ibid*, at paragraphs [47] and [48].

<sup>9</sup> *Saskatchewan Government Insurance v Giesbrecht*, 2025 SKCA 10. See also OIPC [Review Report 078-2025](#) at paragraph [18].

witnesses from participating in future investigations. Lastly, the SHRC added that premature disclosure could impact the “admissibility or probative value of evidence” in any legal proceedings.

[22] The focus of this analysis has to be on the potential injury to the SHRC in the event of disclosure of the document. The concept of “litigation privilege” is also relevant to this analysis. The fear is the “chilling effect” that untimely disclosure could have on parties preparing for litigation.<sup>10</sup> Aside from the general concern associated with the waiver of litigation privilege altogether, it is essential that a party and its counsel be free to work with a certain degree of privacy, free from unnecessary intrusion by opposing parties.

[23] This office is satisfied that the second part of the test is met. Our review confirmed that the SHRC properly applied section 15(1)(d) of *FOIP* to the Investigation Report. In reaching this finding, there is no need to review the other exemptions on which the SHRC has relied.

#### **IV FINDINGS**

[24] OIPC has jurisdiction to undertake a review under PART VII of *FOIP*.

[25] The SHRC properly applied section 15(1)(d) of *FOIP* to the Investigation Report in its entirety.

#### **V RECOMMENDATION**

[26] I recommend the SHRC continue to withhold the Investigation Report under section 15(1)(d) of *FOIP*.

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<sup>10</sup> [\*Lizotte v Aviva Insurance Company of Canada\*](#), 2016 SCC 52 at paragraph [53], [2016] 2 SCR 521.

Dated at Regina, in the Province of Saskatchewan, this 26<sup>th</sup> day of May, 2026.

Grace Hession David  
Saskatchewan Information and Privacy Commissioner