



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 081-2018**

### **Ministry of Health**

**April 22, 2019**

#### **Summary:**

The Ministry of Health (the Ministry) withheld records responsive to the Applicant's access to information request pursuant to subsections 13(2), 17(1)(a), 17(1)(b)(i), 19(1)(b), 22(a), 22(c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner also considered whether the record should be withheld pursuant to subsection 27(1) of *The Health Information Protection Act* (HIPA) and reviewed the Ministry's search for records. He found that subsections 13(2), 17(1)(a), 17(1)(b)(i), 19(1)(b) and 22(c) of FOIP did not apply to the record. He recommended that the Ministry release some records, but withhold others pursuant to subsections 22(a) and 29(1) of FOIP and subsection 27(1) of HIPA.

### **I BACKGROUND**

[1] On June 21, 2017, the Ministry of Health (the Ministry) received a request for review for information pertaining to the name of the Applicant including all emails, letters, briefing notes, texts and any other relevant documents in which the Applicant's name is included. The Applicant requested that the time period of the search span from January 1, 2007 to the date of the access request.

[2] On August 8, 2017, the Ministry provided the Applicant with a fee estimate. The Applicant paid the deposit on August 26, 2017.

- [3] On December 18, 2017, the Applicant had not yet received a response from the Ministry and requested a review by my office. On January 31, 2018, I issued Review Report 326 to 332-2017 which addressed the Ministry's delay in responding to this request and six other access requests.
- [4] On April 17, 2018, the Ministry responded to the Applicant. The Ministry provided the Applicant with some responsive records and withheld some pursuant to subsections 13(2), 17(1)(a), 17(1)(b)(i), 19(1)(b), 22(a), 22(c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [5] On April 23, 2018, the Applicant requested a review by my office of the Ministry's decision to withhold records and the Ministry's search for records. On May 15, 2018, my office notified both the Ministry and the Applicant of my intention to undertake a review.
- [6] On March 27, 2019, Health identified 10 pages of additional responsive records. On April 15, 2019, the Ministry released them to the Applicant. On April 15, 2019, the Ministry also identified two more pages of records but did not apply exemptions.

## **II RECORDS AT ISSUE**

- [7] The Ministry identified 608 records responsive to the Applicant's request. It withheld information on 150 pages of the record. In its response to the Applicant, the Ministry indicated that it was withholding the information pursuant to subsections 13(2), 17(1)(a), 17(1)(b)(i), 19(1)(b), 22(a), 22(c) and 29(1) of FOIP. In preparing the record for this review, it also applied subsection 22(b) of FOIP. I will also consider whether the Ministry should withhold personal health information pursuant to subsection 27(1) of *The Health Information Protection Act* (HIPA). Appendix A provides more details about the record.
- [8] On March 27, 2019, the Ministry identified 10 additional pages of records which were later released to the Applicant. On April 15, 2019, the Ministry also identified two more pages of records.

### **III DISCUSSION OF THE ISSUES**

#### **1. Does my office have jurisdiction in this matter?**

[9] The Ministry qualifies as a government institution pursuant to subsection 2(d)(i) of FOIP. Therefore, my office has jurisdiction in this matter.

[10] The Ministry also qualifies as a trustee pursuant to subsection 2(t)(i) of HIPA.

#### **2. Did the Ministry perform a reasonable search for records?**

[11] Section 5 of FOIP provides:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[12] The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable. FOIP does not require the public body to prove with absolute certainty that records do not exist. Public bodies can provide information in describing its search efforts. Examples of the type of information that can be provided can be found in my office’s resource *IPC Guide to Exemptions for FOIP and LA FOIP*.

[13] With the request for review, the Applicant alleged that there should be additional documents and emails responsive to the request because “several emails, letters and other relevant documents etc. were not included in the response.” The Applicant did not elaborate on what might be missing except to indicate that some attachments were missing. In my office’s notification, the Ministry was asked to detail its search.

[14] In its submission, the Ministry indicated that the timeframe it searched for responsive records was from January 1, 2007 to the date the access request was received.

- [15] The Ministry indicated that it searched the Acute Emergency Services branch, Financial Services Branch, Communications Branch and Deputy Minister's office. The shared drives of each branch was searched, as was any paper records. The Applicant's name was used as keywords in the electronic search.
- [16] The Ministry also searched the emails of several Ministry employees that were detailed in the Ministry's submission. The submission was shared with the Applicant. The Applicant was invited to respond, but did not provide additional concerns or details about records that may be missing.
- [17] On March 27, 2019, the Ministry provided the attachments that were missing to my office. They were released to the Applicant on April 15, 2019. On April 15, 2019, the Ministry also identified two more pages of records but it did not apply exemptions. For more details, see Appendix A.
- [18] I am satisfied with the Ministry's search for records. However, I recommend that the Ministry find a way to ensure that, when processing future access to information requests, attachments to responsive emails are accounted for.

### **3. Is there information not responsive to the access request?**

- [19] When a government institution receives an access to information request, it must determine what information is responsive to the access to information request.
- [20] Responsive means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an Applicant's request will be considered "not-responsive". The Applicant's access to information request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.
- [21] A government institution can sever information as non-responsive only if the Applicant has requested specific information, such as his or her own personal information. The

government institution may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access to information request.

[22] The purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If a government institution has any doubts about its interpretation, it has a duty to assist the Applicant by clarifying or reformulating the request.

[23] The Ministry withheld information from three email strings because it views the information as non-responsive to the Applicant's access request.

[24] In my blog entitled *What about the Non-Responsive Record?* I suggested that best practice is to provide the non-responsive information to the applicant (subject to exemptions). Alternatively, the public body might choose to sever the non-responsive information but that strikes me as a waste of time. Unnecessary severing causes applicants to be suspicious that something is being hidden. An applicant could submit a second access request for the severed non-responsive portions and the public body would have to provide it (subject to exemptions).

[25] The first email string is found on page 92 of the record. In the first email, a health region employee asks several third parties, including the Applicant for information. The Ministry has released this email to the Applicant. The next two emails is a third party responding to the health region and then the health region forwarding the information on to the Ministry. The two emails themselves do not contain the name of the Applicant and reasonably do not pertain to the Applicant. However, as noted above, the Applicant could make a second request, therefore I recommend the Ministry release the information to the Applicant.

[26] The second email chain is found on pages 345 to 348 of the record. The earliest emails in the chain discuss an events that are part of a mediation in which the Applicant was involved. Older emails in the chain, that the Ministry has indicated are non-responsive,

relate to the needs of the mediator involved. These emails are related to a mediation in which the Applicant is involved and are responsive to the request.

[27] Finally, the last email chain found on pages 416 to 418 of the record is an email string between Ministry employees discussing work that is required related to the Applicant. Each email in the string relates to the Applicant. The portion of one of the emails in the string that the Ministry has identified as non-responsive is a to-do list of one of the employees explaining when the work related to the Applicant will be accomplished. The Applicant's request was for all documents containing the name or pertaining to the Applicant. This email pertains to the Applicant, therefore, I find it to be responsive.

[28] I find that further information is responsive to the access request.

#### **4. Does subsection 13(2) of FOIP apply to the record?**

[29] Subsection 13(2) of FOIP provides:

13(2) A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from a local authority as defined in the regulations.

[30] Subsection 2(2) of the FOIP *Regulations* provides:

2(2) For the purposes of these regulations and subsection 13(2) of the Act, "local authority" means a local authority as defined in *The Local Authority Freedom of Information and Protection of Privacy Act*.

[31] My office has established the following test for this exemption:

1. Was the information obtained from another local authority or a similar body in another province or territory of Canada?
2. Was the information obtained implicitly or explicitly in confidence?

[32] The Ministry withheld information pursuant to subsection 13(2) of FOIP on 30 pages of the record.

- [33] The Ministry's submission indicated that the information it redacted was obtained from the former regional health authorities.
- [34] As of December 4, 2017, the former regional health authorities were amalgamated in to the Saskatchewan Health Authority. The regional health authorities qualified as local authorities for the purposes of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) before the amalgamation. The Saskatchewan Health Authority qualifies as a local authority pursuant to subsection 2(f)(xiii) of LA FOIP.
- [35] For subsection 13(2) to apply, the Ministry must show that the information was obtained explicitly or implicitly in confidence. In its submission, the Ministry indicated that the information was provided implicitly in confidence from the former regional health authorities. The Ministry indicated that if it receives information from other organizations, even without the written statement of confidentiality, it assumes it was provided implicitly in confidence and will withhold the information from access requests unless consent is provided from the organization to release it.
- [36] 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.
- [37] Factors to consider when determining whether information was obtained in confidence implicitly include (not exhaustive):
- What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the public body or the local authority?
  - Was the information treated consistently in a manner that indicated a concern for its protection by the public body and the local authority from the point it was obtained until the present time?
  - Is the information available from sources to which the public has access?

- Does the public body have any internal policies or procedures that speak to how records such as the one in question are to be handled confidentially?
- Was there a mutual understanding that the information would be held in confidence? Mutual understanding, in this context, means that the public body and the local authority both had the same understanding regarding the confidentiality of the information at the time it was provided. If one party intends the information to be kept confidential but the other does not, the information is not considered to have been obtained in confidence. However, mutual understanding alone is not sufficient. Additional factors must exist.

[38] The above factors are not a test but rather guidance on factors to consider. It is not an exhaustive list. Each case will require different supporting arguments. The bare assertion that the information was obtained implicitly in confidence would not be sufficient.

[39] In its submission, the Ministry alluded to the fact that the information may have been provided with a mutual understanding that it was to be kept confidential, because it reproduced some of the guidance material above. However, the Ministry did not explain how the former regional health authorities demonstrated this understanding. The Ministry has not provided me with enough information to conclude that all of the information in question was provided implicitly in confidence

[40] The Ministry's mere assertion that it "assumes" it was provided implicitly in confidence is not enough to persuade me that the second test is met.

[41] Subsection 13(2) of FOIP does not apply to the record.



**5. Does subsection 17(1)(a) of FOIP apply to the record?**

[42] Subsection 17(1)(a) of FOIP provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[43] This exemption is meant to allow for candor during the policy-making process, rather than providing for the non-disclosure of all forms of advice or all records related to the advice. The object of the provision includes maintaining an effective and neutral public service capable of producing full, free and frank advice.

[44] In order for this exemption to be found to apply, all three parts of the following test must be met:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. The advice, recommendations, proposals, analyses and/or policy options must:
  - i) be either sought, expected, or be part of the responsibility of the person who prepared the record; and
  - ii) be prepared for the purpose of doing something, for example, taking an action or making a decision; and
  - iii) involve or be intended for someone who can take or implement the action.
3. Was the advice, recommendations, analyses and/or policy options developed by or for the public body?

[45] I will use this test to evaluate the application of subsection 17(1)(a) of FOIP to various portions of the record.

[46] The Ministry applied subsection 17(1)(a) of FOIP to portions of 89 pages of the record. In its submission, the Ministry used one paragraph to explain how the information met the test for subsection 17(1)(a) of FOIP.

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

[47] In its submission, the Ministry indicated that the information in question qualified as advice, analyses and recommendations. My office has defined these terms as follows:

Advice includes the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice has a broader meaning than recommendations.

Advice includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.

Proposals, analyses and policy options are closely related to advice and recommendations and refer to the concise setting out of the advantages and disadvantages of particular courses of action.

[48] The Ministry applied subsection 17(1)(a) of FOIP to a wide variety of information. However, only some of the record qualifies as advice, recommendations and/or analyses. As noted in the definitions above, the information must be tied to making a decision or taking an action. Upon review of the record, the following are examples of types of information that do not meet the first part of the test:

- definitions, background information and statistical data,
- factual accounts of events;
- direction given to employees; and
- words of gratitude to coworkers.

[49] There is information that could qualify as advice, analyses and/or recommendations. However, the other two parts of the test must also be met.

- 2. The advice, recommendations, proposals, analyses and/or policy options must:**
- i) be either sought, expected, or be part of the responsibility of the person who prepared the record; and*
  - ii) be prepared for the purpose of doing something, for example, taking an action or making a decision; and*
  - iii) involve or be intended for someone who can take or implement the action.*

[50] The Ministry did not address these questions in its submission. It simply noted that the information in question consists of email exchanges between the Ministry, regional health authorities, legal counsel and third party organizations.

[51] While preparing its submission, the Ministry relied heavily on my office's resource *IPC Guide to Exemptions* and quoted it extensively. For this exemption, the resource indicates that the role of the individuals involved should be explained by the public body. The Ministry did not provide an explanation.

[52] Given the variety of the information in question, these answers could be different for each page the exemption is applied. It is not evident from a review of the record what the reporting relationship is in each circumstance.

[53] Government institutions should not assume that it is self-evident on the face of the record that a test is met. Section 61 of FOIP provides as follows:

61 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[54] The second part of the test has not been met.

***3. Was the advice, recommendations, analyses and/or policy options developed by or for the public body?***

[55] For information to be developed by or for a public body, the person developing the information should be an official, officer or employee of the public body, be contracted to perform services, be specifically engaged in an advisory role (even if not paid), or otherwise have a sufficient connection to the public body. The role of the individuals

involved should be explained by the public body. In other words, the decisions must be internal to the Ministry.

[56] The Ministry's submission noted that the information in question consist of email exchanges between the Ministry of Health, regional health authorities, and third party organizations. It did not explain if each decision was internal to the Ministry or how the authors of each document had an advisory role to the Ministry.

[57] The third part of the test has not been met.

[58] The Ministry has not demonstrated that subsection 17(1)(a) of FOIP applies to the record as described in Appendix A.

**6. Does subsection 17(1)(b)(i) of FOIP apply to the record?**

[59] Subsection 17(1)(b)(i) of FOIP provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[60] This provision is meant to permit public bodies to consider options and act without constant public scrutiny. A consultation occurs when the views of one or more officers or employees of a public body are sought as to the appropriateness of a particular proposal or suggested action. A deliberation is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. It refers to discussions conducted with a view towards making a decision.

[61] For this exemption to apply, the consultations or deliberations must involve officers or employees of a government institution. In addition, the following two part test must be met:

1. The opinions solicited during a consultation or deliberation must be either sought, expected, or be part of the responsibility of the person who prepared the record; and
2. The opinions solicited during a consultation or deliberation must be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[62] The provision is not meant to protect the bare recitation of facts, without anything further. Further, the exemption does not generally apply to records or parts of records that in themselves only reveal that a consultation or deliberation took place at a particular place or time; that particular persons were involved; or that a particular topic was involved.

[63] The Ministry applied subsection 17(1)(b) of FOIP to 64 pages of the record. Its submission indicated that the information was sought and expected from the employees of the Ministry as part of their job responsibilities and was prepared for senior government officials in order to make decisions and take action.

[64] Upon review of the record, the Ministry has withheld information that would not meet the first part of the test because some of the material would not qualify as consultations or deliberations. This includes factual information.

[65] Further, the Ministry has not explained what decision or action tied to each record. Government institutions should not assume that it is self-evident on the face of the record that a test is met.

[66] I am not persuaded that subsection 17(1)(b)(i) of FOIP applies to the record.

**7. Does subsection 19(1)(b) of FOIP apply to the record?**

[67] Subsection 19(1)(b) of FOIP provides:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

[68] The Ministry applied subsection 19(1)(b) of FOIP to five pages of the record. There are three third parties involved.

[69] The Ministry originally applied subsection 19(1)(b) of FOIP to more pages. However, when the Ministry gave notice to the third parties pursuant to subsection 52 of FOIP, one third party consented to the release of records. The Ministry has since released the records and they are not subject to the review.

[70] The other third parties did not make representations to my office. I rely on the Ministry's submission.

[71] In order for subsection 19(1)(b) of FOIP to apply, the three parts of the following test must be met.

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?

2. Was the information supplied by the third party to a public body?

3. Was the information supplied in confidence implicitly or explicitly?

[72] I will begin by addressing the third part of the test.

[73] In its submission, the Ministry noted that when it receives information from other organizations, even without the written statement of confidentiality, the Ministry will

assume it was provided implicitly in confidence and will withhold the information from access requests unless consent is provided from the other organization to release it.

[74] As discussed when considering subsection 13(2) of FOIP, this is not enough to demonstrate that the information was supplied implicitly or explicitly in confidence. The third part of the test is not met.

[75] I am not persuaded that subsection 19(1)(b) of FOIP applies to the record.

#### **8. Does subsection 22(a) of FOIP apply to the record?**

[76] Subsection 22(a) of FOIP provides:

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;

[77] On May 16, 2018, the Court of Appeal for Saskatchewan determined whether my office had authority to require local authorities to produce records that may be subject to solicitor-client privilege. *University of Saskatchewan v Saskatchewan (Information and Privacy Commissioner)*, 2018 SKCA 34 concluded that my office should follow the “absolutely necessary” principle. As a result, it suggested that my office follow a process to gather information about records and consider whether a prima facie case for solicitor-client privilege has been made before requiring a record.

[78] My office has established a process to consider a claim of solicitor-client privilege. When considering claiming solicitor-client privilege, public bodies have three options when preparing records for review with the IPC:

1. Provide the documents to the IPC with a cover letter stating the public body is not waiving the privilege;
2. Provide the documents to the IPC with the portions severed where solicitor-client privilege is claimed; or

3. Provide the IPC with an affidavit with a schedule of records (see sample in the [\*Rules of Procedure\*](#)).

[79] My office has established the following test for subsection 22(a) of FOIP:

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Was the communication intended to be confidential?

[80] The Ministry provided my office with an affidavit that was signed on December 18, 2018.

[81] The Ministry withheld six documents totaling 15 pages of records pursuant to subsection 22(a) of FOIP. It did not provide these documents to my office for review.

[82] The six documents are emails. They are between employees of the Ministry and crown counsel. I am satisfied that they meet the first test.

[83] The Ministry's affidavit indicates that each of the documents contain legal opinions and advice. I am satisfied that the second part of the test is met. I am also satisfied that these were intended to be confidential and the third part of the test is met.

[84] Although I have not reviewed this portion of the record, I find that the Ministry has made a prima facie case that subsection 22(a) of FOIP applies to this portion of the record. There is no need to consider the application of subsections 22(b) or 22(c) of FOIP to these records.



**9. Does subsection 22(c) of FOIP apply to the record?**

[85] 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.

[86] In order to qualify for this exemption, both parts of the following test must be met:

1. Is the record a correspondence between the public body's legal counsel or an agent of the Attorney General for Saskatchewan 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?

[87] I have reviewed three pages to which the Ministry has applied subsection 22(c) of FOIP.

[88] Upon review, the record in question appears to be an email chain. The earliest email was written by the Applicant and sent to employees of the Ministry, among others. On the next day, the email is forwarded amongst Ministry employees three times. The first time it is forwarded, it is also sent to a Crown Counsel at the Ministry of Justice and Attorney General. The Crown Counsel is not included in any other of the exchanges. At some point, it appears that a Ministry employee has inserted notes in the body of the Applicant's original email. This is what has been severed from the record pursuant to subsection 22(c) of FOIP. It appears that this was done the second time the email was forwarded. This exchange did not include the Crown Counsel.

[89] In its submission, the Ministry asserts that all correspondence is between Ministry employees and Ministry of Justice Crown Counsel employees. The submission did not differentiate between the pages in question and other pages to which the Ministry has applied subsection 22(c) of FOIP.

[90] It does not appear that the pages in question is correspondence between an agent of the Attorney General for Saskatchewan and any other person. As such the first test is not met.

[91] Subsection 22(c) of FOIP does not apply to the record.

**10. Did the Ministry properly apply subsection 29(1) of FOIP to the record?**

[92] 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.

[93] In order for subsection 29(1) of FOIP to apply, the information in the record must first qualify as “personal information” as defined by subsection 24(1) of FOIP; however, it is not an exhaustive list. Some relevant provisions include:

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:

...

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

...

(h) the views or opinions of another individual with respect to the individual;

...

(k) the name of the individual where:

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

(ii) the disclosure of the name itself would reveal personal information about the individual.

[94] The list provided in subsection 24(1) of FOIP is not meant to be exhaustive. There can be other types of information that would qualify as personal information that are not listed. Part of that consideration involves assessing if the information has both of the following:

1. Is there an identifiable individual?

2. Is the information personal in nature?

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 for example, information that fits the definition of employment history.

[95] The information that the Ministry severed from pages 187 and 429 are about individuals who would be identifiable to the Applicant. Although the information would not necessarily fit under a subclause of subsection 24(1) of FOIP, the information in question is personal in nature. As such, I find the information in question qualifies as personal information pursuant to subsection 24(1) of FOIP and should be withheld pursuant to subsection 29(1) of FOIP.

[96] The Ministry indicated that the information withheld on pages 148 and 149 of the record are personal email addresses of individuals. In Review Reports 157-2016, 216-2017, and 184-2016, I have found that personal email addresses qualify as personal information pursuant to subsections 24(1)(e) and (k) of FOIP. As such, they should be withheld pursuant to subsection 29(1) of FOIP.

[97] On page 116 of the record, the Ministry severed a reason why an event would be delayed. The event was also related to the Applicant. The information severed related to a specific family member of the Applicant. In this context, it appears that the reason the event, involving the Applicant, would be delayed was because of something that affected the Applicant and this family member. In this respect, it appears to be information that is personal in nature about the Applicant. As such, it should be disclosed to the Applicant.

[98] The information severed on page 261 is the response of a regional health authority's employee to an email written by the Applicant. The regional health authority employee's comment was sent by email to the Ministry. The comment appears to be a remark about the Applicant and/or the Applicant's concerns. The comment qualifies as personal information of the Applicant pursuant to subsection 24(1)(h) of FOIP because it is the

views or opinions of the regional health authority employee with respect to the Applicant. It should be released to the Applicant.

[99] Finally, the Ministry withheld information on pages 274, 275, 425, 432 and 434 of the record. I will consider whether the information qualifies as personal health information for the purposes of HIPA.

**11. Should the Ministry withhold personal health information pursuant to subsection 27(1) of HIPA?**

[100] The information that the Ministry withheld on pages 432 and 434 of the record is the name of an individual. The information that has been disclosed to the Applicant describes health services that this individual has received. The information severed on pages 274, 275 and 425 also reveals information about an individual's health and health services received.

[101] Subsection 2(m)(ii) of HIPA defines personal health information as follows:

2 In this Act:

...

(m) "personal health information" means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

(ii) information with respect to any health service provided to the individual;

(iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual; or

(v) registration information;

[102] The information in question qualifies as personal health information pursuant to subsections 2(m)(i) and (ii) of HIPA. As such, the Ministry should not disclose the information pursuant to subsection 27(1) of HIPA which provides:

27(1) A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.

[103] The Ministry should continue to withhold this information.

## **12. Did the Ministry meet the duty to assist?**

[104] As part of the request for review, the Applicant complained that the records he received were not in chronological order and that it was not made clear as to which records corresponded with particular parts of the request.

[105] Section 5.1 of FOIP imposes a duty on government institutions to assist an Applicant. It 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.

(2) On the request of an applicant, the government institution shall:

(a) provide an explanation of any term, code or abbreviation used in the information; or

(b) if the government institution is unable to provide an explanation in accordance with clause (a), endeavour to refer the applicant to a government institution that is able to provide an explanation.

[106] Section 5.1 of FOIP does not address the order in which records should be provided. In Review Report 086-2018, I conclude that it is not necessary for a government institution to put records in any specific order unless negotiated by the Applicant beforehand.

[107] The only exception to the order of the records, would be the attachments to emails. In Review Report 086-2018, I concluded that an applicant should not have to request a review

from my office to find out about attachments. If a public body is going to leave duplicate attachments out of the record, or re-order the record, it is best practice to provide an explanation to the applicant at the same time it provides the record. This would be part of the duty to assist.

[108] The Applicant was also concerned that he did not know what records corresponded to each part of his request.

[109] For greater clarity, the Applicant could have made two separate access to information requests. Further, the Ministry reported that the Applicant did not contact the Ministry to seek clarification about which records corresponded to each part of the request between the time he received the records and requested a review from my office. If the Ministry had refused to answer the Applicant's questions about how each record was responsive to the request, it may not have met the duty to assist. On this issue, I am satisfied that the Ministry responded appropriately.

[110] I find the Ministry met the duty to assist.

#### **IV FINDINGS**

[111] I find the Ministry has performed a reasonable search for records.

[112] I find that subsections 13(2), 17(1)(a), 17(1)(b)(i), 19(1)(b) and 22(c) of FOIP do not apply to the record.

[113] I find that subsection 22(a) of FOIP applies to portions of the record.

[114] I find that the Ministry should withhold third party personal information pursuant to subsection 29(1) of FOIP and third party personal health information pursuant to subsection 27(1) of HIPA.

[115] I find the Ministry should release the Applicant's personal information to the Applicant.

[116] I find the Ministry met the duty to assist.

## **V RECOMMENDATION**

[117] I recommend that the Ministry release and withhold records as described in Appendix A.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of April, 2019.

Ronald J. Kruzeniski, Q.C.  
Saskatchewan Information and Privacy  
Commissioner

## Appendix A

<b>PAGE OF THE RECORD</b>	<b>SECTION(S) APPLIED BY THE MINISTRY</b>	<b>DOES IT APPLY?</b>	<b>RELEASE OR WITHHOLD?</b>
3	17(1)(a)	No	Release
	17(1)(b)(i)	No	
7-10	17(1)(a)	No	Release
14-17	17(1)(a)	No	Release
22-25	17(1)(a)	No	Release
29-31	17(1)(a)	No	Release
34-36	17(1)(a)	No	Release
39	13(2)	No	Release
43-44	17(1)(a)	No	Release
45-47	22(a)	Yes	Withhold
	22(b)	No need to review	
	22(c)	No need to review	
49	17(1)(a)	No	Release
65-67	17(1)(a)	No	Release
	17(1)(b)(i)	No	
71-72	17(1)(a)	No	Release
	17(1)(b)(i)	No	
92	Non-responsive	Not Responsive	Withhold
98-99	13(2)	No	Release
101	13(2)	No	Release
102	22(a)	Yes	Withhold
	22(c)	No need to review	
105-106	13(2)	No	Release
108	13(2)	No	Release
109	17(1)(a)	No	Release
	17(1)(b)(i)	No	
112-114	17(1)(a)	No	Release
	17(1)(b)(i)	No	
116	17(1)(a)	No	Release
	29(1)	No	
119-120	13(2)	No	Release
121	17(1)(a)	No	Release
	17(1)(b)(i)	No	
122	13(2)	No	Release
146	17(1)(a)	No	Release
	17(1)(b)(i)	No	
148-149	19(1)(b)	No	Withhold personal information, release remainder
	29(1)	Yes	
150	17(1)(a)	No	Release
	17(1)(b)(i)	No	



<b>PAGE OF THE RECORD</b>	<b>SECTION(S) APPLIED BY THE MINISTRY</b>	<b>DOES IT APPLY?</b>	<b>RELEASE OR WITHHOLD?</b>
155	13(2)	No	Release
164	17(1)(a)	No	Release
	17(1)(b)(i)	No	
168	13(2)	No	Release
	17(1)(a)	No	
	17(1)(b)(i)	No	
169	13(2)	No	Release
176	17(1)(a)	No	Release
	17(1)(b)(i)	No	
179-180	17(1)(a)	No	Release
	17(1)(b)(i)	No	
183	17(1)(a)	No	Release
	17(1)(b)(i)	No	
187	29(1)	Yes	Withhold
210	17(1)(a)	No	Release
	17(1)(b)(i)	No	
214-218	17(1)(a)	No	Release
	17(1)(b)(i)	No	
	22(c)	No	
223	17(1)(a)	No	Release
	17(1)(b)(i)	No	
224	13(2)	No	Release
225	17(1)(a)	No	Release
	17(1)(b)(i)	No	
	19(1)(b)	Released	
229-230	22(a)	Yes	Withhold
	22(b)	No need to review	
	22(c)	No need to review	
245-246	17(1)(a)	No	Release
	17(1)(b)(i)	No	
261	29(1)	Personal information about the Applicant	Release
267-270	17(1)(a)	No	Release
	17(1)(b)(i)	No	
272	13(2)	No	Release
274-275	29(1)	Qualifies as personal health information	Withhold pursuant to subsection 27(1) of HIPA
303	17(1)(a)	No	Release
	17(1)(b)(i)	No	
304	13(2)	No	Release
	17(1)(a)	No	
	17(1)(b)(i)	No	

<b>PAGE OF THE RECORD</b>	<b>SECTION(S) APPLIED BY THE MINISTRY</b>	<b>DOES IT APPLY?</b>	<b>RELEASE OR WITHHOLD?</b>
305	13(2)	No	Release
309	17(1)(a)	No	Withhold
	17(1)(b)(i)	No	
	22(a)	Yes	
	22(b)	No need to review	
	22(c)	No need to review	
310	17(1)(a)	No	Release
	17(1)(b)(i)	No	
310-311	22(a)	Yes	Withhold
	22(b)	No need to review	
	22(c)	No need to review	
312	17(1)(a)	No	Release
	17(1)(b)(i)	No	
313	22(a)	Yes	Withhold
	22(c)	No need to review	
317-319	17(1)(a)	No	Release
	17(1)(b)(i)	No	
320	13(2)	No	Release
325-327	17(1)(a)	No	Release
	17(1)(b)(i)	No	
327-328	13(2)	No	Release
332	13(2)	No	Release
333	13(2)	No	Release
342-343	17(1)(a)	No	Release
	17(1)(b)(i)	No	
345-346	17(1)(a)	No	Release
	17(1)(b)(i)	No	
346-348	Non-responsive	It is responsive	Release
349-352	22(a)	Yes	Withhold
	22(b)	No need to review	
	22(c)	No need to review	
361-362	17(1)(a)	No	Release
	17(1)(b)(i)	No	
371	13(2)	No	Release
372	17(1)(a)	No	Release
	17(1)(b)(i)	No	
373-374	13(2)	No	Release
391-392	17(1)(a)	No	Release
	17(1)(b)(i)	No	
394-395	17(1)(a)	No	Withhold
	17(1)(b)(i)	No	
	22(a)	Yes	

<b>PAGE OF THE RECORD</b>	<b>SECTION(S) APPLIED BY THE MINISTRY</b>	<b>DOES IT APPLY?</b>	<b>RELEASE OR WITHHOLD?</b>
	22(c)	No need to review	
397-398	17(1)(a)	No	Release
	17(1)(b)(i)	No	
400	17(1)(a)	No	Release
	17(1)(b)(i)	No	
402	17(1)(a)	No	Release
	17(1)(b)(i)	No	
409-410	13(2)	No	Release
416	17(1)(a),	No	Release
	17(1)(b)(i)	No	
	Non-responsive	It is responsive	
417	17(1)(a)	No	Release
	17(1)(b)(i)	No	
419	17(1)(a)	No	Release
	17(1)(b)(i)	No	
421-423	17(1)(a)	No	Release
425	29(1)	Qualifies as personal health information	Withhold pursuant to subsection 27(1) of HIPA
429	29(1)	Yes	Withhold
432	29(1)	Qualifies as personal health information	Withhold pursuant to subsection 27(1) of HIPA
434	29(1)	Qualifies as personal health information	Withhold pursuant to subsection 27(1) of HIPA
440	13(2)	No	Release
472	13(2)	No	Release
485-486	17(1)(a)	No	Release
	17(1)(b)(i)	No	
492	17(1)(a)	No	Release
	17(1)(b)(i)	No	
494	13(2)	No	Release
505-507	19(1)(b)	No	Release
Attachment – page 3	None		Release
Attachment 1 – page 4, 126/127			Released
Attachment 2 – page 4			Released
Attachment – page 128			Released