

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 091-2014

Ministry of Health

Summary: The Applicant submitted an access to information request to the Ministry of Health (Health). When she did not receive a response within the legislated timeline, she appealed to the Information and Privacy Commissioner (IPC). In the course of the review, the Applicant received a response but was not satisfied. Health had withheld records pursuant to subsections 13(2), 16(1)(a), 17(1)(a), 17(1)(c), 18(1)(e), 19(1)(a), 19(1)(b), 19(1)(c)(iii), 22(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The IPC found that Health can legitimately withhold information pursuant to subsections 13(2), 17(1)(a), and 29(1) of FOIP on some of the responsive records. He recommended that Health release the remainder of the records.

I BACKGROUND

[1] On April 17, 2014, the Ministry of Health (Health) received the following access to information request:

All correspondence, including attachments between the Ministry of Health and RQHR regarding the community-based delivery of surgical and diagnostic imaging services between July 2, 2013 and April 1, 2014.

[2] On September 8, 2014, the Applicant requested a review by my office because she had not received a response. My office notified Health that it would be undertaking a review.

[3] Health provided a response dated November 12, 2014 to the Applicant. It provided the Applicant with 128 pages of responsive records but advised it was withholding information pursuant to subsection 13(2), 16(1)(a), 17(1)(a), 17(1)(c), 18(1)(e), 19(1)(a), 19(1)(b), 19(1)(c)(iii), 22(a) and 29(1) of *The Freedom of Information and Protection of*

Privacy Act (FOIP). However, in its Index of Records and the records it provided my office, Health was no longer relying on subsection 16(1)(a) of FOIP to withhold information.

[4] The Applicant was dissatisfied with Health's response. Her concerns included the length of time it took for Health to respond, and the withheld portions of the records she received.

[5] My office sent a Draft Review Report with its preliminary findings and recommendations. In response, Health agreed that some exemptions would not be applicable and released some more information to the Applicant. However, it also cited additional exemptions to portions of the record to which it already applied exemptions. For example, it applied subsection 13(2) of FOIP to portions of the record it was already withholding pursuant to subsection 19(1)(b) of FOIP.

[6] Below is my discussion of the exemptions applied by Health.

II RECORDS AT ISSUE

[7] There are 128 pages of responsive records. The records at issue include a variety of different records, including emails, briefing notes, and evaluations of requests for proposals of third party vendors.

III DISCUSSION OF THE ISSUES

[8] Since multiple exemptions were applied to each record, this Review Report will first lay out the tests for each exemption. It will describe each record and list the exemptions applied to the record. Then, I will determine if the exemptions were properly applied to each record.

[9] Health cited subsections 13(2), 17(1)(a), 17(1)(c), 18(1)(e), 19(1)(a), 19(1)(b), 19(1)(c)(iii), 22(a) and 29(1) of FOIP. Before I proceed with the discussion, below are each of the sections relied upon by Health to withhold information and the tests for each.

Subsection 13(2) of FOIP

[10] 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.

[11] In order for subsection 13(2) of FOIP to apply, the following test must be met:

1. Was the information obtained from a local authority?
2. Was the information obtained implicitly or explicitly in confidence?

Subsection 17(1)(a)

[12] 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;

[13] In order for subsection 17(1)(a) of FOIP to apply, 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 a government institution or a member of the Executive Council?

Subsection 17(1)(c) of FOIP

[14] Subsection 17(1)(c) 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:

...

(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution, or considerations that relate to those negotiations;

[15] The test that must be met in order for subsection 17(1)(c) of FOIP to apply is:

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the contractual or other negotiations?
2. Were they developed for the purpose of contractual or other negotiations?
3. Were the contractual or other negotiations being conducted by or on behalf of a government institution?

Subsection 18(1)(e) of FOIP

[16] Subsection 18(1)(e) of FOIP provides:

18(1)(e) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution, or considerations that relate to those negotiations;

[17] The test that must be met in order for subsection 18(1)(e) of FOIP is as follows:

1. The record contains positions, plans, procedures, criteria, instructions or considerations; and
2. The positions, plans, procedures, criteria, instructions or considerations are developed for the purpose of contractual or other negotiations; and
3. The positions, plans, procedures, criteria, instructions or considerations are developed by or on behalf of the government institution.

Subsection 19(1)(a) of FOIP

[18] Subsection 19(1)(a) of FOIP provides:

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

- (a) trade secrets of a third party;

[19] In order for subsection 19(1)(a) of FOIP to apply, Health must be able to explain how the information qualifies as a trade secret. Trade Secret is defined as information, including a formula, pattern, compilation, program, device, product, method, technique or process:

- i. that is used, or may be used, in business or for any commercial purpose;
- ii. that derives independent economic value, actual or potential, from not being generally known to anyone who can obtain economic value from its disclosure or use;
- iii. that is the subject of reasonable efforts to prevent it from becoming generally known; and
- iv. the disclosure of which would result in significant harm or undue financial loss or gain.

[20] The information must meet all of the above criteria to be considered a trade secret. Further, the third party must also be able to prove ownership or a proprietary interest in the trade secret or prove a claim of legal right to the information (i.e. license agreement)

Subsection 19(1)(b) of FOIP

[21] 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;

[22] The test that must be met in order for subsection 19(1)(b) of FOIP to apply is as follows:

1. Is the information financial, commercial, scientific, technical or labour relations information?
2. Was the information supplied by the third party to a government institution?
3. Was the information supplied in confidence implicitly or explicitly?

[23] Further, the definitions for financial, commercial, scientific, technical or labour relations information is as follows:

Financial information relates to money and its use or distribution and must contain or refer to specific data. Examples of financial information include cost accounting method, pricing practices, profit and loss data, overhead and operating costs.

Commercial information is information relating to the buying, selling or exchange of merchandise or services.

Scientific information is information belonging to an organized field of knowledge in the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information.

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics...it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information.

Labour relations information is information that relates to the management of personnel by a person or organization, whether or not the personnel are organized into bargaining units. It includes relationships within and between workers, working groups and their organizations as well as managers, employers and their organizations. Labour relations information also includes collective relations between a public body and its employees. Common examples of labour relations information are hourly wage rates, personnel contract and information on negotiations regarding collective agreements.

Subsection 19(1)(c)(iii) of FOIP

[24] Subsection 19(1)(c)(iii) of FOIP provides:

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

...
(c) information, the disclosure of which could reasonably be expected to:

...
(iii) interfere with the contractual or other negotiations of;
a third party;

[25] The harms test that must be met is as follows:

1. There must be a clear cause and effect relationship between the disclosure and the harm which is alleged;
2. The harm caused by the disclosure must be more than trivial or inconsequential; and
3. The likelihood of harm must be genuine and conceivable.

[26] To interfere with contractual or other negotiations means to obstruct or make much more difficult the negotiation of a contract or other sort of agreement involving a third party.

[27] It should be noted that Health must provide evidence well beyond or considerably above a mere possibility of harm, in order for subsection 19(1)(c)(iii) of FOIP to apply.

Subsection 22(a) of FOIP

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

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

- (a) contains information that is subject to solicitor-client privilege;

[29] The test that must be met in order for subsection 22(a) of FOIP to apply is as follows:

1. The record must be a communication between solicitor
2. The communication must entail the seeking or giving of legal advice or legal assistance and client
3. The communication must be intended to be confidential

Subsection 29(1) of FOIP

[30] 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.

Description of records, the exemptions applied and analysis

- **Pages 1 to 3** – email between RQHR and Health

[31] These pages include an email from RQHR's legal counsel to Health and an attachment. Health applied subsections 13(2), 17(1)(a), 19(1)(b), 19(1)(c)(iii), 22(a), and 29(1) of FOIP to these pages.

[32] For the redacted portions of pages 1 and 2, I find that subsection 17(1)(a) of FOIP applies to the email from RQHR's legal counsel to Health, as advice is provided to Health on what might be a helpful next step.

[33] Page 3 is an excel spreadsheet. This spreadsheet is referenced in the advice given to Health on pages 1 and 2. Therefore, I find that subsection 17(1)(a) of FOIP also applies to page 3.

[34] I find that subsection 29(1) of FOIP applies to the email address that appears to be personal to a Health employee.

[35] I do not have to consider subsections 13(2), 19(1)(b), 19(1)(c)(iii), and 22(a), as I have considered all the redactions already that appear on pages 1 to 3.

- **Pages 4 to 6** – Emails between RQHR and Health

[36] These pages include emails between RQHR and Health, including an email from RQHR's legal counsel to Health. Health applied subsections 13(2), 17(1)(a), 19(1)(b), 19(1)(c)(iii), 22(a), and 29(1) of FOIP.

[37] I find that none of the exemptions apply to the information on page 4 for the following reasons:

- a. Subsection 13(2) of FOIP does not apply to the redacted information on page 4 because the information is not obtained from a local authority but information is provided from Health to a local authority.
- b. Subsection 17(1)(a) of FOIP does not apply to the redacted information as the information does not qualify as advice, proposals, recommendations, analyses or policy options.

- c. Subsection 19(1)(b) of FOIP does not apply to the emails on page 4 as the information does not qualify as financial, commercial, scientific, technical or labour relations information.
- d. Subsection 19(1)(c)(iii) of FOIP does not apply to the emails on page 4 because Health has not identified how the release of the information would interfere with the contractual or other negotiations of a third party.

[38] It should be noted that pages 5 and 6 contains the same email from RQHR's legal counsel to Health that is on pages 1 and 2 that was discussed earlier. I find that subsection 17(1)(a) of FOIP applies to the email from RQHR's legal counsel to Health found on page 5 and 6, as advice is provided to Health on what might be a helpful next step.

[39] I find that subsection 29(1) of FOIP applies to the email address that is at the top of page 5. It appears to be a personal email address of a Health employee.

- **Pages 7 to 12** – Emails between Health and RQHR regarding third party's calendar

[40] These pages are emails between Health and RQHR regarding a third party's calendar. Health applies subsections 13(2) and 19(1)(b) of FOIP to these pages.

[41] I find that subsection 13(2) of FOIP does not apply. Health asserts that RQHR provided the information on an implicitly confidential basis. The mere assertion that information was provided implicitly in confidence is not enough for me to find that the information was provided in confidence. On the face of the record, I cannot tell that the information was provided in confidence. The two-part test for subsection 13(2) of FOIP is not met.

[42] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that the information qualifies as technical information. Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. It usually involves information prepared by a professional in the field and describes the construction, operation or maintenance of a structure, process,

equipment or a thing. A third party's calendar does not qualify as technical information. Therefore, I find that subsection 19(1)(b) of FOIP does not apply.

- **Pages 13 to 15** – email between Health employees

[43] Pages 13 to 15 contain emails exchanged between Health employees. The emails are short exchanges about the preparation of a briefing note (but do not contain the substance of the briefing note). Health applied subsections 13(2), 17(1)(a), 19(1)(b), and 29(1) of FOIP.

[44] I find that subsection 13(2) of FOIP does not apply. Health asserts that RQHR provided the information on an implicitly confidential basis. The mere assertion that information was provided implicitly in confidence is not enough for me to find that the information was provided in confidence. On the face of the record, I cannot determine that the information was provided in confidence. The two-part test for subsection 13(2) of FOIP is not met.

[45] I find that subsection 17(1)(a) of FOIP does not apply as the emails do not contain advice, recommendations, proposals, analyses and policy options.

[46] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts the emails contain technical information. I find that the information on pages 13 to 15 does not fit the definition of technical information that was provided earlier.

[47] I find that subsection 29(1) of FOIP would apply to the email address that appears to be a personal email address of a Health employee.

- **Pages 16 to 21** - Briefing note entitled *Third Party Surgery Delivery Regina Qu'Appelle Health Region* dated July 15, 2013

[48] Pages 16 to 21 is a briefing note to which Health applied subsections 13(2), 17(1)(a), 19(1)(b), 19(1)(c)(iii).

[49] I find that subsection 13(2) of FOIP does not apply. Health asserts that RQHR provided the information on an implicitly confidential basis. The mere assertion that information was provided implicitly in confidence is not enough for me to find that the information was provided in confidence. On the face of the record, I cannot determine that the information was provided in confidence implicitly. The two-part test for subsection 13(2) of FOIP is not met.

[50] I find that subsection 17(1)(a) of FOIP applies to the top half of page 18 (the third page of the briefing note). On the face of the record, I can determine that the information qualifies as analyses prepared by an employee of Health and that the analyses is intended for the Minister.

[51] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that pages 16 to 21 contain “confidential information with references to labour relations.” I find that such information is not enough to meet the three-part test for subsection 19(1)(b) of FOIP.

[52] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that the disclosure could jeopardize contractual and other negotiations between the local authority and third party. The mere assertion that there could be harm is not enough for me to find that subsection 19(1)(c)(iii) of FOIP to apply. In order for me to find that subsection 19(1)(c)(iii) of FOIP to apply, Health must provide evidence that goes well beyond or considerably above a mere possibility of harm.

- **Page 26 to 29** Briefing note entitled *Regina Qu’Appelle Health Region – Request for Proposals – non-hospital Insured Surgical Services* dated September 4, 2013

[53] Health applied subsections 13(2), 19(1)(b) and 19(1)(c)(iii) of FOIP to pages 26 to 29. These pages contain a briefing note.

[54] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. It states it consulted with RQHR and RQHR requested the information “be severed based on the confidentiality of the

information provided”. The mere assertions that Health obtained the information in confidence are not enough for me to find that subsection 13(2) of FOIP applies. Health has not explained the circumstances, or provided any other information, that it obtained the information implicitly in confidence.

[55] I find that subsection 19(1)(b) does not apply. Health asserts that that the record contains “implicitly confidential information with references to labour relations”. I find that the information provided to my office is not enough to meet the three-part test for subsection 19(1)(b) of FOIP.

[56] I find that subsection 19(1)(c)(iii) does not apply. Health asserts that the disclosure of the information “could jeopardize the contractual and other negotiations between the local authority and third party”. The mere assertion that there could potentially be harm is not enough for me to find that subsection 19(1)(c)(iii) of FOIP to apply. In order for me to find that this subsection applies, Health must provide evidence that goes well beyond or considerably above a mere possibility of harm.

- **Page 34** – Email between Health and RQHR

[57] Health applied subsection 17(1)(c) of FOIP to the body of an email between it and RQHR. Section 17(1)(c) of FOIP applies to positions, plans, procedures, criteria, instructions or considerations.

[58] A *plan* is a formulated and especially detailed method by which a thing is to be done; a design or scheme. *Positions and plans* refer to information that may be used in the course of negotiations. *Procedures, criteria, instructions* and *considerations* are much broader in scope, covering information relating to the factors involved in developing a particular negotiating position or plan.

[59] I find that the information in this email does not qualify as a plan, position, procedure, criteria, instruction or consideration. Therefore, I find that subsection 17(1)(c) of FOIP does not apply.

- **Page 35** – Email between Health and RQHR

[60] Health redacted a journalist's name on page 35 under subsection 29(1) of FOIP. If the information qualifies as personal information as defined by subsection 24(1) of FOIP, then the information can be redacted under subsection 29(1) of FOIP. In other words, if the information is about an identifiable individual and is of a personal nature, then the information can be redacted under subsection 29(1) of FOIP.

[61] I find that the name refers to an individual in her professional, not personal, capacity. As such, I find that subsection 29(1) of FOIP does not apply to the name on page 35.

- **Page 36** – Emails between Health and RQHR

[62] Page 36 contains emails between Health and RQHR. Health applied subsection 13(2) to the subject line and bodies of the emails. I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. It states it consulted with RQHR and RQHR requested the information "be severed based on the confidentiality of the information provided". The mere assertions by both Health and RQHR that Health obtained the information in confidence are not enough for me to find that subsection 13(2) of FOIP applies. Health has not explained the circumstances, or provided any other information, that it obtained the information implicitly in confidence.

- **Page 37** – Letter by RQHR CEO to Health's Assistant Deputy Minister

[63] I find that subsection 17(1)(a) of FOIP does not apply. A fragment of a sentence in a letter date December 4, 2013 to Health's Assistant Deputy Minister was severed pursuant to subsection 17(1)(a). I find that this fragment of a sentence does not include advice, proposals, recommendations, analyses or policy options.

- **Pages 40 to 41** – Email among Health employees

[64] A part of the attachment line in an email that is on pages 40 and 41 was redacted under subsections 19(1)(b) and 19(1)(c)(iii) of FOIP.

[65] I find that subsection 19(1)(b) of FOIP does not apply because the information is not financial, commercial, scientific, technical or labour relations information.

[66] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that releasing the attachment line “could potentially interfere with contractual negotiations.” The mere assertion that there could potentially be harm is not enough for me to find that subsection 19(1)(c)(iii) of FOIP to apply. In order for me to find that this subsection applies, Health must provide evidence that goes well beyond or considerably above a mere possibility of harm.

- **Pages 42 to 50** – Health Facility License Application

[67] Health applied subsections 13(2), 19(1)(b), and 19(1)(c)(iii) of FOIP to a health facility’s application for a licence to operate a health facility pursuant to *The Health Facilities Licensing Act*.

[68] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party and it stated that no records should be released pertaining to their surgery centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party’s position is that no records should be released, this is not enough for me to determine the circumstances at the time Health obtained such information from RQHR that would imply that Health obtained the information in confidence.

[69] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that the information is “implicitly confidential information related to financial, commercial, technical and

labour relations information.” This is not enough information for me to determine that the three part test for subsection 19(1)(b) of FOIP is met.

[70] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that the releasing the information “could interfere with contractual and other negotiations regarding the delivery of surgical services in a privacy surgery centre.” I find that this not enough to meet the harms test in order for this subsection to apply.

- **Page 51 – Health facility price list**

[71] Page 51 is a price list of a health facility. Health applied subsections 19(1)(a) and 19(1)(c)(iii) of FOIP to this page.

[72] I find that subsection 19(1)(a) of FOIP does not apply. Health has not provided any arguments to my office as to how this subsection would apply. On the face of the record, the information does not qualify as a trade secret.

[73] I find that subsection 19(1)(c) of FOIP does not apply. Health has not provided arguments as to how the release of this information would interfere with contractual or other negotiations of a third party.

[74] Therefore, I find that subsections 19(1)(a), and 19(1)(c)(iii) of FOIP do not apply.

- **Pages 52 to 56 – Procedure list**

[75] Health applied subsections 13(2), 19(1)(b) and 19(1)(c)(iii) of FOIP to pages 52 to 56. These pages list the type of procedures, or services, that this particular health facility provides.

[76] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party it stated that no records should be released pertaining to their surgery

centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party's position is that no records should be released, this is not enough for me to determine the circumstances at the time Health obtained such information from RQHR that would imply that Health obtained the information in confidence.

[77] I find that subsection 19(1)(b) of FOIP does not apply. These pages list procedures offered by a third party. Such information could qualify as commercial information. However, Health has not explained how the information was supplied to it by a third party in confidence, implicitly or explicitly. Therefore, the three-part test for subsection 19(1)(b) of FOIP is not met.

[78] Finally, I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that the releasing the information "could interfere with contractual and other negotiations". This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

- **Pages 57 to 58** – List of supplies used by health facility

[79] Health applied subsections 13(2), 19(1)(b) and 19(1)(c)(iii) of FOIP to pages 57 to 58. These pages list supplies – it provides the name of the supply, the volume, and an item number.

[80] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party and it stated that no records should be released pertaining to their surgery centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party's position is that no records should be released, this is not enough for me to determine the circumstances at the time Health obtained such information from RQHR that would imply that Health obtained the information in confidence.

[81] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that these pages include “implicitly confidential information related to financial, commercial, technical and labour relations information.” Even if this was the case, Health has not provided any arguments regarding how the information was supplied to it by a third party in confidence. On the face of the record, I cannot determine that a third party supplied the information to Health in confidence.

[82] Finally, I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that releasing the information “could interfere with contractual and other negotiations”. This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

- **Pages 59 to 60** – Practitioner staff privileges

[83] Health applied subsections 13(2), 19(1)(b) and 19(1)(c)(iii) of FOIP to pages 59 and 60. Health also indicated in its Index of Records it was applying subsection 29(1) of FOIP to these pages. These pages list physicians’ names and the physician’s degree and specialty.

[84] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party and it stated that no records should be released pertaining to their surgery centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party’s position is that no records should be released, this is not enough for me to determine the circumstances at the time Health obtained such information from RQHR that would imply that Health obtained the information in confidence.

[85] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that these pages include “implicitly confidential information related to financial, commercial, technical and labour relations information.” I find that these pages do not contain financial, commercial, technical and labour relations information. Therefore, the three-part test for 19(1)(b) of FOIP does not apply.

[86] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that releasing the information “could interfere with contractual and other negotiations”. This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

[87] Finally, I find that the information about the physicians is not of a personal nature. Therefore, I find that subsection 29(1) of FOIP does not apply.

- **Pages 61 to 65** – List of sections and subsections of third party’s policy and procedure manual

[88] Health applied subsections 13(2), 19(1)(b) and 19(1)(c)(iii) of FOIP to pages 61 to 65. These pages look to be a listing of policies and procedures in the third party’s policy and procedure manual. It should be noted that these pages are merely a list of policies and procedures but not the policies and procedures themselves.

[89] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party and it stated that no records should be released pertaining to their surgery centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party’s position is that no records should be released, this is not enough for me to determine the circumstances at the time Health obtained such information from RQHR that would imply that Health obtained the information in confidence.

[90] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that these pages include “implicitly confidential information related to financial, commercial, technical and labour relations information.” I find that these pages do not contain financial, commercial, technical and labour relations information. Therefore, the three-part test for 19(1)(b) of FOIP does not apply.

[91] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that releasing the information “could interfere with contractual and other negotiations”. This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

- **Page 66** – List of staff names and professional designation or title

[92] Health applied subsections 13(2), 19(1)(b) and 19(1)(c)(iii) of FOIP to page 66. Health also indicated in its Index of Records that it was applying subsection 29(1) of FOIP. This page is a list of staff names, and each staff member’s professional designation or title.

[93] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party and it stated that no records should be released pertaining to their surgery centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party’s position is that no records should be released, this is not enough for me to determine the circumstances at the time Health obtained such information from RQHR that would imply that Health obtained the information in confidence.

[94] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that this page includes “implicitly confidential information related to financial, commercial, technical and labour relations information.” I find that this page does not contain financial, commercial, technical and labour relations information. Therefore, the three-part test for subsection 19(1)(b) of FOIP does not apply.

[95] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that the releasing the information “could interfere with contractual and other negotiations”. This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

[96] Finally, I find that the information about the physicians is not of a personal nature. Therefore, I find that subsection 29(1) of FOIP does not apply.

- **Page 67** – A copy of an agreement that employees sign stating they will comply with HIPA

[97] Health applied subsections 13(2), 19(1)(b), and 19(1)(c)(iii) of FOIP to page 67. This page contains an agreement that the employees of the third party signs, agreeing to comply with HIPA.

[98] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party and it stated that no records should be released pertaining to their surgery centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party's position is that no records should be released, this is not enough for me to determine the circumstances at the time Health obtained such information from RQHR that would imply that Health obtained the information in confidence.

[99] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that this page includes "implicitly confidential information related to financial, commercial, technical and labour relations information." I find that this page does not contain financial, commercial, technical and labour relations information. Therefore, the three-part test for 19(1)(b) of FOIP does not apply.

[100] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that releasing the information "could interfere with contractual and other negotiations". This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

- **Page 68** – Employee information consent form

[101] Health applied subsections 13(2), 19(1)(b) and 19(1)(c)(iii) of FOIP to page 68. This page is entitled "Employee Information Consent Form". I find that this consent form does not qualify as a trade secret so subsection 19(1)(a) of FOIP does not apply.

[102] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party and it stated that no records should be released pertaining to their surgery centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party's position is that no records should be released, this is not enough for me to determine the circumstances at the time Health obtained such information from RQHR that would imply that Health obtained the information in confidence.

[103] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that this page includes "implicitly confidential information related to financial, commercial, technical and labour relations information." I find that this page does not contain financial, commercial, technical and labour relations information. Therefore, the three-part test for 19(1)(b) of FOIP does not apply.

[104] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that releasing the information "could interfere with contractual and other negotiations". This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

- **Pages 69 to 70** – Agreement between a local authority and a third party

[105] Health applied subsections 13(2) and 19(1)(c)(iii) of FOIP to pages 69 to 70. These pages contain an agreement between a local authority and a third party.

[106] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was provided to it implicitly in confidence by RQHR. Also Health states it consulted with the third party and it stated that no records should be released pertaining to their surgery centre operations. The mere assertion that RQHR provided the information to Health in confidence is not enough for me to determine that subsection 13(2) of FOIP applies. Further, even though the third party's position is that no records should be released, this is not enough for me to determine the circumstances at the time Health

obtained such information from RQHR that would imply that Health obtained the information in confidence.

[107] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that the releasing the information “could interfere with contractual and other negotiations”. This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

- **Pages 71 to 72** – Emails between Health and RQHR

[108] Health applied subsections 13(2) and 17(1)(a) of FOIP to pages 71 to 72. They contain emails between Health and RQHR.

[109] I find that subsection 13(2) of FOIP does not apply because, on the face of the record, I cannot determine if the information was obtained in confidence by Health.

[110] I find that subsection 17(1)(a) of FOIP does not apply because when I review the emails and their subject lines, I find that they do not qualify as advice, recommendations, proposals, analyses and policy options.

- **Pages 75 to 76** – Equipment list

[111] Health applied subsection 19(1)(b) of FOIP to pages 75 to 76. These two pages list a third party’s equipment, the equipment’s primary use, and the year that the equipment was purchased.

[112] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that the information is “highly technical information related to the ongoing business of the third party of which its commercial livelihood is based”. Earlier, I noted the definitions of technical information and commercial information. The information in this record does not fit either definition. Further, Health has not provided any further information to meet the three-part test for subsection 19(1)(b) of FOIP.

- **Pages 77 to 84** – Health Facility License Application

[113] Health applied 19(1)(b) to pages 77 to 84. These pages are an application submitted by a third party to a local authority for a licence to operate a health facility.

[114] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that the information is technical and is proprietary to the third party. Earlier, I noted the definition of technical information. The information in this record does not fit the definition of technical information. Further, Health has not provided any further information to meet the three-part test for subsection 19(1)(b) of FOIP.

- **Pages 92 to 96** – Procedures list.

[115] Health applied subsections 19(1)(b) and 19(1)(c)(iii) of FOIP to sever a portion of pages 92 to 96. These pages contain a table that has the following headings: Name of Procedure, Estimated/year, Equipment Used, Any and All Medications administered with this service, location & distance to the nearest Hospital, and Primary provider of this Procedure. Health withheld the column with the heading “Estimated/year”.

[116] I find that subsection 19(1)(b) of FOIP does not apply. Health asserted that the “estimates represent the commercial and financial livelihood of the surgery centre whereby releasing the information could interfere with contractual and other negotiations and compromise the position of [name of third party] as a third party surgery provider.” Earlier, I noted the definition of commercial and financial information. I find that this information does not qualify for commercial information. The information could qualify as financial information. However, Health has not provided enough information to meet the three-part test for subsection 19(1)(b) of FOIP.

[117] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that the release of the information “could interfere with contractual and other negotiations and compromise the position of [name of third party] as a third party surgery provider”. This mere assertion is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

- **Page 97** – Document with staff information

[118] Health applied subsection 29(1) of FOIP to page 97. This page is a table that lists staff names, qualifications, professional regulatory number, registration/certification, position/description, duties/responsibilities, average hours per month, BCLS, ACLS and PALS (there is no explanation on the face of the record what these initials stand for).

[119] I find that the professional regulatory number is similar to an employee number. In the past, my office has found that employee numbers would qualify as personal information, as defined by subsection 24(1)(b) of FOIP. Therefore, I find that subsection 29(1) of FOIP applies to the professional regulatory number column.

[120] I find that the remainder of the information does not qualify as information that is personal in nature so subsection 29(1) of FOIP does not apply.

- **Pages 98 to 99** – Agreement between a third party and a local authority.

[121] Health applied subsection 13(2), 19(1)(b), and 19(1)(c)(iii) of FOIP to pages 98 to 99. These pages contain an agreement between a third party and a local authority.

[122] I find that subsection 13(2) of FOIP does not apply. Health asserts that RQHR supplied the information to Health on an implicitly confidential basis. Further, it asserts that RQHR requests that the information be severed based on the “confidentiality of the information provided”. The mere assertions that the exchange of information was confidential is not enough for me to determine that subsection 13(2) of FOIP applies. Health has not explained the circumstances, or provided any other information, that it obtained that it obtained the information implicitly in confidence.

[123] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that the information is financial and technical information. Earlier, I noted the definitions of financial and

technical information. I find that the information on these pages do not qualify as financial or technical information.

[124] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserts that the disclosure of the agreement “could interfere with contractual or other negotiations between the local authority and the surgery centre” and that this agreement “was not released publicly”. The mere assertion that there “could” be interference is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

- **Pages 100 to 104** – Email between Health and RQHR

[125] Health applied subsections 13(2), 19(1)(b), and 19(1)(c)(iii) of FOIP to pages 100 to 104. The pages contain emails between Health and RQHR regarding a news release strategy.

[126] I find that subsection 19(1)(b) of FOIP does not apply. Health asserts that the information is labour relations information and financial information, supplied in confidence by RQHR. Earlier, I noted the definitions for labour relations information and financial information. I find that none of the redacted information qualifies as labour relations information and financial information.

[127] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health asserted that the release of the information “could interfere with contractual or other negotiations between the local authority and the surgery centre”. The mere assertion that there “could” be interference is not enough for me to find that subsection 19(1)(c)(iii) of FOIP applies.

[128] It should be noted that in a letter dated March 27, 2015 to my office, RQHR advised that it did not object to the release of the information on these pages except for two lines of an email that appear at the top of page 101. RQHR asserted that subsection 19(1)(c)(iii) of FOIP would apply to these two lines.

[129] RQHR argued that the information is “labour relations strategy that would cause economic interference when negotiating current and future positions”. When I review the

two lines at the top of page 101, I find that the email asserts that if a certain type of information was revealed, a harm would occur. However, the two lines in the email itself, is not the information the disclosure of which would cause a harm. Therefore, again, I find that subsection 19(1)(c)(iii) of FOIP does not apply.

- **Pages 110 to 111** – Emails between Health and RQHR

[130] Health applied subsections 13(2), 17(1)(a), 19(1)(b), and 19(1)(c)(iii) of FOIP to sever portions of four emails on pages 110 and 111. The one email (out of four emails) that was disclosed to the Applicant is about scoring of proposals.

[131] I find that subsection 13(2) of FOIP does not apply. Health offered no arguments as to why subsection 13(2) of FOIP would apply. On the face of the record, I find that the two-part test is not met.

[132] I find that subsection 17(1)(a) of FOIP does not apply. The severed information would not qualify as advice, recommendations, proposals, analyses and policy options.

[133] I find that subsection 19(1)(b) of FOIP does not apply. Health offered no arguments as to why subsection 19(1)(b) of FOIP would apply. On the face of the record, I find that the three-part test is not met.

[134] I find that subsection 19(1)(c)(iii) of FOIP does not apply. Health offered no arguments as to why subsection 19(1)(c)(iii) of FOIP would apply. On the face of the record, the harms test is not met.

- **Pages 112 to 115** – Evaluation of vendors' bids in the RFP process.

[135] Health applied subsections 13(2) and 18(1)(e) of FOIP to pages 112 to 115. These pages contain the actual evaluation of vendors' bids in the RFP process.

[136] I find that subsection 13(2) of FOIP applies to these pages. I find that Health obtained these records from a local authority, RQHR. In its submission to my office, RQHR explained that it assures vendors confidentiality of the bids to assure a fair and competitive bidding practice in its RFP process. (It, however, explained that it reveals the successful vendor's cost of service). This demonstrates that RQHR treated this information in a manner that indicates a concern for its protection from disclosure prior to being communicated to Health. Therefore, I find that Health obtained this information implicitly in confidence.

- **Pages 116 to 125** – Selection and Evaluation Guide

[137] Health applied subsections 13(2) and 18(1)(e) of FOIP. These pages are the selection and evaluation guide. It is a table but there is no vendor information filled in.

[138] I find that subsection 13(2) of FOIP does not apply. Health asserts that the information was obtained by Health from RQHR in confidence. The mere assertion is not enough for me to find that subsection 13(2) of FOIP applies.

[139] I find that subsection 18(1)(e) of FOIP does not apply as this subsection applies only to criteria developed for the purpose of contractual or other negotiations by or on behalf of the Government of Saskatchewan or a government institution. This selection and evaluation guide was developed by or on behalf of a local authority, RQHR.

- **Page 126** - email between Health and RQHR

[140] Health applied subsections 13(2) and 17(1)(a) of FOIP to page 126. Page 126 contains two emails between Health and RQHR.

[141] I find that subsection 13(2) of FOIP does not apply. Even though subsection 13(2) is not a third party exemption, RQHR provided comment about these emails to my office in a letter dated March 27, 2015 on these emails. RQHR asserted it did not object to the

release of these emails. I find that the second part of the two-part test for subsection 13(2) of FOIP is not met

[142] I find that subsection 17(1)(a) of FOIP does not apply as the information does not qualify as advice, proposals, recommendations, analyses or policy options.

- **Page 127** – Document detailing Health facility costs

[143] Health applied subsections 13(2), 17(1)(a), 19(1)(b), and 19(1)(c)(iii) of FOIP. This page details the costs of a health facility.

[144] I find that subsection 13(2) of FOIP applies. The costs appear to belong to an unsuccessful bidder in the RFP process. As discussed earlier, RQHR's RFP process includes assuring confidentiality of bidders in the RFP. Therefore, the vendor would have supplied the information in confidence to RQHR. Further, since RQHR treats the information consistently in a manner that indicates a concern for its protection from disclosure prior to the information being communicated to Health, then I find that subsection 13(2) of FOIP applies to the information.

- **Page 128** – Email from RQHR to Health

[145] Health applied subsections 13(2) and 17(1)(a) of FOIP to page 128. It is an email that communicates who the successful bidder is and its intention of when it will inform the bidders of the decision.

[146] I find that subsection 13(2) of FOIP applies to this email. In the subject line, RQHR indicates that the information is confidential. Therefore, Health obtained the information from RQHR explicitly in confidence.

V FINDINGS

[147] On pages 1 to 3:

- a. I find that subsection 17(1)(a) of FOIP applies.
- b. I find that subsection 29(1) of FOIP applies to the email address that appears to be a personal email address of a Health employee.

[148] On pages 4 to 6:

- a. I find that subsection 17(1)(a) of FOIP applies to pages 5 and 6.
- b. I find that subsection 29(1) of FOIP applies to the email address that appears to be a personal email address of a Health employee.

[149] On pages 13 to 15:

- a. I find that subsection 29(1) of FOIP applies to the email address that appears to be a personal email address of a Health employee.

[150] On pages 16 to 21:

- a. I find that subsection 17(1)(a) of FOIP applies to the top half of the third page of the briefing note that Health withheld pursuant to this subsection.

[151] On page 97:

- a. I find that subsection 29(1) of FOIP applies to the professional regulatory number column.

[152] On pages 112 to 115:

- a. I find that subsection 13(2) of FOIP applies.

[153] On page 127:

- a. I find that subsection 13(2) of FOIP applies.

[154] On page 128:

- a. I find that subsection 13(2) of FOIP applies.

VI RECOMMENDATIONS

[155] I recommend that Health continue to withhold the information where I have found that the exemption applies, listed in the findings.

[156] I recommend that Health release the remainder of the information.

Dated at Regina, in the Province of Saskatchewan, this 29th day of June, 2015.

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