

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT 116/2013**

**Ministry of Health**

**Summary:**

The Applicant submitted a request to the Ministry of Health (Health). Health responded by providing redacted copies of the responsive records, citing subsections 17(1)(a), 17(1)(b)(i), and 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant appealed to the Information and Privacy Commissioner (IPC). In its submission, Health also raised subsections 16(1)(d)(i) and 17(1)(b)(iii) of FOIP for reasons to withhold portions of the responsive records. The IPC found that subsection 19(1)(b) of FOIP does not apply to any of the responsive records, subsection 17(1)(a) of FOIP applies to some but not all of the responsive records to which Health applied it to, subsection 17(1)(b)(i) of FOIP is not applicable to the portion of the responsive record that Health applied it to, subsection 17(1)(b)(iii) of FOIP is not applicable to the portions of the record to which Health applied it to. The IPC recommended that Health release the portions of the records to which he found that no exemptions apply. He also recommended that Health complete a line-by-line review of the report found on pages 50 to 168 of the responsive records and only sever the portions of the report that qualify as advice, proposals, recommendations, analyses or policy options.

**I BACKGROUND**

[1] The Applicant submitted the following access to information request to the Ministry of Health (Health):

Copy of all correspondence, including attachments, regarding the RHA laundry services strategy between the Ministry of Health and 3sHealth between March 1, 2012 and April 30, 2013.

[2] Health provided the Applicant with redacted copies of the responsive records that totaled 207 pages and cited subsections 17(1)(a), 17(1)(b)(i) and 19(1)(b) of FOIP as its reasons

for withholding information. In its submission, Health also raised subsection 16(1)(d)(i) for pages 39 to 44, and 17(1)(b)(iii) for pages 171 to 173.

## II RECORDS AT ISSUE

[3] The records at issue include emails, with attachments, between Health and 3sHealth.

## III DISCUSSION OF THE ISSUES

### 1. Does subsection 19(1)(b) of FOIP apply to the information in question?

[4] 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;

[5] The test to determine if subsection 19(1)(b) applies is as follows:

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

[6] In the past, my office, in referencing Orders by other jurisdictions, determined that financial information would include information regarding the monetary resources or financial capabilities of a third party, that technical information would be information that belonged to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts, that scientific information is information belonging to an organized field of knowledge, and that commercial information is information related to the buying, selling or exchange of merchandise or services. Labour relations information can be defined as information that relates to the

management of personnel and would include information regarding the collective relationship between an employer and its employees (Alberta IPC Order 2000-003; Ontario IPC Order P-1614). 3sHealth also cited Ontario IPC Orders PO-3310 and PO-3311 where they define labour relations in its submission.

- [7] The responsive records include emails and their attachments from the time period March 1, 2013 to April 30, 2013. The emails were exchanges between Health and 3sHealth and attached were drafts of documents related to laundry services where they discussed and exchanged revisions to documents related to laundry and linen services. For example, there were draft memos, message guides, FAQs, and news releases. Information contained in these communication documents would not qualify as financial, commercial, scientific, technical, or labour relations information of a third party.
- [8] I find that subsection 19(1)(b) is not applicable to the information found on pages 1 to 12, 13 to 21, 22, 23, 24, 26 to 30, 31, 39 to 44, 48, 169 to 170.
- [9] There was also an excel spreadsheet on pages 34 to 36 and 174 to 175 that details health care facilities, the number of beds at each facility and the type of laundry facility each health care facility has. Such information would not qualify as financial, commercial, labour relations, scientific or technical information.
- [10] I find that subsection 19(1)(b) of FOIP would also not apply to the excel spreadsheet found on pages 34 to 36 and 174 to 175.

**2. Does subsection 17(1)(a) of FOIP apply to the information in question?**

- [11] Health cited subsection 17(1)(a) of FOIP to support withholding some of the information in the responsive records. 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;

- [12] In order for subsection 17(1)(a) of FOIP to apply, Health must demonstrate that

1. the withheld portions of the record qualify as advice, proposals, recommendations, analyses or policy options; and
2. the record was developed by or for a government institution or a member of the Executive Council.

[13] Advice includes the analysis of a situation or issue that may require action and the presentation of options for future action but does not include the presentation of facts. Recommendations include suggestions for a course of action as well as the rationale for a suggested course of action. Proposals and analyses or policy options refer to the concise setting out of advantages and disadvantages of particular courses of action (Government of Alberta *FOIP Guidelines and Practices* at page 166).

[14] In the past, my office has stated that a party must have a sufficient advisory role to give advice, proposals, recommendations, analyses or policy options. For example, general stakeholders and members of the public providing views, comments or opinions on a topic would not hold a sufficient advisory role. In this case, 3sHealth asserted that it was “mandated by the Ministry to provide options and analyses for a better linen service in Saskatchewan”. As a result, it developed a business case for linen services for Health. I find that 3sHealth held a sufficient advisory role to Health.

[15] On pages 22 to 23, Health emails 3sHealth on suggested changes to a quote that will be attributed to the Minister in a news release. I find that this would qualify as a recommendation so the first part of the test is met. The suggestions were developed by Health so the second part of the test is met. I find that subsection 17(1)(a) would be applicable to pages 22 to 23.

[16] On page 38, there is an email between Health employees on the routing of speaking notes. This email does not contain advice, proposals, recommendations, analyses or policy options. I find that subsection 17(1)(a) would not be applicable to page 38.

[17] On page 46, there is an email from Health to 3sHealth. Health is presenting 3sHealth with the wording for a question and answer document regarding linen services. Health

redacted the body of the email but disclosed the remainder of the email string. When I consider the context of the redacted email, then I can conclude that Health was recommending wording for the questions and answers document. The first part of the test is met. Since the recommendation was made by Health, then the second part of the test is met and subsection 17(1)(a) is applicable.

[18] On page 47, there are emails from Health to 3sHealth where Health is posing questions to 3sHealth. The questions are redacted. These questions do not qualify as advice, proposals, recommendations, analyses or policy options. Therefore, I find that subsection 17(1)(a) is not applicable.

[19] Page 48 features two emails on two different subjects. The first email dated March 25, 2013 (timestamped 5:03pm) is an email from Health to 3sHealth that states that the Minister's office is looking for a study completed in 2001. This statement does not qualify as advice, proposals, recommendations, analyses or policy options. Therefore, I find that subsection 17(1)(a) is not applicable.

[20] The second email, dated March 25, 2013 (timestamped 4:23pm), on page 48 is an email from 3sHealth to Health. 3sHealth states what its recommendation would be if a certain decision is made. The first part of the test is met. The recommendation is made for Health so the second part of the test is met. Therefore, I find that subsection 17(1)(a) is applicable.

[21] Pages 50 to 168 is an email with a report attached. The report is by K-Bro Linen Systems Inc that was created in 2001. According to executive summary of report, K-Bro was retained by the Ministry of Health to provide recommendations on laundry services. I find that subsection 17(1)(a) would apply to some portions of the 2001 report but not the entire report. I recommend that Health only sever the portions of this 2001 report that would qualify as advice, proposals, recommendations, analyses or policy options under subsection 17(1)(a).

**3. Does subsection 17(1)(b)(i) of FOIP apply to the information in question?**

[22] Subsection 17(1)(b) 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;

(ii) a member of the Executive Council; or

(iii) the staff of a member of the Executive Council;

[23] In order for subsection 17(1)(b) of FOIP to apply, the information must qualify as a consultation or deliberation. In the past, my office determined that a consultation is when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. A deliberation is a discussion of the reasons for and against an action.

[24] Health applied subsection 17(1)(b)(i) to withhold information that appears on the bottom half of page 24 of the records.

[25] The information that is being withheld under subsection 17(1)(b)(i) appears on page 24 of the records. The withheld information is in an email where the sender requests the recipient of the email to send her a revised document. Such information does not qualify as consultations or deliberations. As such, I find that subsection 17(1)(b)(i) is not applicable.

**4. Does subsection 17(1)(b)(iii) of FOIP apply to the information in question?**

[26] As stated earlier information must qualify as a consultation or deliberation in order for subsection 17(1)(b) of FOIP to apply. Once it has been determined that the information qualifies, then a three-part test must be met. The test is as follows:

The consultation or deliberation must:

1. either be sought or expected, or be part of the responsibility of the person from whom they are sought;

2. be sought for the purpose of doing something, such as taking an action or making a decision; and
3. involve someone who can take or implement the action.

[27] Health applied subsection 17(1)(b)(iii) of FOIP to withhold information that appears on pages 171 to 173 of the records responsive to the Applicant's request. Pages 171 to 172 contains an email sent by Health to 3sHealth where Health provides background information on a matter and asks that 3sHealth draft an answer for a questions and answers document based on the background information. Such information does not qualify as a consultation or deliberation. As such, subsection 17(1)(b)(iii) of FOIP would not apply to pages 171 to 172.

[28] Page 173 contains two emails between 3sHealth and Health. In the email dated April 3, 2013, Health is requesting that 3sHealth send a spreadsheet containing information that the Minister has requested. 3sHealth responds in an email dated April 4, 2013 with the requested information. The information in these emails would not qualify as a consultation or deliberation. As such, subsection 17(1)(b)(iii) of FOIP would not apply to page 173.

**5. Does subsection 16(1) of FOIP apply to the information in question?**

[29] Subsection 16(1) of FOIP provides:

**16(1)** A head shall refuse to give access to a record that discloses a confidence of the Executive Council...

[30] This exemption applies to Cabinet confidences. Health applied it to pages 39 and 44 of the records. These pages are a document for frequently asked questions. In its submission, it argued that the records are part of a Cabinet Decision Item (CDI). It pointed to page 38 of the records (which was partially released), which is an email from a Senior Policy/Legislative Analyst. Attached to an email is a document entitled "Speaking Points Laundry CDI". This supports that pages 39 and 44 were a part of a CDI.

[31] A CDI is a decision-making tool used by Cabinet. Based on my review of the records, I am satisfied that these records would have been a part of a CDI. A CDI would qualify as

a Cabinet confidence. Therefore, I find that these records are exempt from release pursuant to subsection 16(1) of FOIP.

**6. Is there non-responsive information in the records in question?**

[32] Health identified some information on page 22 of the records to be non-responsive to the Applicant's request. I find that the information is of a personal nature and is indeed non-responsive to the Applicant's request.

**IV FINDINGS**

[33] I find that subsection 19(1)(b) does not apply to any of the responsive records.

[34] I find that subsection 17(1)(a) of FOIP would not be applicable to pages 38 and 47 of the records.

[35] I find that subsection 17(1)(a) of FOIP is not applicable to the first email dated March 25, 2013 (timestamped 5:03pm) on page 48 of the records.

[36] I find that subsection 17(1)(a) of FOIP is applicable to the second email dated March 25, 2013, (timestamped 4:23pm) on page 48 of the records.

[37] I find that subsection 17(1)(a) of FOIP is applicable to portions of pages 50 to 168 of the records.

[38] I find that subsection 17(1)(b)(i) of FOIP is not applicable to page 24 of the records.

[39] I find that subsection 17(1)(b)(iii) of FOIP is not applicable to pages 171 to 173 of the records.

[40] I find that some of the information that is on page 22 of the records is non-responsive.



**V RECOMMENDATIONS**

- [41] I recommend that Health release the portions of the record it had withheld under subsection 19(1)(b) of FOIP.
- [42] I recommend that Health release pages 24, 38, 47, 171, 172, and 173 of the records.
- [43] I recommend that Health release the email dated March 25, 2013 (timestamped 5:03pm) that is on page 48 of the records.
- [44] I recommend that Health complete a line-by-line review of the report that is on pages 50 to 168 of the records and only sever those portions of the report that qualify as advice, proposals, recommendations, analyses or policy options.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of January, 2015.

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