

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT 117/2013**

**Ministry of Health**

**Summary:** The Applicant submitted an access to information request to the Ministry of Health (Health). Health provided the Applicant with redacted records. Health cited subsections 16(1)(c), 17(1)(b)(i), 17(1)(b)(iii), and 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as reasons for withholding portions of the records. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that subsections 17(1)(b)(i) and 19(1)(b) of FOIP was not applicable to the portion of the records to which Health applied them. He found that subsection 17(1)(b)(iii) of FOIP applied to some but not all portions of the records to which Health applied it. Finally, the IPC found that subsection 16(1) of FOIP applied to the portions of the records to which Health applied it. The IPC recommended that Health release the portions of the records where he found no exemptions apply.

**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 May 1, 2013 and June 30, 2013.

[2] Health provided the Applicant with redacted copies of the responsive records that totaled 140 pages and cited subsections 16(1)(a), 16(1)(c), 17(1)(b)(i), and 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as reasons for withholding information. However, in its submission, Health advised that it meant to cite subsection 17(1)(b)(iii) instead of subsection 16(1)(a). Further, in its submission, Health also raised subsection 16(1)(d)(i) for pages 121 to 125.

## 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] I will determine if the first part of the above test is met.

[7] 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.

[8] The records include emails and their attachments from the time period May 1, 2013 to June 30, 2013. The email exchanges were between Health and 3sHealth as it relates to preparing for the announcement of a new provincial linen service. The emails and attachments are communication documents including a news release, FAQs, a memo from the Health Minister, a memo from the CEO of 3sHealth, and message guides. Information contained in these communication documents would not qualify as financial, commercial, scientific, technical, or labour relations information of a third party. They contain information about the province's need for a new linen service, the new linen service that will be implemented, the reasons for developing and implementing the new linen service, and the third party that will be delivering the linen service.

[9] As such, I find that subsection 19(1)(b) does not apply to the withheld information in the record.

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

[10] 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;

[11] 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.

[12] Health applied subsection 17(1)(b)(i) of FOIP to withhold two small portions of page 140. When I review these portions, I find that they do not qualify as a consultation or deliberation. They are statements as to who should be carbon copied on a document and how there are questions about the document.

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

[13] 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.

[14] Health applied subsection 17(1)(b)(iii) of FOIP to withhold information that is on pages 1 to 5 of the record. Page 1 features two emails. The first email, dated May 24, 2013 (timestamped 4:53pm) was disclosed except for the part of the name of an attached document. The name does not qualify as a consultation or deliberation. As such, subsection 17(1)(b)(iii) of FOIP does not apply.

[15] The other email on page 1, dated May 24, 2013 (timestamped 4:48pm), is sent from the Chief of Staff for the Minister of Health to the Special Advisor to the Deputy Minister of Health. The Chief of Staff is requesting that the Special Advisor double check the accuracy of a list. The Chief of Staff suggests edits to the list if a particular situation exists and the reasons for the edits. Such information would qualify for exemption under subsection 17(1)(b)(iii).

[16] However, the remainder of the information in that email would not qualify for exemption under subsection 17(1)(b)(iii) as the information merely provides background information about the attached documents but there is no consultation or deliberation. Pages 2 to 5 are the attached documents. Since these attached documents are not a part of the consultation or deliberation, they do not qualify for exemption under subsection 17(1)(b)(iii).

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

[17] 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...

[18] This exemption applies to Cabinet confidences. Health applied it to pages 99 to 109, 114 to 117 and 121 to 125 of the responsive records. In its submission, it asserted that these records were part of a CDI. A CDI is a decision-making tool used by Cabinet. When I review the records, I am satisfied that these pages of records were a part of a CDI. Therefore, I find that these pages are exempt from release pursuant to subsection 16(1) of FOIP.

**IV FINDINGS**

[19] I find that subsection 19(1)(b) of FOIP is not applicable to the records.

[20] I find that subsection 17(1)(b)(i) of FOIP is not applicable to page 140.

[21] I find that subsection 17(1)(b)(iii) of FOIP is not applicable to the email dated May 24, 2013 (timestamped 4:53pm) on page 1 of the records.

[22] I find that subsection 17(1)(b)(iii) of FOIP is applicable to a portion of the email dated May 24, 2013 (timestamped 4:48pm) on page 1 of the records.

[23] I find that subsection 17(1)(b)(iii) of FOIP is not applicable to pages 2 to 5 of the records.

[24] I find that subsection 16(1) of FOIP applies to pages 99 to 109, 114 to 117, and 121 to 125 of the records.

## **V RECOMMENDATIONS**

[25] I recommend that Health release the portions of the record it withheld under subsection 19(1)(b) of FOIP.

[26] I recommend the two portions of page 140 that it withheld under subsection 17(1)(b)(i) of FOIP be released.

[27] I recommend that Health release the email dated May 24, 2013 (time stamped 4:53pm) that is on page 1 of the records.

[28] I recommend that Health release pages 2 to 5 of the records.

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

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