SEPTEMBER 23, 2004 FILE NO. — 2003-066

SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT 2004—006

Saskatchewan Human Rights Commission

Summary: **The Applicant sought access to a file in the possession of the Saskatchewan Human Rights Commission. The file in question had been provided to the Commission in 2002 for purposes of an investigation undertaken pursuant to the *Saskatchewan Human Rights Code.* This included material from an organization not subject to *The Freedom of Information and Protection of Privacy Act* ("FOIP Act"). The Commission refused access on the basis of s. 15(1)(c) of the FOIP Act. The Information and Privacy Commissioner found that 48 documents did not come within that exemption and should be produced to the Applicant after appropriate severing. The balance of documents were properly withheld on the basis of the exemption cited by the Commission. The documents to be withheld included personal health information under *The Health Information Protection Act* ("HIPA"). The Commissioner found that the personal health information had been collected principally in anticipation of a quasi-judicial proceeding and should not be released.**

Statutes Cited: ***Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1, s.28.1, 33; *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22-01, ss. 5, 24(1), 31, 15(c), 61; *The Health Information Protection Act*, S.S. 1999, c. H-0.021, ss. 2(m), 12, 38(1)(e)**

Authorities Cited: **Saskatchewan Information and Privacy Commissioner Reports 2004-003, 2003/046, 2003/035, 2002/039, 2001/037, 2001/029, 2001/005, 2000/022, 99/012, 97/019, 96/001, 93/021, 93/014; Alberta Information and Privacy Commissioner Order 2003/003 at p. 13.**

I BACKGROUND

[1] The Applicant is a health care professional and had made a complaint to The Saskatchewan Human Rights Commission ("the Commission") against the Applicant's professional governing body ("the Association").

[2] The Applicant submitted an Access to Information Request dated June 25, 2003 to the Commission for "*The entire contents of the file compiled by the* [Association] *containing information regarding [name of Applicant]. This file was surrendered to the SHRC on or around October 18/02"*.

[3] The Commission wrote the Applicant on June 27, 2003 advising that the response time was extended a further 30 days pursuant to section 12(1) of *The Freedom of Information and Protection of Privacy Act* (the Act). The reason for this extension was that the consultations necessary to comply with the application could not reasonably be completed within the initial 30 day period.

[4] On September 2, 2003 the Commission wrote to the Applicant advising that the record requested could not be released. The Commission stated that:

> *The information you request is "the entire contents of the file compiled by the* [Association], *containing information regarding* [the Applicant]. *This file was surrendered to the Saskatchewan Human Rights Commission on or around October 18, 2002". This information cannot be released because it is information gathered with respect to a lawful investigation. Information of this nature is exempt from access according to subsection 15(1)(c) of The Freedom of Information and Protection of Privacy Act.*
>
> *The information you request was created by the* [Association]. *We suggest that a request for disclosure of this information would be more properly made to the* [Association] *and suggest that you contact the* [Association] *directly in that regard.*

[5] Our office received a request for review from the Applicant dated October 20, 2003 on October 22, 2003. The Acting Commissioner, Richard Rendek, Q.C., wrote the Commission advising that a review would be undertaken under the Act.

[6] On November 19, 2003 our office received the record from the Commission.

[7] We were advised that the Commission had initially sought production of the file of the Association pursuant to s. 28.1(5) of *The Saskatchewan Human Rights Code*. That provides as follows:

> *(5) For the purposes of an investigation pursuant to subsection 28(1), the commission or any person authorized by the commission may at any reasonable time:*
>
> *(a) require the production of books, documents, correspondence, records or other papers that related or may relate to the complaint;*
> *(b) make any inquiries relating to the complaint, of any person, in writing or orally; and*
> *(c) subject to subsection (6), on giving a receipt for books, documents, correspondence, records or other papers, remove any books, documents, correspondence, records or other papers examined pursuant to this section for the purpose of making copies or extracts of those books, documents, correspondence, records or other papers.*

[8] The Association file relates to an internal disciplinary investigation relating to the Applicant that had been undertaken by a regulatory body in a foreign jurisdiction. The Association furnished the file to the Commission.

[9] The Commission refused the Applicant access to the entire record.

[10] The Commission took the position that since the Commission did not create the record but acquired it in the course of a lawful investigation, the Applicant should obtain a copy directly from the Association. The Commission represented that the Association could best determine which of the documents forming the record could be disclosed in accordance with its own regulations and policy guidelines.

[11] In reviewing the record produced by the Commission we found that it included personal health information of the Applicant. We advised both parties that in our view the Commission is a trustee for purposes of *The Health Information Protection Act.* We requested submissions from the parties specifically on the question of the applicability of that statute. We decided to treat the request for review of the Applicant as if it was also a request for review pursuant to section 42(a) of HIPA.

[12] The Association is not a government institution and is not therefore subject to *The Freedom of Information and Protection of Privacy Act.*

[13] As of the date of this Report the Commission has not concluded its investigation and it's decision on disposition of the complaint of the Applicant is still pending.

II RECORDS AT ISSUE

[14] This record was provided by the Commission prior to the publication of our *Helpful Tips* document currently available at www.oipc.sk.ca under the *Resources* tab. That document outlines the format in which a record should be prepared for purposes of a review under Part VII of the Act.

[15] The record is 137 pages. The material can roughly be segregated into two packages. The one package consists of evidence as to the fitness of the Applicant to practice as a health care professional. This includes medical information and opinion, evaluations of information and deliberations internal to the Association with respect to the fitness of the Applicant. This material will be referred to as Package One in the balance of this report.

[16] Package Two is an assortment of materials comprised mostly of three types of documents. (1) Emails and correspondence between the Applicant and the Association, (2) Orders and Formal Decisions by a regulatory body in a foreign jurisdiction and (3) Cover letters and fax cover sheets with respect to the Applicant's file. Together with this Report I am providing the Commission with a particularized list of those documents that comprise Package Two numbered 1 to 48.

[17] Items 3, 11, 15, 17, 18, 19, 20, 21 and 35 in Package Two include certain handwritten comments and annotations that relate to the investigation of the Commission.

[18] All of this material appears to be documents from the Association and related to an investigation undertaken by the Commission.

III ISSUES

Did the Commission properly apply section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act* ("the Act") to the records withheld?

Was this a lawful investigation?

Would the release of the record interfere with a lawful investigation?

Would the release of the record disclose information with respect to a lawful investigation?

Does the lawful investigation exemption apply to the record of an investigation undertaken by a body other than the Commission?

Is there authority for the Commission to deny access to the Applicant to his personal health information?

IV DISCUSSION OF THE ISSUES

[19] Before addressing the key issues identified in the previous section, it is necessary to consider a number of preliminary questions. We start by considering the following provisions of the Act:

> *24(1) Subject to subsection (2),* ***"personal information"*** *means personal information about an identifiable individual that is recorded in any form, and includes:…(b) information that relates to the education…or employment history of the individual…"(h) the views or opinions of another individual with respect to the individual"*
>
> *31(1) Subject to Part III and subsection (2), an individual whose personal information is contained in a record in the possession or under the control of a government institution has a right to, and:*
>
> *(a) on an application made in accordance with Part II; and*
>
> *(b) on giving sufficient proof of his or her identity;*
>
> *shall be given access to the record.*

> *(2) A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits, where the information is provided explicitly or implicitly in confidence.*

[20] The record in question does involve personal information of the Applicant. It clearly identifies the Applicant in an identifiable way. It does relate to the Applicant's health history, education and employment history. It does involve the views or opinions of others about the Applicant.

[21] We note that the Commission has not asserted that section 31(2) applies. Access has been denied on the basis of one of the exemptions in Part III of the Act, namely section 15(1)(c).

[22] The Applicant has asserted that the Commission will be obliged to grant access to the Applicant in any event by reason of procedural provisions of the *Saskatchewan Human Rights Code* and the *Saskatchewan Human Rights Code Regulations.* With respect to this argument, the possibility that responsive documents may be disclosed in the future through some alternative process is not relevant to our review of whether a government institution has properly applied the discretionary exemptions in the Act.

Did the Commission properly apply section 15(1)(c) of the Act to the records withheld?

[23] Section 15(1)(c) of the Act provides as follows:

> *15(1) A head may refuse to give access to a record, the release of which could:*
>
> *…(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;…*

[24] This is a discretionary exemption. Even if this section applies, the government institution may still decide to disclose the information. To exercise its discretion properly, the government institution must show that it considered the objects and purposes of the Act (one of which is to allow access to information) and did not exercise its discretion for an improper or irrelevant purpose. The objects and purposes of the Act were considered by this office in Report 2004-03, [5] to [11].

The burden of proof is on the Commission by reason of section 61 of the Act. Section 61 states:

> *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.*

[25] This requires analysis of at least three discrete questions:

> Was this a lawful investigation?
>
> Would the release of the record interfere with a lawful investigation?
>
> Would the release of the record disclose information with respect to a lawful investigation?

Was this a lawful investigation?

[26] The term "lawful investigation" is not defined in the Act. It was considered by Saskatchewan's first Information and Privacy Commissioner, Mr. Derril McLeod, in his Report 93/021. In that case, he chose to define "lawful investigation" to mean an investigation that is authorized or required and permitted by law. He received a submission from the government institution that "lawful investigation" should mean any investigation that is not contrary to or prohibited by law. Commissioner McLeod stated, in response,

> *However, if this were so, it would encompass any and every investigation of any matter whatsoever not prohibited by some specific law. I am unable to conclude that such a broad interpretation is intended or warranted. In my view, the expression "lawful investigation" means an investigation that is authorized or required and permitted by law. So also, the expression, "law enforcement" must, in my view, be considered to pertain to enforcement of laws of general or particular application by appropriate law enforcement agencies, and not to the*

> *determination of private issues or rights between parties to a contract as appears to be the case here.* [page 6]

[27] We adopt the same definition of "lawful investigation".

[28] It does not appear that this office has previously determined this question in connection with the activities of the Saskatchewan Human Rights Commission. This office has however characterized a number of other types of proceedings under other statutes as a "lawful investigation".

[29] The North Battleford Water Inquiry was found to be a "lawful investigation" *given the investigative powers conferred upon the Commission of Inquiry by virtue of the Terms of Reference in the Order-in-Council under The Public Inquiries Act.*[1] In addition, the following investigations were found to be lawful investigations by this office:

- the investigation into a fire pursuant to *The Prairie and Forest Fires Act* and an insurance adjuster's report constituted a "lawful investigation" for purposes of the Act.[2]
- the investigation into a harassment complaint made by an employee to her public sector employer even though this was not done pursuant to any prescribed investigative process.[3]
- the investigation of a potential offence under *The Securities Act, 1988*[4]

[30] Part IV of the *Saskatchewan Code of Human Rights* prescribes a comprehensive procedure for the investigation and resolution of complaints. This includes an expansive power to search and seize "*books, documents, correspondence, records or other papers that related to or may relate to the complaint"*.[5] There is provision for the appointment, by the Chief Commissioner, of a human rights tribunal panel. The tribunal panel may *"establish rules requiring the parties to disclose, before an inquiry begins, any documentary or expert evidence the parties intend to use at an inquiry"*. In the event that the matter proceeds to an order by a human rights tribunal, a copy of any resulting order

[1] 2001/029, [17] to [20].
[2] OIPC Report 2003/035
[3] OIPC Report 2002/039
[4] OIPC Report 2003/46
[5] s. 28.1

of the tribunal shall be entered "*as a judgment of the Court of Queen's Bench and may be enforced as such.*[6]

[31] I find that the investigation undertaken in this case by the Commission qualifies as a lawful investigation for purposes of section 15(1)(c) of the Act.

Would the release of the record interfere with a lawful investigation?

[32] This would require an ongoing investigation. In Report 93/021, former Commissioner McLeod observed that

> *In its initial submission to me, the* [government institution] *suggested that since the allegations made by the informant amounted to allegations of criminal conduct, that therefore they would come within Section 15(1)(a) which deals with the investigation of "an offence". However, it is apparent that any investigation has been concluded and consequently could not be interfered with at this stage. The same observation appears to me to apply to Section 15(1)(c).*

[33] Mr. McLeod made the same point in his Report 93/014 when dealing with a police investigation report that was disclosed to Saskatchewan Government Insurance, and in Report 96/001 when dealing with an access request for certain investigation records in the possession of the Saskatchewan Securities Commission.

[34] In this case, the evidence is that the investigation undertaken by the Commission has not yet been completed and there has been no disposition of the case under the Saskatchewan Human Rights Code.

[35] I am not satisfied that the release of Part One of the record would interfere with a lawful investigation within the meaning of section 15(1)(c). Part Two of the record and its release to the Applicant would not interfere with this lawful investigation of the Commission.

[6] s. 33

Would the release of the record disclose information with respect to a lawful investigation?

[36] Is it possible to disclose information with respect to a lawful investigation without interfering with a lawful investigation?

[37] The Applicant has asserted that the purpose of section 15(1)(c) is to allow the government institution *"the discretion to preclude access to records in circumstances where disclosure could be injurious to the interest specified in the exemption"*.

[38] The Applicant further asserts that, since the record was "*created by the* [Association], *and gathered in the course of an investigation by the Commission into allegations of discrimination made against the creator of the record*", the file represents nothing more than a fixed set of facts.

[39] I find that factual information would normally be an integral element of "*lawful investigation"* and that to narrow the meaning of "*information with respect to a lawful investigation"* as the Applicant argues is not appropriate nor would it be consistent with previous reports of this office. The Commission secured the record solely by reason of its responsibility to investigate a complaint under the Saskatchewan Human Rights Code and by virtue of it's statutory power to require the production of records. I find that the collection of this record is an essential part of the Commission's investigation.

[40] In interpreting section 15(1)(c) I note the use of the disjunctive "or" and find that if the Legislative Assembly meant to include a harm or prejudice element in the phrase "*disclose information with respect to a lawful investigation*", it could have omitted them altogether and simply left the words "*interfere with a lawful investigation*". In other words, since the Assembly included the additional phrase, I find that it intended to capture something different than that captured by "*interfere with a lawful investigation"*.

[41] The Applicant argues that "*the head must present evidence demonstrating that disclosure of the responsive record could compromise its effective utilization with respect to the particular investigation for which it was gathered, or interfere with the Commission's ability to carry out its mandate in some other way*". I find that if that had been the intention of the Legislative Assembly it would not have added the second element of section 15(1)(c).

[42] In Report 99/012, Acting Commissioner Gerrand dealt with an access request for documents that related to criminal proceedings that had been fully concluded. Mr. Gerrand made no finding with respect to whether release of the record in question would "*disclose information with respect to a lawful investigation*". He based his recommendations that the record not be released on the first part of section 15(1)(c), namely "*interfere with a lawful investigation*" and on other provisions in the Act.

[43] Mr. Gerrand also considered section 15(1)(c) in his Report 2000/022. He was dealing with an access request for an Inquiry Report dealing with an investigation of two police forces in the late 1980's. He noted that the report outlined in considerable detail the methods and procedures used by the police forces. He found that the release of the report would "*disclose information with respect to a lawful investigation*" and that other exemptions would apply also. Mr. Gerrand observed that

> *The report is replete with detail of information that was obtained by reason of the investigation and this information would be disclosed if the report were released in pursuance with the provision of the Act.*

[44] Mr. Gerrand also found in Report 2001/005 that section 15(1)(c) had been properly invoked by Saskatchewan Government Insurance when it refused access to material related to an insurance claim.

[45] In Report 2001/029 Mr. Gerrand considered section 15(1)(c) in dealing with a review of a decision by Saskatchewan Environment and Resource Management to refuse access to records related to an inquiry into the contamination of drinking water in North Battleford.

Mr. Gerrand relied on "interference with a lawful investigation" to uphold most of the decision of the government institution. He also made the following observation:

> *In my opinion, the words "disclose information with respect to a lawful investigation" as used in section 15(1)(c) of the Act do not relate to the disclosure of information or documents that will form part of the evidence adduced at the Inquiry but rather methods or techniques that might be employed for the purpose of carrying out the Inquiry. The documents that I have examined are documents related to potential evidence rather than process, with the exception of the basic Inquiry documents referred to in the preceding paragraph.* [24]

[46] In Report 2001/037 Mr. Gerrand recommended a denial of access to certain police investigative records since the homicide investigation was still open and active. He noted that the file materials included "*factual material respecting the crime in question and the manner in which the investigation has been carried forward for many years.*"

[47] My predecessor, Richard Rendek, Q.C., found that section 15(1)(c) had been properly invoked by Saskatchewan Environment Resource Management, Saskatchewan Justice and the Royal Canadian Mounted Police in respect of a document comprised of "*…two and one-half pages in length and comprised of detailed factual reporting of events that occurred during an investigation…*".[7]

[48] This provision was again considered by this office in Report 2003/046. That case involved documents provided to the Saskatchewan Financial Services Commission by the Royal Canadian Mounted Police and the Manitoba Securities Commission. One of the grounds upon which the former Acting Commissioner Rendek relied was section 15(1)(c). The former Commissioner noted that the Saskatchewan Financial Services Commission objected to the release of material that resulted from a joint investigation undertaken by the Manitoba Securities Commission and the RCMP. The objection was that the two bodies considered all material in respect to their investigations as confidential and it was released to:

> *…other regulators and law enforcement officials with the understanding that it will be kept confidential. This is common practice and understanding among enforcement agencies and violation of this confidentiality would lead to a situation where information required to fulfil our mandate would no longer be provided to us by other regulatory and law enforcement agencies.*

[7] Report 2002/005, 2002/016

[49] This suggests that the concern was not that there would be interference with a lawful investigation but rather that there would be other consequences unrelated to the investigation. Mr. Rendek recommended that, with the exception of certain public documents, the record should not be disclosed to the Applicant.

[50] We note also Report 2002/039 issued by Acting Commissioner Rendek. In that case Mr. Rendek considered a number of exemptions including section 15(1)(c) of the Act. He was dealing with a decision by Saskatchewan Executive Council to deny access to the Applicant to a report on a harassment in the workplace complaint. He concluded that the exemption related solely to a specific, ongoing investigation and not to a general investigative process. As a consequence any harm contemplated in future investigations by release of the report was irrelevant. Mr. Rendek concluded that since the investigation in question had ended and there was no specific investigation underway, the section 15(1)(c) exemption would not apply. I find that Mr. Rendek was addressing the first part of section 15(1)(c) i.e. "*interfere with a lawful investigation*".

[51] The release of Part 1 of the record would disclose information with respect to an ongoing lawful investigation.

[52] We note that in some other provinces, the intention of the legislature is somewhat clearer. For example, in the Alberta *Freedom of Information and Protection of Privacy Act*, the 'law enforcement' exception provides in part, "*The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to …(f) interfere with or harm an ongoing or unsolved law enforcement investigation, including a police investigation*"[8] [emphasis added]

[53] My view is that it is possible to disclose information with respect to a lawful investigation without interfering with a lawful investigation.

[8] Alberta *Freedom of Information and Protection of Privacy Act*, s. 20(1)(f)

[54] Having regard to these authorities noted above, I find that none of the documents that comprise Package Two are documents that are caught by the lawful investigation exemption in section 15(1)(c) save for some handwritten comments and annotations that appears on the documents #3, 11, 15, 17, 18, 19, 20, 21 and 35 in Package Two.

[55] There is one further issue that has been raised by the Commission that must be addressed.

Does the lawful investigation exemption apply to the record of an investigation undertaken by a body other than the Commission?

[56] I note that the Legislative Assembly elected to make the Saskatchewan Human Rights Commission a government institution for purposes of the Act.[9] This province could have expressly excluded the records of the Commission from the application of this Act but has not done so. We note that in the Alberta *Freedom of Information and Protection of Privacy Act*, that statute does not apply to an entity acting in a quasi-judicial capacity. The Alberta statute does not apply to an arbitrator and the arbitrator's records.[10] That law also excludes independent officers of that province's legislature and their records.

[57] I also note that section 5 of the Act provides that:

> *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.* [emphasis added]

[58] I take the foregoing underlined passage to be a recognition that possession and control are different things. Otherwise, there would be no need to have both words. It is therefore conceivable that a government institution might have possession but not control of a record or that it might have control of a record but not possession.

[59] The material produced by the Commission in this case as responsive to the access request is a file of the Association. Much of that file is material related to an earlier investigation by the regulatory body in a foreign jurisdiction.

[9] *The Freedom of Information and Protection of Privacy* Regulation, Appendix, Part 1
[10] Alberta OIPC Order 2000-003, [54], available online at www.oipc.ab.ca

[60] It is common that investigative organizations share investigation reports. This was true in a number of previous cases addressed by this office, including:

- Report of police investigation into an alleged break-in and robbery was disclosed to Saskatchewan Government Insurance[11];
- Material from an RCMP investigation was disclosed to Saskatchewan Justice[12];
- Material from a municipal police service and the RCMP was disclosed to Saskatchewan Justice[13];
- Report from an insurance adjuster was disclosed to Saskatchewan Environment and Resource Management[14];
- Materials from Manitoba Securities Commission and RCMP disclosed to Saskatchewan Financial Services Commission[15];

[61] I find that a record may be "*information with respect to a lawful investigation"* in circumstances where the record in full or in part has been created by another body. I find no requirement in the Act that this exemption can only be invoked in circumstances where the investigation has been solely the work of the government institution. The key is whether the record is in the possession or under the control of the government institution. I find that the record in this case is in the possession of the Commission.

Is there authority for the Commission to deny access to the Applicant of his personal health information?

[62] If a trustee has custody or control of an individual's personal health information, *The Health Information Protection Act* (HIPA) applies to that information and not *The Freedom of Information and Protection of Privacy Act*. Section 4(3) of HIPA states:

> 4(3) *Except where otherwise provided, The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act do not apply to personal health information in the custody or control of a trustee*.

[11] Report 93/014
[12] Report 97/019
[13] Reports 2001/037, 2000/022
[14] Report 2003/035
[15] Report2003/046

[63] In this case, the Commission is described as a "*government institution*" in *The Freedom of Information and Protection of Privacy Regulation,* Appendix, Part I. The definition of "*trustee*" in HIPA includes *"(i) a government institution"*.

[64] Personal health information is defined in HIPA as follows:

> *2(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;*
> *(v) registration information*

[65] In the result, this record is in the custody of a trustee, namely the Commission, and includes personal health information

[66] Section 12 of HIPA provides as follows:

> *In accordance with Part V, an individual has the right to request access to `personal health information about himself or herself that is contained in a record in the custody or control of a trustee.*

[67] Section 38 of HIPA provides, in part, as follows:

> *(1) Subject to subsection (2), a trustee may refuse to grant an applicant access to his or her personal health information if:…*
>
> *(e) the information was collected principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding*

[68] Insofar as HIPA is concerned, my view is that when the Commission collects information, including personal health information, it does so in anticipation of or for the use of an investigation and possible referral to a human rights panel under Part IV of *The Saskatchewan Human Rights Code*. I conclude that the Code contemplates a quasi-judicial proceeding as that term has been discussed by the Supreme Court of Canada.[16]

[69] The Package One documents, if released, would disclose personal health information that has been collected principally in anticipation of, or for use in a quasi-judicial proceeding and should therefore not be released on the basis of section 38(1)(e) of HIPA. The balance of the Package One documents should not be released on the basis of section 15 (1)(c) of the Act.

[70] Section 16 of HIPA provides as follows:

> *Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:*
>
> *(a) protect the integrity, accuracy and confidentiality of the information;*
> *(b) protect against any reasonably anticipated:*
> *(i) threat or hazard to the security or integrity of the information;*
> *(ii) loss of the information; or*
> *(iii) unauthorized access to use, disclosure or modification of the information; and*
> *(c) otherwise ensure compliance with this Act by its employees.*

[71] The Commission has not developed policies and procedures to ensure compliance by its employees with HIPA.

V RECOMMENDATIONS

[72] I find that the Saskatchewan Human Rights Commission investigation currently underway is a "lawful investigation" within the meaning of section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act*.

[16] Harelkin v. University of Regina [1979] 2 S.C.R. 561. See also, Laurendeau v. Canadian Broadcasting Corp.. [2003] C.P.S.S.R.B. No. 35

[73] I find that Package Two of the record in question consists of matters that do not qualify as an integral part of a "lawful investigation" and therefore I recommend that Package Two be disclosed to the Applicant within 35 days after certain information which would be subject to section 15(1)(c) is severed on documents 3, 11, 15, 17, 18, 19, 20, 21 and 35. I am providing the Commission with a copy of Package Two on which I have identified those portions that should be severed.

[74] I find that most of Package One of the record in question is "*information with respect to a lawful investigation"* within the meaning of section 15(1)(c) of *The Freedom of Information and Protection of Privacy Act.*

[75] I find that the balance of Package One constitutes personal health information of the Applicant within the meaning of *The Health Information Protection Act* and that this was collected principally in anticipation of and for use in a quasi-judicial proceeding pursuant to section 38(1)(e) of HIPA. Consequently the personal health information should not be released to the Applicant.

[76] I recommend that the Commission develop comprehensive written policies and procedures in compliance with section 16 of *The Health Information Protection Act*.

[77] I further recommend that the Commission provide the Applicant and our office with a copy of those written policies and procedures within 90 days of this Report.

[78] I find that the Saskatchewan Human Rights Commission has acted properly and in compliance with *The Freedom of Information and Protection of Privacy Act* in refusing to provide access to Package One of the record in question.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of September, 2004.

R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for Saskatchewan