



REVIEW REPORT 047-2022

Ministry of Labour Relations and Workplace Safety

September 22, 2022

Summary: The Ministry of Labour Relations and Workplace Safety (LRWS) received an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) from the Applicant. LRWS released two records in part and withheld other records in whole. It claimed that the exemptions in sections 15(1)(c), (k), (k.2), 22(a), 29(1) of FOIP and section 27(1) of *The Health Information Protection Act* applied. In this review, the Commissioner found that some information was exempt pursuant to sections 15(1)(c) and 29(1) of FOIP. He recommended that LRWS continue to withhold this information and release the remaining information.

I BACKGROUND

[1] The Ministry of Labour Relations and Workplace Safety (LRWS) received an access to information request from the Applicant under *The Freedom of Information and Protection of Privacy Act* (FOIP) on January 19, 2022. The Applicant's request was for:

- 1) All notes, documents, etc written/taken by [named employee] and [named employee] at Fire Sand Glass on January 12, 2022.
- 2) Any pictures or videos, etc taken by [named employee] and [named employee] at Fire Sand Glass on January 12, 2022.
- 3) Phone records for [named employee] and [named employee] from January 12, 2022 to January 19, 2022.
- 4) Any and all communication including, but not limited to emails, electronic messages, etc including [named employee] or [named employee] with respect to Fire Sand Glass from January 12 to January 19, 2022.

5) Written credentials for [named employee] and [named employee] as Occupational Health Officers.

6) The compensation, including benefits, bonuses, or any other compensation provided to [named employee] and [named employee] from the beginning of their employment up to and including January 19, 2022.

7) Employment start date for [named employee] and [named employee] as Occupational Health and Safety Officers.

8) Name and Contact information for the direct supervisor of [named employee] and [named employee].

9) Any and all records associated with Occupational Health and Safety Report Number 1-00019645. This should include but not be limited to, notes, phone call logs/records, interviews/meetings, documents, filings, emails, electronic messages, etc.

10) Any and all records associated with Occupational Health and Safety inspection at Fire Sand Glass on January 12, 2022. This should include but not be limited to, notes, phone call logs/records, interviews/meetings, documents, filings, emails, electronic messages, etc.

[2] On February 18, 2022, LRWS responded to the access to information request identifying 141 pages of records and two written credentials or identification cards for two Occupational Health Officers as responsive. LRWS withheld the 141 pages in their entirety pursuant to sections 15(1)(c), (k), (k.2), 22(a) and 29(1) of FOIP and 27(1) of *The Health Information Protection Act* (HIPA). It released portions of the written credentials denying access to the photographs based on section 29(1) of FOIP. It added that information responsive to parts 6 and 8 of the access to information request was publicly available and it provided links to the information. It did not identify a specific record responsive to part 7 of the request, but denied access to the responsive information relying on section 29(1) of FOIP.

[3] On March 2, 2022, the Applicant requested that my office review LRWS' decision.

[4] On March 29, 2022, my office notified the Applicant and LRWS of my intention to undertake a review of LRWS' decision. The notification included a request that they file a submission on the claim that information was exempt.

[5] LRWS provided my office with an index of records and copies of the responsive records on April 27, 2022. On June 8, 2022, LRWS provided my office with a revised index of records, and its submission. In its submission, it noted that it was withdrawing its claim to section 15(1)(k.2) of FOIP.

[6] The Applicant did not file a submission.

II RECORDS AT ISSUE

[7] LRWS identified written credentials for two of its Occupational Health Officers from which it withheld their photographs. LRWS did not identify a record responsive to part 7 of the request, but as noted above, it stated it was withholding the information. Finally, LRWS identified 141 pages of records that it withheld in full. The following index of records describes the records at issue and the exemptions claimed for each page of the records:

Page Number	Description of Record	Released/Withheld	Exemption(s) Applied
Not Applicable	Written credentials for two Occupational Health Officers	Released in part	29(1) of FOIP applied to withhold photographs of officers
Not Applicable	Information about start date of two Occupational Health Officers	Withheld	29(1) of FOIP
1 to 5	Officer Notes	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP applied to portions
6 to 7	Email between OHS staff	Withheld	15(1)(c), (k) of FOIP applied to all
8 to 9	Officer Report	Withheld	15(1)(c), (k) of FOIP applied to all
10 to 12	Notice of Contravention	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP and 27(1) of HIPA applied to portions
13	Progress Report on Notice of Contravention	Withheld	15(1)(c), (k) of FOIP applied to all

14 to 15	Email correspondence	Withheld	15(1)(c), (k) of FOIP applied to all
16	Accident Notification	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP and 27(1) of HIPA applied to portions
17 to 79	Email correspondence	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) and 22(a) of FOIP and 27(1) of HIPA applied to portions
80 to 91	Officer Notes	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP and 27(1) of HIPA applied to portions
92 to 94	Corporate Registry	Withheld	15(1)(c), (k) of FOIP applied to all
95	Email correspondence	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP and 27(1) of HIPA applied to portions
96 to 99	Fire Sand Glass OHC Minutes	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP applied to portions
100 to 102	Officer Recommendation Memo	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP and 27(1) of HIPA applied to portions
103 to 104	Officer's Statement	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP and 27(1) of HIPA applied to portions
105 to 127	On scene photographs	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP applied to portions
128 to 137	Officer phone records	Withheld	15(1)(c), (k) of FOIP applied to all, 29(1) of FOIP applied to portions
138 to 141	Officer text messages	Withheld	15(1)(c), (k) of FOIP applied to all,

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] LRWS qualifies as a “government institution” as defined in section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

[9] LRWS also claimed that section 27(1) of HIPA applies to portions of the records. HIPA applies when three elements are present: 1) “personal health information” 2) “trustee” and 3) the trustee has custody or control of the personal health information.

[10] Pages 10 to 12, 16, 17 to 79, 95, 100 to 102, and 103 to 104 of the records contain information about the injuries and medical treatment of an individual allegedly injured in the workplace. This qualifies as the personal health information of the individual as defined by section 2(m)(i) of HIPA, which states:

2 In this Act:

...

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

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

[11] LRWS is a “trustee” as defined in section 2(t)(i) of HIPA, which provides:

2 In this Act:

...

(t) “trustee” means any of the following that have custody or control of personal health information:

(i) a government institution;

[12] With respect to the third element, in my office’s Investigation Report [306-2019](#), I stated that “custody” is the physical possession of a record by a trustee with a measure of control. “Control” connotes authority, meaning the trustee has the authority to manage the records,

including restricting access to it. In this matter, LRWS has custody of the records at issue as they were generated in connection with its authority under *The Saskatchewan Employment Act* (SEA). As LRWS has custody of the personal health information at issue, I find that HIPA applies, and I also have jurisdiction under that act to conduct this review.

2. Did LRWS properly apply sections 15(1)(c) and (k) of FOIP?

[13] LRWS applied sections 15(1)(c) and (k) of FOIP to all the records at issue except for the written credentials for two Occupational Health Officers and the information about their employment start date.

[14] Section 15(1)(c) of FOIP is a discretionary exemption that permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 30, 2021, [*Guide to FOIP*, Ch. 4], pp. 51-52)

[15] Section 15(1)(c) of FOIP provides:

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;

[16] My office applies the following two-part test to determine if section 15(1)(c) applies:

1. Does the government institution’s activity qualify as a lawful investigation?
2. Does one of the following exist?
 - a. Could release of the information interfere with a lawful investigation?
 - b. Could release of the information disclose information with respect to a lawful investigation?

(*Guide to FOIP*, Ch. 4, pp. 52 - 53)

1. Does the government institution's activity qualify as a lawful investigation?

[17] In support of its argument that section 15(1)(c) of FOIP applies, LRWS asserted:

The information gathered and created by Occupational Health and Safety was a result of a lawful investigation and law enforcement matter. Clauses 15(1)(c) and (k) are written in a similar fashion and for that reason, the Ministry will deal with both exemptions here.

...

The inspection at issue is one that is authorized or permitted by law that could lead to a penalty or sanction imposed under [SEA]. The Ministry submits the inspection falls within the definition of lawful investigation or law enforcement matter. Subsection 3-63(1) of SEA provides the Ministry with the mandate to conduct inspections. This provision states:

3-63(1) Subject to subsection (4), an occupational health officer may enter any premises, place of employment, worksite or vehicle and conduct an inspection for the purpose of:

- (a) preventing work-related incidents, injuries or illnesses;
- (b) ascertaining the cause and particulars of a work-related incident, injury or illness or of an incident that had the potential to cause a work-related incident, injury or illness;
- (c) making an inquiry in response to a complaint concerning occupational health and safety; or
- (d) determining whether there is compliance with this Part, the regulations made pursuant to this Part, a compliance undertaking, a notice of contravention or an order issued pursuant to a prescribed Act or regulation.

The offences that could result from an inspection are set out in section 3-78 and the penalties in section 3-79.

For our purposes, while the word inspection is used, subsection 3-63(1) of [SEA] provides occupational health officers with the ability to conduct an investigation. The powers provided to occupational health officers during the course of the inspection (subsection 3-63(2) and (3) of [SEA]) support this position. The investigation was authorized and permitted by law and thus subject to the exemption provided in clause 15(1)(c) of FOIP.

[18] In previous reports of my office, such as in [Review Report 248-2020, 167-2021](#), I have found that an inspection authorized by section 3-63(1) of the SEA qualified as a lawful

investigation pursuant to section 15(1)(c) of FOIP. Consistent with these findings, I find that LRWS' activity in this case was authorized by the SEA, and it qualified as a lawful investigation under section 15(1)(c) of FOIP. Part one of the test has been met.

2. Does one of the following exist?

a. Could release of the information interfere with a lawful investigation?

b. Could release of the information disclose information with respect to a lawful investigation?

[19] To meet part two of the test, it is only necessary for the government institution to demonstrate that the information in the record is information with respect to a lawful investigation. "With respect to" are words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters (*Guide to FOIP*, Ch. 4, p. 53).

[20] LRWS asserted:

[LRWS] submits that the wording of the exemption means that it applies to both active and closed investigations and law enforcement matters.

It has been established that the records in question were generated in response to an investigation being conducted under the authority of subsection 3-63(1) of *The Saskatchewan Employment Act* and accordingly are records respecting a lawful investigation. Further, it has also been established that the investigation could lead to a sanction pursuant to *The Saskatchewan Employment Act*. The investigation is closed, however, the exemptions continue to apply, pursuant to *Evenson v. Saskatchewan (Ministry of Justice)* (2013 SKQB 296).

[LRWS] submits that the clauses 15(1)(c) and (k) have been properly applied to the portions of the record it has been applied to.

[21] Based on a review of the records, I find that the release of pages 1 to 141 would reveal information about the lawful investigation that was conducted by LRWS. Therefore, subject to my treatment of the absurd result principle below, the information at issue meets both parts of the test for the application of section 15(1)(c) of FOIP.

Absurd Result

[22] When determining if exemptions in FOIP and HIPA apply, government institutions should consider whether applying the exemption would give rise to an absurd result. This is based on a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. As set out in my office's *Guide to FOIP*, the presumption against absurdity was described by the Supreme Court of Canada in *Rizzo v. Rizzo Shoes Ltd. (re)*, (1998) as follows:

[27] ...It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to [Pierre-Andre Cote, *The Interpretation of Legislation in Canada* (2nd ed. 1991)] an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to some interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes* supra at p. 88).

(*Guide to FOIP*, Ch. 4, p. 4)

[23] Previous reports of my office (see for example, my office's Review Reports [215-2020](#), [171-2019](#), and [164-2021](#), and blogs [Absurd Result](#) and [Absurd Result II](#)) have found that the absurd result principle applies in the following circumstances:

- The requester provided the information to the government institution
- The requester was present when the information was presented to the public body and
- The information is clearly within the requester's knowledge.

[24] On the face of the records, it is evident that some of the information withheld by LRWS was provided by the Applicant to LRWS namely, the emails at pages 21 to 22 (duplicated at pages 27 to 28, 43 to 44, and 46 to 47). Other information is clearly within the knowledge of the Applicant because it has already been shared with them by LRWS, it was provided to LRWS by the Applicant, or it originated with the Applicant or the company they own and operate. The records that fall into this category are the Officer Report (pages 8 to 9), Notice of

Contravention (pages 10 to 12), Progress Report on Notice of Contravention (page 13), and an email to the Applicant from LRWS (page 21). The Applicant's company's Occupational Health and Safety Meeting Minutes at pages 96 to 99, and the photographs of the minutes and agendas at pages 106 to 115 also fall within this category, because it is clear on the face of the records that the Applicant attended these meetings, signed the Minutes, and their company maintained these records. The Corporate Registry Profile Report for the Applicant's company at pages 92 to 94 are publicly available records that include information that would be within the knowledge of the Applicant.

- [25] Applying the absurd result principle, I find that the information described in paragraph [24] above is not exempt under section 15(1)(c) of FOIP, because it would be absurd to find it exempt in the circumstances described above. Therefore, I recommend that LRWS release this information, subject to my consideration of sections 29(1) of FOIP and 27(1) of HIPA which have been claimed in relation to portions of the information on these pages.
- [26] For the same reason that I have found that section 15(1)(c) of FOIP does not apply to the records described in paragraph [24], I also find that section 15(1)(k) of FOIP does not apply. In other words, it would be absurd to find that these records are exempt under sections 15(1)(c) and (k) of FOIP. Therefore, it is not necessary for me to consider whether the test for the application of section 15(1)(k) of FOIP has been met in this case.
- [27] In summary, I find that LRWS properly applied section 15(1)(c) of FOIP to the following pages: 1 to 5, 6 to 7, 13, 14 to 15, 16, 17 to 20, 23 to 26, 29 to 42, 45, 48 to 79, 80 to 91, 95, 100 to 102, 103 to 104, 105, 116 to 127, 128 to 137 and 138 to 141.
- [28] I also find that LRWS did not properly apply sections 15(1)(c) and (k) of FOIP to the following pages: 8 to 9, 10 to 12, 21 to 22 (duplicated at pages 27 to 28, 43 to 44, and 46 to 47), 92 to 94, 96 to 99, and 106 to 115.
- [29] LRWS applied section 22(a) of FOIP to some of the records. As I have found that those records are exempt pursuant to sections 15(1)(c) of FOIP, it is not necessary for me to

consider whether section 22(a) of FOIP applies. I now turn to consider the claim that some information is exempt pursuant to section 29(1) of FOIP.

3. Did LRWS properly apply section 29(1) of FOIP?

[30] Given my findings regarding the application of section 15(1)(c) of FOIP, I need only consider if LRWS properly applied section 29(1) of FOIP to the following records:

- written credentials of two Occupational Health Officers
- employment start dates for two Occupational Health Officers
- the information that I have found is not exempt under sections 15(1)(c) and (k) of FOIP and for which section 29(1) of FOIP has been claimed, namely, pages 11, 21 to 22 (duplicated at pages 27 to 28, 43 to 44, and 46 to 47), 92 to 93, 96 to 99, and 106 to 115.

[31] Section 29(1) of FOIP is a mandatory exemption that protects the privacy of individuals whose personal information may be contained in records that are responsive to a request made by someone else (*Guide to FOIP*, Ch. 4, p. 281).

[32] Section 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.

[33] Section 29(1) of FOIP applies to “personal information”, which is defined in section 24(1) of FOIP. Section 24(1) of FOIP provides, in part:

24(1) Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

[34] The list of examples of personal information in section 24(1) of FOIP is not exhaustive. To qualify as personal information, the information must, 1) be about an identifiable individual and 2) be personal in nature.

[35] With respect to the application of this exemption, LRWS asserted:

[LRWS] submits personal information includes the names of employees at [named company] and their respective work histories, including, but not limited to length of employment, nature of work, disciplinary action and workplace incidents.

For the records in question, employee names are redacted where the names are linked with data elements such as: job title, length of employment; workplace training; workplace incidents or use of personal protective equipment. While the Applicant may be the employer, that relationship to the employees does not entitle the Applicant to the employee's personal information when it is in the possession or control of [LRWS].

[LRWS] submits that it has properly applied subsection 29(1) of FOIP to portions of the records indicated.

[36] As noted above, the photographs of two Occupational Health Officers appearing on their written credentials were withheld by LRWS. While in some contexts a photograph of a person may qualify as their personal information, when that photograph is used for professional identification purposes it relates to the individual in a professional capacity, is not personal in nature, and therefore, it does not qualify as personal information pursuant to section 24(1) of FOIP. In the context of a professional identification card, the photograph is like business card information and consistent with my findings in relation to other business card information in previous reports from my office, such as Review Report [322-2021, 030-2022](#), I find that it is not exempt pursuant to section 29(1) of FOIP. As no other exemptions have been claimed for these photographs, I recommend that they be released.

[37] The information about the employment start date for two Occupational Health Officers qualifies as the personal information of these individuals pursuant to section 24(1)(b) of FOIP as it is about their employment history. This is consistent with the approach taken by my office to employment start dates in previous reports. See for example Review Report [035-2019](#). I find that this information is exempt pursuant to section 29(1) of FOIP.

[38] With respect to the remaining information for which section 29(1) of FOIP has been claimed, even if I find that it qualifies as the personal information of other individuals pursuant to section 24(1) of FOIP, I find that the exemption in section 29(1) of FOIP does not apply to the information. For the same reasons I found that it would be absurd to find that sections 15(1)(c) and (k) of FOIP apply to this information, I also find that section 29(1) of FOIP does not apply to this information. As noted above, this information was either provided by the Applicant to LRWS, provided by LRWS to the Applicant or is within the knowledge of the Applicant because of their role on the company's Occupational Health and Safety Committee and their role as owner and operator of the company. Applying the absurd result principle discussed above, I find that section 29(1) of FOIP does not apply to this information, and I recommend that LRWS release it to the Applicant.

[39] In summary, I find that LRWS:

- did not properly apply section 29(1) of FOIP to the written credentials of two Occupational Health Officers
- properly applied section 29(1) of FOIP to the information about the two Occupational Health Officers' employment start date, and
- did not properly apply section 29(1) of FOIP to the information on the following pages: 11, 21 to 22 (duplicated on pages 27 to 28, 43 to 44, and 46 to 47), 92 to 93, 96 to 99, and 106 to 115.

4. Did LRWS properly apply section 27(1) of HIPA?

[40] LRWS applied section 27(1) of HIPA to withhold portions of some pages. However, I need only consider its application in relation to page 11, which I have found is not exempt under sections 15(1)(c), (k) and 29(1) of FOIP.

[41] Section 27(1) of HIPA provides:

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

- [42] The information severed from page 11 includes information about the nature of injuries sustained by an individual in their place of work. I have already found that this is personal health information. As section 27(1) of HIPA is a mandatory exemption and the individual has not consented to the disclosure of the information, section 27(1) of HIPA would apply to this information, but for my consideration of the potential application of the absurd result principle.
- [43] I note that the severed information is contained in a report that was provided to the Applicant during the investigation conducted by LRWS. In these circumstances, I find that section 27(1) of HIPA does not apply to this information due to the application of the absurd result principle described earlier in this Report. Therefore, I find that LRWS did not properly apply section 27(1) of HIPA.

IV FINDINGS

- [44] I find that I have jurisdiction under FOIP and HIPA to conduct this review.
- [45] I find that LRWS properly applied section 15(1)(c) of FOIP to the following pages: 1 to 5, 6 to 7, 13, 14 to 15, 16, 17 to 20, 23 to 26, 29 to 42, 45, 48 to 79, 80 to 91, 95, 100 to 102, 103 to 104, 105, 116 to 127, 128 to 137 and 138 to 141.
- [46] I find that LRWS did not properly apply sections 15(1)(c) and (k) of FOIP to the following pages: 8 to 9, 10 to 12, 21 to 22 (duplicated on pages 27 to 28, 43 to 44, and 46 to 47), 92 to 94, 96 to 99, and 106 to 115.
- [47] I find that LRWS properly applied section 29(1) of FOIP to the information about the Occupational Health Officers' employment start date.
- [48] I find that LRWS did not properly apply section 29(1) of FOIP to the written credentials of the Occupational Health Officers.

[49] I find that LRWS did not properly apply section 29(1) of FOIP to the information on the following pages: 11, 21 to 22 (duplicated on pages 27 to 28, 43 to 44, 46 to 47), 92 to 93, 96 to 99, and 106 to 115.

[50] I find that LRWS did not properly apply section 27(1) of HIPA to the information on page 11.

V RECOMMENDATIONS

[51] I recommend that LRWS continue to withhold the following pages: 1 to 5, 6 to 7, 13, 14 to 15, 16, 17 to 20, 23 to 26, 29 to 42, 45, 48 to 79, 80 to 91, 95, 100 to 102, 103 to 104, 105, 116 to 127, and 128 to 137 and the information about the LRWS's Occupational Health Officers' employment start date.

[52] I recommend that LRWS release the remaining pages and unsevered copies of the written credentials.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of September, 2022.

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