



REVIEW REPORT 155-2022

Ministry of Labour Relations and Workplace Safety

February 21, 2023

Summary:

The Applicant requested a review of the Ministry of Labour Relations and Workplace Safety's (LRWS) response to their access to information request. The Commissioner found that LRWS properly applied subsections 15(1)(c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* in some places, but not all. He also found that LRWS properly applied subsection 27(1) of *The Health Information Protection Act*. Finally, the Commissioner found that LRWS completed a reasonable search for records and appropriately withheld information as not responsive, but should release nonetheless, subject to exemptions. The Commissioner recommended that LRWS continue to withhold information that he found was exempt and release information that was not exempt. He also recommended that LRWS take no further action with respect to the search for records.

I BACKGROUND

- [1] 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 on May 20, 2022. The Applicant filed the access to information request on behalf of their client, the employer of an injured worker. Any reference to the Applicant in this Report should be treated as a reference to the Applicant or their client, as may be appropriate in the context.
- [2] The Applicant sought access to “any and all information and documentation” relating to:

[LRWS]'s inspection, investigation or the appeal of [named company] with respect to the April 21, 2020 workplace incident involving [the injured worker] (the "Incident"), including:

1. Any external correspondence, whether by way of email, text message, fax or letter, sent or received by [LRWS] in relation to the Incident;
2. Any internal correspondence, whether by way of email, text message, fax or letter, generated by [LRWS] in relation to the Incident; and
3. Any report or work product, whether draft, preliminary, or final in nature, in relation to the Incident, generated by [LRWS].

[3] On June 17, 2022, LRWS issued its decision in accordance with section 7 of FOIP. In its decision, LRWS released some records in full. It also withheld records and portions of records pursuant to subsections 22(b), (c), 29(1), 15(1)(c), (e), 19(1)(b), and 13(1)(a) of FOIP and subsection 27(1) of *The Health Information Protection Act* (HIPA).

[4] On August 4, 2022, my office received a request for review from the Applicant.

[5] On September 13, 2022, LRWS issued a revised decision withdrawing its claim that subsection 19(1) of FOIP applied. It also released to the Applicant the record that it had previously claimed was exempt under that exemption.

[6] On September 20, 2022, the Applicant advised my office that they believed that additional records existed. They asked my office to add search as an issue in the review.

[7] On September 21, 2022, my office notified the Applicant and LRWS that my office would be undertaking a review and invited them to provide a submission.

[8] My office received an Index of Records, copies of the records at issue and a submission from LRWS on November 29, 2022. In its submission, LRWS stated that it was withdrawing its claim that subsections 13(1)(a), 22(b) and (c) of FOIP applied to the records.

[9] On January 18, 2023, LRWS issued a second revised decision withdrawing its claim that subsections 13(1)(a) and 22(b) of FOIP applied and released additional information. It stated that records previously withheld under subsection 22(b) of FOIP were withheld under subsection 15(1)(c) of FOIP only. LRWS also decided to release additional records previously withheld in full under subsection 15(1)(c) of FOIP, now redacting portions pursuant to subsections 15(1)(c) and 29(1) of FOIP.

[10] LRWS' January 18, 2023 revised decision letter did not address the previous claim that subsection 22(c) of FOIP applied. However, as noted below, it is apparent from a review of the redacted records provided to this office that no information was withheld pursuant to that subsection. Therefore, I will not consider it in my analysis below.

II RECORDS AT ISSUE

[11] LRWS identified 19 records or bundles of records. LRWS released 90 pages in part and withheld 401 pages in full. It also withheld the four audio recordings. The following table describes the records at issue in this review and the exemptions claimed for the records or portions of records:

Record/ Bundle No.	Page No.	Description	Released or withheld in full/Withheld in part	Exemptions Applied
1	1, 4 to 7, 9, 11 to 14, 29, 32 to 34, 37, 38, 41, 42, 46, 48, 52, 54 to 55, 57, 58, 60	Investigation Report	Withheld in part	FOIP subsection 29(1)
1	8	Investigation Report	Withheld in part	FOIP subsection 13(1)(a)
1	10, 12, 30, 31, 40	Investigation Report	Withheld in part	FOIP subsection 29(1), HIPA subsection 27(1)
2-5	N/A	Four audio recorded witness statements	Withheld in full	FOIP subsections 29(1), 15(1)(c), (e)

6-10	N/A	Five photographs of text messages	Withheld in full	FOIP subsections 29(1), 15(1)(c), (e)
11	1 to 18	Employee information and training	Withheld in full	FOIP subsections 29(1), 15(1)(c)
12	1 to 318	Injured worker's medical information	Withheld in full	FOIP subsections 29(1), 15(1)(c), HIPA subsection 27(1)
13	1 to 6	General/Prime contractor's Incident Report	Withheld in full	FOIP subsection 15(1)(c)
14	1 to 8	Photographs	Withheld in full	FOIP subsection 15(1)(c)
15	1 to 18	Legal Officer's field notes	Withheld in full	FOIP subsection 15(1)(c)
16	1	Research	Withheld in full	FOIP subsection 15(1)(c)
17	1 to 7	Interview questions	Withheld in full	FOIP subsections 29(1), 15(1)(c), (e)
18	1 to 2	General/Prime Contractor's Health and Safety Plan	Withheld in full	FOIP subsection 15(1)(c)
19 (112 pages)	Pages 3 to 11, 14 to 19, 21, 38 to 40, 42 to 55, 57 to 61, 63 to 65, 67 to 72, 75 to 76, 79, 81 to 84, 89, 92 to 94, 106 to 109, 111	LRWS' letters and emails	Some pages withheld in full, and some pages withheld in part	FOIP subsection 15(1)(c)
19	12, 22, 23 to 25, 27, 30 46 to 47, 50, 51 60, 65, 69, 83, 87, 91, 101, 105	LRWS' letters and emails	Withheld in part	FOIP subsection 29(1), HIPA subsection 27(1)
19	22, 32, 73, 96	LRWS' letters and emails	Withheld in part	Non-responsive

*The page numbers assigned to Bundle 19 are the same page numbers applied by LRWS in the records released to the Applicant on January 18, 2023.

[12] As noted in the table above, the redacted records provided to my office included a claim that information in Record 1, page 8, was exempt pursuant to subsection 13(1)(a) of FOIP. However, LRWS withdrew its claim to that exemption in its revised decision letter dated January 18, 2023. As LRWS did not claim any other exemptions for this information, I recommend that LRWS release Record 1 page 8 in full to the Applicant.

[13] During this review, LRWS also identified a clerical error with respect to Bundle 19, page 93, which is part of an email chain. It advised my office that it had intended to apply subsection 15(1)(c) of FOIP to the entire email chain. Based on a review of the redacted record, it is apparent that LRWS intended to apply subsection 15(1)(c) of FOIP to that page. Therefore, I will consider the potential application of that exemption to Bundle 19, page 93 in the discussion below.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[14] LRWS qualifies as a “government institution” pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review under FOIP.

[15] As LRWS claimed that subsection 27(1) of HIPA applies to portions of the records, I must determine if I have jurisdiction under that act. 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.

[16] The portions of records to which LRWS applied subsection 27(1) of HIPA contain information about the injuries, medical treatment and health care providers of the injured worker. Bundle 19, page 92 also contains personal health information of another individual. This information qualifies as personal health information as defined by subsection 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;

[17] LRWS is a “trustee” as defined in subsection 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;

[18] LRWS has custody of the records at issue as they were generated and collected in connection with its authority under *The Saskatchewan Employment Act* (SEA). As all three elements are present, I find that HIPA applies, and I have jurisdiction to conduct this review under that act.

[19] I turn to consider whether LRWS properly applied subsection 27(1) of HIPA.

2. Did LRWS properly apply subsection 27(1) of HIPA?

[20] LRWS applied subsection 27(1) of HIPA to the following information:

- Record 1, pages 10 (severances 2, 3), 12 (severances 5 to 7), 30 (severances 2 to 4), 31 (severances 2, 3), 40 (severances 1, 2)
- Bundle 12
- Bundle 19, pages 12 (severance 2), 22 (severance 2), 27 (severance 1), 30 (severance 1), 87 (severance 2), 91 (severance 2), and 101 (severance 1).

[21] LRWS also claimed that subsection 27(1) of HIPA applied to all of Bundle 19, page 92.

[22] Subsection 4(3) of HIPA provides that HIPA, and not FOIP or *The Local Authority Freedom of Information and Protection of Privacy Act*, applies to personal health information in the custody or control of a trustee. That subsection 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.

[23] The above is consistent with subsection 24(1.1) of FOIP that provides as follows:

24(1.1) Subject to subsection (1.2), “personal information” does not include information that constitutes personal health information as defined in *The Health Information Protection Act*.

[24] As I previously set out in this Report, the information withheld pursuant to subsection 27(1) of HIPA qualifies as the injured worker’s or another individual’s personal health information, because it is information with respect to their physical health.

[25] The exception is in Bundle 19, page 92 where only portions contain information that qualifies as personal health information. The remaining information in Bundle 19, page 92 does not qualify as personal health information because it is background and process related information about LRWS’ investigation. Therefore, HIPA does not apply to it. I will consider if that information is exempt under subsection 15(1)(c) of FOIP below.

[26] Subsection 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.

[27] In this case, there is no evidence before me to suggest that the injured worker and the other individual have consented to the release of their personal health information. Therefore, with the exception discussed below, I find that LRWS properly applied subsection 27(1) of HIPA to the personal health information described above in paragraphs [16]. I recommend that it continue to withhold this information pursuant to subsection 27(1) of HIPA. I also find that LRWS properly applied subsection 27(1) of HIPA to the personal

health information of the injured worker and the other individual contained in Bundle 19, page 92, and recommend LRWS continue to withhold those portions pursuant to subsection 27(1) of FOIP.

[28] I now turn to consider Record 1 page 30 (severances 2 to 3). 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 (*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 30, 2021, [*Guide to FOIP*, Ch. 4], at p. 4).

[29] Previous reports of my office, such as Review Reports, [171-2019](#), [215-2020](#) and [164-2021](#)), have found that the absurd result principle applies in the following circumstances:

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

[30] Further information about this principle can be found in my office’s blogs, [Absurd Result](#) and [Absurd Result II](#)).

[31] It is apparent from a review of Record 1 page 30 that the injured worker’s personal health information withheld at severances 2 and 3 was provided to LRWS by the Applicant. Therefore, it would be absurd to find that it is exempt under subsection 27(1) of HIPA. I find that LRWS did not properly apply subsection 27(1) of HIPA to Record 1, page 30 (severances 2 and 3). As LRWS did not claim any other exemptions for this information, I recommend that LRWS release it to the Applicant.

3. Did LRWS properly apply subsection 15(1)(c) of FOIP?

[32] Considering the findings regarding the application of subsection 27(1) of HIPA, I need only consider if LRWS properly applied subsection 15(1)(c) of FOIP to the following information:

- Records 2 to 11 and 13 to 18
- Bundle 19 pages 3 to 11, 14 to 19, 21 (severance 1), 38 (severances 1 to 4), 39 (severances 1, 2), 40 (severances 1 to 3), 42 (severances 1 to 5), 43 (severance 1), 44 (severances 1 to 4), 45 (severance 1), 46 (severances 1, 2), 47 (severances 3 to 6), 48 (severances 1 to 4), 49 (severance 1), 50 (severances 1, 3), 51 (severances 4, 5, 7) 52 (severances 1 to 3), 53 (severance 1), 54 (severances 1, 2), 55 (severances 1 to 3), 57 (severances 1 to 3), 58 (severance 1), 59 (severances 1, 2), 60 (severance 1), 61 (severances 1 to 4), 63 (severances 1 to 4), 64 (severances 1 to 4), 65 (severances 2 to 7), 67 (severance 1), 68 (severances 1 to 3), 69 (severances 2 to 4), 70 (severances 1 to 5), 71 (severance 1), 72 (severance 1), 75 (severance 1), 76 (severances 1 to 2), 79 (severances 1 to 2), 81 (severance 1), 82 (severances 1, 2), 83 (severances 2 to 4), 84 (severances 1 to 3), 89, 92 (non-personal health information), 93, 94 (severances 1 to 3), 106 (severance 1), 107 (severances 1 to 3), 108 (severances 1 to 4), 109 (severances 1 to 4), 111 (severance 1)

[33] Subsection 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*, Ch. 4, pp. 51-52).

[34] Subsection 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;

[35] My office applies the following two-part test to determine if subsection 15(1)(c) of FOIP 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)

[36] I now turn to consider if LRWS has met the two-part test.

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

[37] LRWS stated that following a workplace accident involving the Applicant, its occupational safety and legal affairs departments conducted an investigation. It asserted that the investigation was authorized or permitted under subsection 3-63(1) of *The Saskatchewan Employment Act* (SEA). That subsection 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.

[38] LRWS explained that its legal affairs department became involved due to the serious nature of the worker's injuries. Following the investigation, LRWS referred the matter for prosecution and the employer was found guilty of violations under *The Occupational Health and Safety Regulations, 2020*. LRWS added that even though it closed its investigation, the exemptions continue to apply.

[39] In previous reports of my office, such as in Review Reports [248-2020](#), [167-2021](#) and [047-2022](#), I have found that an inspection authorized by subsection 3-63(1) of SEA qualified as a lawful investigation pursuant to subsection 15(1)(c) of FOIP. The nature of the activity did not change as a result of the involvement of LRWS' legal counsel. Consistent with these findings, I find that LRWS' activities were authorized by SEA, and they qualified as a lawful investigation under subsection 15(1)(c) of FOIP. Therefore, 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?

[40] 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).

[41] LRWS claimed that release of the information would disclose information with respect to a lawful investigation. It asserted that it generated the records and portions of records to which it applied subsection 15(1)(c) of FOIP during the investigation described above. It added that many redacted portions include investigators' opinions, analysis of the case, description of actions taken, information about investigative approaches, and steps taken to gather evidence and prepare the case.

[42] Based on a review of Records 2 to 11 and 13 to 18 and the severances made to Bundle 19, it is apparent that they include information such as investigators' opinions and analysis. They also include descriptions of actions taken and proposed investigative techniques and approaches. I find that the release of this information would reveal information with respect to LRWS' lawful investigation. Therefore, LRWS has met the second part of the test. I now turn to consider if the absurd result principle applies to this information.

[43] It is apparent from a review of the records that the Applicant either provided the following information to LRWS or is aware of it:

- Record 11 – pages 1 (written statement signed and provided by Applicant), 2 (Applicant’s new employee information form), and 15 to 18 (emails between Applicant and LRWS).
- Record 18 (Health and Safety Plan signed by Applicant).
- Bundle 19 – pages 10 to 11 (emails between the Applicant and LRWS).

[44] Applying the absurd result principle, I find that subsection 15(1)(c) of FOIP does not apply to the information withheld from Record 11 as described in paragraph [43] above. I note that LRWS has claimed that subsection 29(1) of FOIP also applies to Record 11. However, given my findings on the application of the absurd result principle, it is not necessary for me to consider if that exemption applies.

[45] The absurd result principle also applies to Record 18 and Bundle 19, pages 10 and 11, given that the Applicant would have knowledge of the information as a signatory to Record 18 and as a party to the email communications at pages 10 and 11 of Bundle 19.

[46] Therefore, I find that LRWS did not properly apply subsection 15(1)(c) of FOIP to the information described in paragraph [43]. I recommend that LRWS release this information to the Applicant.

[47] As noted above, LRWS met both parts of the test for the application of subsection 15(1)(c) of FOIP for the remaining information to which this exemption was applied. Therefore, I find that LRWS properly applied subsection 15(1)(c) of FOIP except as described in paragraphs [44] and [45] above.

4. Did LRWS properly apply subsection 29(1) of FOIP?

[48] Considering the findings above regarding the application of subsection 27(1) of HIPA and 15(1)(c) of FOIP, I need only consider if LRWS properly applied subsection 29(1) of FOIP to the following information:

- Record 1: pages 1 (severance 1), 4 (severances 1 to 8), 5 (severance 1), 6 (severances 1 to 22), 7 (severances 1 to 19), 9 (severances 1 to 3), 10 (severances 1, 4 to 9), 11 (severances 1 to 3), 12 (severances 1 to 4, 8 to 11), 13 severances 1 to 8), 14 (severances 1 to 5), 29 (severances 1 to 5), 30 (severances 1, 5), 31 (severance 1), 32 (severances 1 to 3), 33 (severances 1 to 3), 34 (severances 1 to 6), 37 (severance 1), 38 (severance 1), 41 (severances 1 to 3), 42 (severances 1 to 4), 46 (severances 1 to 3), 48 (severance 1), 52 (severances 1 to 4), 54 (severances 1 to 2), 55 (severances 1 to 7), 57 (severances 1 to 4), 58 (severances 1 to 2), 60 (severances 1 to 5)
- Bundle 19: pages 12 (severances 1, 3), 23 (severances 1 to 2), 24 (severances 1 to 6), 25 (severances 1 to 7), 46 (severances 3 to 4) 47 (severances 1, 2) 50 (severances 2, 4) 51 (severances 1 to 3, 5) 60 (severance 2), 65 (severance 1), 69 (severance 1), 83 (severance 1), 87 (severances 1, 3), 91 (severances 1, 3), 105 (severances 1, 2).

[49] Subsection 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).

[50] 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.

[51] Subsection 29(1) of FOIP applies to “personal information”, which is defined in subsection 24(1) of FOIP. The subsections of 24(1) of FOIP that are relevant in this review are:

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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(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;

...

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

...

(h) the views or opinions of another individual with respect to the individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[52] The list of examples of personal information in subsection 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.

[53] Regarding the application of this exemption, LRWS asserted:

The ministry submits personal information includes the names of employees at [named company] and information about their roles, work history, training and information about work incidents and injuries.

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 and injuries obtained in the course of employment. 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 the Ministry.

The Ministry submits it has properly applied subsection 29(1) of FOIP to portions of the records indicated.

Record 1, pages 5 (severance 1), 9 (severances 1 to 3), 10 (severances 4, 5), 11 (severances 1, 3), and 52 (severance 1)

- [54] LRWS applied subsection 29(1) of FOIP to the name, rank, work telephone number and badge number of a police officer who was called to the job site following the accident. This information is in Record 1, pages 5 (severance 1), 9 (severances 1 to 3), 10 (severances 4, 5), 11 (severances 1, 3), and 52 (severance 1). Based on a review of the record, it is apparent that the police officer was conducting official business or functions when they attended at the job site, including by providing information about the incident to LRWS' investigators. Therefore, I find that the police officer's information appears in a business or work context and is not personal in nature.
- [55] In previous reports, I have found that the names and business contact information of individuals do not qualify as personal information where they appear in a business or professional context. See for example my office's Review Reports [301-2019](#), [186-2019](#) and [004-2022](#).
- [56] My office's previous reports, such as Review Report [131-2019](#), have also found that an employee's badge number that appears in a business or professional context does not qualify as personal information.
- [57] Following this approach, the police officer's name, rank, work telephone number and badge number do not qualify as personal information. Therefore, I find that LRWS did not properly apply subsection 29(1) of FOIP to the information described in paragraph [54] of this Report. As LRWS did not claim any other exemptions for this information, I recommend that it release the information to the Applicant.

Record 1 pages 6 (severances 1, 8(name only) to 11), 7 (severances 1, 17 to 19) 29 (severances 1 to 5), 32 (severances 1 to 3), 33 (severances 1 to 3), 34 (severances 1 to 6), 37 (severance 1), 38 (severance 1), 46 (severances 1 to 3), 57 (severances 1 to 4), 58 (severances 1 to 2), and 60 (severances 3, 4)

[58] LRWS also applied subsection 29(1) of FOIP to names, job titles, business contact information, and signatures of employees of the Applicant, a safety consulting firm, and the general/prime contractor. This information is found in:

Record 1 pages 6 (severances 1, 8 (name only) to 11), 7 (severances 1, 17 to 19), 29 (severances 1 to 5), 32 (severances 1 to 3), 33 (severances 1 to 3), 34 (severances 1 to 6), 37 (severance 1), 38 (severance 1), 46 (severances 1 to 3), 57 (severances 1 to 4), 58 (severances 1 to 2), and 60 (severances 3, 4).

[59] As this information relates to these individuals in their business or professional capacity, it is not personal in nature. Except for the signatures, which I address below, this is the kind of information you might see on a business card, and it does not qualify as personal information. Consistent with findings in previous reports from my office, such as [Review Report 322-2021, 030-2022](#), I find that LRWS did not properly apply subsection 29(1) of FOIP to this information.

[60] Individuals' signatures also appear on these pages. In previous reports of my office, I have found that signatures of employees that appear in their work product or records generated in a work context, do not qualify as personal information. See for example my office's Review Reports 301-2019 and [149-2019, 191-2019](#). Following the same approach here, I find that the signatures that appear in these pages do not qualify as personal information. Accordingly, I find that LRWS did not properly apply subsection 29(1) of FOIP to the signatures as they appear on these pages.

[61] Therefore, I find that LRWS did not properly apply subsection 29(1) of FOIP to the information described in paragraph [58] of this Report. As LRWS did not claim any other exemptions for this information, I recommend that it release the information to the Applicant.

Record 1 pages 4 (severances 3 to 5), 12 (severances 1, 7, 8), 13 (severances 2, 3, 5 to 8), and 14 (severances 2, 4)

- [62] LRWS withheld the names of witnesses from Record 1 pages 4 (severances 3 to 5), 12 (severances 1, 2, 9, 10, 11), 13 (severances 2, 3, 5 to 8), and 14 (severances 2, 5) pursuant to subsection 29(1) of FOIP. Based on a review of this information, it is apparent that these individuals provided their observations or accounts of the events surrounding the workplace accident. These accounts do not include their opinions or opinions about other individuals.
- [63] According to my office's [Review Report LA-2013-001](#), a witness's objective, eye-witness account of what occurred in the workplace would not be considered personal information. Unless the information provided by a witness reveals information that is personal in nature or about an identifiable individual, it does not qualify as personal information as defined in subsection 24(1) of FOIP. In addition, the fact that an individual was interviewed as part of a workplace investigation does not reveal any personal information about them. This approach has been followed in my office's Review Reports [010-2018](#), [023-2019](#), [098-2019](#), [141-2019](#), and [132-2022](#). I will follow the same approach here.
- [64] Accordingly, I find that the witness' names do not qualify as personal information in the context of the records at issue here. Therefore, I find that LRWS did not properly apply subsection 29(1) of FOIP to the information described in paragraph [62] of this Report. As LRWS did not claim any other exemptions for this information, I recommend that LRWS release it to the Applicant.

Absurd Result

- [65] The following portions of Record 1 and Bundle 19 contain information that was provided by the Applicant to LRWS or is clearly within the knowledge of the Applicant:
- Record 1, pages 1 (severance 1), 4 (severances 1, 6 to 8), 6 (severances 12, 17, 19), 7 (severances 1, 6, 8 [name only], 10, 11), 10 (severances 1, 8, 9), 11 (severance 2), 12 (severance 8), 13 (severances 1 [date of birth only], 2 [name and date of birth], 4), 14 (severances 1, 3, 4), 30 (severance 1), 31 (severance 1), 41 (severances 1 to

3), 42 (severance 1), 48 (severance 1), 52 (severances 2 to 4), 54 (severances 1, 2), 55 (severances 1 to 7), and 60 (severances 1 to 5).

- Bundle 19 pages 12 (severances 1, 3), 23 (severance 1), 24 (severances 1 to 6), 25 (severances 1, 2, 4,) 87 (severances 1, 3), 91(severances 1, 3), and 105 (severance 1).

[66] The information described above includes the following: the injured worker's name, date of birth, resume, training, orientation, work experience and general information about the incident. Some of this information was provided by the Applicant to LRWS. Other information is within the knowledge of the Applicant as the injured worker's employer. The severed information also includes the supervisor's and coworkers' names and dates of birth which would also be within the knowledge of the Applicant in their capacity as employer of the individuals.

[67] Applying the absurd result principle described above, I find that LRWS did not properly apply subsection 29(1) of FOIP to the information described at paragraph [65] of this Report. As LRWS did not claim any other exemptions for this information, I recommend that it release the information to the Applicant.

Other information

[68] Record 1 page 7 (severance 7) is the driver's license number for an individual. This information qualifies as the individual's personal information pursuant to subsection 24(1)(d) of FOIP. Information about the family status of two individuals and other personal information about them such as their personal contact details appear at Record 1 pages 4 (severance 2), 6 (severances 20 to 22), and Bundle 19, pages 23 (severance 2), 25 (severances 3, 5 to 7), and 105 (severance 2). This qualifies as their personal information pursuant to subsections 24(1)(a), (e) and (k) of FOIP.

[69] There is no evidence before me to support a finding that the personal contact details for the injured worker, witnesses and other individuals are within the knowledge of the Applicant, therefore the absurd result principle would not apply to this information. I find that the personal addresses and contact details of the injured worker and other employees of the

Applicant and employees of the general/prime contractor qualify as personal information pursuant to subsection 24(1)(e) of FOIP. This information can be found at Record 1, pages 6, 7, 13, 42.

[70] Bundle 19 pages 46 (severance 3 to 4) and 47 (severances 1, 2), 50 (severances 2, 4), 51 (severances 1 to 3, 6), 60 (severance 2), 65 (severance 1), 69 (severance 1), are emails between LRWS' employees which include opinions or views about another LRWS employee, opinions and views about themselves, information about their own employment history and the other employee's employment history. This information qualifies as personal information pursuant to subsections 24(1)(b), (f), and (h) of FOIP.

[71] Therefore, I find that LRWS properly applied subsection 29(1) of FOIP to the information described in paragraphs [68] to [70]. I recommend that LRWS continue to withhold this information pursuant to subsection 29(1) of FOIP.

5. Did LRWS conduct a reasonable search for responsive records?

[72] Section 5 of FOIP establishes an applicant's right of access to records in the possession or under the control of a government institution. Subsection 5.1(1) of FOIP requires a government institution to respond to an applicant's access to information request openly, accurately and completely. This means that government institutions should make reasonable efforts to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process (*Guide to FOIP*, Chapter 3: "Access to Records", updated: June 29, 2021, [*Guide to FOIP*, Ch. 3], at p. 7).

[73] Section 5 and subsection 5.1(1) of FOIP provide:

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.

5.1(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[74] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the access to information request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the access request and related circumstances (*Guide to FOIP*, Ch. 3, p. 7).

[75] When my office conducts a review of a government institution's search efforts, we require information to help us understand the level of effort made to locate the records in question. The submission to my office should outline the strategy used to complete the search, which can include:

- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by: alphabet, year, function, subject?
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the government institution's control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders - indicate what key terms were used to search if applicable.

- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided.

(Guide to FOIP, Ch. 3, pp. 9 to 10)

[76] The above list is meant to be a guide. Providing these details is not a guarantee that my office will find that the search efforts were reasonable. Each case will require different search strategies and details depending on the records requested.

[77] The Applicant believes that additional records exist. In particular, they believe that records such as notes, emails, and text messages involving LRWS, and the general or prime contractor should exist. However, the Applicant did not provide any information or evidence to support its claim that additional records exist.

[78] LRWS asserted:

A thorough search was conducted by OHS for records related to this access request. The searches were conducted by four employees, primarily the Content Analyst, Branch Services, Occupational Health and Safety and the investigating officers from Legal Affairs and Safety Operations, Occupational Health and Safety.

The search was conducted in May 20, 25 and 26, 2022. The branch searched within their ORS database and officer correspondence. The search words used were: [name of employer], [injured worker's name]. The search conducted took approximately eight hours between the involved employees.

[79] In an Appendix to its submission, LRWS provided a breakdown of its search efforts. For example, it provided information about the various individuals who conducted the search, the date and amount of time spent on each search, the electronic database searched, and the keywords used for those searches. It is apparent that the individuals who were engaged in the search were staff with knowledge of the records, the specific investigation and the database where the records were stored.

[80] As stated in previous reports of my office, such as [Review Report 212-2021](#), if an Applicant believes a public body has not conducted an adequate search and that more records should exist, then there is some onus on the Applicant to provide evidence to support their assertion.

[81] Based on the information provided by LRWS and the limited information provided by the Applicant, I find that LRWS' search efforts for records were reasonable. I recommend that LRWS take no further action with respect to its search.

6. Do the records contain information that is not responsive to the access to information request?

[82] LRWS claimed that the following portions of records were not responsive to the request:

Bundle 19, pages 22 (severance 1), 32 (severance 1), 73 (severances 1, 2), 96 (severances 1, 2)

[83] When a government institution receives an access to information request, it must determine what information is responsive to the request. "Responsive" means relevant. The term describes anything that is reasonably related to the request. The Applicant's access to information request itself sets out the boundaries of relevancy and circumscribes the records or information that will be identified as being responsive (*Guide to FOIP*, Ch. 3, p. 12).

[84] A public body can sever information as non-responsive only if the Applicant has requested specific information, such as their personal information. The public body may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access request (*Guide to FOIP*, Ch. 3, p. 13).

[85] The purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If a government institution has any doubts about its interpretation, it has a duty to assist an applicant by clarifying or reformulating the request (*Guide to FOIP*, Ch. 3, p. 13).

[86] The Applicant's request was clear in that they sought access to information about an inspection, investigation or appeal regarding a specific workplace incident. Based on a review of the records, the portions of the records that LRWS identified as non-responsive relate to separate and distinct matters that were under investigation by LRWS or matters unrelated to the inspection, investigation or appeal regarding the workplace incident.

[87] Therefore, I find that LRWS properly claimed that the information described in paragraph [82] above is not responsive to the request. However, consistent with my blog, "[What About the Non-Responsive Record?](#)", I recommend that LRWS release the non-responsive information, subject to any exemptions that may apply.

IV FINDINGS

[88] I find that I have jurisdiction to conduct this review under FOIP and HIPA.

[89] I find that LRWS properly applied subsection 27(1) of HIPA as described in paragraph [27] of this Report.

[90] I find that LRWS did not properly apply subsection 27(1) of HIPA as described in paragraph [31] of this Report.

[91] I find that LRWS did not properly apply subsection 15(1)(c) of FOIP as described in paragraph [46] of this Report.

[92] I find that LRWS properly applied subsection 15(1)(c) of FOIP to the remaining information.

[93] I find that LRWS did not properly apply subsection 29(1) of FOIP as described in paragraphs [57], [61], [64] and [67] above.

[94] I find that LRWS properly applied subsection 29(1) of FOIP as described in paragraph [71] above.

[95] I find that LRWS conducted a reasonable search.

[96] I find that the following information is not responsive to the access to information request: Bundle 19: pages 22 (severance 1), 32 (severance 1), 73 (severances 1, 2), 96 (severances 1, 2).

V RECOMMENDATIONS

[97] I recommend that LRWS release the information described in paragraph [12] to the Applicant within 30 days of the issuance of this Report.

[98] I recommend that LRWS continue to withhold the information described in paragraph [27] pursuant to subsection 27(1) of HIPA.

[99] I recommend that LRWS release to the Applicant the information as described in paragraph [31] within 30 days of the issuance of this Report.

[100] I recommend that LRWS release to the Applicant information as described in paragraph [46] within 30 days of issuance of this Report.

[101] I recommend that LRWS continue to withhold information as described in paragraph [47] pursuant to subsection 15(1)(c) of FOIP.

[102] I recommend that LRWS release to the Applicant the information as described in paragraphs [57], [61], [64] and [67] within 30 days of issuance of this Report.

[103] I recommend that LRWS continue to withhold the information as described in paragraph [71] pursuant to subsection 29(1) of FOIP.

[104] I recommend that LRWS take no further action with respect to its search for records.

[105] I recommend that LRWS release the information that it found to be not responsive to the request, subject to any exemptions that may apply, within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 21st day of February, 2023.

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