



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 330-2023, 334-2023

Ministry of Corrections, Policing and Public Safety

April 3, 2024

Summary:

The Applicant submitted an access to information request to the Ministry of Corrections, Policing and Public Safety (Corrections) for records of their deceased son. However, the Applicant was unable to provide Corrections with documentation that identified them as the representative of their son's estate. Corrections responded to the Applicant's access request. It provided the Applicant access to some of the records but it cited subsections 2(2)(c), 13(2), 15(1)(c), (k), (m), 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 27(4)(e)(ii) of *The Health Information Protection Act* (HIPA) as reasons for refusing the Applicant access to records. Later, the Applicant submitted another access request to Corrections. This time, the Applicant provided Letters of Administration that identified the Applicant as the administratrix of their son's estate. Corrections responded to the Applicant's access request. It cited subsection 27(4)(e)(ii) of HIPA as its reason for withholding the record. Corrections also indicated it did not include any responsive records it previously provided to the Applicant in response to the Applicant's first access request. The Applicant appealed to the Commissioner. The Commissioner made a number of findings, including that the Applicant is acting as the personal representative of their son pursuant to subsection 59(a) of FOIP and subsection 56(a) of HIPA. Further, the Commissioner found that Corrections cannot withhold the Applicant's son's personal information from the Applicant on the basis of subsection 29(1) of FOIP. Further, the Commissioner found that Corrections did not properly apply subsection 27(1) of HIPA. The Commissioner also found that Corrections did not properly apply subsections 15(1)(c), (k) and (m) of FOIP. The Commissioner made a number of recommendations including that Corrections amend its policies and procedures so that it considers an applicant's ability to exercise another individual's rights or powers under FOIP and HIPA in the processing of access requests. Finally, the Commissioner recommended that Corrections comply with the recommendations set out in the Appendix of this Report.

I BACKGROUND

[1] On June 22, 2023, the Ministry of Corrections, Policing and Public Safety (Corrections) received the following access to information request from the Applicant:

All records of my deceased son, [Name], including medical records

[2] In a letter dated August 31, 2023, Corrections indicated to the Applicant that they would need to provide documentation that names them (the Applicant) as the representative of their son's estate. The Applicant was unable to do so.

[3] In a letter dated September 26, 2023, Corrections responded to the Applicant. Corrections indicated it was providing the Applicant access to some, but not all, of the responsive record. Corrections cited subsections 2(2)(c), 13(2), 15(1)(c), (k), (m), 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 27(4)(e)(ii) of *The Health Information Protection Act* (HIPA) as its reasons for refusing the Applicant access to records.

[4] On November 1, 2023, the Court of King's Bench issued Letters of Administration appointing the Applicant, as administratrix of their son's estate.

[5] Then, on November 2, 2023, Corrections received a second access to information request from the Applicant:

All records of my deceased son, [Name].

[6] The Applicant included a copy of the Letters of Administration with their access request.

[7] In a letter dated December 1, 2023, Corrections responded to the Applicant. Corrections provided the Applicant access to a one-page record but withheld another. In its letter, it cited subsection 27(4)(e)(ii) of HIPA as its reason for withholding the record. Corrections said:

Some of the records were withheld from release pursuant to subsection 27(4)(e)(ii) of HIPA which gives a trustee the discretion to release information about a deceased

individual. In this case, in careful consideration of the circumstances, a decision was made not to disclose.

- [8] Further, Corrections noted that it did not include the “previously requested records” in its response to the Applicant’s previous access request. It said:

I would also like to remind you of your previous request CP 093-23P, seeking “All records of my deceased son, [Name], including medical records. September 10, 2022 – present date”. On September 26, 2023 we emailed those records to you. Please note that these previously requested records are not included in the responsive records package for your current request.

- [9] On December 18, 2023, the Applicant indicated to my office that they would like to proceed with reviews of Correction’s two responses (dated September 26, 2023 and December 1, 2023) to their access requests. The Applicant indicated that the reason for their access request to Corrections was to determine whether to proceed with litigation related to their son’s untimely death.

- [10] On December 28, 2023, my office sent notices of review to both the Applicant and Corrections informing them that my office would be undertaking reviews of Corrections’ responses to the Applicant.

- [11] On January 29, 2024, Corrections provided my office with a copy of the records at issue and the Index of Records.

- [12] On February 1, 2024, my office inquired with Corrections on whether it would consider releasing any further records it withheld from the Applicant in response to their first access request now that the Applicant is the administratrix of their son’s estate.

- [13] On February 8, 2024, Corrections responded it “will not be releasing the records in question as they are part of an ongoing investigation.”

- [14] On March 22, 2024, Corrections provided my office with submissions for my office’s files 330-2023 and 334-2023.

II RECORDS AT ISSUE

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- [15] There are 211 pages of records responsive to the Applicant's first access request, which included log detail reports, warrants reports, and medical records. Corrections granted the Applicant access to some of the records but withheld others, in full or in part, citing subsections 15(1)(c), (k), (m) and 29(1) of FOIP and subsection 27(1) of HIPA in its Index of Records as its reasons. I will refer to these records as the "Set 1 Records". Corrections provided my office with a copy entitled "Clean Copy" which contains no redactions. Then, it provided my office with a "Redacted" copy, which is the version provided to the Applicant. I set out the page numbers of the Clean Copy and the Redacted copy in the Appendix.
- [16] I note that pages 167 to 168 and 211 of the Set 1 Records were not accounted for in the Index of Records. Therefore, I will consider these pages under the mandatory exemptions of subsection 29(1) of FOIP and subsection 27(1) of HIPA.
- [17] Further, there are court records (warrants) that Corrections indicated to my office that it intends to release to the Applicant which it should proceed to do so. I have outlined these pages in the Appendix.
- [18] Finally, in its submission, Corrections applied the discretionary exemption to 15(1)(d) of FOIP to pages 104 to 113 of the Set 1 Records. However, since this discretionary exemption was not raised in its section 7 decision (dated September 26, 2023), I will not consider this discretionary exemption pursuant to section 2-4 my office's *Rules of Procedure*.

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[19] There were two, one-page records responsive to the Applicant's second access request, one of which was provided to the Applicant but the other was withheld in full. Corrections cited subsection 29(1) of FOIP and subsection 27(1) of HIPA in its Index of Records, as its reason for withholding the record from the Applicant. I will refer to this record as the "Set 2 Record".

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[20] Corrections qualifies as a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. It also qualifies as a "trustee" pursuant to subsection 2(1)(t)(i) of HIPA. I find that I have jurisdiction to conduct this review.

2. Is the Applicant acting as a personal representative of their son pursuant to subsection 59(a) of FOIP and subsection 56(a) of HIPA?

[21] The Applicant enclosed a copy of the Letters of Administration with their second access to information request to Corrections on November 2, 2023. Subsection 59(a) of FOIP provides:

59 Any right or power conferred on an individual by this Act may be exercised:

(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

[22] Further, subsection 56(a) of HIPA provides:

56 Any right or power conferred on an individual by this Act may be exercised:

(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

[23] In order for an applicant to rely on subsection 59(a) of FOIP and subsection 56(a) of HIPA, the following two requirements must be met.

1. Proof of the right to act as the personal representative is required.
2. Proof that disclosure of the requested information is necessary for the purposes of administering the deceased's estate.

(*Guide to FOIP*, Chapter 3, "Access to Records", updated May 5, 2023 [*Guide to FOIP*, Ch. 3], pp. 162-163)

1. *Proof of the right to act as the personal representative is required.*

[24] A "personal representative" would be someone appointed by the court as the Executor or Executrix or Administrator of an estate (*Guide to FOIP*, Ch. 3, p. 162). As noted in the background of this Report, the Applicant provided both Corrections and my office with a copy of the Letters of Administration that names them as the administratrix of their son's estate. Therefore, the Applicant has the right to act as the personal representative of their son.

2. *Proof that disclosure of the requested information is necessary for the purposes of administering the deceased's estate.*

[25] Neither FOIP nor HIPA permits a personal representative to access information for all purposes. They allow personal representatives to access information for purposes related to the administration of the estate (*Guide to FOIP*, Ch. 3, p. 163).

[26] "Administration of an estate" means the management and settlement of the estate of a deceased, including selling, collecting and liquidating assets, paying debts, and making claims for funds owing or exercising any right of a financial benefit of the deceased (*Guide to FOIP*, Ch. 3, p. 163).

[27] The duties of an executor (or an administratrix in this case) in administering an estate in Saskatchewan are not always limited to winding up the estate. There is a function of administration that includes the management of the estate and considerations of what assets

may exist or may come into existence (such as when an estate sues for damages resulting from a wrongful death) and form part of the estate to be administered. An example of a case where disclosure may be necessary for this purpose would be where a widower needs information to help decide whether to proceed with litigation related to the partner's death (*Guide to FOIP*, Ch. 3, p. 163).

[28] As noted in the background, the Applicant indicated to my office that they sought access to records to determine whether to proceed with litigation relating to their son's untimely death. This is plausible given that they had enclosed the Letters of Administration along with the second access request they submitted to Corrections. The Applicant's access request relates to the administration of their son's estate within the meaning of subsection 59(a) of FOIP and subsection 56(a) of HIPA.

[29] I find that the Applicant is acting as personal representative of their son pursuant to subsection 59(a) of FOIP and subsection 56(a) of HIPA.

[30] I note that Corrections had cited subsection 27(4)(e)(ii) of HIPA in its response to both of the Applicant's access requests. In [Review Report LA-2009-002 / H-2009-001](#) at paragraphs [124] to [125], my office noted that it is not necessary to consider a disclosure provision under section 27 of HIPA if the requirements for subsection 56(a) of HIPA are met.

[124] I must note that "disclosure" is an entirely different exercise than "access" and the two must not be conflated as RQHR has done here.

[125] As I have found that the request meets the requirement of relating to the administration of the deceased's estate for the purposes of section 56(a) of HIPA, it is not necessary to consider discretionary disclosure of the record under this section.

[31] Since the requirements of subsection 56(a) of HIPA are met, I will not consider Corrections reliance on subsection 27(4)(e)(ii) of HIPA to refuse disclosure to the Applicant. However, I should note that it is confusing that Corrections relied on subsection 27(4)(e)(ii) of HIPA as its reason to withhold personal health information from the Applicant when subsection 27(4)(e)(ii) of HIPA contemplates the disclosure of personal health information.

Nevertheless, there is no need for me to consider subsection 27(4)(e)(ii) of HIPA in this matter.

3. Did Corrections properly apply subsection 29(1) of FOIP?

[32] Corrections applied subsection 29(1) of FOIP to pages 5, 9, 16, 24, 31, 39, 40, 44, 48, 56, 61, 74, 91, 95, 104 to 113, 174 to 198, 200, 203, and 208 of the Set 1 Records. It also applied subsection 29(1) of FOIP to the Set 2 Record.

[33] Also, I will consider whether subsection 29(1) of FOIP applies to pages 167 to 168 and 211 of the Set 1 Records since they were unaccounted for in Corrections' Index of Records.

[34] Before I proceed, I note that on pages 5, 9, 24, 104 to 107, 110 to 113, 174 to 196, 200, 203, and 208 of the Set 1 Records contains "personal health information" as defined by subsection 2(1)(m) of HIPA. I note that subsection 4(3) of HIPA provides as follows:

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.

[35] Further, subsection 24(1.1) of FOIP provides:

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.

[36] Therefore, I will consider the personal health information that appears on the pages listed in the previous paragraph in my analysis of subsection 27(1) of HIPA later on in this Report. I should note that while those pages contain personal health information, those pages also contain "personal information" under FOIP, as discussed below.

[37] 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.

[38] In order for subsection 29(1) of FOIP to apply, the withheld information must qualify as a third party's "personal information" as defined by subsection 24(1) of FOIP.

[39] Subsections 24(1)(a), (b), (d), (e), (k)(i) and (k)(ii) of FOIP are relevant in this review, and provide as follows:

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;

(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.

[40] Information on the pages in which Corrections applied subsection 29(1) of FOIP qualifies as "personal information" as defined by subsection 24(1) of FOIP. They contain the personal information of the Applicant (which was released to the Applicant), the Applicant's son (such as name, address, date of birth, and custody number), and other third party individuals (such as their names). Below, I will consider whether the personal information of the Applicant's son and other third party individuals should be released to the Applicant or should be withheld under subsection 29(1) of FOIP.

a. Personal information of the Applicant's son

[41] In its submission, Corrections indicated that some of the withheld records contained the Applicant's son personal information as defined by subsection 24(1)(b) of FOIP.

[42] In my office's [Review Report 098-2015](#), the applicant in that review was the personal representative of their deceased son's estate. The government institution in that review had withheld pages of the record that contained the son's personal information pursuant to subsection 29(1) of FOIP. I had recommended that the government institution release the pages that contain the son's personal information but continue to withhold the one page that contains the personal information of other individuals (see paragraphs [12] to [18] of [Review Report 098-2015](#)).

[43] Similarly, information in the pages to which Corrections applied subsection 29(1) of FOIP contains the personal information of the Applicant's son as defined by subsection 24(1)(a), (b), (d), (e) and (k)(i) of FOIP. However, the Applicant is the personal representative of their son pursuant to subsection 59(a) of FOIP. Further, the information could be relevant in the Applicant determining whether they should pursue litigation on behalf of their son's estate. I find that Correction cannot withhold the Applicant's son's personal information from the Applicant on the basis of subsection 29(1) of FOIP. My findings and recommendations are set out in the Appendix.

b. Personal information of third-party individuals

[44] Based on a review of the pages to which Corrections applied subsection 29(1) of FOIP, the pages contain the personal information of third party individuals as defined by subsection 24(1)(k)(ii) of FOIP. Specifically, the third party individuals were either inmates (but not the Applicant's son) or people who visited the Applicant's son. I will consider the personal information of these two groups below.

i. Personal information of inmates

[45] Pages 16 and 109 of the Set 1 Record identify the names of inmates who are not the Applicant's son. Such information qualifies as personal information pursuant to subsection 24(1)(k)(i) of FOIP. Therefore, I find that Corrections properly applied subsection 29(1) of FOIP to the names of the inmates who are not the Applicant's son on pages 16 and 109 of the Set 1 Records. My findings and recommendations are in the Appendix.

ii. Personal information of visitors

[46] Pages 31, 39, 40, 44, 48, 56, 61, 74, 91, and 95 of the Set 1 Records contains the names of people who visited the Applicant's son. Such information qualifies as personal information pursuant to subsection 24(1)(k)(ii) of FOIP.

[47] However, on pages 40, 44, 48, 56, 61, 91, and 95, it appears that the Applicant was present when another individual visited the Applicant's son. As noted in my office's [Review Report 111-2022](#) and [Review Report 254-2022](#), the absurd principle applies where:

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

[48] Since the Applicant was present alongside the other visitor, I find it would be an absurd result to withhold the names of the visitors on pages 40, 44, 48, 56, 61, 91, and 95 of the Set 1 Records from the Applicant. I recommend that Corrections release the visitor's information on pages 40, 44, 48, 56, 61, 91, and 95 of the Set 1 Records. See the Appendix for my recommendations.

[49] However, I find that Corrections properly applied subsection 29(1) of FOIP to the visitor's personal information at pages 31, 39, and 74 of the Set 1 Records. I recommend that Corrections continue to withhold the names of visitors that appear on pages 31, 39 and 74 of the Set 1 Records. See the Appendix for my recommendations.

4. Did Corrections properly apply subsection 27(1) of HIPA?

[50] Corrections applied subsection 27(1) of HIPA to pages 5, 9, 16, 24, 104 to 113, 174 to 198, 200, 203 and 208 of the Set 1 Records. It also applied subsection 27(1) of HIPA to the Set 2 Record.

[51] 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.

[52] Information within pages 5, 9, 16, 24, 104 to 113, 174, 198, 200, 203 and 208 of the Set 1 Record and the Set 2 Record, including allergy, medication, and answers to health screening questions, qualifies as “personal health information” as defined by subsection 2(1)(m)(i) and (ii) of HIPA:

2(1) 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;
- (ii) information with respect to any health service provided to the individual;

[53] Similar to my analysis of subsection 29(1) of FOIP, the Applicant is the personal representative of their son pursuant to subsection 56(a) of HIPA. Further, the information could be relevant in the Applicant determining whether they should pursue litigation on behalf of their son’s estate. I find that Corrections did not properly apply subsection 27(1) of HIPA to pages 5, 9, 16, 24, 104 to 113, 174 to 198, 200, 203 and 208 of the Set 1 Records or to the Set 2 Record. My findings and recommendations are set out in the Appendix.

[54] Health had applied subsection 27(1) of HIPA to pages 104 to 113 of the Set 1 Records but it also applied subsections 15(1)(c), (d), (k), and (m) of FOIP to these pages. I will consider these subsections below.

5. Did Corrections properly apply subsection 15(1)(c) of FOIP?

[55] Corrections applied subsection 15(1)(c) of FOIP to pages 104 to 113 of the Set 1 Records.

[56] 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;

[57] My office uses 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 the release of the information interfere with a lawful investigation?
 - b) Could the release of the information disclose information with respect to a lawful investigation?

(*Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access", updated October 18, 2023 [*Guide to FOIP*, Ch. 4], pp. 53-54)

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

[58] Section 15 of FOIP uses the word "could" versus "could reasonably be expected to" as seen in other provisions of FOIP. The threshold for could is somewhat lower than a reasonable expectation. The requirement for could is simply that the release of the information could have the specified result. There would still have to be a basis for

asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to FOIP*, Ch. 4, p. 54).

[59] A “lawful investigation” is an investigation that is authorized or required and permitted by law. The government institution should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future. Further, this first part of the two-part test is not limited to investigations that are conducted by the government institution. In other words, investigations can include investigations conducted by other organizations (*Guide to FOIP*, Ch. 4, p. 53).

[60] In its submission, Corrections indicated that the Saskatchewan Coroners Service (SCS) obtained pages 104 to 113 of the Set 1 Records as part of SCS’ investigation into the Applicant’s son’s death. Corrections noted subsections 8(1), 11(1), and 13(1)(b) of *The Coroners Act, 1999*, as SCS’ authority to obtain the records for SCS’ investigation. These subsections state:

8(1) Where an inmate of a jail, military guardroom, remand centre, penitentiary, lock-up or place where the person is held under a warrant of a judge or a correctional facility as defined in *The Correctional Services Act, 2012* dies, the person in charge of that place shall immediately notify a coroner of the death.

...

11(1) If a coroner is informed that there is a body of a deceased person in the coroner’s jurisdiction and the coroner has reason to believe that the death occurred under circumstances that require a coroner to be notified, **the coroner:**

(a) may take possession of the body; and

(b) shall conduct any investigation that the coroner considers necessary.

...

13(1) For the purposes of an investigation, a coroner:

...

(b) may examine and make copies of any records relating to the deceased or his or her circumstances where the coroner believes on reasonable grounds that it is necessary to do so for the purposes of the investigation;

[Emphasis added]

[61] The content of pages 104 to 113 of the Set 1 Records describe the circumstances in which the SCS would investigate pursuant to section 11 of *The Coroners Act, 1999*. Further, it would seem like SCS would obtain these records for an investigation. However, Corrections has not provided evidence that SCS has undertaken an investigation under *The Coroners Act, 1999*, or evidence that SCS requested a copy of pages 104 to 113 of the Set 1 Records. In [Order F14-45](#) by the Office of the Information and Privacy Commissioner of British Columbia (BC IPC), there needs to be evidence that the records form a part of a public body's lawful investigation in order to be exempt. BC IPC said:

[21] I have also considered if the information in dispute forms part of an investigation by another public body that does have the statutory authority to impose sanctions or penalties, as was the case in Orders 50-1995 and F11-13. **Although the OCG's senior investigator states that the police often request access to records that the OCG has compiled during the course of OCG investigations, there is no evidence that the actual records at issue here form part of a police investigation.** In addition, I have carefully considered exhibit B of the OCG's senior investigator's affidavit, which was accepted into the inquiry in camera, so I may not describe it publicly. However, **I can say that, in my view, exhibit B indicates that the RCMP does not actually know what the records responsive to the applicant's access request are. Therefore, I am not persuaded that the information in dispute in this inquiry actually forms part of any RCMP investigation. As stated in previous orders, until such time as the information becomes part of an investigation by a public body with the statutory authority to conduct an investigation and impose sanctions or penalties, the information is not part of a law enforcement matter under FIPPA.**

[Emphasis added]

[62] Similar to the BC IPC, I require evidence to show that SCS has indeed undertaken an investigation into the matter and that the records form a part of the investigation. An example of evidence that could be provided by Corrections is SCS's request for records for the purpose of its investigation under *The Coroners Act, 1999*. However, Corrections did not do so. Therefore, it has not met its obligation under section 61 of FOIP. The first part of the two-part test is not met. I find that Corrections did not properly apply subsection 15(1)(c) of FOIP.

6. Did Corrections properly apply subsection 15(1)(k) of FOIP?

[63] Corrections applied subsection 15(1)(k) of FOIP to pages 104 to 113 of the Set 1 Records.

[64] Subsection 15(1)(k) of FOIP provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[65] My office uses the following two-part test to determine if subsection 15(1)(k) of FOIP applies:

1. Is there a law enforcement matter involved?
2. Does one of the following exist?
 - a) Could the release of information interfere with a law enforcement matter?
 - b) Could the release disclose information with respect to a law enforcement matter?

(Guide to FOIP, Ch. 4, pp. 78-79)

1. Is there a law enforcement matter involved?

[66] Law enforcement includes investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which leads to or could lead to a penalty or sanction being imposed under the enactment (*Guide to FOIP, Ch. 4, at p. 78*).

[67] “Investigation” has been defined, in general, as a systematic process of examination, inquiry and observations (*Guide to FOIP, Ch. 4, at p. 78*).

[68] “Inspection” has been defined, in general, as a careful examination (*Guide to FOIP, Ch. 4, at p. 79*).

[69] In its submission, Corrections' arguments for subsection 15(1)(k) of FOIP were the same as the arguments Corrections provided for subsection 15(1)(c) of FOIP. Corrections asserted that SCS undertook a lawful investigation, which qualifies as a "law enforcement matter".

[70] The terms "lawful investigation" is not interchangeable with "law enforcement matter". "Law enforcement" includes investigations conducted for the purpose of enforcing an enactment which leads to or could lead to a penalty or sanction being imposed under the enactment. Investigations by SCS do not lead to penalty or sanctions under *The Coroners Act, 1999*. Further, SCS published a [brochure](#) indicating that a SCS' investigation "is fact finding and does not assign fault or blame".

[71] I note that in [Order F11-13](#), the BC IPC mentions that if a matter investigated by the British Columbia Coroners' Service (BCCS) was referred to police and the coroner's investigation formed a part of the criminal investigation by the police, then the matter would qualify as "law enforcement":

[15] Previous orders have interpreted "law enforcement" under FIPPA to require that a public body have a "law enforcement mandate". Whether coroners' investigations meet the definition of "law enforcement" has not been the subject of an order in British Columbia.

[16] **There are some orders from Ontario that have addressed this issue. Collectively, they have found that, on their own, coroners' investigations do not constitute law enforcement, because coroners are not empowered to impose penalties or sanctions. In one case, however, the adjudicator found that, while the coroner's investigation on its own did not constitute "law enforcement", in combination with the police investigations, it did constitute "law enforcement".** As Senior Adjudicator Francis observed in Order F10-09, the coroner's role and legislation in Ontario is similar to that of British Columbia.¹³ In addition, the definition of "law enforcement" in FIPPA and the Ontario Freedom of Information and Protection of Privacy Act are substantially similar. It is clear from the definition of "law enforcement" that it includes criminal investigations conducted by the police.

[17] Therefore, **I find that, in cases where a coroner's investigation forms part of, or leads to, a criminal investigation by police, it qualifies as "law enforcement".** Now I will turn to whether the information at issue relates to investigative "techniques

or procedures” used or likely to be used in investigations that could form part of law enforcement.

[Emphasis added]

[72] In this case, Corrections has merely asserted that SCS undertook an investigation. It has not provided any evidence to support that assertion or any evidence that the Coroner’s investigation forms a part of an investigation by another organization (such as a police service) that could lead to a penalty or sanction. Therefore, Corrections has not met the first part of the two part test. I find that Corrections has not properly applied subsection 15(1)(k) of FOIP.

7. Did Corrections properly apply subsection 15(1)(m) of FOIP?

[73] Corrections applied subsection 15(1)(m) of FOIP to pages 104 to 113 of the Set 1 Records.

[74] Subsection 15(1)(m) of FOIP provides:

15(1) A head may refuse to give access to a record, the release of which could:

...

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[75] My office uses the following two-part test to determine if subsection 15(1)(m) of FOIP applies. However, only one of the questions needs to be answered in the affirmative for the exemption to apply. There may be circumstances where both questions apply and can be answered in the affirmative:

1. Could release reveal security arrangements (of particular vehicles, buildings, other structures, or systems)?
2. Could release reveal security methods employed to protect the particular vehicles, buildings, other structures, or systems?

(*Guide to FOIP*, Ch. 4, p. 91-92)

1. Could release reveal security arrangements (of particular vehicles, buildings, other structures, or systems)?

[76] Earlier, I discussed the word “could” versus “could reasonably be expected”.

[77] “Reveal” means to make known; cause or allow to be seen (*Guide to FOIP*, Ch. 4, p. 91).

[78] “Security” means a state of safety or physical integrity. The security of a building includes the safety of its inhabitants or occupants when they are present in it. Examples of information relating to security include methods of transporting or collecting cash in a transit system; plans for security systems in a building; patrol timetables or patterns for security personnel; and the access control mechanisms and configuration of a computer system. Security means sufficient security (*Guide to FOIP*, Ch. 4, p. 91).

[79] In its submission, Corrections said that portions of pages 104 to 113 of the Set 1 Records were withheld because:

they would reveal security arrangements and protocols within the correctional facility. On these pages, the code type and its classification meaning have been withheld. Specific codes are associated with security arrangements and signify to those receiving the communication, what type of action is required. The release of the codes, along with the circumstances that led to the codes being called, could reveal security and tactical arrangements.

Information on these pages was also withheld because it outlines what occurred during an incident at the correctional facility. The information sets out actions specifically taken by all those involved in the incident, including how Corrections Officers responded to the code being called and what measures were taken.

[80] Based on a review of pages 104 to 113 of the Set 1 Records, my office noted that there was a code type on each of the pages except for page 108. However, there is no indication of any security arrangements. Further, Correction’s submission does not explain what security arrangements are being protected by withholding the code. I find that Corrections has not properly applied subsection 15(1)(m) of FOIP.

8. Did Corrections properly apply subsection 13(2) of FOIP?

[81] As described in the background of this Report, Corrections sent a letter dated September 26, 2023, to the Applicant as its section 7 decision in response to the Applicant's first access request. Corrections had cited subsection 13(2) of FOIP as a reason for withholding records from the Applicant. However, Corrections' submission to my office does not identify on which pages it applied subsection 13(2) of FOIP. Further, the records and the Index of Records provided to my office by Corrections also do not identify which pages to which Corrections applied subsection 13(2) of FOIP and it is a discretionary exemption. Therefore, I am not considering subsection 13(2) of FOIP in this review.

9. Should Corrections have considered the Applicant's Letters of Administration in the processing of the Applicant's second access to information request?

[82] As outlined in the background of this Report, the Applicant had submitted their first access request on June 22, 2023. At the time, the Applicant was not the administratrix of their deceased son's estate.

[83] Then, the Applicant re-submitted the same access request on November 2, 2023, when they were the administratrix of their deceased son's estate.

[84] However, based on Correction's letter dated December 1, 2023 to the Applicant (as quoted in the background), it appeared that Corrections did not consider the Applicant's status as the administratrix of their deceased son's estate in the processing of the Applicant's second access request. Corrections merely said, "the previously requested records are not included in the responsive records package for your current request."

[85] I find that Corrections should have considered the Applicant's Letters of Administration in the processing of the Applicant's second access to information request. Had Corrections done so, the Applicant could have received the records much sooner and Corrections could have potentially avoided these two reviews with my office.

[86] I recommend that Corrections amend its policies and procedures so that it considers an applicant's ability to exercise another individual's right or power under FOIP and HIPA in the processing of access requests within 30 days of the issuing of this Report.

IV FINDINGS

[87] I find that I have jurisdiction to conduct this review.

[88] I find that the Applicant is acting as personal representative of their son pursuant to subsection 59(a) of FOIP and subsection 56(a) of HIPA.

[89] I find Corrections cannot withhold the Applicant's son's personal information from the Applicant on the basis of subsection 29(1) of FOIP.

[90] I find that Corrections properly applied subsection 29(1) of FOIP to the names of the inmates who are not the Applicant's son on pages 16 and 109 of the Set 1 Records.

[91] I find it would be an absurd result to withhold the names of the visitors on pages 40, 44, 48, 56, 61, 91, and 95 of the Set 1 Records from the Applicant.

[92] I find that Corrections properly applied subsection 29(1) of FOIP to the visitor's personal information at pages 31, 39, and 74 of the Set 1 Records.

[93] I find that Corrections did not properly apply subsection 27(1) of HIPA to pages 5, 9, 16, 24, 104 to 113, 174 to 198, 200, 203 and 208 of the Set 1 Records and to the Set 2 Record.

[94] I find that Corrections did not properly apply subsection 15(1)(c), (k) and (m) of FOIP to pages 104 to 113 of the records at issue.

[95] I find that Corrections should have considered the Applicant's Letters of Administration in the processing of the Applicant's second access to information request. Had Corrections

done so, the Applicant could have received the records much sooner and Corrections could have potentially avoided these two reviews with my office.

V RECOMMENDATIONS

[96] I recommend that Corrections amend its policies and procedures so that it considers an applicant's ability to exercise another individual's right or power under FOIP and HIPA in the processing of access requests within 30 days of the issuing of this Report.

[97] I recommend that Corrections comply with the recommendations set out in the Appendix within 30 days of the issuing of this Report.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of April, 2024.

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

Appendix

Set 1 Records (IPC file 334-2023; CP file 093-23P)				
Page Number of Clean Copy	Page Number of Redacted Copy	Exemptions applied by Corrections	IPC Findings	IPC Recommendations
1	1	Released		
2	2	Released		
3	3	Released		
4	4	Released		
5		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
6	5	Released		
7	6	Released		
8	7	Released		
9		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
10	8	Released		
11	9	Released		
12	10	Released		
13	11	Released		
14	12	Released		
15	13	Released		
16		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP applies to names of inmates that is not the Applicant's son.	Withhold the name of the inmate who is not the Applicant's son; release remainder.
17	14	Released		
18	15	Released		
19	16	Released		
20	17	Released		
21	18	Released		
22	19	Released		
23	20	Released		
24		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply.	Release.

			27(1) of HIPA does not apply.	
25	21	Released		
26	22	Released		
27	23	Released		
28	24	Released		
29	25	Released		
30	26	Released		
31	27	29(1) of FOIP	29(1) of FOIP applies to the name of the visitor.	Withhold the name of the visitor pursuant to 29(1) of FOIP; release remainder.
32	28	Released		
33	29	Released		
34	30	Released		
35	31	Released		
36	32	Released		
37	33	Released		
38	34	Released		
39	35	29(1) of FOIP	29(1) of FOIP applies to the name of the visitor.	Withhold the name of the visitor pursuant to 29(1) of FOIP; release remainder.
40	36	29(1) of FOIP	Absurd result to withhold the name of the visitor since the Applicant was present.	Release.
41	37	Released		
42	38	Released		
43	39	Released		
44	40	29(1) of FOIP	Absurd result to withhold the name of the visitor since the Applicant was present.	Release.
45	41	Released		
46	42	Released		
47	43	Released		
48	44	29(1) of FOIP	Absurd result to withhold the name of the	Release.

			visitor since the Applicant was present.	
49	45	Released		
50	46	Released		
51	47	Released		
52	48	Released		
53	49	Released		
54	50	Released		
55	51	Released		
56	52	29(1) of FOIP	Absurd result to withhold the name of the visitor since the Applicant was present.	Release.
57	53	Released		
58	54	Released		
59	55	Released		
60	56	Released		
61	57	29(1) of FOIP	Absurd result to withhold the name of the visitor since the Applicant was present.	Release.
62	58	Released		
63	59	Released		
64	60	Released		
65	61	Released		
66	62	Released		
67	63	Released		
68	64	Released		
69	65	Released		
70	66	Released		
71	67	Released		
72	68	Released		
73	69	Released		
74	70	29(1) of FOIP	29(1) of FOIP applies to the names of visitors.	Withhold the names of the visitors pursuant to 29(1) of FOIP; release remainder.
75	71	Released		
76	72	Released		
77	73	Released		

78	74	Released		
79	75	Released		
80	76	Released		
81	77	Released		
82	78	Released		
83	79	Released		
84	80	Released		
85	81	Released		
86	82	Released		
87	83	Released		
88	84	Released		
89	85	Released		
90	86	Released		
91	87	29(1) of FOIP	Absurd result to withhold the name of the visitor since the Applicant was present.	Release.
92	88	Released		
93	89	Released		
94	90	Released		
95	91	29(1) of FOIP	Absurd result to withhold the name of the visitor since the Applicant was present.	Release.
96	92	Released		
97	93	Released		
98	94	Released		
99	95	Released		
100	96	Released		
101	97	Released		
102	98	Released		
103	99	Released		
104		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.
105		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.

106		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.
107		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.
108		29(1),15(1)(c), , (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.
109		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1) of FOIP applies to the name of inmate who is not the Applicant's son. 29(1), 15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply to remainder.	Continue to withhold the name of the inmate who is not the Applicant's son. Release remainder.
110		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.
111		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.
112		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.
113		29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA	29(1),15(1)(c), (k), (m) of FOIP; 27(1) of HIPA does not apply.	Release.

114	100	Released		
115	101	Released		
116	102	Released		
117	103	Released		
118	104	Released		
119		Court record to be released by Corrections.		Release.
120		Court record to be released by Corrections.		Release.
121	105	Released		
122		Court record to be released by Corrections.		Release.
123		Court record to be released by Corrections.		Release.
124		Court record to be released by Corrections.		Release.
125	106	Released		
126		Court record to be released by Corrections.		Release.
127		Court record to be released by Corrections.		Release.
128		Court record to be released by Corrections.		Release.
129	107	Released		
130		Court record to be released by Corrections		Release.
131		Court record to be released by Corrections.		Release.
132	108	Released		
133		Court record to be released by Corrections.		Release.
134		Court record to be released by Corrections.		Release.
135	109	Released		

136		Court record to be released by Corrections.		Release.
137		Court record to be released by Corrections.		Release.
138	110	Released		
139		Court record to be released by Corrections.		Release.
140		Court record to be released by Corrections.		Release.
141	111	Released		
142		Court record to be released by Corrections.		Release.
143		Court record to be released by Corrections.		Release.
144	112	Released		
145		Court record to be released by Corrections.		Release.
146		Court record to be released by Corrections.		Release.
147	113	Released		
148		Court record to be released by Corrections.		Release.
149		Court record to be released by Corrections.		Release.
150	114	Released		
151		Court record to be released by Corrections.		Release.
152		Court record to be released by Corrections.		Release.
153	115	Released		
154		Court record to be released by Corrections.		Release.

155		Court record to be released by Corrections.		Release.
156	116	Released		
157		Court record to be released by Corrections.		Release.
158		Court record to be released by Corrections.		Release.
159	117	Released		
160		Court record to be released by Corrections.		Release.
161	118	Released		
162		Court record to be released by Corrections.		Release.
163	119	Released		
164		Court record to be released by Corrections.		Release.
165	120	Released		
166		Court record to be released by Corrections.		Release.
167		No exemptions specified by Corrections as to why it is withholding this page.	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
168		No exemptions specified by Corrections as to why it is withholding this page.	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
169	121	Released		
170	122	Released		
171	123	Released		
172	124	Released		
173	125	Released		
174		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply.	Release.

			27(1) of HIPA does not apply.	
175		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
176		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
177		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
178		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
179		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
180		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
181		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
182		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
183		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.

184		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
185		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
186		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
187		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
188		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
189		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
190		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
191		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
192		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
193		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply.	Release.

			27(1) of HIPA does not apply.	
194		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
195		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
196		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
197		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
198		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
199		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
200		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
201	126	Released		
202	127	Released		
203		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
204	128	Released		
205	129	Released		

206	130	Released		
207	131	Released		
208		29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.
209	132	Released		
210	133	Released		
211		No exemptions specified by Corrections as to why it is withholding this page.	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release
	134	Released		
Set 2 Record (IPC file 330-2023; CP file 198-23P)				
Page Number of Clean Copy	Name of Redacted Record	Exemptions applied by Corrections	IPC Findings	IPC Recommendations
1	Suicide Prevention Screening Guidelines	29(1) of FOIP; 27(1) of HIPA	29(1) of FOIP does not apply. 27(1) of HIPA does not apply.	Release.