



## REVIEW REPORT 006-2024

### Saskatchewan Health Authority

April 4, 2024

#### Summary:

The Applicant made an access to information request to the Saskatchewan Health Authority (SHA). The SHA denied access to portions of the records pursuant to subsections 14(1)(m), 16(1)(a), (b), (e), 17(1)(b) and 23(1)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review of the decision by the Commissioner. During the review, the Applicant withdrew his request for access to information that SHA withheld pursuant to subsection 14(1)(m) of LA FOIP. The Commissioner found that the SHA properly applied subsections 16(1)(a) and (b) of LA FOIP in some cases. He also found that subsection 28(1) of LA FOIP applied. Further, he found that the SHA did not properly apply subsections 16(1)(e) and 17(1)(b) of LA FOIP. The Commissioner recommended that the SHA continue to withhold or to release information accordingly.

#### I BACKGROUND

[1] The Applicant made an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Saskatchewan Health Authority (SHA). The request was dated May 26, 2023, but was received by the SHA on June 16, 2023. The Applicant's request stated:

Provide copies of documents regarding the proposal, planning, design, launch and any reviews of the Community based opioid agonist therapy program for the Swift Current region, since January 1, 2021.

[2] On July 16, 2023, the SHA wrote to the Applicant extending the time for its response by 30 days.

- [3] On December 18, 2023, the SHA sent its section 7 decision to the Applicant releasing some records and withholding portions of other records. The SHA claimed that the withheld information was exempt pursuant to subsections 14(1)(m), 16(1)(a), (b), (e), 17(1)(b) and 23(1)(a) of LA FOIP.
- [4] On January 3, 2024, the Applicant filed a request for a review with my office regarding the SHA's claim that portions of the records were exempt.
- [5] On January 23, 2024, my office sent notice of the review to the Applicant and the SHA inviting them to provide my office with a submission.
- [6] On March 19, 2024, the SHA provided its submission to my office. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

- [7] The SHA identified 103 pages of responsive records. It released 72 pages in full and withheld 31 pages in whole or in part relying on subsections 14(1)(m), 16(1)(a), (b), (e), 17(1)(b) and 23(1)(a) of LA FOIP.
- [8] In its Index of Records and its submission, the SHA clarified that it erred by claiming subsection 23(1)(a) of LA FOIP and should have claimed subsection 28(1) of LA FOIP. As subsection 23(1) of LA FOIP deals with definitions of personal information, I accept SHA's clarification and will consider if subsection 28(1) of LA FOIP applies.
- [9] During this review, the Applicant advised that they were not interested in gaining access to the information withheld from pages 40 to 41 and 56 to 57 pursuant to the discretionary exemption in subsection 14(1)(m) of LA FOIP. I will therefore not be considering subsection 14(1)(m) of LA FOIP.

### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction?

[10] The SHA qualifies as a “local authority” pursuant to subsection 2(1)(f)(xiii) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

#### 2. Did the SHA properly apply subsection 16(1)(a) of LA FOIP?

[11] The SHA applied subsection 16(1)(a) of LA FOIP to portions of pages 65, 67 to 77, 78, 80 and 97 to 98. Subsection 16(1)(a) of LA FOIP is a discretionary exemption. It applies where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a local authority.

[12] Subsection 16(1)(a) of LA FOIP provides as follows:

**16(1)** Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority;

[13] As stated in my office’s *Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated October 18, 2023, (*Guide to LA FOIP*, Ch. 4) at pages 110 to 118, my office uses the following two-part test to determine if this exemption applies:

- 1) Does the information qualify as advice, proposals, recommendations, analyses or policy options?
- 2) Was the advice, proposals, recommendations, analyses and/or policy options developed by or for the local authority?

[14] My office’s *Guide to LA FOIP*, Ch. 4 at pages 110 to 112, includes definitions of the following relevant terms:

“Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future

action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The “pros and cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a local authority must make a decision for future action.

Advice includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.

Advice has a broader meaning than recommendations. The legislative intention was for advice to have a distinct meaning from recommendations. Otherwise, it would be redundant. While “recommendation” is an express suggestion, “advice” is simply an implied recommendation.

...

A “proposal” is something offered for consideration or acceptance.

“Analyses” (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements.

[15] As set out in my office’s *Guide to LA FOIP*, Ch. 4 at page 115, subsection 16(1)(a) of LA FOIP does not protect the bare recitation of facts unless the facts and advice are so intertwined as to preclude release.

***Pages 65, 78 and 80***

[16] Page 65 is a two-page email with an attached draft contract. A duplicate of the email appears on page 80. The SHA withheld portions of this email that include detailed comments on the draft contract. The SHA also withheld portions of page 78 that include comments on a draft contract.

[17] In its submission, the SHA asserted that the information withheld from pages 65 and 80 qualified as an analysis of a draft contract and included recommended changes. It asserted that the information withheld from page 78 also qualified as an analysis of a contract with proposed changes.

[18] Having reviewed the withheld information, it appears to be a detailed examination of the provisions of a draft contract. Therefore, the withheld information qualifies as analyses. The emails were developed by an employee of the SHA. Therefore, the withheld information meets both parts of the two-part test. Accordingly, I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to pages 65, 78 and 80. I recommend that the SHA continue to withhold this information.

*Pages 67 to 77*

[19] The SHA asserted that the draft contract withheld from pages 67 to 77 qualified as a “draft proposal of a service agreement.” The SHA did not explain how the draft contract qualified as a proposal.

[20] The draft contract includes notations and track changes that reveal advice provided by the SHA employees. In addition, I note that the final version of the contract was released to the Applicant. Therefore, it would be possible for the Applicant to compare the draft version with the final version and draw accurate inferences about the advice, proposal or analysis made by the SHA staff.

[21] Similar circumstances existed in my office’s [Review Report 100-2018](#) which involved the request for access made to the SHA for a draft letter. In that report, I found that where the final version of a letter was released to an Applicant, release of the draft version would enable the Applicant to draw accurate inferences about the advice and recommendations by comparing the draft to the final version. For that reason, I found that subsection 16(1)(a) of LA FOIP applied to the draft letter.

[22] Given the similar circumstances, I will follow the same approach here and find that release of the draft contract at pages 67 to 77 would reveal information about advice, proposals, and analyses. As SHA staff developed the contract for the SHA, SHA has met both parts of the test. Accordingly, I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to pages 67 to 77. I recommend that the SHA continue to withhold this information.

*Pages 97 to 98*

[23] SHA asserted that information withheld from emails at pages 97 to 98 qualified as analysis and advice from an SHA employee.

[24] This information appears to be factual information. It does not reveal advice or analysis. Therefore, I find that the SHA did not properly apply subsection 16(1)(a) of LA FOIP to pages 97 to 98. I recommend that, within 30 days of issuance of this Report, the SHA release this information.

**3. Did the SHA properly apply subsection 16(1)(b) of LA FOIP?**

[25] The SHA applied subsection 16(1)(b) of LA FOIP to emails on pages 46 to 48 and 78. Subsection 16(1)(b) of LA FOIP provides:

**16(1)** Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving officers or employees of the local authority;

[26] This is a discretionary exemption that permits refusal of access where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a local authority.

[27] As stated in my office's *Guide to LA FOIP*, Ch. 4 at pages 119 to 123, my office uses the following two-part test to determine if subsection 16(1)(b) of LA FOIP applies:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of the local authority?

[28] I will consider if SHA has met each part of the two-part test.

[29] Definitions of the following key terms are set out in my office's *Guide to LA FOIP*, Ch. 4 at pages 119 to 120:

“Consultation” means:

- The action of consulting or taking counsel together: deliberation, conference.
- A conference in which parties consult and deliberate.

A consultation can occur when the views of one or more officers or employees of a local authority are sought as to the appropriateness of a particular proposal or suggested action.

...

“Deliberation” means:

- The act of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision.
- The consideration and discussions of the reasons for and against a measure by a number of councilors.

A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

[30] Like the approach I took in [Review Report 141-2023](#) and [Review Report 318-2023](#), for the purposes of the analysis that follows, I will consider a communication that involves the seeking of advice as a consultation. Where a person is charged with making a decision, the process of decision-making or considering that advice is a deliberation.

[31] The SHA asserted that the information qualifies as a consultation and deliberation by an SHA employee, and it provided a general description of the subject matter of the consultations and deliberations. No further information about the exemption claim was provided to my office.

***Page 46***

[32] The information withheld from the email on page 46 does not qualify as a consultation or deliberation because it does not involve the seeking of advice or the consideration of advice

by a decision maker. Some of the information qualifies as statements of fact. Other information appears to be advice or opinions such as the first paragraph. The first line of the second paragraph is a factual statement. The bulleted information in the second paragraph is a summary of a telephone call which is a statement of fact. Paragraphs 3 to 5 are also statements of fact or opinion and advice.

- [33] For these reasons, part one of the test has not been met. Therefore, I find that SHA did not properly apply subsection 16(1)(b) of LA FOIP to page 46. I recommend that, within 30 days of issuance of this Report, the SHA release this information.

*Pages 47 to 48*

- [34] Similar information was withheld from pages 47 and the top of page 48, namely the salutation and advice, opinion, and factual information. This information does not qualify as a consultation or deliberation and part one of the test has not been met. I recommend that, within 30 days of issuance of this Report, the SHA release this information.
- [35] The second and third paragraph in the email that appears at the bottom of page 48 includes information that would qualify as a consultation because the decision maker is seeking advice from other staff. However, the remaining information in that email would not qualify as a consultation or deliberation because it is either factual or provides direction to staff.
- [36] I find that the SHA did not properly apply subsection 16(1)(b) of LA FOIP to pages 47 and 48, except for the second and third paragraph of the email that appears at the bottom of page 48. I recommend that, within 30 days of issuance of this Report, the SHA release all information withheld from these pages with one exception. I recommend that the SHA continue to withhold the two paragraphs at the bottom of page 48, pursuant to subsection 16(1)(b) of LA FOIP.

*Page 78*

[37] The information in bullets numbered 1 and 2 on page 78, qualifies as a consultation because the author of the email is consulting with other SHA employees by seeking advice on outstanding issues. Therefore, part one of the test has been met. As the consultation involved employees of the SHA, part two of the test has also been met. I find that the SHA properly applied subsection 16(1)(b) of LA FOIP to this information. I recommend that the SHA continue to withhold the information at bullets 1 and 2 of page 78.

[38] However, the information withheld from bullet 3 on page 78, would not qualify as a consultation because it appears to be a statement of fact about the program and not a request for advice. Nor does it qualify as a deliberation because it does not involve a careful consideration with a view to a decision. There is no weighing of reasons for and against a decision or action. As the first part of the test has not been met for this information, I find that SHA did not properly apply subsection 16(1)(b) of LA FOIP to bullet 3 of page 78. I recommend that, within 30 days of issuance of this Report, the SHA release bullet 3 on page 78.

**4. Did the SHA properly apply subsection 16(1)(e) of LA FOIP?**

[39] The SHA applied subsection 16(1)(e) of LA FOIP to pages 1 to 2 which it described as a budget development document. That exemption provides as follows:

**16(1)** Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(e) information, including the proposed plans, policies or projects of the local authority, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

[40] Subsection 16(1)(e) of LA FOIP as a discretionary exemption that permits refusal of access in situations where release of information, including the proposed plans, policies or projects of a local authority, could reasonably be expected to result in disclosure of a

pending policy or budgetary decision. The purpose of the exemption is to prevent premature disclosure of policy or budgetary decisions. Once a policy or budgetary decision has been taken and has been or is being implemented, the information can no longer be withheld under this exemption.

[41] The *Guide to LA FOIP*, Ch. 4 at pages 133 to 136, states that to determine if this exemption applies, my office uses the following two-part test:

1. Is it information of the local authority?
2. Could disclosure reasonably be expected to result in disclosure of a pending policy or budgetary decision?

[42] I now turn to consider part one of the test.

***1. Is it information of the local authority?***

[43] The following definition for “information” is provided in the *Guide to LA FOIP*, Ch. 4 at page 134: “facts or knowledge provided or learned as a result of research or study.”

[44] In its submission, the SHA asserted that the information at issue relates to budgets and staffing levels of the SHA. I am satisfied that the withheld information is information of the SHA since it contains facts or knowledge provided or learned by the SHA. Therefore, SHA has met part one of the test.

***2. Could disclosure reasonably be expected to result in disclosure of a pending policy or budgetary decision?***

[45] The *Guide to LA FOIP*, Ch. 4 at page 135 includes the following definition of “pending” found in the *Concise Oxford Dictionary, 10<sup>th</sup> Edition*: “pending” means awaiting decision or settlement; about to happen. In the context of subsection 16(1)(e) of LA FOIP, a pending policy or budgetary decision is a policy or budgetary decision that has been made but has not been announced or implemented.

[46] The *Guide to LA FOIP*, Ch. 4, at page 135 also sets out the following definitions:

A “policy” is a standard course of action that has been officially established by the local authority.

“Budgetary” means of or pertaining to a budget. A budget is a periodic, (especially annual) estimate of revenue and expenditure.

“Decision” means the action of coming to a determination or resolution with regard to any point or course of action; resolution or conclusion arrived at.

[47] The SHA asserted that it applied subsection 16(1)(e) of LA FOIP to information that “qualifies as proposed plans and budgets including the proposed budgets and recommended staff levels with regards to the operational priorities of the SHA.” In response to questions from my office about whether the information qualified as a “pending decision,” SHA stated that the proposal was not approved.

[48] In order for subsection 16(1)(e) of LA FOIP to apply, the decision at issue must be finalized or already made. This approach is based on findings of Alberta’s Office of the Information and Privacy Commissioner (AB IPC) relating to subsection 24(1)(g) of the *Alberta Freedom of Information and Protection of Privacy Act* which is equivalent to subsections 16(1)(e) of LA FOIP and 17(1)(g) of *The Freedom of Information and Protection of Privacy Act*. In [Order F2008-008](#), the AB IPC stated:

In referring to a decision that is pending, I believe that the intent of section 24(1)(g) of the Act is to protect a decision that has already been made – and not merely any number of possible decisions.

[49] Previous reports of my office have followed this approach. See for example, Review Reports [185-2022](#), [093-2020](#), [158-2020](#) and [386-2019](#).

[50] Based on a review of the withheld information, it appears that it may have informed a budgetary decision; however, it does not contain or reveal the decision that was made. Even if pages 1 to 2 did contain a policy or budgetary decision, I would find that subsection 16(1)(e) of LA FOIP does not apply because the proposal was not approved and therefore is not awaiting announcement or implementation. Therefore, it does not qualify as a

pending decision. Accordingly, I find that the SHA has not demonstrated that it properly applied subsection 16(1)(e) of LA FOIP. I recommend that, within 30 days of issuance of this Report, SHA release the withheld information.

**5. Did the SHA properly apply subsection 17(1)(b) of LA FOIP?**

[51] The SHA applied the discretionary exemption in subsection 17(1)(b) of LA FOIP to pages 12, 21, 23 and 91. This exemption permits refusal of access in situations where release of a record could reasonably be expected to disclose financial, commercial, scientific, technical or other information which the local authority has a proprietary interest in or a right of use and which has monetary value or is reasonably likely to have monetary value.

[52] Subsection 17(1)(b) of LA FOIP provides:

17(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) financial, commercial, scientific, technical, or other information:

(i) in which the local authority has a proprietary interest or a right of use; and

(ii) that has monetary value or is reasonably likely to have a monetary value;

[53] The *Guide to FOIP*, Ch. 4 at pages 147 to 151 sets out the following three-part test that my office uses to determine if this exemption applies:

1. Does the information contain financial, commercial, scientific, technical, or other information?
2. Does the local authority have a proprietary interest or right to use it?
3. Does the information have monetary value for the local authority or is it reasonably likely to?

[54] The SHA's submission asserted that the exemption applies because the information qualifies as financial information with a monetary value regarding the rate of pay. With

respect to page 23, it added that the information qualified as technical information used for financial coding.

[55] I now turn to consider each part of the test.

***1. Does the information contain financial, commercial, scientific, technical, or other information?***

[56] The definition of “financial information” can be found in the *Guide to LA FOIP*, Ch. 4 at pages 147 to 148. It is information regarding monetary resources, such as financial capabilities, assets, and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a particular party.

[57] Pages 12 and 21 are schedules to service agreements between the SHA and other parties. The SHA withheld information about rates of pay from those pages. Page 23 is a template for an expense claim form which is attached to a service agreement between the SHA and another party. The SHA withheld information about the hourly rate of pay from that form. Page 91 is a schedule to a template service agreement. The SHA withheld the hourly rate from that page.

[58] The information on pages 12, 21 and 23 qualifies as the financial information of the payees because it describes their monetary resources. This is consistent with the approach taken by my office in [Review Report 342-2019](#).

[59] The information withheld from page 91 does not describe the monetary resources of a particular party as it appears in a template agreement. However, release of the hourly rate from the template agreement would allow the Applicant to draw accurate inferences about the monetary resources of individuals who have entered into service agreements with the SHA. Therefore, it too qualifies as financial information.

***2. Does the local authority have a proprietary interest or right to use it?***

[60] My office's *Guide to LA FOIP*, Ch. 4 at pages 139 to 140, states that to meet this part of the test, the local authority must be able to demonstrate rights to information. "Proprietary" means of, relating to, or holding as property. "Proprietary interest" is the interest held by a property owner together with all appurtenant rights. It signifies "interest as an owner" or "legal right or title." "Owner" means someone who has the right to possess, use, and convey something; a person in whom one or more interest are vested. "Right of use" means a legal, equitable, or moral title or claim to the use of property, or authority to use.

[61] In its submission, the SHA did not explain how it had a proprietary interest in or right to use the information about hourly rates. Nor is there any information on the face of the records to support a finding that the SHA has a proprietary interest either in a traditional intellectual property sense or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Further, there is nothing on the face of the records, and in particular, in the service agreement that would suggest that the information should be treated as the SHA's confidential business information. Therefore, SHA has not met part two of the test.

***3. Does the information have monetary value for the local authority or is it reasonably likely to?***

[62] Other than SHA's submission that the withheld information has monetary value, it did not explain why or how part three of the test was met. In addition, there is nothing on the face of the records that would support this claim. In these circumstances, I find that SHA has not met part three of the test.

[63] Section 51 of LA FOIP places the burden on the SHA to establish that it has the right to refuse access to the records. Section 51 of LA FOIP provides as follows:

**51** In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[64] I find that the SHA did not properly apply subsection 17(1)(b) of LA FOIP. I recommend that, within 30 days of issuance of this Report, the SHA release this information to the Applicant.

**6. Did the SHA properly apply subsection 28(1) of LA FOIP?**

[65] The SHA applied subsection 28(1) of LA FOIP to information about an employee on page 45. This provision prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure or if disclosure without consent is authorized by subsection 28(2) or section 29 of LA FOIP.

[66] Subsection 28(1) of LA FOIP provides:

**28(1)** No local authority 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 29.

[67] For subsection 28(1) of LA FOIP to apply, I must first find that the withheld information is “personal information.” Subsection 23(1) of LA FOIP defines “personal information” and provides some examples of the types of information that can be considered personal information. Subsection 23(1)(a) of LA FOIP is relevant here. It states:

**23(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;

[68] The list of examples of personal information in subsection 23(1) of LA FOIP is not exhaustive. To qualify as “personal information,” the information must be 1) about an identifiable individual, and 2) personal in nature.

[69] SHA asserted that the withheld information qualified as personal information because it was about the marital status of an employee. Based on a review of the records, I find that

the information withheld from page 45 qualifies as personal information pursuant to subsection 23(1)(a) of LA FOIP.

[70] As there is no indication that the individual involved has consented to the release of this information and that the exceptions in subsections 28(2) or section 29 of LA FOIP would apply, I find that the SHA properly applied subsection 28(1) of LA FOIP. I recommend that the SHA continue to withhold the information pursuant to subsection 28(1) of LA FOIP.

#### **IV FINDINGS**

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

[72] I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to pages 65, 67 to 77, 78 and 80.

[73] I find that the SHA did not properly apply subsection 16(1)(a) to LA FOIP to pages 97 to 98.

[74] I find that the SHA did not properly apply subsection 16(1)(b) of LA FOIP to pages 46, 47 and 48, except for the information described below.

[75] I find that the SHA properly applied subsection 16(1)(b) of LA FOIP to the second and third paragraph in the email at the bottom of page 48.

[76] I find that the SHA did not properly apply subsection 16(1)(e) of LA FOIP to pages 1 to 2.

[77] I find that the SHA did not properly apply subsection 17(1)(b) of LA FOIP to pages 12, 21, 23 and 91.

[78] I find that the SHA properly applied subsection 28(1) of LA FOIP to page 45.

## V RECOMMENDATIONS

- [79] I recommend that, within 30 days of issuance of this Report, the SHA release to the Applicant the information withheld on pages 1-2, 12, 21, 23, 46 to 48 (except for the information described below), 91, and 97 to 98.
- [80] I recommend that the SHA continue to withhold the second and third paragraph from the email at the bottom of page 48 pursuant to subsection 16(1)(b) of LA FOIP.
- [81] I recommend that the SHA continue to withhold the information on pages 65, 67 to 77, 78, and 80 pursuant to subsection 16(1)(a) of LA FOIP.
- [82] I recommend that the SHA continue to withhold the information on page 45 pursuant to subsection 28(1) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 4<sup>th</sup> day of April, 2024.

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