



REVIEW REPORT 007-2024

Saskatchewan Health Authority

April 15, 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 16(1)(a) and (d) 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. The Commissioner found that the SHA properly applied subsections 16(1)(a) of LA FOIP in some cases but not all. He also found that the SHA did not properly apply subsection 16(1)(d) 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 June 16, 2023, but appears to have been received by the SHA on July 7, 2023. The Applicant's request stated:

Provide copies of documents showing any discussions or plans for Community-based harm reduction for the Swift Current region, since January 1, 2021.

[2] The SHA acknowledged receipt of the request by letter dated July 10, 2023. On August 4, 2023, the SHA wrote to the Applicant extending the time for its response by 30 days.

- [3] On December 21, 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 16(1)(a) and (d) of LA FOIP.
- [4] On January 1, 2023, 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 24, 2024, my office sent a notice of the review to the Applicant and the SHA inviting them to provide my office with a submission.
- [6] On March 22, 2024, the SHA provided my office with a submission. The Applicant did not provide a submission.

II RECORDS AT ISSUE

- [7] The SHA identified 144 pages of responsive records. It released 42 pages in full and withheld 102 pages in whole or in part relying on subsections 16(1)(a) and (d) of LA FOIP. See the Appendix for details.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [8] 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?

- [9] 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.

[10] 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;

[11] 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 was properly applied:

- 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?

[12] My office's *Guide to LA FOIP*, Ch. 4 at page 115, states that 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.

[13] In its submission, the SHA asserted that the withheld information qualified as advice, proposals, recommendations, analyses and policy options. The following definitions of these terms are set out in my office's *Guide to LA FOIP*, Ch. 4 at pages 110 to 113:

- "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 “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a 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.
- “Policy options” are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant’s identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information.

[14] SHA’s submission provided little information to support its claims that the information at issue qualified as advice, recommendations, proposals, analysis or policy options. It merely stated that that the information qualified as one or more of these categories of information.

Pages 9 to 11, 17 to 18, 25, 27 to 38, 54 to 58, 59, 62 to 80, 81 to 85, 88, 97, 122 to 123, 141 to 143 and 144

[15] Based on a review of pages 9 to 11, 17 to 18, 25, 27 to 38, 54 to 58, 59, 62 to 80, 81 to 85, 88, 97, 122 to 123, 141 to 143 and 144, it is apparent that the withheld information is factual, or provides instructions or directions to staff or employees. Accordingly, this information does not qualify as advice, recommendations, proposals, analysis or policy options. Therefore, part one of the test has not been met for this information, and it is not necessary for me to consider part two of the test.

[16] I find that the SHA did not properly apply subsection 16(1)(a) of LA FOIP to these pages. Where the SHA has also applied subsection 16(1)(d) of LA FOIP to this information, I will consider it later in this Report.

Pages 107 to 119

[17] Pages 107 to 119 contain a template for a service agreement. SHA asserted that it qualifies as a proposal. However, it provided no further information to explain how it was offered for consideration or acceptance. Nor is there anything in the records that would support such a finding. Based on the limited information provided and a review of the records, I find that the template does not qualify as advice, recommendations, proposals, analysis or policy options. Therefore, part one of the test has not been met for these pages, and I do not need to consider the second part. I find that the SHA did not properly apply subsection 16(1)(a) of LA FOIP to this information. I will consider later in this Report if subsection 16(1)(d) of LA FOIP applies.

Pages 12 to 13, 14 to 15, 19 to 22, 23 to 24, 40, 53, 90 to 96 and 130 to 133

[18] Based on a review of the records, some but not all of the information on the following pages qualifies as advice, recommendations, proposals, analysis or policy options developed by the SHA. My analysis and the reasons follow:

- Pages 12 to 13 is a two-page request for funding. SHA asserted that the withheld information “qualifies as analysis, with a proposal and plans that relate to the administration of the SHA that have not been implemented.” Based on a review of these pages, I note that some information qualifies as analyses because it sets out a detailed examination of the elements or structure of something. Some of the information also qualifies as a proposal because it is offered for consideration or acceptance. The withheld information also qualifies as a recommendation because it is a piece of advice about what to do provided in an official context. It is apparent from the records that it was developed by the SHA.
- Pages 14 to 15 is a briefing note requesting funding. The SHA asserted that the information “qualifies as analysis, with a proposal and plans that relate to the administration of the SHA.” Some portions of the briefing note are factual statements – namely, page 14, paragraphs 1, 3; page 15 (first sentence and two graphs), third paragraph (first sentence), and fourth paragraph. The remaining

information qualifies as analyses because it sets out a detailed examination of a proposed program and recommendations because it is advice provided in an official context. The withheld information was developed by the SHA.

- Pages 19 to 22 is a briefing note requesting funding. Page 19, paragraphs 1 and 2 contain factual information that is not exempt. The remaining withheld information qualifies as analyses because it sets out a detailed examination of a proposed program. It also qualifies as a recommendation because it includes specific advice provided in an official context by the SHA.
- Pages 23 to 24, which were withheld in full, set out options for staffing and describe the processes and detailed considerations and advice relating to the various options. This information qualifies as analysis, policy options and recommendations developed by the SHA.
- Page 40 is a letter. The SHA asserted that it qualifies as recommendations. Having reviewed the letter, I find that it qualifies as recommendations because it is specific advice provided in an official context. Some of the information also qualifies as analysis because it sets out details of steps that can be taken to support the recommended actions. The information was developed by the SHA.
- Page 53 is a template for a letter that appears to have been prepared by the SHA. It includes information that would qualify as advice and analysis namely paragraphs 2, 3 and 4. The information was developed by the SHA. This information qualifies as advice because it provides guidance about how to manage an issue and includes an analysis of the situation or issue that requires action. The remaining information is factual.
- Pages 90 to 96 contain implementation checklists and roadmaps. Information withheld from page 93 is a duplicate of information that I have found to be exempt on page 40 and therefore it qualifies as a recommendation and analysis developed by the SHA. The remaining information does not qualify as advice, recommendations, proposals, analysis or policy options.
- Pages 130 to 133 contain a draft job description and track changes. The SHA withheld the information in the draft and the track changes. The track changes qualify as advice, recommendations and analysis provided by the SHA. This approach is consistent with the approach taken in previous reports such as Review Reports [168-2023](#), [164-2021](#), and [216-2017](#) which considered subsection 17(1)(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP) (the equivalent to subsection 16(1)(a) of LA FOIP). Regarding the remaining withheld information, simply because a document is in draft form does not qualify the draft as advice, recommendations, proposals, analysis or policy options. The information in the draft must have this character or qualify for exemption. Based on a review of the draft and the context as outlined in the related emails, the other withheld portions of the draft do not qualify as advice, recommendations, proposals, analysis or policy options.

[19] Accordingly, I find that the SHA properly applied subsection 16(1)(a) of LA FOIP in some but not all cases. Further details are set out in the Appendix to this Report.

[20] Where I have found that the SHA properly applied subsection 16(1)(a) of LA FOIP, I recommend that it continue to withhold the information pursuant to subsection 16(1)(a) of LA FOIP. Details are provided in the Appendix.

[21] I will now consider the possible application of subsection 16(1)(d) of LA FOIP to the information that I found not to be exempt pursuant to subsection 16(1)(a) of LA FOIP.

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

[22] Given my findings above, I need only consider if the SHA properly applied subsection 16(1)(d) of LA FOIP to the following pages: 9 to 11, 14 to 15, 17 to 18, 19 to 22, 25, 27 to 38, 53, 54 to 58, 59, 62 to 80, 81 to 85, 88, 90 to 96, 97, 106, 107 to 119, 122, 123, 124, 130 to 133, 141, 142 and 144.

[23] Subsection 16(1)(d) of LA FOIP is a discretionary exemption. It applies where release of a record could reasonably be expected to disclose plans that relate to the management of personnel or the administration of a local authority which have not yet been implemented. It protects against the premature release of plans that have already been decided by a public body.

[24] Subsection 16(1)(d) 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:

...

(d) plans that relate to the management of personnel or the administration of the local authority and that have not yet been implemented;

[25] As stated in my office's *Guide to LA FOIP*, Ch. 4 at pages 130 to 132, my office uses the following three-part test to determine if subsection 16(1)(d) of LA FOIP applies:

1. Does the record contain a plan(s)?
2. Does the plan(s) relate to:
 - i. The management of personnel?
 - ii. The administration of the local authority?
3. Has the plan(s) been implemented by the local authority?

[26] I turn to consider if SHA has met each part of the three-part test in this case.

1. Do the records contain a plan(s)?

[27] My office's *Guide to LA FOIP*, Ch. 4 at page 130 includes the following definition of a "plan":

a formulated and especially detailed method by which a thing is to be done; a design or scheme. A detailed proposal for doing or achieving something; an intention or decision about what one is going to do.

[28] A plan includes detailed information about who is involved and affected, what will happen, when it will happen and the supporting rationale. Where the records do not include information about how work will be carried out, by whom and when, it does not qualify as a plan (see my office's [Review Report 132-2023](#)).

[29] However, as I stated in my office's [Review Report 166-2018](#), which considered subsection 17(1)(d) of FOIP, the equivalent to subsection 16(1)(d) of LA FOIP, information that qualifies as a plan can be found in documents that form part of the proposed plan, such as communication documents, if they contain sufficient detail that, if released, would reveal the proposed plan.

[30] In a previous report involving the SHA, I found that information that suggests that an action be taken and a request for information to initiate the plan qualify as a plan (see [Review Report 154-2024](#)). Employees' opinions, feelings and thoughts do not qualify as plans (see my office's [Review Report LA-2014-004](#)).

[31] SHA asserted that all the responsive records qualified as plans that have not yet been implemented. It did not provide further information or explanation of how the information qualified as a plan.

[32] However, it is apparent from a review of the withheld information that in many cases it reveals a detailed plan about various programs. The details include who is involved and affected, how the program will be implemented, and relevant parties be engaged and how the plan will be executed. Some of the withheld information deals with other aspects of the plan such as funding, education, training or communications.

[33] I will now turn to an analysis of the information withheld on each page:

- Pages 9 to 11 contain a checklist. It appears to be a detailed methodology for engagement with clients to support roll out of the proposed program. Release of this information would reveal the proposed plan. Therefore, it qualifies as a plan.
- Pages 14 to 15 contain a briefing note. I found above that the SHA properly withheld portions of the briefing note pursuant to subsection 16(1)(a) of LA FOIP. I find that the remaining portions of the briefing note set out detailed information about a program and qualify as a plan.
- Pages 17 to 18 are emails that respond to the above briefing note. They include detailed information about funding which qualifies as a plan.
- Pages 19 to 22 contain a briefing note. I found above that some of the information on these pages was exempt pursuant to subsection 16(1)(a) of LA FOIP. The remaining withheld information, on page 19, paragraphs 1 and 2, qualifies as a plan because it reveals detailed information about funding for a program, implementation considerations and particulars of the plan.
- Pages 25, 27 to 38 contain a PowerPoint presentation with educational or instructional information which appears to support implementation of the proposed program. They contain sufficient detailed information that if released, would reveal details of a plan. Accordingly, the information at issue here qualifies as a plan.
- Page 53 is a template for a letter intended as a communication tool for community partners. I found above that subsection 16(1)(a) of LA FOIP applies to paragraphs 2, 3 and 4. The remaining information does not qualify as a plan because it does not include information that describes a detailed method by which something is to be done.

- Pages 54 to 58 contain a backgrounder regarding a program. It sets out detailed procedural information for community volunteers about how to implement a program. It qualifies as a plan.
- Pages 59, 62 to 80 contain a PowerPoint presentation with detailed education or instructions about a program. Release of this information would reveal information about a plan. Accordingly, the presentation qualifies as a plan.
- Pages 81 to 85 are frequently asked questions and responses regarding a proposed program. It provides detailed information to inform stakeholders about a proposed program and release of this information would reveal detailed information about a plan.
- Page 88 is a work standard that describes in detail how a role or position within the proposed program should be carried out. It qualifies a plan.
- Pages 90 to 96 are detailed checklists to support the work standard above. They qualify as a plan.
- Page 97 is a poster that includes details of an event to support roll out of a proposed program. It is part of the communications strategy and release of the poster would reveal aspects of the proposed plan. Therefore, it qualifies as a plan.
- Pages 107 to 119 contain a template for a service agreement. The draft service agreement sets out the details by which a program will be implemented. This information qualifies as a plan.
- Page 122 to 123 are emails between SHA employees. The withheld portions of page 122 reveal a plan or elements of a plan. The withheld portions of page 123 also reveal elements of a plan.
- Page 124 (and its duplicate at page 141) is an email. The information withheld from page 124 does not reveal a plan.
- Pages 130 to 133 contain a draft job description. I found above that the track changes qualify for exemption under subsection 16(1)(a) of LA FOIP. The remaining information does not reveal detailed information about a proposed program and therefore does not qualify as a plan.
- Page 142 is a meeting note which reveals detailed information about the implementation status and next steps for implementation of a proposed program. Release of this information would reveal information about the proposed plan. It qualifies as a plan.
- Page 144 first paragraph does not include any information that would qualify as a plan. The remaining withheld information includes detailed information that qualifies as a plan.

[34] I find that part one of the test has been met in some but not all cases. I now turn to consider if part two of the test has been met.

2. Do the plans relate to:

i. The management of personnel?

ii. The administration of the local authority?

[35] According to the *Guide to LA FOIP*, Ch. 4 page 130, the “management of personnel” refers to all aspects of the management of human resources of a local authority that relates to the duties and responsibilities of employees. This includes staffing requirements, job classification, recruitment and selection, employee salary and benefits, hours and conditions of work, leave management, performance review, training, separation and layoff. It also includes the management of personal service contracts (i.e., contracts of service) but not the management of consultant, professional or other independent contractor contracts (i.e., contracts for service).

[36] The *Guide to LA FOIP*, Ch. 4 page 131, states that “administration of a local authority” comprises all aspects of a local authority’s internal management, other than personnel management, that are necessary to support the delivery of programs and services. Administration includes business planning, financial operations, and contract, property, information and risk management.

[37] Based on a review of the records, I find that all of the information that I have found qualifies as a plan relates to the management of human resources or the administration of the SHA. They include information about staffing requirements, job descriptions and recruitment. They also include information about the steps necessary to support delivery of the program or services including business planning, financial operations and contracts. Accordingly, part two of the test has been met in relation to the information that qualifies as a plan.

3. *Has the plan(s) been implemented by the local authority?*

[38] In order for the third part of this test to be met, the plan(s) cannot *yet* have been implemented. “Implementation” is defined at page 131 of the *Guide to LA FOIP*, Ch. 4, as the point when the implementation of a decision begins. “Yet” means at some time in the future, in the remaining time available, before all is over. However, it is not necessary for the implementation activities to have been completed.

[39] In response to questions posed by my office, the SHA stated that the plans have not been implemented and there are no plans to implement them at this time.

[40] In my office’s [Review Report 166-2018](#), I found that if a plan is replaced with a different plan and it will not be implemented anymore, then the third part of the test has not been met. In that case the Saskatchewan Legal Aid Commission [SLAC] confirmed that the proposal or plan at issue had been “set aside” and was not implemented for cost and other considerations. Referring to the equivalent provision in FOIP, I stated:

Subsection 17(1)(d) of FOIP is intended to protect information on decisions that have been made by a public body, the details of which the public body has not made publicly known through implementation. SLAC has not stated whether or not it intends to implement this plan in the future, so the third part of the test has not been met.

[41] Based on a review of the records and the materials submitted to my office by SHA, it is apparent that the plans were not implemented, and it appears that there is no intention to implement them in the future. Therefore, release of the information would not result in the premature release of plans that are waiting to be implemented. I find that the third part of the test has not been met.

[42] As all three parts of the test must be met, I find that SHA did not properly apply subsection 16(1)(d) of LA FOIP. I recommend that, within 30 days of release of this Report, the SHA release the information that I have found is not exempt. The details are set out in the Appendix to this Report.

IV FINDINGS

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

[44] I find that the SHA did not properly apply subsection 16(1)(a) of LA FOIP in all cases.

[45] I find that the SHA did not properly apply subsection 16(1)(d) of LA FOIP.

V RECOMMENDATIONS

[46] I recommend that, within 30 days of issuance of this Report, the SHA release and continue to withhold records as set out in the Appendix.

Dated at Regina, in the Province of Saskatchewan, this 15th day of April, 2024.

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

Appendix

Page Nos.	LA FOIP Exemptions Applied	Description	Findings on LA FOIP Exemptions	Commissioner's Recommendation
9 to 11	16(1)(a) and (d)	Checklist	Not 16(1)(a)/Not 16(1)(d)	Release
12 to 13	16(1)(a) and (d)	Infrastructure/Equipment Request	16(1)(a) applies	Withhold
14 to 15	16(1)(a) and (d)	Funding Request	16(1)(a) applies to all but p. 14, paras. 1, 3; p. 15 (1st sentence, two graphs); para. 3 (1st sentence), and para. 4/Not 16(1)(d)	Release p. 14, paras. 1, 3; p. 15 (1st sentence, two graphs); para. 3 (1st sentence), and para. 4/Withhold remaining information
17 to 18	16(1)(a) and (d)	Email	Not 16(1)(a)/Not 16(1)(d)	Release
19 to 22	16(1)(a) and (d)	Briefing Note	16(1)(a) applies to all but p. 19 paras. 1 and 2/Not 16(1)(d)	Release p. 19, paras 1 and 2/Withhold remaining information
23 to 24	16(1)(a) and (d)	Peer Programming Document	16(1)(a) applies	Withhold
25, 27 to 38	16(1)(a) and (d)	PowerPoint Presentation	Not 16(1)(a)/Not 16(1)(d)	Release
40	16(1)(a) and (d)	Community Engagement Package	16(1)(a) applies	Withhold
53	16(1)(a) and (d)	Letter Template	16(1)(a) applies to paras. 2, 3 and 4 only/Not 16(1)(d)	Withhold paras. 2, 3 and 4 and release remaining
54 to 58	16(1)(a) and (d)	Background Information for Community Clean up	Not 16(1)(a)/Not 16(1)(d)	Release
59, 62 to 80	16(1)(a) and (d)	PowerPoint Presentation	Not 16(1)(a)/Not 16(1)(d)	Release

81 to 85	16(1)(a) and (d)	Frequently Asked Questions	Not 16(1)(a)/Not 16(1)(d)	Release
88	16(1)(a) and (d)	Work Standard	Not 16(1)(a)/Not 16(1)(d)	Release
90 to 96	16(1)(a) and (d)	Planning Documents	16(1)(a) applies to page 93 but not remaining information/Not 16(1)(d)	Release all but for page 93
97	16(1)(a) and (d)	Poster	Not 16(1)(a)/Not 16(1)(d)	Release
106	16(1)(d)	Picture	Not 16(1)(d)	Release
107 to 119	16(1)(a) and (d)	Services Agreement	Not 16(1)(a)/Not 16(1)(d)	Release
122	16(1)(a) and (d)	Email	Not 16(1)(a)/Not 16(1)(d)	Release
123	16(1)(a) and (d)	Email	Not 16(1)(a)/Not 16(1)(d)	Release
124	16(1)(d)	Email	Not 16(1)(d)	Release
130 to 133	16(1)(a) and (d)	Draft Job Description	16(1)(a) applies to track changes only/Not 16(1)(d)	Withhold track changes only and release remaining information
141	16(1)(a) and (d)	Email	Not 16(1)(a)/Not 16(1)(d)	Release
142	16(1)(a) and (d)	Meeting Notes	Not 16(1)(a)/Not 16(1)(d)	Release
143	16(1)(a)	Meeting Notes	Not 16(1)(a)	Release
144	16(1)(a) and (d)	Memo	Not 16(1)(a)/Not 16(1)(d)	Release