



REVIEW REPORT 010-2024

Saskatchewan Health Authority

August 19, 2024

Summary:

The Applicant submitted an access to information request to the Saskatchewan Health Authority (SHA) requesting access to records related to a “Do Not Hire List/Cautious Hire List”. The SHA applied a 30-day extension to the response timeline pursuant to subsection 12(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). In its section 7 decision to the Applicant, the SHA indicated it was providing access to some but not all responsive records. The SHA withheld access to the “Do Not Hire List/Cautious Hire List” pursuant to subsection 30(2) of LA FOIP. The Applicant requested that the Commissioner review the timeline of SHA’s response and its decision to withhold a part of the record in question. The A/Commissioner found that SHA did not comply with subsections 7(2) and 12(2) of LA FOIP and recommended that SHA ensure it is properly resourced to respond to access requests within the legislated timelines. The A/Commissioner found that the SHA did not meet its burden of proof in demonstrating that subsection 30(2) of LA FOIP applied to the record and recommended the information requested be released to the Applicant within 30 days of the issuance of this Report.

I BACKGROUND

[1] On November 21, 2023, the Applicant submitted an access to information request to the Saskatchewan Health Authority (SHA) requesting access to:

1. Human Resource and Labor Relations File May 2011- current from Providence Place
2. Human Resource and Labor Relation File May 2011- current SHA and Former FHHR

3. Do Not Hire List (DNHL) may be identified by alternate terminology (Cautionary Hire List) for SHA and affiliates to include all health regions dated Jan 2023 to November 21, 2023
4. The Categories that exist on such DNHL/ cautionary hire list.
5. The police's [sic] and work standards used to determine if/when someone should be placed on the DNHL/call cautionary higher [sic] list.
6. Whether my name is on the DNHL/cautionary hire list.

[2] The time period for the records requested was from May 2011 to current.

[3] In a letter dated January 8, 2024, the SHA informed the Applicant that the 30-day response period had been extended an additional 30 days pursuant to subsection 12(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The new response deadline was provided as January 22, 2024.

[4] In its section 7 decision dated January 17, 2024, the SHA responded to the Applicant indicating that it was withholding some information in full or in part pursuant to subsection 30(2) of LA FOIP. It further indicated it was providing access in full to “the Work Standard used for managing the Do Not Hire List/Cautionary Hire List.”

[5] On January 24, 2024, my office received a request from the Applicant to review the timeline of the SHA's response and its decision to withhold a part of the record in full.

[6] In correspondence on January 26, 2024, the Applicant confirmed that they were requesting a review of the SHA's compliance with legislated timelines and the application of subsection 30(2) of LA FOIP to the record.

[7] In a letter dated February 12, 2024, the SHA reconsidered its application of subsection 30(2) of LA FOIP and released some records on the Applicant's employee personnel file but indicated, “access to the list was refused subject to subsection 30(2) of LA FOIP.”

[8] On March 12, 2024, my office sent notices to the SHA and the Applicant advising of my office's intent to undertake a review of the SHA's decision. My office requested that the SHA provide a copy of the record and an index of records to my office by April 11, 2024,

and its submission by May 13, 2024. The Applicant was also invited to provide a submission by May 13, 2024.

[9] In correspondence with my office on April 10, 2024, the SHA confirmed that its submission provided to my office on February 12, 2024, was its final submission on the matter. The SHA initially refused to provide a copy of the record to my office, however, after further communications with my office, on April 12, 2024, the SHA provided a page of the Cautionary Hire List.

II RECORDS AT ISSUE

[10] The record at issue is a page of a spreadsheet called a Cautionary Hire List (or Do Not Hire List as referred to by the Applicant). The SHA applied subsection 30(2) of LA FOIP to the information on the page.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Did the SHA respond to the Applicant within the legislated timelines?

[12] LA FOIP requires local authorities to respond to access to information requests within 30 days after the request is made. This requirement is set out in subsection 7(2) of LA FOIP which provides, in part:

7(2) The head shall give written notice to the applicant within 30 days after the application is made...

[13] The *Guide to LA FOIP*, Chapter 3, “Access to Records,” updated May 5, 2023 (*Guide to LA FOIP*, Ch. 3) at page 49, explains that subsection 7(2) of LA FOIP provides that within 30 days of receiving an access to information request, the local authority must provide a response to the applicant. The response should include one or more of the enumerated statements listed at subsection 7(2) of LA FOIP.

[14] Section 12 of LA FOIP provides that local authorities can extend the initial 30-day response deadline for a maximum of 30 more days. This means 60 days in total. However, this is only under limited circumstances, which are outlined in this section.

[15] Subsections 12(1)(a), (b), (2) and (3) are relevant to this review and provide:

12(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records; or

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the local authority;

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period;

...

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[16] Page 112 of the *Guide to LA FOIP*, Ch. 3, emphasizes that subsection 12(2) of LA FOIP provides that where a local authority intends to extend the response time, it must give notice of the extension to the applicant within the first 30 days following receipt of the access to

information request. If a local authority does not give notice within the original 30-day deadline, it is no longer able to request an extension as its lack of response constitutes a “deemed refusal” pursuant to subsection 7(5) of LA FOIP.

[17] The *Guide to LA FOIP*, Ch. 3, at page 50 provides that [*The Legislation Act*](#) (LA) establishes general rules that govern the interpretation of all statutory instruments in the province of Saskatchewan. Based on section 2-28 of LA, the following can be applied for calculating 30 days under LA FOIP:

- The first day the access request is received is excluded in the calculation of time.
- If the due date falls on a holiday, the time is extended to the next day that is not a holiday.
- If the due date falls on a weekend, the time is extended to the next day the office is open.
- As LA FOIP expresses the time in a number of days, that is interpreted as 30 calendar days, not business days.

[18] Applying LA FOIP and the LA, the due date for the delivery of the notice of extension under subsection 12(2) of LA FOIP is calculated as follows:

- November 21, 2023 – The date of receipt of the access to information request.
- November 22, 2023 – The first day for calculating the 30-day time period for responding to the access to information request under subsection 7(2) of LA FOIP.
- December 21, 2023 - The due date for the written decision under subsection 7(2) of LA FOIP and/or the notice of extension under subsection 12(2) of LA FOIP.

[19] The SHA in a letter to the Applicant dated January 8, 2024, issued a notice of time extension pursuant to subsection 12(1)(b) of LA FOIP. As the due date for the notice was December 21, 2023, the SHA did not meet its obligation under subsection 12(2) of LA FOIP.

[20] I find that the SHA did not comply with subsections 7(2) and 12(2) of LA FOIP.

[21] In my office's [Review Report 196-2022](#), I stated,

[16] As SHA's time extension did not comply with subsection 12(2) of LA FOIP, I find that it did not comply with section 12 of LA FOIP. In these circumstances, I need not consider SHA's reasons for extending the time pursuant to subsections 12(1)(a)(i), (ii) and (b) of LA FOIP.

[22] Also, in my office's [Review 297-2021](#), where I considered the equivalent provision of subsection 12(2) of LA FOIP in *The Freedom of Information and Protection of Privacy Act* (FOIP), I found that:

[12] ... subsection 12(2) of FOIP provides that a notice of extension must be provided to an applicant within the first 30 days after the government institution receives the request. ...As Justice provided its notice late, it did not comply with subsection 12(2) of FOIP.

[13] As Justice did not comply with subsection 12(2) of FOIP, I do not need to consider if its reason for the extension was appropriate...

[23] I find the same here. As SHA has not complied with subsection 12(2) of LA FOIP, then there is no need for me to consider whether it properly extended the time period pursuant to subsection 12(1) of LA FOIP.

[24] I have in past reports impressed on the SHA the need to ensure it is properly resourced to respond to access requests within the legislated timeline set out in LA FOIP. This is the fourth report I am issuing this year, after Review Reports [313-2023](#), [314-2023](#) and [315-2023](#) concerning the SHA's non-compliance with legislated timelines.

[25] Again, I recommend SHA ensure it is properly resourced to respond to access requests within the legislated timelines set out in sections 7 and 12 of LA FOIP.

3. Did the SHA properly apply subsection 30(2) of LA FOIP?

[26] The SHA applied subsection 30(2) of LA FOIP to information in the Cautionary Hire List that pertained to the Applicant.

[27] Subsection 30(2) of LA FOIP provides:

30(2) A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by the local authority, where the information is provided explicitly or implicitly in confidence.

[28] The *Guide to LA FOIP*, Chapter 6, "Protection of Privacy", updated February 27, 2023 (*Guide to LA FOIP*, Ch. 6) at page 252, provides that this provision attempts to address two competing interests: the right of an individual to have access to their personal information and the need to protect the flow of frank information to local authorities so that appropriate decisions can be made respecting the awarding of jobs, contracts, and other benefits.

[29] The *Guide to LA FOIP*, Ch. 6 at pages 253 to 255 also provides the following three-part test that must be met in order for the provision to be found to apply. All three parts of the test must be met:

1. Is the information personal information that is evaluative or opinion material?
2. Was the personal information compiled solely for one of the enumerated purposes?
3. Was the personal information provided explicitly or implicitly in confidence?

[30] The SHA provided a submission to my office along with a copy of its six-page Work Standard titled, *Cautionary Hire List Maintenance and Additions/Removals*. In its submission, the SHA provided the following arguments for why subsection 30(2) of LA FOIP applied:

Access to the list was refused subject to subsection 30(2) of LA FOIP. 30(2) permits the head to refuse to disclose to an individual personal information about that individual that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability for employment. The cautionary hire list provides a method for managers in the SHA to flag employees who, based on their previous working experience within the SHA, may not be suitable for future employment in the SHA. Whether or not an SHA employee is placed on the cautionary hire list as per the provided work standard is evaluative and based on the opinion of the employee's manager. As per the IPC's *Guide to LA FOIP*, "suitability" means the

appropriateness for a particular person, purpose or situation. A manager can consider the fact that an individual is on the cautionary hire list to assist in their determination of their suitability for future employment. As per the work standard, the manager submits information to Human Resources to place the former employee on the cautionary hire list. **That information is provided by the manager to HR in confidence, implicitly.** Therefore, the SHA will not disclose to the employee whether or not their name was placed on the cautionary hire list.

[Emphasis added]

[31] Section 51 of LA FOIP provides that the burden of establishing that access to a record applied for may or must be refused or granted is on the head concerned. In other words, the SHA must establish that subsection 30(2) of LA FOIP applies. Based on the one paragraph argument and copy of the Work Standard that has been provided to my office, I am unable to find that subsection 30(2) of LA FOIP applies.

[32] For example, for the third part of the test, the SHA should be establishing how the personal information is provided implicitly in confidence. As per page 255 of the *Guide to LA FOIP*, Ch. 6, *implicitly* means the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of understanding that the information be kept confidential. Factors considered when determining whether a document was provided in confidence *implicitly* include (not exhaustive):

- What is the nature of the information. Would a reasonable person regard it as confidential. Would it ordinarily be kept confidential by the party providing it or by the local authority.
- Was the information treated consistently in a manner that indicated a concern for its protection by the party providing it and the local authority from the point at which it was provided until the present time.
- Is the information available from sources to which the public has access.
- Does the local authority have any internal policies or procedures that speak to how records or information such as that in question are to be handled confidentially.
- Was there a mutual understanding that the information would be held in confidence.

- [33] By simply providing that the information is “provided by the manager to HR in confidence implicitly,” SHA has not met the burden of proof required by section 51 of LA FOIP. I would have expected further arguments to support why this is so. The Work Standard was provided but if this was relevant to the statement made, the SHA did not point to anything in it to support its statement. Based on these points, I find that the burden of proof is not met, and the third part of the test is therefore not met.
- [34] As all three parts of the test must be met, there is no need to go further in my analysis. In conclusion, I find that the SHA has not properly applied subsection 30(2) of LA FOIP to the information withheld in the Cautionary Hire List.
- [35] This finding is consistent with my office’s [Review Report 011-2024](#), issued less than a month ago, that considered the SHA’s application of subsection 30(2) of LA FOIP to a Cautionary Hire List in response to another access to information request.
- [36] In Review Report 011-2024, I highlighted my concerns with the SHA’s resistance to providing my office with cautionary hire lists required to conduct my review. I re-emphasize my concerns and ask that, in the future, SHA promptly provide any such lists to ensure a seamless review. I hope I do not have to resort to issuing a summons to get the complete list.
- [37] Finally, I would want to reiterate my observation on the SHA’s Cautionary Hire Lists as provided in paragraph [19] of Review Report 011-2024:

[19]...the existence of these lists poses access and privacy issues that should be considered by the SHA. For example, the SHA’s aforementioned Work Standard sets out the steps required to place someone on the list and the process regarding ongoing maintenance of the list. It states that all external resumes, including contractors, must be checked against the cautionary hire list prior to any offer being made. This step is done by employees in Workforce Planning & Employment Strategies. It also appears other departments may have access to the list. Who all has access to this list across the SHA is a privacy concern. How are potential breaches of privacy related to this list being caught and handled? If the SHA is reluctant to be transparent with individuals about being on the list and why, how are individuals supposed to challenge these decisions? I encourage the SHA to reconsider its use of these lists unless it can demonstrate that all access and privacy related concerns are adequately addressed.

[38] In response to my Review Report 011-2024, the SHA clarified that the Cautionary Hire List was not shared with any departments. The SHA further added that “the list is in the custody and control of the Workforce Planning & Employment Strategies (WPES) unit of the SHA. As per the submitted work standard, WPES checks applicants against the cautionary hire list prior to the applicant’s name being sent to the hiring manager. The hiring manager would then need to inquire with WPES as to why the applicant is flagged as a cautionary hire.” While I appreciate the clarification, this does not alleviate my concerns noted in my Review Report 011-2024. For example, how large is the WPES unit, how does the SHA restrict access to the list, how is access audited, how can individuals challenge decisions of the SHA to put individuals on it, and how is the SHA meeting its duty under section 26 of LA FOIP to ensure accuracy and completeness of the personal information it is using when it decides to place an individual on this list? I could continue but as I stated in my Review Report 011-2024, I again encourage the SHA to reconsider its use of these lists unless it can demonstrate that all access and privacy related concerns are adequately addressed.

IV FINDINGS

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

[40] I find that the SHA did not comply with subsections 7(2) and 12(2) of LA FOIP.

[41] I find that the SHA did not properly apply subsection 30(2) of LA FOIP to the page of the Cautionary Hire List in question.

V RECOMMENDATIONS

[42] I recommend that the SHA ensure it is properly resourced to respond to access requests within the legislated timelines set out in sections 7 and 12 of LA FOIP.

[43] I recommend that the SHA release the information requested by the Applicant within 30 days from the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 19th day of August, 2024.

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