



REVIEW REPORT 022-2023, 028-2023

Saskatchewan Health Authority

August 29, 2023

Summary:

Two Applicants made access to information requests under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Saskatchewan Health Authority (SHA). SHA extended the time for responding to the requests. It subsequently issued two decisions denying access to portions of the responsive records. In relation to one request, SHA claimed that portions of the records were exempt pursuant to subsections 16(1)(a), (b), (d), and 28(1) of LA FOIP. In the other request, it claimed that portions were exempt pursuant to subsection 28(1) of LA FOIP. The Applicants asked the Commissioner to review the timeliness of SHA's response and its decision to apply exemptions. The Commissioner issued one Report addressing the two requests. The Commissioner found that SHA did not comply with sections 7 and 12 of LA FOIP in both cases. He also found that SHA properly applied subsection 28(1) of LA FOIP to some information but not all. Additionally, he found that SHA properly applied subsection 16(1)(b) of LA FOIP to some information. With respect to some personal information, the Commissioner found that SHA did not properly exercise its discretion pursuant to subsection 28(2)(n)(i) of LA FOIP and subsection 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Act Regulations* (LA FOIP Regulations). The Commissioner recommended that, within 30 days of issuing this Report, SHA release to the Applicants the information that he found was not exempt and continue to withhold information where the SHA properly applied an exemption. He also recommended that, within 30 days of the issuing this Report, SHA reconsider the exercise of its discretion under subsections 28(2)(n)(i) of LA FOIP and 10(g)(ii) of the LA FOIP Regulations.

I BACKGROUND

- [1] The Saskatchewan Health Authority (SHA) received an access to information request (Request 073) under *The Local Authority Freedom of Information and Protection of*

Privacy Act (LA FOIP) from Applicant #1 on December 10, 2021. Applicant #1 sought access to the following information:

The terms and circumstances under which SHA [title and name redacted] and [title and name redacted] ceased to be employees of SHA in 2021, including the terms of any settlement or award resulting from employment being terminated, pursuant to LA FOIP Regulations Section 10(g)(ii).

- [2] On December 17, 2021, SHA sent Applicant #1 a letter requesting payment of an application fee pursuant to subsection 5(1) of *The Local Authority Freedom of Information and Protection of Privacy Act Regulations* (LA FOIP Regulations). The SHA subsequently advised this letter was sent in error and that it had received the application fee on December 10, 2021.
- [3] On January 3, 2022, SHA sent Applicant #1 a notice of extension of the timeline for responding to the access to information request to February 6, 2022. It stated that it was extending the time by 30 days pursuant to subsections 12(1)(a)(ii) and (b) of LA FOIP.
- [4] On January 18, 2023, SHA issued a decision to Applicant #1 pursuant to section 7 of LA FOIP releasing portions of the responsive records and denying access to portions pursuant to subsections 16(1)(a), (b), (d) and 28(1) of LA FOIP.
- [5] SHA's section 7 decision also stated that the head considered subsection 28(2)(n)(i) of LA FOIP and subsection 28(2)(s) of LA FOIP, with subsection 10(g) of the LA FOIP Regulations, and decided not to exercise discretion to release the records under those provisions.
- [6] On January 26, 2023, Applicant #1 filed a request for a review with my office seeking a review of SHA's decision to withhold portions of the responsive records. My office opened Review File 022-2023.
- [7] On February 21, 2023, my office sent a notice of review to SHA and Applicant #1. The notice invited the parties to provide a submission on the exemptions claimed to withhold the records or portions of records, the appropriateness of the extension of time and the

timeliness of SHA's response. The notice also invited SHA to provide an explanation of its decision not to exercise its discretion to disclose some personal information.

[8] SHA provided its Index of Records and redacted and unredacted versions of the responsive records to my office on March 22, 2023. It provided its submission on May 12, 2023. Applicant #1 did not provide a submission.

[9] SHA received an access to information request (Request 074) under LA FOIP and application fee from Applicant #2 on December 22, 2021. Applicant #2 sought access to the following information:

 Emails concerning the work status of former [title and name redacted] from March 2020 to present. Any emails concerning the resignation of former [second title and name redacted]. The resignation letter of [name redacted].

[10] On January 10, 2022, SHA sent Applicant #2 a notice of extension of the timeline for responding to the access to information request by 30 days pursuant to subsections 12(1)(a)(i), (ii) and (b) of LA FOIP.

[11] On January 12, 2022, Applicant #2 wrote to SHA clarifying the access to information request as follows:

 1. Emails concerning the work status of former [title and name redacted] from March 2020 to present.

 We are looking for any correspondence from former [title and name redacted] regarding former [title and name redacted]'s work status, including but not limited to any remote work outside of the province performed by [name redacted] [their] retirement, [name redacted] taking over [title redacted] duties, any questions about [their] return to in-office work in Saskatchewan, from March 1 2020-present.

 2. Any emails concerning the resignation of former [title and name redacted].

 We are looking for emails and correspondence between SHA and Ministry of Health senior leadership regarding former [title and name redacted]'s resignation, including but not limited to the reason for [their] resignation, the timeline for [their] departure from the position and discussion among senior leadership about the resignation, from Nov. 1 2021 to Dec. 17 2021.

Senior leadership includes [name redacted], SHA board chairperson [name redacted], Minister of Health [name redacted], Deputy Minister [name redacted], Associate Deputy Minister [name redacted] and Assistant Deputy Minister [name redacted].

- [12] Between May 16, 2022 and August 24, 2022, Applicant #2 and SHA staff exchanged correspondence regarding the status of the access to information request.
- [13] On January 18, 2023, SHA issued a decision to Applicant #2 pursuant to section 7 of LA FOIP releasing portions of the responsive records and denying access to portions pursuant to subsection 28(1) of LA FOIP.
- [14] SHA's section 7 decision also stated that the head considered subsection 28(2)(n)(i) of LA FOIP and subsection 28(2)(s) of LA FOIP, with subsection 10(g) of the LA FOIP Regulations, and decided not to exercise its discretion to release the records under those provisions.
- [15] On February 6, 2023, Applicant #2 filed a request for a review with my office seeking a review of SHA's decision to withhold portions of the responsive records. My office opened Review File 028-2023.
- [16] On February 22, 2023, my office sent a notice of review to SHA and Applicant #2. The notice invited the parties to provide a submission on the exemptions claimed to withhold the records or portions of records, the appropriateness of the extension of time and the timeliness of SHA's response. The notice also invited SHA to provide an explanation of its decision not to exercise its discretion to disclose some personal information.
- [17] The SHA provided its Index of Records and redacted and unredacted versions of the responsive records to my office on March 22, 2023. It provided its submission on May 12, 2023. Applicant #2 did not provide my office with a submission.
- [18] The issues raised in Review File 022-2023 and 028-2023 are similar. All the information at issue in Review File 028-2023 is also at issue in Review File 022-2023. Therefore, I have decided to issue one report addressing the issues in both files.

II RECORDS AT ISSUE

[19] In Review File 022-2023 (Request 073), SHA identified nine pages of responsive emails, letters and attachments. It released two pages in full, five pages in part and withheld two pages in full. For Review File 028-2023 (Request 074), SHA identified seven pages of responsive records. It released two pages in full, three pages in part and withheld two pages in full.

[20] In its submission, SHA withdrew its claim that subsection 16(1)(d) of LA FOIP applied to some records. Therefore, this exemption is no longer at issue here.

[21] The following table describes the pages at issue and the exemptions applied by SHA:

Request No and Page No.	Description	LA FOIP Exemptions Applied
Request 073, p. 1	Email dated Oct. 25, 2023	Subsection 28(1) in part
Request 073, pp. 2-3, and their duplicates (Request 074, Part 1, pp. 4-5)	Two-page document signed on Oct. 25, 2021	Subsection 28(1) in full
Request 073, pp. 5-6 and their duplicates (Request 074, Part 1, pp. 2-3)	Letter dated Oct. 21, 2021	Subsection 28(1) in part
Request 073, p. 7	Email dated Oct. 25, 2021	Subsections 16(1)(a), 16(1)(b) and 28(1) in part
Request 073, p. 9 and its duplicate (Request 074, Part 2, p. 2)	Letter dated Nov.24, 2021	Subsection 28(1) in part

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Did SHA comply with sections 7 and 12 of LA FOIP?

[23] 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:

[24] Section 12 of LA FOIP gives a local authority the right to extend this initial 30-day response deadline for a maximum of 30 more days in defined circumstances. This means 60 days in total.

[25] The circumstances where a local authority can extend the time are set out in subsection 12(1) of LA FOIP. Subsection 12(2) of LA FOIP requires a local authority to provide notice of its extension within 30 days after the access to information request is made.

[26] Subsection 12(3) of LA FOIP requires that a local authority give written notice to the applicant of its decision in accordance with section 7 within the period of the extension.

[27] *The Legislation Act* (LA) establishes the rules that govern the interpretation of all statutory instruments in the province. According to section 2-28 of the LA, the timelines set out in LA FOIP are calculated as follows:

- 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; and
- As LA FOIP expresses the time in a number of days, this is interpreted as 30 calendar days, not business days.

(*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated: June 29, 2021 [*Guide to LA FOIP*, Ch. 3] page 29)

[28] With respect to the timelines in Review File 022-2023 (Request 073), the due date for the delivery of the notice of extension under subsection 12(2) of LA FOIP and the extended due date for the decision under section 7 and subsection 12(3) of LA FOIP are calculated as follows:

- December 10, 2021 – the date of receipt of the access to information request and application fee.
- December 11, 2021 – 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.
- January 10, 2022 – 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.
- January 11, 2022 – the first day for calculating the allowable 30-day extended time period under subsection 12(1) of LA FOIP.
- February 10, 2022 – the due date for the decision under subsection 12(3) of LA FOIP where the extension is for the maximum allowable time period of 30 days.

[29] In Review File 028-2023 (Request 074), the timelines are calculated as follows:

- December 22, 2021 – the date of receipt of the access to information request and application fee.
- December 23, 2021 – 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.
- January 21, 2022 – 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.
- January 24, 2022 – the first day for calculating the allowable 30-day extended time period under subsection 12(1) of LA FOIP.
- February 22, 2022 – the due date for the decision under subsection 12(3) of LA FOIP where the extension is for the maximum allowable time period of 30 days.

[30] In Review File 022-2023 (Request 073), SHA's notice of time extension was issued on January 3, 2022. As the due date for the notice was January 11, 2022, its notice of time extension was issued within the time required under subsection 12(2) of LA FOIP.

- [31] In Review File 028-2023 (Request 074), SHA's notice of time extension was issued on January 10, 2022. The due date for the notice was January 21, 2022. Therefore, its notice was issued within the time required under subsection 12(2) of LA FOIP.
- [32] In both files, however, the SHA failed to comply with subsection 12(3) of LA FOIP which requires local authorities to issue decisions pursuant to subsection 7(2) of LA FOIP within the time period set out in the extension. Also in both files, SHA did not issue its section 7 decisions until January 18, 2023 – approximately 11 months after the due date. Therefore, SHA was not in compliance with subsection 12(3) of LA FOIP. I do not need to consider if it had the authority to extend the time. I find that SHA did not comply with sections 7 and 12 of LA FOIP in both files.
- [33] This is the fourth report issued this year where my office has found that SHA has failed to respond to an access to information request within the time required by LA FOIP. In my office's [Review Report 196-2022](#) and [Review Report 216-2022](#), I recommended that SHA review its policies and procedures for responding to access to information requests and make any changes necessary to ensure that it processes requests within the legislated timelines. In response to these reports, the SHA agreed to comply with the recommendations.
- [34] While I am not reviewing its reasons for the late responses, SHA acknowledged that it did not send its section 7 decisions within the time required by LA FOIP. In its submission to my office, it apologized to the Applicants for the extensive delays. It asserted that it had experienced a significant increase in access to information requests. It added that it receives an average of seven access to information requests per month and in December 2021 it received 13 requests or a 53.8% increase. It claimed that given the increase in requests, responding within the initial 30 days would have unreasonably interfered with the duties of the Privacy Office. SHA also asserted that it took steps to address the increase in volume. Within a month of receiving these requests, it had filled two full time positions and was working to reduce a backlog created by the vacancies, and to train and orient the new team members.

[35] The delay of approximately 11 months in issuing the section 7 decisions is significant. I appreciate that SHA has taken steps to address the issue. In future, SHA should be mindful of its obligations to respond to access to information requests within the time required by LA FOIP.

3. Did SHA properly apply subsection 28(1) of LA FOIP?

[36] SHA withheld information on the following pages pursuant to subsection 28(1) of LA FOIP:

Request 073 – pages 1, 2-3 (and their duplicates), 5-6 (and their duplicates), 7 and 9 (and its duplicate)

[37] Subsection 28(1) of LA FOIP is a mandatory exemption that prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure, or if the disclosure is authorized by one of the subsections of 28(2) or section 29 of LA FOIP (*Guide to LA FOIP*, Chapter 6: “Protection of Privacy”, updated: February 27, 2023, [*Guide to LA FOIP*, Ch. 6], page 164).

[38] 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.

[39] For subsection 28(1) of LA FOIP to apply, the information in question must qualify as “personal information.” Subsection 23(1) of LA FOIP defines “personal information” and provides examples of the types of information that qualify as personal information. Subsection 23(2) of LA FOIP sets out the exceptions applicable to employment related information about officers or employees of a local authority. When information does not constitute personal information, the rules under Part IV of LA FOIP do not apply (*Guide to LA FOIP*, Ch. 6, p. 81). The following subsections are relevant in this review:

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:

...

(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;

(e) the home or business address, home or business telephone number, fingerprints or blood type 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.

...

23(2) "Personal information" does not include information that discloses:

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

[40] The list of examples in subsection 23(1) of LA FOIP is not exhaustive. Other types of information could qualify as personal information. To constitute personal information, two elements must be present. The information must be about an identifiable individual and the information must be personal in nature (*Guide to LA FOIP*, Ch. 6, at p. 39).

[41] I now turn to consider if the information at issue is personal information and if it is exempt pursuant to subsection 28(1) of LA FOIP.

Page 1 and the attachments at pages 2 and 3

[42] SHA withheld a personal email address and associated name from page 1 claiming that it qualified as the individual's personal information pursuant to subsection 23(1)(e) of LA FOIP. It cited my office's *Guide to LA FOIP*, Ch. 6, at p. 58.

- [43] The context for the email is important. It was sent on October 25, 2021. At that time, the sender was no longer an employee of SHA. Consequently, the email was sent in a personal as opposed to professional capacity. I note that the email address and associated name is personal and identifies the sender. Previous reports of my office, such as Review Reports [018-2023](#), and [118-2020](#), have found that personal email addresses used in personal contexts qualify as personal information. Following the same approach here, I find that the personal email address is personal information pursuant to subsection 23(1)(e) of LA FOIP. It appears that the individual involved did not consent to the release of the information. Therefore, I find that SHA properly applied subsection 28(1) of LA FOIP to this information.
- [44] SHA also claimed that the subject line of this email qualified as personal information, but it did not specify which clause in subsection 23(1) of LA FOIP applied. However, it asserted that release of the subject line would reveal the circumstances surrounding the conclusion of the sender's employment. I will consider if the subject line qualifies as employment history information pursuant to subsection 23(1)(b) of LA FOIP.
- [45] Previous reports issued by my office, including [Review Report 035-2019](#) and [Review Report 037-2021](#), have found that the term "employment history" as used in subsection 23(1)(b) of LA FOIP includes the type of information normally found in a personnel file, such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job or leave transactions. It could also include the start date and end date of employment.
- [46] The subject line of the email on page 1 describes the attached record which appears on page 2. SHA withheld page 2 (and its duplicate) in full. Similar types of records were at issue in my office's [Review Report 035-2019](#). In considering if the information in those records qualified as employment history, I adopted the approach taken by the Ontario Information and Privacy Commissioner's office (ON IPC) in [M-173](#) and [MO-2293](#). In those orders, the ON IPC found that while agreements, such as releases and undertakings may arise out of a pre-existing employment relationship, the details of the arrangements put in place to end the employment connection would not qualify as employment history. I will follow the same approach here.

[47] I find that the subject line of the email on page 1 and the attachment on page 2 would not qualify as employment history information pursuant to subsection 23(1)(b) of LA FOIP, as they describe and set out the details of the arrangements put in place to end the employment relationship. I find that SHA did not properly apply subsection 28(1) of LA FOIP to the subject line of the email on page 1 and the contents of page 2. I recommend that, within 30 days of issuance of this Report, SHA release the subject line of the email to Applicant #1. As page 2 and its duplicate, Part 1, p. 4, were responsive to both Request 073 and 074, I recommend that, within 30 days of issuance of this Report, SHA release those pages to Applicants #1 and #2, except for the signatures which I address below.

[48] Page 3 and its duplicate (Part 1, p. 5) is an affidavit of witness. It includes information about the individual who witnessed the individual's signature on page 2. As the witness was acting in a personal capacity, their name, profession, address and signature qualify as personal information pursuant to subsections 23(1)(b), (e) and (k) of LA FOIP, respectively. I find that SHA properly applied subsection 28(1) of LA FOIP to this information and it should continue to withhold it.

[49] Paragraph 1 of the affidavit describes the matter that the witness is attesting to. Release of this paragraph would not identify the witness and would not reveal any personal information of the witness. Nor does paragraph 1 qualify as the personal information of the individual who signed page 2, as it relates to the arrangements put in place regarding the cessation of their employment. I also note that the witness swore the affidavit before a Notary Public or Commissioner of Oath. The information about the Notary/Commissioner, including their signature, does not qualify as personal information. I recommend that, within 30 days of issuance of this Report, SHA release all of page 3, but for the information referred to in paragraph [48] to the Applicants.

Pages 5-6

[50] Pages 5-6 (and their duplicates) describe the arrangements put in place to conclude the individual's employment relationship. I find that the withheld information does not qualify as employment history information, except for two dates discussed below.

[51] Page 5 includes the end date of the subject individual's employment and the date of signing their employment contract. This information qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP. Therefore, I find that SHA properly applied subsection 28(1) of LA FOIP to the two dates but did not properly apply subsection 28(1) of LA FOIP to the remaining information on pages 5 and 6. I recommend that, within 30 days of issuance of this Report, SHA release pages 5 and 6, and their duplicates, to the Applicants, except for the two dates. I will consider the signature that appears on page 5 below.

Page 7

[52] SHA asserted that the information withheld from the email on page 7, which is responsive to Request 073 only, contains details regarding the subject individual's "working arrangements" and qualifies as their personal information pursuant to subsection 23(1)(b) of LA FOIP.

[53] Page 7 is an email from senior SHA human resources staff to other senior SHA staff. SHA released the information about the sender, recipient, subject line and the salutation. The first to fourth bullet points include information about the subject individual's working circumstances and the conclusion of the employment relationship. The withheld information is the kind of information that would appear in a personnel file. Therefore, I find that it qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP. As there is no suggestion that the subject individual consented to the release of this information, I find that SHA properly applied subsection 28(1) of LA FOIP.

[54] The fifth bullet point describes the financial compensation to be provided to the subject individual. I find that this qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP, because it is a financial transaction involving the subject individual and for the reasons set out below, it does not fall within the exception in subsection 23(2)(a) of LA FOIP.

[55] The financial compensation at issue is a severance payment. Severance payments are characterized and calculated as "pay in lieu of notice," but their essential character is that

of damages and the purpose is to place the individual in the position they would have been but for the breach of contract. Severance payments cannot be considered as bestowing any advantage or betterment on the recipient. Severance payments do not fall within the exception set out in subsection 23(2)(a) of LA FOIP as they are not discretionary benefits (*Guide to LA FOIP*, Ch. 6, p. 82).

- [56] The other information withheld from page 7, such as the first line of the email, the last line and the sixth and seventh bullet points do not contain any information that would qualify as employment history. As the information does not reveal anything of a personal nature, I find that it does not qualify as personal information. Therefore, I find that SHA did not properly apply subsection 28(1) of LA FOIP to this information. I will consider if this information is exempt pursuant to subsections 16(1)(a) and (b) of LA FOIP under issue 4 below.

Page 9

- [57] SHA claimed that the body of the letter withheld from page 9, and its duplicate, qualifies as personal information of the author pursuant to subsection 23(1)(b) of LA FOIP. It asserted that the information qualifies as employment history information under subsection 23(1)(b) of LA FOIP because it contains the terms and circumstances of the subject individuals' departure from the SHA. It also claimed that the personal mailing and email address severed from the top of the page qualify as personal information.
- [58] Turning first to the body of the letter, this record is identical to a record found at page 48 of the records at issue in my office's [Review Report 017-2023](#). In Review Report 017-2023, I stated:

- [34] SHA withheld the body of a letter dated November 24, 2021 from page 48. While I cannot reveal the contents of the letter, it contains information that would normally appear in a personnel file such as information surrounding the termination of an employment contract. This is consistent with findings made by my office in previous reports such as [Review Report LA-2007-001](#) and [Review Report 097-2017](#). Therefore, I find that the withheld information qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP. As there is no

suggestion that SHA had consent to release the information, I find that SHA properly applied subsection 28(1) of LA FOIP.

[59] These findings apply equally to page 9 (and its duplicate). Therefore, I find that the body of the letter on page 9, and its duplicate, qualify as the personal information of the author of the letter pursuant to subsection 23(1)(b) of LA FOIP. Given that there is no suggestion that the author consented to the release of the information, I find that SHA properly applied subsection 28(1) of LA FOIP.

[60] Turning to the email and mailing addresses on page 9, in my office's [Review Report 017-2023](#), I found that the letter was written by the individual, a senior employee of SHA, in their capacity as a senior employee and related to their ongoing role as a senior employee. For these reasons, I found that the letter was written in a professional capacity. I have consistently found that email addresses used in a business or professional capacity and context, are not personal information. See for example my office's [Review Report 138-2021, 185-2021](#). This finding applies equally to the personal mailing address. Even though the letter may contain information that qualifies as personal information, in the circumstances before me this does not change the fact that the context for the letter was professional, or business related.

[61] Accordingly, the personal email and mailing addresses on page 9, do not qualify as the personal information of the author of the letter. I find that SHA did not properly apply subsection 28(1) to this information. I recommend that SHA release the personal email and mailing addresses on page 9 and its duplicate to the Applicants. In the discussion that follows I will consider if the signature on page 9 is exempt.

Handwritten signatures

[62] SHA also withheld handwritten signatures from the following pages:

Request 073, pages 2 and 3 (and their duplicates), 5 (and its duplicate) and 9 (and its duplicate)

[63] SHA asserted that the signatures qualified as personal information pursuant to subsection 23(1)(d) of LA FOIP. It claimed that the signature is a symbol which is unique to the identifiable individual. It added:

It is not our practice to redact signatures, however given the circumstances and potential for the information to be published there is an increased potential for misuse. The SHA protected the signature as this information was identified by the RCMP as potentially being used for identity theft (*Guide to LA FOIP*: Chapter 6 on page 15)

[64] Handwritten signatures may not constitute personal information where they appear in records that are generated as part of an individual's work product. See for example, my office's [Review Report 149-2019, 191-2019](#). In that report, I explained work product is information generated by or otherwise associated with an individual in the normal course of performing their professional or employment responsibilities, whether in a public or private setting. Where the signature appears in a record that relates to a personal matter and was prepared in a personal context, the signature may qualify as the individual's personal information (see for example, my office's [Review Report 156-2015](#)).

[65] Regarding pages 2 and 3, the handwritten signatures of a former SHA employee appear in records which were prepared in a personal context or in the individual's personal capacity because at the time of signing, the individual was no longer an employee of SHA. I find that the individual's signature qualifies as personal information pursuant to subsection 23(1) of LA FOIP. I find that SHA properly applied subsection 28(1) of LA FOIP to the signatures.

[66] Pages 2 and 3 also contain the signature of a witness. As the witness was not acting in a professional or work capacity at the time of signing, and the individual is identifiable from the other information in the records, I find that the signature qualifies as their personal information.

[67] Pages 5 and 9 are two letters written by the same person. The individual's signature was withheld from the pages. The Applicants are aware of the identity of the author because SHA released portions of these letters that reveal their identity.

[68] The letter on page 5 is official or work-related correspondence regarding another SHA staff member. It is the author's work product. Therefore, the individual's signature appears in a professional context, and I find that it does not qualify as personal information. The signature on page 9 was also at issue in my office's [Review Report 017-2023](#). As I found above, this letter was written in a professional capacity, the signature would not qualify as personal information. Therefore, I find that SHA did not properly apply subsection 28(1) of LA FOIP to the signatures on pages 5 and 9. I recommend that SHA release them to the Applicants.

[69] Further, I note that at the time of the issuance of this Report, the individual's signature was available publicly on the internet.

[70] I turn to address SHA's discretion to disclose personal information withheld from pages 2-3 (and their duplicates), 5-6 (and their duplicates), 7 and 9 (and its duplicate). Although subsection 28(1) of LA FOIP indicates that consent of the data subject is required before disclosure may occur, subsection 28(2) of LA FOIP provides a government institution with the ability, in some circumstances, to exercise its discretion and disclose personal information without consent. As noted above, my office's notice of review invited SHA to make a submission on whether it properly considered LA FOIP subsections 28(2)(n)(i), and 28(2)(s), together with subsection 10(g)(ii) of the LA FOIP Regulations.

Subsections 28(2)(n)(i) of LA FOIP and 10(g)(ii) of the LA FOIP Regulations

[71] Subsections 28(2)(n)(i) and (s) of LA FOIP state:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...

(n) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or

...

...
(s) as prescribed in the regulations.

[72] Subsection 28(2)(n)(i) of LA FOIP gives a local authority discretion to disclose personal information about an individual without consent for any purpose where the public interest in disclosure clearly outweighs any invasion of privacy that could result from disclosure. This provision requires the exercise of discretion by the “head” of the local authority. Disclosure can be for any purpose provided the criteria in subsection 28(2)(n)(i) of LA FOIP are met (*Guide to LA FOIP*, Ch. 6, p. 213).

[73] A local authority can use the following test to determine if it has discretion to disclose pursuant to subsection 28(2)(n)(i) of LA FOIP:

1. Is the information “personal information” as defined by LA FOIP?
2. Is there a public interest in the personal information?
3. Does the public interest clearly outweigh any invasion of privacy?

(*Guide to LA FOIP*, Ch. 6, p. 213)

[74] Public interest means the interest of the public or of a group of individuals. It does not include the interest of only one individual. The criteria for assessing whether there is a public interest in information are as follows:

- (1) Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?
- (2) Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public?
- (3) If the records are about the process or functioning of the local authority, will they contribute to open, transparent, and accountable government?

(*Guide to LA FOIP*, Ch. 6, pp. 217-218)

[75] A public interest is not automatically established where the media is involved (*Guide to LA FOIP*, Ch. 6, p. 215).

[76] Regarding part three of the test, my office's *Guide to LA FOIP*, Ch. 6, at pp. 217-218 states that local authorities should apply the "invasion of privacy" test to determine the level of privacy risk in the disclosure. This involves a detailed review of three risk factors. The risk factors are the sensitivity of the information, the expectation of the individual to whom the information relates, and the probability and degree of injury.

[77] Subsection 10(g)(ii) of the LA FOIP Regulations also creates an exception to the mandatory exemption in subsection 28(1) of LA FOIP. It gives discretion to disclose personal information in some circumstances. It states:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

...

(g) to any person where the information pertains to:

...

(ii) the terms or circumstances under which a person ceased to be an employee of a local authority, including the terms of any settlement or award resulting from the termination of employment;

[78] As noted in my office's [Investigation Report 296-2017](#), for subsection 10(g)(ii) of the LA FOIP Regulations to apply, the personal information must either pertain to:

- i) the terms under which a person ceased to be an employee of a local authority;
- or
- ii) the circumstances under which a person ceased to be an employee of a local authority.

[79] The term "employee" is defined in subsection 2(1)(b.1) of LA FOIP which states:

2(1) In this Act:

...

(b.1) "employee" means an individual employed by a local authority and includes an individual retained under a contract to perform services for the local authority;

[80] My office's [Investigation Report 296-2017](#) was the first time that it had the opportunity to consider subsection 10(g)(ii) of the LA FOIP Regulations. Relying on definitions in

Black's Law Dictionary, Tenth Edition, and *The Concise Oxford English Dictionary*, I stated:

[19] My office's view is that in the context of subsection 10(g)(ii) of the Regulations, "terms" means any contractual obligation of the local authority or the individual related to a termination of employment. ...

[20] "Circumstances under which a person ceased to be an employee of a local authority" means something different. *The Concise Oxford English Dictionary* defines "circumstance" as "a fact or condition connected with or relevant to an event or action". ...

[21] It is also important to note that this is a discretionary clause. In other words, even if the personal information in question meets the criteria set out in subsection 10(g)(ii) of the Regulations, the local authority is not obligated to disclose it.

[81] With respect to the discretion to disclose under these provisions, SHA asserted:

The head of the SHA considered section 28(2)(n)(i) and found that the public interest in the disclosure does not clearly outweigh any invasion of privacy that could result from the disclosure. The head further considered section 28(2)(s) and section 10(g)(ii) of the Regulations and decided not to exercise discretion to the release of these records as the records contained details about the terms and circumstances under which [title redacted] ceased to be an employee of the SHA.

The records withheld pursuant to section 28(1) were primarily related to the terms and circumstances under which [individual's title] ceased to be an employee of the SHA. While it could be argued that there is a public interest in the records given the multiple access to information requests received by the SHA surrounding this subject matter, the information responsive is the personal information of the former [title] who is entitled to the protection of their information. The former [title] departure from the SHA is public knowledge, however the terms and circumstances surrounding the departure qualify as personal information under 23(1)(b) as explained in the table above.

[82] As noted above, the Applicants did not provide a submission.

[83] If I find that subsections 28(1)(n)(i) of LA FOIP and subsection 10(g)(ii) of the LA FOIP Regulations apply to the circumstances here, my authority is limited to a review of SHA's exercise of discretion. However, I will not substitute my discretion for that of the head.

[84] Regarding the factors that should be taken into account when exercising discretion to release information, in my office's [Review Report 173-2018](#) I stated:

[31] A discretion conferred by statute must be exercised consistently with the purposes underlying its grant. It follows that to properly exercise this discretion, the head must weigh the considerations for and against disclosure, including the public interest in disclosure (*Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 at [46]). Some factors that should be taken into account when exercising discretion include:

- the general purposes of the Act (i.e. government institutions should make information available to the public, and individuals should have access to personal information about themselves);
- the wording of the discretionary exemption and the interests which the exemption attempts to protect or balance;
- whether the applicant's request may be satisfied by severing the record and providing the applicant with as much information as is reasonably practicable;
- the historical practice of the government institution with respect to the release of similar types of records;
- the nature of the record and the extent to which the record is significant or sensitive to the government institution;
- whether the disclosure of the information will increase public confidence in the operation of the government institution;
- the age of the record;
- whether there is a definite and compelling need to release the record; and
- whether the Commissioner's recommendations have ruled that similar types of records or information should be released.

[32] The Supreme Court of Canada in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, (2010) SCC 23, confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exemption and to return the matter for reconsideration to the head of the government institution. The Court also considered the following factors to be relevant to the review of discretion:

- the decision was made in bad faith;

- the decision was made for an improper purpose;
- the decision took into account irrelevant considerations; or
- the decision failed to take into account relevant considerations.

Analysis - Subsection 28(2)(n)(i)

[85] An analysis of subsection 28(2)(n)(i) of LA FOIP requires first a determination of whether the provision applies and then a review of the exercise of discretion under that section. In terms of the application of the provision, I have already found that the following information qualifies as personal information:

page 1 - personal email address
page 2 - address information on first line and last line and signatures
page 3 - witness's profession, address, name and signature
pages 5 - body of letter
page 7 - first to fifth bullet points
page 9 – body of letter

[86] I now turn to consider if SHA met part two of the test. The broader context for these requests relates to the cessation of employment of two senior SHA staff. I find that the release of information that I have found to be personal on pages 1, 2, 3 and 5 would not shed light on any matters of public interest. Nor would it reveal any information about the activities of the SHA at the material time. Therefore, I find that the second part of the test for the application of subsection 28(2)(n)(i) of LA FOIP has not been met. It is not necessary for me to consider part three. Accordingly, I find that subsection 28(2)(n)(i) of LA FOIP does not apply to this information.

[87] Regarding page 9 and part two and three of the test, I will follow the approach taken in [Review Report 017-2023](#) where the same record was at issue. In that report, I stated:

[57] Having carefully considered the submissions of the Applicant and SHA, it appears that there is a public interest in the information withheld from page 48 because its release may shed some light on issues of concern to the public and on the activities of the local authority. In its submission, SHA appeared to agree that there may be a public interest in the information. For example, it stated: “While it could be argued that there

is a public interest in the records given the multiple access to information requests received by the SHA surrounding this subject matter ...”. My office has received three requests for review that involve records that relate to the conclusion of the affected party’s employment. I also note that the circumstances surrounding the employment were the subject of discussion in many media outlets and in other public forums. For these reasons, I find that part two of the test has been met.

[58] Regarding the third part of the test, SHA asserted that the public interest does not outweigh any invasion of privacy that would result from the release. It added:

the information [...] is the personal information of the former [title] who is entitled to the protection of their information. The former [title] departure from the SHA is public knowledge, however the terms and circumstances surrounding the departure qualify as personal information under 23(1)(b) ...

[59] SHA provided little information about how it arrived at its conclusion. Therefore, it is not apparent if SHA considered factors such as the expectation of the individual to whom the information relates and the probability and degree of injury that would result from release of the information. For these reasons, I find that SHA did not properly exercise its discretion to disclose the personal information withheld from page 48 pursuant to subsection 28(2)(n)(i) of LA FOIP. I recommend that, within 30 days of issuance of this Report, SHA reconsider the exercise of its discretion pursuant to subsection 28(2)(n)(i) of LA FOIP for information withheld from page 48 and consider if it can release additional information to the Applicant.

[88] Like the personal information in page 9, the personal information at page 7 relates to an individual whose employment relationship with the SHA received much media and other public attention at the end of 2021 and in early 2022. Given the media interest, the nature of the senior staffing positions involved, the potential impact of the conclusion of these employment relationships on the operations of the SHA, I find that there is a public interest in the information and part two of the test has been met.

[89] I also note that in relation to the personal information on page 7, it is not apparent if SHA considered factors such as the expectation of the individual to whom the information relates and the probability and degree of injury that would result from release of the information. Accordingly, I find that SHA did not properly exercise its discretion to disclose the personal information withheld from pages 9 and 7 pursuant to subsection 28(2)(n)(i) of LA FOIP.

[90] I recommend that, within 30 days of issuance of this Report, SHA reconsider the exercise of its discretion pursuant to subsection 28(2)(n)(i) of LA FOIP for personal information withheld from pages 9 and 7 and consider if it can release additional information to the Applicants.

Analysis - Subsection 10(g)(ii) of the LA FOIP Regulations

[91] The individuals to whom the personal information on pages 1, 2-3, 5-6, 7 and 9 relates, with one exception, were “employees” of SHA as that term is defined in subsection 2(1)(b.1) of LA FOIP. The exception relates to the information about the witness that appears on page 3. As subsection 10(g)(ii) of the LA FOIP Regulations only applies to former employees, I find that the provision does not apply to the witness’s personal information on page 3.

[92] The personal information withheld from page 1 (personal email address) and pages 2 and 3 (address information and signatures) does not describe the terms or circumstances under which the subject individual ceased to be an employee of SHA. Therefore, I find that part two of the test for the application of subsection 10(g)(ii) of the LA FOIP Regulations has not been met for this information.

[93] However, the personal information withheld from pages 5 (date of termination of employment and date of employment contract) and 7 (bullets one to five) does describe the terms of the subject individual’s employment and the circumstances under which they ceased to be an employee. Accordingly, I find that the criteria for the application of subsection 10(g)(ii) of the LA FOIP Regulations have been met for this information.

[94] Regarding the personal information withheld from page 9, I will following the same approach as I did in [Review Report 017-2023](#). Accordingly, I find that the information is about the circumstances under which the subject employee ceased to be an employee. Therefore, I find that SHA has discretion to disclose the personal information on page 9 under subsection 10(g)(ii) of the LA FOIP Regulations.

- [95] I must now determine if SHA properly exercised its discretion when it decided not to release the personal information on pages 5, 7 and 9. Having considered SHA's submission and the nature of the information withheld, I am not persuaded that the SHA acted in bad faith or for an improper purpose.
- [96] I note that in considering the application of subsection 28(2)(n)(i) of LA FOIP and in exercising its discretion under subsection 10(g)(ii) of the LA FOIP Regulations, SHA balanced the public interest in disclosure of the information against the privacy interests. However, SHA did not consider all the relevant factors such as the general purposes of LA FOIP; whether the Applicants' request may be satisfied by severing the record; whether the disclosure will increase public confidence in the operation of SHA; and the age of the record.
- [97] I also note that it appears that no efforts were made by SHA to obtain the consent of the subject individuals to the release of their personal information. SHA's failure to consider the views of the individuals, whose privacy interests it aims to protect, also amounts to a failure to consider relevant factors in its exercise of discretion.
- [98] For these reasons, I find that SHA did not properly exercise its discretion under subsection 10(g)(ii) of the LA FOIP Regulations. I recommend that, within 30 days of issuance of this Report, SHA reconsider the exercise of its discretion under subsection 10(g)(ii) of the LA FOIP Regulations to determine if it can release additional information from pages 5, 7 and 9. I also recommend that SHA consider contacting the subject individuals to seek their views on the disclosure of their personal information and take those views into account.

4. Did SHA properly apply subsection 16(1)(b) of LA FOIP?

- [99] I now turn to consider the application of subsection 16(1)(b) of LA FOIP to page 7. This is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a local authority (*Guide to LA FOIP*, Ch. 4, p. 112).

[100] The provision is intended to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public (*Guide to LA FOIP*, Ch. 4, p. 112).

[101] 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;

[102] 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?

(*Guide to LA FOIP*, Ch. 4, pp. 113-114)

[103] Following is an analysis to determine if the two-part test has been met.

1. Does the record contain consultations or deliberations?

[104] SHA asserted that it applied 16(1)(b) of LA FOIP to the body of the email on page 7 because it was a consultation between SHA leadership regarding the proposed actions with respect to an employee. As I have found that some of the information is exempt pursuant to subsection 28(1) of LA FOIP, I need only consider here if the last two bullet points of the email are exempt.

[105] “Consultation” means the action of consulting or taking counsel together: deliberation,

conference. It is 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. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation (*Guide to LA FOIP*, Ch. 4, p. 113).

[106] The information withheld from page 7 is about the terms of employment and the conclusion of the employment relations of a senior staff person within SHA. It includes a proposal made by a senior SHA human resources staff regarding how to communicate or describe the circumstances. It qualifies as a consultation because it is apparent that the author is seeking the views of other staff regarding the messaging. I find that the first part of the test has been met because the information at issue would qualify as a consultation.

2. Do the consultations or deliberations involve officers or employees of the local authority?

[107] “Involving” means including. “Officers or employees of a local authority” means an individual employed by a local authority and includes an individual retained under a contract to perform services for the local authority (*Guide to LA FOIP*, Ch. 4, p. 114).

[108] Based on a review of page 7, it is apparent that the severed information qualifies as a consultation or deliberation among SHA staff about the circumstances surrounding the conclusion of an individual’s employment relationship and how the circumstances should be communicated. The identities of the senders and recipients of the emails was released to the Applicants. As such, I find that the second part of the test is met. Accordingly, I find that SHA properly applied subsection 16(1)(b) of LA FOIP to the information withheld from page 7. I recommend that SHA continue to withhold this information pursuant to subsection 16(1)(b) of LA FOIP.

[109] Given my findings above, it is not necessary for me to consider if SHA properly applied subsection 16(1)(a) of LA FOIP.

IV FINDINGS

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

[111] I find that SHA did not comply with sections 7 and 12 of LA FOIP in both cases.

[112] I find that SHA properly applied subsection 28(1) of LA FOIP to some information.

[113] I find that SHA did not properly apply subsection 28(1) of LA FOIP to other information.

[114] I find that SHA did not properly exercise its discretion to disclose personal information pursuant to subsection 28(1)(n)(i) of LA FOIP.

[115] I find that SHA did not properly exercise its discretion to disclose the personal information pursuant to subsection 10(g)(ii) of the LA FOIP Regulations.

[116] I find that SHA properly applied subsection 16(1)(b) of LA FOIP.

V RECOMMENDATIONS

[117] I recommend that, within 30 days of issuing this Report, SHA release the following information to Applicant # 1 (Request 073):

Page 1 – the subject line of the email;

Page 2 – all the information but for the signatures;

Page 3 – all the information but for the witness's name, profession, address and signature;

Pages 5-6 – all the information but for the dates of the end of the individual’s employment and the date of their employment contract; and

Page 9 – the personal email and mailing addresses of the author.

[118] I recommend that, within 30 days of issuing this Report, SHA release the following information to Applicant #2 (Request 074):

Part 1, p. 4 – all the information but for the signatures;

Part 1, p. 5 – all the information but for the witness’s name, profession, address and signature;

Part 1, p. 2-3 – all the information but for the dates of the end of the individual’s employment and the date of their employment contract; and

Part 2, p. 2 – the personal email and mailing addresses of the author.

[119] I recommend that, in Request 073 and within 30 days of issuing this Report, SHA reconsider the exercise of its discretion pursuant to subsection 28(2)(n)(i) of LA FOIP and subsection 10(g)(ii) of LA FOIP Regulations for the personal information withheld from pages 5, 7 and 9.

[120] I recommend that, in Request 073 and within 30 days of issuing this Report, SHA consider contacting the individuals whose personal information appears in pages 5, 7 and 9 to seek their views on the disclosure of their personal information and take those views into account.

[119] I recommend that, in Request 074 and within 30 days of issuing this Report, SHA reconsider the exercise of its discretion pursuant to subsection 28(2)(n)(i) of LA FOIP and subsection 10(g)(ii) of LA FOIP Regulations for the personal information withheld from Part 1, page 2 and Part 2, p. 2.

[120] I recommend that, in Request 074 and within 30 days of issuing this Report, SHA consider contacting the individuals whose personal information appears in Part 1, page 2 and Part

2, p. 2 to seek their views on the disclosure of their personal information and take those views into account.

Dated at Regina, in the Province of Saskatchewan, this 29th day of August 2023.

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