



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 127-2024

Saskatchewan Health Authority

September 12, 2024

Summary:

The Applicant submitted a 10-part access to information request to the Saskatchewan Health Authority (SHA) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The SHA responded by indicating that: 1) it was denying the Applicant access to a record pursuant to subsection 18(1)(c) and section 19 of LA FOIP; 2) that records do not exist; and 3) that it had already provided the Applicant access to records previously. The Applicant appealed to the A/Commissioner. Then, in the course of the A/Commissioner's review, the SHA indicated to the A/Commissioner that it was no longer relying on section 18 of LA FOIP but that it was continuing to rely on section 19 of LA FOIP. Also, in the course of the review, the SHA provided the Applicant with 73 pages of records but indicated it was withholding portions of the record pursuant to section 21 of LA FOIP. The A/Commissioner continued with his review. He made a number of findings including that the SHA properly applied subsection 19(a) of LA FOIP to some portions of the records at issue but not all. Further, he found that the SHA made a reasonable effort to search for certain records, but he also found that the SHA did not demonstrate a reasonable search for other records sought by the Applicant. The A/Commissioner made a number of recommendations including that within 30 days of issuance of this Report, that the SHA release pages 1 to 9 and 21 of the Driver Evaluation Assessment Package but to continue to withhold pages 10 to 20 and 22 to 30 of the Driver Evaluation Assessment Package pursuant to subsection 19(a) of LA FOIP. He recommended that the SHA release the redacted portions of the records at issue that SHA withheld pursuant to section 21 of LA FOIP. Finally, he recommended that SHA conduct a further search for certain records and inform my office and the Applicant of the results of its search within 30 days of issuance of this Report.

I BACKGROUND

- [1] On March 22, 2024, the Saskatchewan Health Authority (SHA) received the following access to information request from the Applicant:

This is a request under the foip act [sic] and the hipa act [sic] to Kinetic rehab and Kinetik driver evaluation program.

Iam [sic] requesting from you all documents used in the decision making of your functional assessment of [Name of Applicant] on February 12 and 13 2024

Requesting the following documents

- 1.. Copy of strenght [sic] tests done on arm and hand
- 2.. Copies of doctors reports of any improvements or regression since assessments at end of august 2024
- 3Any [sic] and allreports [sic] including [sic] hand written notes regarding myself [Name of Applicant].
- 4.. Any in house reports and conversations regarding [Name of Applicant].
- 5.. Copy of reports used in showing long standing learning disabilities as you keyed on in your report.
- 6.. Copies of all tests,types [sic] and versions of tests used in assessment
- 7.Copies [sic] of all completed tests showing my work on them
- 8..Signed [sic] copy of drivers instructors [sic] report used for the assisment [sic] report
- 9.. Copy of up to date safty [sic] certficate [sic] of vehicle used in driving assesment [sic]
- 10.Copy [sic] of driving instructors [sic] credentials.

- [2] In correspondence dated April 17, 2024, the Director of Privacy at SHA responded to the Applicant:

The SHA responds to each of your requests as follows:

- 1. Copy of strength tests done on arm and hand**
- 2. Copies of doctors [sic] reports of any improvements or regression since assessments at end of august 2024**
- 3. Any and all reports including hand written notes regarding myself [Name of Applicant].**
- 4. Any in house reports and conversations regarding [Name of Applicant].**

This record does not exist. This notification has been provided pursuant to clause 7(2)(e) of the Act.

5. Copy of reports used in showing long standing learning disabilities as you keyed on in your report.

6. Copies of all tests, types and versions of tests used in assessment

Access to these records and the evaluation is denied pursuant to clause 18(1)(c) and section 19 of the Act.

These are licensed copyrighted test materials and raw test responses requiring interpretation by a practitioner with specialized training and cannot be released to individuals. In addition, access to the evaluation form is also denied.

18(1) Subject to Part V and this section, a head shall refuse o [sic] give access to a record that contains:

(c) information, the disclosure of which could reasonably be expected to:

- (i) result in financial loss or gain to;
- (ii) prejudice the competitive position of; or
- (iii) interfere with the contractual or other negotiations of;

a third party.

19 A head may refuse to give access to a record that contains information relating to:

- (a) testing or audit procedures or techniques; or
- (b) details of specific tests to be given or audits to be conducted; if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

7. Copies of all completed tests showing my work on them

8. Signed copy of drivers instructors report used for the assessment report

This record does not exist. This notification has been provided pursuant to clause 7(2)(e) of the Act. The driving instructor does not complete a report.

9. Copy of up to date safety certificate of vehicle used in driving assessment

This record does not exist in the SHA. The assessment is completed by SGI, therefore you need to request this information directly from SGI. This notification has been provided pursuant to clause 7(2)(e) of the Act.

10. Copy of driving instructors credentials

This record does not exist in the SHA. The assessment is completed by SGI, therefore you need to request this information directly from SGI. This notification has been provided pursuant to clause 7(2)(e) of the Act.

Regarding the requests numbered 1, 2, 3, 5, and 7, all health records related to your Driver Evaluation have been previously provided to you.

[3] Then, in a letter dated April 18, 2024, the Director of Rehabilitation Services at the Saskatoon City Hospital wrote the following to the Applicant:

I wanted to provide you with a written response to your letter, dated March 22, 2024. In this letter, you list a number of requests for copies of documentation pertaining to your involvement with the Rehab Outpatient Therapy Program as well as your testing and evaluation with our Driver Evaluation Program.

Myself and the Manager for the Driver Evaluation Program, [Name of Manager], reviewed your requests and believe that we have already forwarded to you all the information related to your Driver Evaluation. The following tests were administered in your evaluation with our Driver Evaluation Program: *the Trials [sic] A & B, MoCA, Bells Cancellation Test, Useful Field of View UFOV, Snellgrove Maze Task and DVPT-Visual Perception test.*

In regards to your request for “copies of all tests, types, versions of tests”, these are licensed copyrighted test materials and raw test responses requiring interpretation by a practitioner with specialized training and cannot be released to individuals. The results of these tests have been included in the final evaluation form of which you have received two copies.

Please expect to receive a letter from SHA’s Director of Privacy, [Name of Director of Privacy], responding to each of your requests for information.

As indicated at our in person meeting at Saskatoon City Hospital on February 29th, we have no further information to provide and recommended to you, that you will need to work with SGI to launch a formal appeal if you are in disagreement with the SGI recommendations related to your driving license.

Please see the attached letter from our SHA legal representative if you feel you require further intervention on this matter.

[4] Enclosed with SHA’s letter was another letter (also dated April 18, 2024), by SHA’s legal counsel, to the Applicant:

I am Legal Counsel to the Saskatchewan Health Authority (“SHA”). I write further to your recent communications with Theresa [Last name of Director], Director of Rehabilitation Services.

As [Name of Director of Rehabilitation Services] has indicated, if you wish to appeal SGI’s decision concerning your driver’s license, you must do so by contacting SGI directly.

If you are dissatisfied with the response to your request for information, or the manner in which your request was handled, please refer to the letter the SHA Privacy Office has sent to you on or about April 17, 2024 for further information.

Another option is to contact the Saskatchewan Ombudsman. Information can be found here: <https://ombudsman.sk.ca/>

[5] On April 30, 2024, my office received a request for review from the Applicant.

[6] On May 9, 2024, the Applicant explained to my office the reasons for their request for review:

As I have said they can say what they want they have no [sic] produced one single thing requested as for number 9 the vehicle how could they even use this vehicle unless it was certified road worthy they contract this driving instructor and his vehicle He is a professional driving instructor they contracted so how would there not be a report from the guy doing the testing as in house reports go there was a meeting with me a member of SHA Tereasa [sic] [Last name of Director of Rehabilitation Services] and [Name of occupational therapist] along with with [sic] the head of kinetic [sic] and drivers evaluation program and notes [sic] were being taken by the reads [sic] and the SHA rep so they exist As far as SGI goes they got the medical report from the driver evaluation program that I hired SHA to do and who I paid to do it SGI has really nothing to do with this except receive the report from the driver evaluation report and make there [sic] decision on that report...

[7] On May 14, 2024, the Applicant provided the following reason why they believed records existed, including identifying the first names of two SHA employees they (the Applicant) believed were taking notes in a meeting:

...about a week after I did the driver evaluation test I had been complaining to [Name of occupational therapist] and her bosses that she had refused to answer any questions I had asked and I wanted answers they finally set up a meeting with me and the people I told you were there any questions I asked her she tried to avoid answering which I complained that she was doing the whole meeting Theresa and Jamie were taking note these are part of what I want as she was doing some lying at the meeting and I was

pointing it out to the others who were taking notes they new [sic] she was lying as I gave her the opportunity to go get The [sic] paperwork from her office and she refused remember I paid 250 dollars to SHA to have this assessment done also I paid for it so all reports should be mine

- [8] On May 17, 2024, the Applicant provided why they believed exemptions should not be applied to records they requested:

I thought I would contact you with the fact that Theresa in her letter to me claims the pages used in the testing are copyright however I just got on the internet and printed off a couple of testing Papers [sic] that were used with me and they said free to use if there was any copyright infringements it would be SHA for using [sic] the test papers to make money without paying a fee to the program owner...

- [9] On May 28, 2024, the SHA informed my office it was no longer relying on subsection 18(1)(c)(iii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). However, other exemptions were still being applied to the information.

- [10] On June 7, 2024, the Applicant provided the first name of a SHA employee they believed took notes at a meeting:

In the email I sent you earlier I mentioned the name Jamie was at the meeting Jamie is the SHA representative at the meeting so they full well know them notes exist

- [11] On June 7, 2024, my office notified the SHA and the Applicant of my office's review. In the notices sent, my office had said that the Applicant witnessed "Natasha" and "Jamie" taking notes at the meeting. My office sought a submission that the SHA conducted a search for notes taken by these employees.

- [12] However, on June 20, 2024, the Applicant contacted my office to say that they had witnessed "Theresa" and "Jamie", not "Natasha".

- [13] Therefore, on the same day, my office sent an email to SHA to clarify that the Applicant had witnessed "Theresa" and "Jamie" taking notes at the meeting, and that my office sought a submission that the SHA conducted a search for notes taken by these employees.

[14] Then, in a letter dated July 5, 2024, SHA wrote a letter to the Applicant. The letter enclosed records but stated that portions of a record were being withheld pursuant to section 21 of LA FOIP. The letter said:

Further to your Access to Information Request (dated March 22, 2024) received by the Director, Rehabilitation Services in the Saskatchewan Health Authority (SHA) on March 22, 2024, pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act), the SHA has expanded its search and is re-sending records that have been previously released and providing you with additional records, as follows:

- **Copy of strength tests done on arm and hand** – enclosed.
- **Copies of doctors reports of any improvements or regression since assessments at end of august 2024** – enclosed.
- **Any and all reports including hand written notes regarding myself [Name of Applicant]** – enclosed.
- **Any in house reports and conversations regarding [Name of Applicant]** – enclosed.

Note that a portion of the record has been redacted subject to section 21 of the Act:

Solicitor-client privilege 21

A head may refuse to give access to a record that:

- (a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;
 - (b) was prepared by or for legal counsel for the local authority in relation to a matter involving the provision of advice or other services by legal counsel; or
 - (c) contains correspondence between legal counsel for the local authority and any other person in relation to a matter involving the provision of advice or other services by legal counsel.
- **Copy of reports used in showing long standing learning disabilities as you keyed on in your report** - enclosed.
 - **Copies of all completed tests showing my work on them** – enclosed.

[15] Then, in a letter dated July 24, 2024, the SHA said to the Applicant the following:

Thank you for your telephone call to my office on July 15, 2024. The purpose of this letter is to answer your questions regarding records related to the following:

- **Copy of strength tests done on arm and hand.**
 - The records discussing the strength of your arm and hand is documented throughout the report titled “Comprehensive Functional Driving Assessment” (pages 63-73 of your package), and in the Rehabilitation Outpatient Specialized Services multidisciplinary assessment form (pages 13-14 of your package).
- **Copy of reports used in showing long standing learning disabilities as you keyed on in your report.**
 - In our phone conversation on July 17, 2024, you clarified that you are seeking a record that references “long standing disabilities” as referred to on the third page of the document titled “Comprehensive Functional Driving Assessment”.
 - There are no records that reference “long standing learning disabilities”. It was written in the report by the Occupational Therapist (OT) as a potential explanation for patients who have cognitive challenges in relation to driving. The OT was not suggesting that you have learning disabilities, but instead made a general reference to explain cognitive challenges to patients in general.
 - Therefore, the record does not exist. This notification has been provided pursuant to clause 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act*.

II RECORDS AT ISSUE

[16] The first record at issue is the Driver Evaluation Assessment Form, which is 30 pages. SHA withheld this record in its entirety pursuant to section 19 of LA FOIP.

[17] Next, the SHA had compiled 73 pages of records. SHA numbered the pages from 1 to 73 by hand and sent them to the Applicant enclosed in a letter dated July 5, 2024. Pages 1 to 73 were released in full to the Applicant except for portions of pages 52 and 54, which

were withheld pursuant to section 21 of LA FOIP. I will refer to these 73 pages as the “Compiled Records”.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[18] The SHA is 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 properly apply subsection 19(a) of LA FOIP?

[19] The sixth item listed in the Applicant’s access request was for “Copies of all tests, types [sic] and versions of tests used in assessment”. The “Driver Evaluation Assessment Form”, which is 30 pages in length, sets out the tests used in the driver evaluation program, including the Trail Making Part A & Part B, Snellgrove Maze Task Montreal Cognitive Assessment (MoCA), Rookwood Driving Battery, Stereo Optical Rehab G Record Form for Optec Vision Tester, Motor-Free Visual Perception Test (MVPT), Developmental Test of Visual Perception.

[20] The SHA applied section 19 of LA FOIP to all 30 pages of the Driver Evaluation Assessment Form. In its submission, the SHA provided arguments for why it believes subsection 19(a) of LA FOIP applies to the record. Therefore, I will consider subsection 19(a) of LA FOIP below.

[21] Subsection 19(a) of LA FOIP provides:

19 A head may refuse to give access to a record that contains information relating to:

(a) testing or auditing procedures or techniques;

...

if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

[22] My office uses the following two-part test to determine if subsection 19(a) applies:

1. Does the record contain information relating to testing or auditing procedures or techniques?
2. Could disclosure reasonably be expected to prejudice the use or results of particular tests or audits?

(*Guide to LA FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated October 18, 2023 [*Guide to LA FOIP*, Ch. 4], pp. 211-212)

[23] Pages 211 to 212 of *Guide to LA FOIP*, Ch. 4, provide the following definitions:

- “Relating to” should be given a plain but expansive meaning. “Relating to” requires some connection between the information and the testing or auditing procedures or techniques.
- A “test” is a set of questions, exercises or practical activities that measure either what someone knows or what someone or something is like or can do.
- An “audit” is the formal examination of an individual’s or organization’s accounting records, financial situation or compliance with some other set of standards. It is the systematic identification, evaluation and assessment of an organization’s policies, procedures, acts and practices against pre-defined standards.
- “Procedures” are the manner of proceeding; a system of proceeding; conduct, behavior.
- “Techniques” are the manner of execution or performance in relation to mechanical or formal details; a skillful or efficient way of doing or achieving something.
- “Could reasonably be expected to” means there must be a reasonable expectation that disclosure could prejudice the use or results of particular tests or audits.

[24] In its submission, the SHA asserted that the Driver Evaluation Assessment Package “is a set of exercises and practical activities that measure the functional capabilities of the applicant.” Further, the SHA asserted that disclosure of the tests could prejudice the results of future clients. It said:

Disclosure of the test could prejudice the results of future clients. If the client has the test in advance, they will have advanced knowledge of the exercises and activities that are on the test, and prepare themselves for the test accordingly. This would result in inaccurate results, and a client could pass the test where they wouldn't normally, thus resulting in unreliable results.

[25] Further, SHA said that it purchased the tests from Pearson Assessments. SHA said [Pearson's website](#) sets out the terms and conditions of sale and use of Pearson products. SHA said:

The SHA purchased the test from Pearson Assessments, and Pearson notes the following on their website:

- To protect their security and value, Products may not be resold, re-licensed, transferred or otherwise further distributed without prior written permission from Pearson.
- Printing or reproducing copyright-protected materials or content, whether the reproductions are sold or furnished free for use, including reproduction of test items, scales, scoring algorithms, scored directions, or other content, is strictly prohibited by law and by these Terms & Conditions.
- Access to test materials must be limited to qualified persons with a responsible, professional interest who agree to safeguard their use.
- Test materials and scores may be released only to persons qualified to interpret and use them properly.

[Emphasis added]

[26] Based on a review of the 30-pages of the Driver Evaluation Assessment Package, the first five pages do not contain any testing, auditing procedures or techniques. The first five pages contains fields for the evaluator to fill in information about the client, including the results of each of the tests but they do not contain the test. Further, page 21 of the Driver Evaluation Assessment Package is the Stereo Optical Rehab G Record Form for the Optec Vision Tester, which is available online on Stereo Optical's website and appears to be a form for the evaluator to record test results and is, therefore, not the test itself. Therefore, the first five pages and page 21 of the Driver Evaluation Assessment Package do not meet the first part of the two-part test. I find that SHA has not properly applied subsection 19(a)

of LA FOIP to pages 1 to 5 and 21 of the Driver Evaluation Assessment Package. I recommend that SHA release pages 1 to 5 and 21 of the Driver Evaluation Assessment Package to the Applicant.

[27] However, pages 6 to 20 and 22 to 30 contain copies of the tests that evaluators use. SHA's point that the disclosure of the tests could prejudice the results of future clients is well-taken. However, I note that the Trail Making Test was initially designed as part of the U.S. Army Individual Test Battery and is now in the public domain (*Handbook of Assessment in Clinical Gerontology* (Second Edition), 2010 at page 699). Further, the Trail Making Part A & Part B test appears to be available on the Internet on multiple websites, including the websites for Pathways BC and the Center-TBI. The Supreme Court has said in [*Merck Frosst Canada Ltd. v. Canada \(Health\)*, 2012 SCC 3 \(CanLII\), \[2012\] 1 SCR 23](#) that information is not confidential if it is in the public domain (*Guide to LA FOIP*, Chapter 5: "Third Party Information", updated February 22, 2023 [*Guide to LA FOIP*, Ch. 5]), p. 22). Given that the Trail Making Part A & Part B on pages 6 to 9 on the Driver Evaluation Assessment Package is in the public domain, then, any person can access the test. Therefore, given that the test is accessible to the public, it is difficult to argue that disclosure by SHA would prejudice the results of the test. The second part of the two-part test is not met. I find that SHA has not properly applied subsection 19(a) of LA FOIP to pages 6 to 9 of the Drivers Evaluation Assessment Package. I recommend that the SHA release pages 6 to 9 of the Driver Evaluation Assessment Package to the Applicant.

[28] However, the remainder of the tests in the Driver Evaluation Assessment Package at pages 10 to 20 and 22 to 30 appear to be tests that are not in the public domain. They are either available for purchase or they appear not to be in the public domain. I note they are only available for purchase by "[Qualified Users](#)" as defined by Pearson, and not by the general public. I am satisfied that the disclosure of these pages containing tests would prejudice the use or results of the particular tests. I find that SHA properly applied subsection 19(a) of LA FOIP to pages 10 to 20 and 22 to 30 of the Driver Evaluation Assessment Package. I recommend that SHA continue to withhold pages 10 to 20 and 22 to 30 of the Driver Evaluation Assessment Package from the Applicant pursuant to subsection 19(a) of LA FOIP.

3. Did the SHA properly apply subsection 21(a) of LA FOIP?

[29] As described in the Records at Issue section of this Report, SHA had compiled records and numbered the pages from 1 to 73 by hand, which I refer to as the “Compiled Records”. SHA applied section 21 of LA FOIP to withhold portions of pages 52 and 54 of the Compiled Records from the Applicant.

[30] Section 21 of LA FOIP is a discretionary exemption. As noted earlier, section 2-4 of my office’s *Rules of Procedure* provides that my office does not consider discretionary exemptions not included in the head’s decision under LA FOIP. SHA’s decision letter dated April 17, 2024 pursuant to section 7 of LA FOIP did not cite section 21 of LA FOIP. In fact, the SHA did not raise section 21 of LA FOIP until July 5, 2024, which was after my office notified the SHA and the Applicant that my office was undertaking a review. Therefore, my office will not consider section 21 of LA FOIP in this review.

[31] I recommend that SHA release the redacted portions at pages 52 and 54 of the Compiled Records to the Applicant.

4. Did the SHA conduct a reasonable search for records?

[32] My office reviews a local authority’s efforts to search for records when it responds to an Applicant’s access request by indicating that records do not exist. The focus of a search review by my office is whether the local authority conducted a reasonable search. As noted above, a reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances (*Guide to LA FOIP*, Chapter 3: “Access to Records”, updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3] p. 14).

[33] Applicants must establish the existence of a reasonable suspicion that a local authority is withholding a record or has not undertaken an adequate search for a record. Sometimes this

can take the form of having possession of or having previously seen a document that was not included with other responsive records or media reports regarding the record. The applicant is expected to provide something more than a mere assertion that a document should exist (*Guide to LA FOIP*, Ch. 3, p. 13).

[34] In their correspondence with my office, as quoted in the background of this Report, the Applicant asserted they had not received the following:

- “as for number 9 the vehicle how could they even use this vehicle unless it was certified road worthy”
- “report from the guy doing the testing”
- “...they finally set up a meeting with me...Theresa and Jamie were taking note [sic] these are part of what I want...”
- “...the pages used in the testing...”

[35] Based on the above, it appears that the Applicant was seeking the following types of records:

- Vehicle information used in the testing.
- Report by the driving instructor.
- Notes by the Director Rehabilitation Services (“Theresa”) and Client Concern Specialist (“Jamie”).
- A copy of the tests.

[36] Further, on July 17, 2024 and July 31, 2024, the Applicant spoke with my office and asserted that they had also not received the record about the hand and arm strength test.

[37] Below is an analysis of SHA’s efforts to search for records responsive to the Applicant’s access request.

Vehicle information used in the testing.

[38] The Applicant had submitted a 10-part access to information request to the SHA. The ninth item requested by the Applicant was a copy of an up-to-date safety certificate of the vehicle

used in the driving assessment. The SHA had responded in its letter dated April 17, 2024 indicating that the record does not exist. It said:

This record does not exist in the SHA. The assessment is completed by SGI, therefore you need to request this information directly from SGI. This notification has been provided pursuant to clause 7(2)(e) of the Act.

[39] However, in its submission to my office, the SHA explained that the Driver Evaluation Program is an SHA program “that is funded on a contract by SGI”. The SHA said:

The Driver Evaluation Program is an SHA program that is funded on a contract by SGI. The SHA is funded to administer this program and there is a subsequent program in Regina call [sic] the Driver Assessment Program.

The program employs a full time Occupational Therapist and part time administrative support, and is managed by the Manager for Kinetik Services.

[40] It is confusing that the SHA informed the Applicant that the assessment is completed by SGI but then told my office that the Driver Evaluation Program is an SHA program. Nevertheless, my office’s focus is on SHA’s efforts to search for records in SHA’s possession/custody and/or control regarding the vehicle used by the Applicant during their driving assessment. The SHA did not provide any information or evidence regarding its efforts to search for records regarding the vehicle used in the assessment. An example of a reasonable search is evidence that the SHA’s Director of Privacy asked the Manager of Kinetik Rehabilitation Services what records exist regarding the vehicle used in the assessment. Specifically, asking about records related to the safety certification of the vehicle and the Manager of Kinetik Service’s response to such a question. However, the SHA did not provide evidence it conducted a search for such records.

[41] Therefore, I find that SHA did not demonstrate that it conducted a reasonable search for records regarding the safety certificate and the vehicle used in the Applicant’s assessment. I recommend that the SHA conduct a search for the safety certificate regarding the vehicle used and inform both my office and the Applicant of its search results within 30 days of issuance of this Report.

Report by the driving instructor

[42] The eighth part of the Applicant's access request was for a signed copy of the driving instructor's report used for the assessment report. The SHA had responded to the Applicant by saying that the record does not exist because the driving instructor does not complete a report.

[43] In its submission to my office, the SHA explained the role of the driving instructor during an assessment as follows:

The program contracts a driver instructor for the in-person drive along assessment, and the assessment includes the SHA's Occupational Therapist. During the drive along assessment, the driver instructor sits in the front seat of the vehicle, and the Occupational Therapist sits in the back seat. The contracted driver instructor does not submit a report; this individual is there to manage the drive and ensure that the drive is completed safely and all traffic guidelines are adhered to.

...

The Director, Rehabilitation Services has confirmed that the instructor sits in the front seat while the applicant completed the road test. He is focused on the driver and has access to a second set of brakes and a steering wheel so that he can take control of the vehicle if necessary. He does not take notes nor does he complete a report, therefore there is no record to provide the applicant. The Occupational Therapist sits in the back seat during the evaluation, and does take notes. Those notes were provided to the applicant (see record titled "55-62 Copy of Notes for Client – Feb 12 & 13, 2024")

[44] If there was a report by the driving instructor, it is reasonable that the SHA conducted a search for records with the Manager of Kinetik Rehabilitation Services, who manages the program. Pages 31 to 32 of the records provided to the Applicant (and to my office) is evidence that the SHA did in fact conduct a search for the report with the Manager of Health Information Services. In an email on pages 31 to 32, the Manager of Kinetik Rehabilitation Services had explained to a Manager of Health Information Services the reason why a report by the driving instructor does not exist as follows:

The driving instructor does not chart and does not have any input in the report. The driving instructor is there to provide safety for the client and SHA staff since they are trained to control a vehicle to prevent a safety incident from occurring.

[45] Based on the above, I find that the SHA conducted a reasonable search for a report by the driving instructor. I recommend that the SHA take no further action regarding the search for a report by the driving instructor.

Notes by the Director Rehabilitation Services (“Theresa”) and Client Concern Specialist (“Jamie”).

[46] In its submission, the SHA explained that pages 18 to 46 of the records provided to the Applicant and to my office were all records taken by “Jamie” the Client Concern Specialist. Based on a review, my office noted that page 46 appears to be the handwritten meeting notes by “Jamie” the Client Concern Specialist. Pages 18 to 44 appear to be email exchanges and page 45 is documentation by “Jamie” the Client Concern Specialist regarding interactions “Jamie” has had with the Applicant. Based on a review of the records, I find that SHA has demonstrated they conducted a reasonable search for notes by “Jamie” the Client Concern Specialist.

[47] The SHA did not provide evidence that it conducted a search for meeting notes by “Theresa” the Director Rehabilitation Services. An example of a reasonable search is evidence that the SHA’s Director of Privacy asked “Theresa” the Director Rehabilitation Services to conduct a search for records related to the meeting with the Applicant (which occurred on February 29, 2024) and specifically, any handwritten notes they may have taken at the meeting and “Theresa” the Director Rehabilitation Services’ response. However, the SHA did not provide evidence it conducted a search for such meeting notes.

[48] I find that the SHA did not demonstrate that it conducted a reasonable search for meeting notes by “Theresa” the Director Rehabilitation Services. I recommend that the SHA conduct a search for meeting notes by “Theresa” the Director Rehabilitation Services and inform both my office and the Applicant of its search results within 30 days of issuance of this Report.

A copy of the tests

[49] The sixth part of the Applicant's access to information request was for copies of all tests, types and versions of tests used in the assessment. SHA searched and located the 30-page Driver Evaluation Assessment Package, which contains a copy of the tests. The SHA had denied the Applicant access to the Driver Evaluation Assessment Package pursuant to subsection 19(1)(a) of LA FOIP, which I discussed earlier. Since it is evident that SHA searched and located the Driver Evaluation Assessment Package, I will not consider whether SHA conducted a reasonable search for a copy of the tests. I recommend that SHA take no further action regarding the search for the Driver Evaluation Assessment Package.

A copy of the strength tests done on arm and hand

[50] The first part of the Applicant's access to information request was for a copy of the strength tests done on their arm and hand. In SHA's initial letter dated April 17, 2024 to the Applicant, SHA said that records related to the first (and second, third, fifth and seventh) part of the access request "have been previously provided to you".

[51] Then, SHA enclosed records (paginated from 1 to 73) in its letter dated July 5, 2024 to the Applicant.

[52] Then, in a letter dated July 24, 2024 to the Applicant SHA explained that pages 13 to 14 and pages 63 to 73 of the records contain the information they sought. SHA's letter dated July 24, 2024 to the Applicant said:

- **Copy of strength tests done on arm and hand.**

- The records discussing the strength of your arm and hand is documented throughout the report titled "Comprehensive Functional Driving Assessment" (pages 63-73 of your package), and in the Rehabilitation Outpatient Specialized Services multidisciplinary assessment form (pages 13-14 of your package).

[53] Based on a review by my office, pages 63 to 73 is a report entitled "Comprehensive Functional Driving Assessment", which was done by an occupational therapist. It appears

to be an assessment of the Applicant's driving, but does not contain information about tests done on the Applicant's arm and hand.

[54] However, the bottom of page 13 and a portion of page 14 of the Compiled Records (pages 2 and 3 of progress notes with the "date of service" August 31, 2023 at the Saskatoon City Hospital) contains assessment information by Rehabilitation Medicine at the Saskatoon City Hospital. The assessment information contains information regarding the Applicant's arm and hand function, including information about the "Chedoke McMaster stage of recovery" for the Applicant's left arm and hand, as well as information about the testing of grip strength of both the Applicant's right and left hand with the Jamar Dynamometer. This information appears to be responsive to the first part of the Applicant's access request. That is, it provides information about strength testing their arm and hand.

[55] Earlier, I said that applicants must establish the existence of a reasonable suspicion that a local authority (such as SHA) is withholding a record or has not undertaken an adequate search for a record. In this case, it appears that SHA has undertaken a search and provided a record (pages 13 and 14 of the Compiled Records) with the responsive information. The Applicant has not provided any further information or evidence of why the information on pages 13 and 14 of the Compiled Records is not what they are seeking and why they believe additional records exist.

[56] I find SHA has conducted a reasonable search for records regarding strength tests done on the Applicant's arm and hand.

IV FINDINGS

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

[58] I find that SHA has not properly applied subsection 19(a) of LA FOIP to pages 1 to 5 and 21 of the Driver Evaluation Assessment Package.

- [59] I find that SHA has not properly applied subsection 19(a) of LA FOIP to pages 6 to 9 of the Drivers Evaluation Assessment Package.
- [60] I find that SHA properly applied subsection 19(a) of LA FOIP to pages 10 to 20 and 22 to 30 of the Driver Evaluation Assessment Package.
- [61] I find that SHA did not demonstrate that it conducted a reasonable search for records regarding the safety certificate and the vehicle used in the Applicant's assessment.
- [62] I find that SHA conducted a reasonable search for a report by the driving instructor.
- [63] I find that SHA has demonstrated they conducted a reasonable search for notes by "Jamie" the Client Concern Specialist.
- [64] I find that SHA did not demonstrate that it conducted a reasonable search for meeting notes by "Theresa" the Director Rehabilitation Services.
- [65] I find SHA has conducted a reasonable search for records regarding strength tests done on the Applicant's arm and hand.

V RECOMMENDATIONS

- [66] I recommend that SHA release pages 1 to 5 and 21 of the Driver Evaluation Assessment Package to the Applicant.
- [67] I recommend that SHA release pages 6 to 9 of the Driver Evaluation Assessment Package to the Applicant.
- [68] I recommend that SHA continue to withhold pages 10 to 20 and 22 to 30 of the Driver Evaluation Assessment Package from the Applicant pursuant to subsection 19(a) of LA FOIP.

- [69] I recommend that SHA release the redacted portions at pages 52 and 54 of the Compiled Records to the Applicant.
- [70] I recommend that SHA conduct a search for the safety certificate regarding the vehicle used and inform both my office and the Applicant of its search results within 30 days of issuance of this Report.
- [71] I recommend that SHA conduct a search for meeting notes by “Theresa” the Director Rehabilitation Services and inform both my office and the Applicant of its search results within 30 days of issuance of this Report.
- [72] I recommend that SHA take no further action regarding the search for a report by the driving instructor.
- [73] I recommend that SHA take no further action regarding the search for the Driver Evaluation Assessment Package.

Dated at Regina, in the Province of Saskatchewan, this 12th day of September, 2024.

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