



## **REVIEW REPORT 180-2024**

### **Saskatchewan Health Authority**

**December 18, 2024**

**Summary:** The Applicant submitted an access to information request to Saskatchewan Health Authority (SHA). SHA responded by providing records to the Applicant but indicating some records did not exist. The Applicant requested a review by the Commissioner. The A/Commissioner found SHA's search efforts were reasonable and adequate for purposes of *The Local Authority Freedom of Information and Protection of Privacy Act* and recommended that SHA take no further action.

#### **I BACKGROUND**

[1] On April 3, 2024, a lawyer on behalf of the Applicant sent an access to information request to Saskatchewan Health Authority (SHA). The request was for the following:

1. Full document file including the daily log featuring the exercises and weights completed by [Applicant's name], including any classroom training sessions and treatment received, as well as goals set out by the team;
2. A copy of your policies and procedures manuals in their entirety, especially as it relates to patient care; and
3. A copy of the written decision, including any relevant meeting notes and reason for not including the patient in this decision-making process, regarding [Applicant's name] discharge from the program and refusal to supply a rating.

[2] By letter dated April 22, 2024, SHA provided its section 7 decision to the Applicant. The letter indicated, "enclosed is the complete requested file with copies of all of its documents."

- [3] On April 23, 2024, the law firm representing the Applicant confirmed receipt via email to SHA. The law firm also inquired if the remainder of the documents were coming in a second package as no policy or procedure manuals for Kinetik Rehabilitation Centre were included.
- [4] On the same day, SHA responded to the law firm directing the law firm to the SHA policies and procedures located on the SHA's website.
- [5] On July 4, 2024, my office received a Request for Review from the law firm representing the Applicant. Through my office's intake process, the scope of the review was determined to be on the SHA's response to #2 of the Applicant's access to information request above. That response being that no records existed that were specific to #2 for Kinetik Rehabilitation Centre other than the SHA's policies and procedures on the SHA's website.
- [6] On August 8, 2024, my office notified SHA and the law firm representing the Applicant of my office's intent to undertake a review and invited both parties to provide submissions by September 9, 2024. On August 16, 2024, the Applicant provided a submission to my office. SHA provided its submission on September 9, 2024.
- [7] In its submission to my office, SHA included a policy that could be shared with the Applicant titled, *SHA Policy: Culture & Safety*. My office requested SHA provide this to the Applicant which it did via email on October 7, 2024. SHA also gave consent for my office to share the rest of its submission with the Applicant which contained details of its search efforts. My office did so on October 8, 2024, and requested the Applicant advise if they were satisfied or wished for my office to continue with the review. The Applicant did not answer this question, so my office continued with the review.

## **II RECORDS AT ISSUE**

- [8] SHA has indicated that internal policies and procedures for Kinetik Rehabilitation Centre do not exist. Therefore, the focus of this review will be the search efforts SHA undertook in arriving at this decision.

### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction?

[9] Our understanding is that the Kinetic Rehabilitation Centre is part of SHA. SHA is a “local authority” pursuant to subsection 2(1)(f)(xiii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I have jurisdiction to conduct this review.

#### 2. Did SHA conduct a reasonable search for records?

[10] Section 5 of LA FOIP provides every applicant the right of access to records in the possession or control of a local authority:

**5** Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[11] Section 5 is clear that access to records must be granted if they are in the possession or under the control of the local authority subject to any applicable exemptions under LA FOIP.

[12] Prior to an analysis of the search efforts conducted by SHA, it is important to clarify that LA FOIP does not require local authorities to answer questions that come in an access to information request. For example, access to information requests that ask why the local authority made certain decisions. LA FOIP provides access to records and unless answers are in a record, the local authority is not required under LA FOIP to answer them or create records. However, it does have a duty to answer questions as to whether it has responsive records.

[13] A “record” is defined at subsection 2(1)(j) of LA FOIP as “a record of information in any form and includes information that is written, photographed, recorded or stored in any

manner, but does not include computer programs or other mechanisms that produce records.”

[14] I will now turn my attention to the search efforts conducted by SHA. To lay the foundation for this analysis it is important to note that LA FOIP does not require a local authority to prove with absolute certainty that records responsive to an access to information request do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

[15] 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.

[16] When conducting a review of a local authority’s search efforts, details are requested that help my office understand the level of effort made to locate the records. The submission to my office should outline the search strategy conducted which can include:

- For personal information requests – explain how the individual is involved with the local authority (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
  - Describe how records are classified within the records management system. For example, are the records classified by:
    - Alphabet
    - Year

- Function
  - Subject
- 
- Consider providing a copy of your organizations record schedule and screen shots of the electronic directory (folders & subfolders).
  - If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
  - Explain how you have considered records stored off-site.
  - Explain how records that may be in the possession of a third party but in the local authority's control have been searched such as a contractor or information service provider.
  - Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
  - Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
    - For electronic folders – indicate what key terms were used to search if applicable.
  - On what dates did each employee search?
  - How long did the search take for each employee?
  - What were the results of each employee's search?
    - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the IPC resource, [\*Using Affidavits in a Review with the IPC\*](#) available on our website.

(*Guide to LA FOIP*, Chapter 3: “Access to Records”, updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], pp. 14 to 15).

[17] The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

[18] In its submission to my office, SHA provided its *Records Tracking Sheet* to explain the steps it took in its search for records. I note that the tracking sheet appears to assert that the Applicant has previously requested the same information from SHA on two prior occasions

although SHA did not provide evidence of this to my office. The tracking sheet provides the following details (Note: I have flagged each access to information request in red font below):

Dates	Notes/Comments
Feb 8 to 16, 2023 (Request #1)	Rehabilitation Coordinator and Medical Office Assistant reviewed request and compiled documents requested by client. All documents were sent to client with the mention that Kinetik does not have a Policies and Procedures manual and that the clinic follows SHA Policies and Procedures. Rehabilitation Coordinator and Medical Office Assistant confirmed SHA has Policies and Procedures accessible to the public through the SHA website.
Mar 11 to 15, 2024 (Request #2)	Rehabilitation Coordinator, Medical Office Assistant and Program Manager reviewed request and compiled all documents requested by client’s legal counsel. All documents were sent to client’s legal counsel with the mention that Kinetik does not have a Policies and Procedures manual and that the clinic follows SHA Policies and Procedures.
Apr 3 to 5, 2024 (Request #3)	Rehabilitation Coordinator, Medical Office Assistant and Program Manager reviewed request and compiled all documents requested by client’s legal counsel. All documents were sent to client’s legal counsel with the mention that Kinetik does not have a Policies and Procedures manual and that the clinic follows SHA Policies and Procedures. It was noted to them that if they have a question about a certain policy within SHA, Kinetik staff can help in directing them to that policy if they cannot find it through the SHA website. Rehabilitation Coordinator, Medical Office Assistant and Program Manager confirmed SHA has Policies and Procedures accessible to the public through the SHA website.
Apr 23 to 26, 2024	Rehabilitation Coordinator, Medical Office Assistant, Program Manager and SHA legal counsel reviewed, searched, and compiled all documents requested by client’s wife. The rehabilitation Coordinator, Medical Office Assistant and Program Manager confirmed all documents compiled on this date range were the same documents provided to the client, and their legal counsel in February of 2023, March, and April of 2024. The Rehabilitation Coordinator, Medical Office Assistant and Program Manager searched and confirmed Kinetik Rehabilitation does not have a Policies and Procedures Manual and that Kinetik Rehabilitation staff follow the SHA Policies and Procedures outlined by the SHA website accessible to the public.

June 4 to 7, 2024	Rehabilitation Coordinator, Medical Office Assistant, and Program Manager reviewed, and searched to confirm all documents requested by client, his wife and his legal counsel were present in the documents sent to them in 2023 and 2024. Note was made to SHA legal counsel who was in contact with client’s legal counsel that Kinetik does not have a Policies and Procedures manual and that Kinetik staff follow SHA Policies and Procedures.
Aug 8, 2024	Rehabilitation Coordinator, Medical Office Assistant, and Program Manager reviewed, and searched to confirm all documents requested by client, his wife and his legal counsel were present in the documents sent to them in 2023 and 2024. Note was made to SHA Privacy who was in contact with client’s legal counsel that Kinetik does not have a Policies and Procedures manual and that Kinetik staff follow SHA Policies and Procedures.
Sept 3 to 4, 2024	Rehabilitation Coordinator, Medical Office Assistant, and Program Manager reviewed, searched, and confirmed all documents requested by the client and his legal counsel included the entire medical chart from Kinetik Rehabilitation. Rehabilitation Coordinator, Medical Office Assistant and Program Manager confirmed SHA has Policies and Procedures accessible to the public through the SHA website. The Rehabilitation Coordinator, Medical Office Assistant and Program Manager searched and confirmed again Kinetik Rehabilitation does not have a Policies and Procedures Manual and that Kinetik Rehabilitation staff follow the SHA Policies and Procedures outlined by the SHA website accessible to the public.

[19] Also included with the SHA’s submission to my office was its *Responsive Record Search Checklist & Search Log for Access to Information Requests*. This checklist or log provided the following details of the search conducted by the SHA:

- **Searches conducted by:** Rehabilitation Coordinator, Medical Office Assistant, and Program Manager.
- **Searches completed:** February 8 to 16, 2023; March 11 to 15, 2024; April 3 to 5, 2024, April 23 to 26, 2024. June 4 to 7, 2024, August 8, 2024, and September 3 to 4, 2024.
- **Length of searches:** Greater than 30 minutes on each search by each individual.
- **Ran a file search on computer and/or laptop:**

- List of directories searched:
  - Kinetik “Z” drive in SHA shared drive network.
  - Rehab folder in SHA “S” drive in SHA shared drive network.
  - SHA website ([www.saskhealthauthority.ca](http://www.saskhealthauthority.ca)).
- Key words searched:
  - Policies, Procedures, Orientation, P & P, Policies and Procedures, Program Policies, Program Procedures, SHA Policies, SHA Procedures, SHA Orientation, Kinetik, SGI, SHA Program, Verbal abuse, violent conduct, staff safety, patient safety, incident reports, patient name (in internal Kinetik and rehab drives only), patient’s PHN (in internal Kinetik and rehab drives only), privacy, Tertiary, and SGI medical facilitator.
- **Ran a search on email using all folders:**
  - List of directories searched: Emails of Rehabilitation Coordinator and Program Manager.
  - Key words searched: same as file searches above.
- **Ran a search of calendar:**
  - Date completed: September 3 to 4, 2024.
  - Length of search: 10 minutes per search per individual noted above.
- **Paper records:**
  - List of files/notebooks searched:
    - Kinetik does not have any paper charting. All information is stored electronically. Client had paper gym program sheets that were scanned into the electronic medical record. The paper records were destroyed the day after the items were scanned into the EMR.
    - Date completed: File scanned into EMR on January 9, 2023.
- **No files or information is stored offsite.**
- **Electronic Storage:**
  - List of devices/ directories searched:



- All data is stored on our shared SHA network.
- See above details about computer/laptop searches.

- **Mobile Devices:**

- Staff and Program Manager do not store any information on electronic mobile devices. Program Manager reviewed with all staff September 3 to 4, 2024 to confirm. No data stored on mobile devices.

[20] In legal counsel's submission provided to my office on behalf of the Applicant, legal counsel stated as follows:

I just have a few comments of information we are looking for:

- They say they follow SHA policies, but they represented to us they were separate and apart from the SHA.
- If they don't have policies and procedures:
  - How do they know the day to [sic] requirements of their job?
  - How are rehabilitation services decided?
  - What are the requirements for the paperwork they give and expect to receive?
  - What gives them the authority to implement behavioral contracts and demand quieter participation from patients?
  - What gives them the authority to deny requested treatment that other patients in the same program receive?
  - How do they structure each patient's plans if they don't have policies based on patient need?
  - How do they determine the level care each patient receives and what gives them authority to make changes if requested by a physician and what gives them the authority to deny requested changes?
- What are their reporting requirements to SGI and who facilitates the paperwork?
- What is their obligation to the clients regarding standard of care?

- How do they assign specific treatments to each case and who has the authority to change these treatments?
- What gives them authority to deny access to more physio, chiro, massage and on site physicians?
- What gives them the authority to ignore patient pain complaints and force physically unrealistic expectations on patients?

[21] Furthermore, in the submission provided to my office by the Applicant's legal counsel, they also asserted the following:

I have previously asked them for policies and procedures regarding the following that cannot be located on their website:

- General patient care
- Patient care for rehabilitation patients
- Patient care for patients with chronic pain
- Patient care for patients with nerve damage

...the reason the records should exist is because those are common place [sic] questions of a business that would be addressed in their policies and procedures. If a business can not [sic] identify how they manage day to day operations or set out how a job is done how is anyone employed there? Therefore, the reason the policies and procedures exist in every work place [sic] is why they should also exist in Kinetik.

I had also made the request in person to view them when they charged me \$60 to have copies of [Applicant's] file with them and they said the binder is too big they wouldn't give me a copy. I have no record of this as it was a conversation, but that is proof of its existence.

[22] Applicants must establish the existence of a reasonable suspicion that a local authority is withholding a record or has not undertaken a reasonable or 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 that confirm the existence of records. The applicant is expected to provide something more than a mere assertion that a record should exist (*Guide to LA FOIP*, Ch. 3, p. 13).

[23] While I find it unusual that Kinetik Rehabilitation Centre does not have its own internal policies and procedures, a local authority does not have to prove with absolute certainty

that records responsive to an access to information request do not exist. However, it does have to demonstrate that it has conducted a reasonable search to locate them. The threshold that must be met is one of “reasonableness.” Reasonableness does not mean perfection but rather an effort that is objectively diligent and prudent in all the circumstances.

[24] I have and will continue to comment or recommend that local authorities have policies and procedures in place that relate to access to information and the protection of privacy. In fact, regarding the protection of privacy and the SHA specifically, LA FOIP and *The Health Information Protection Act* require policies and procedures to be in place that protect personal information and personal health information.

[25] However, the focus of my review is not about the protection of privacy but rather the search efforts undertaken by SHA. It is also not about the broader issue of whether it is appropriate that Kinetik Rehabilitation Centre does not have its own internal policies and procedures around patient care which is outside my jurisdiction to address. This is perhaps an issue the Applicant may wish to raise with the Chief Executive Officer for the SHA, their MLA or the Ombudsman Saskatchewan office as this falls more within the jurisdiction of these individuals or offices.

[26] In conclusion, based on what has been provided to my office, I find that SHA has demonstrated that its searches for internal policies and procedures specific to Kinetik Rehabilitation Centre was reasonable and adequate for purposes of LA FOIP.

#### **IV FINDING**

[27] I find that SHA has demonstrated that its search for internal policies and procedures specific to Kinetik Rehabilitation Centre was reasonable and adequate for purposes of LA FOIP.

#### **V RECOMMENDATION**

[28] I recommend that SHA take no further action.

Dated at Regina, in the Province of Saskatchewan, this 18<sup>th</sup> day of December, 2024.

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