



## **REVIEW REPORT 237-2023**

### **Chinook School Division No. 211**

**January 24, 2024**

#### **Summary:**

The Applicant submitted an access to information request to Chinook School Division No. 211 (School Division) for a copy of the Out-of-Scope Personnel Handbook (handbook). The School Division responded by indicating it was withholding the entire handbook from the Applicant pursuant to subsections 17(1)(b), (d), and (f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review by the Commissioner. In the course of the review, the School Division released two and half pages of the 21-page handbook but continued to withhold the remainder of the handbook. The Commissioner found that the School Division did not properly apply the exemptions. He recommended that the School Division release the handbook, in its entirety, to the Applicant within 30 days of issuance of this Report.

#### **I BACKGROUND**

[1] On June 21, 2023, the School Division No. 211 (School Division) received the following access to information request from the Applicant:

The current Out of Scope Personnel Handbook for Non-Unionized Staff and (if not included in the Handbook) the current hourly and monthly rates of pay and hours of work for non-unionized out-of-scope classifications of Chinook School Division No. 211.

Current salaries of all out-of-scope managerial staff of Chinook School Division No. 211 and their salary increases for the 2021-22, 2022-23 and 2023-24 fiscal years.

[2] The Applicant specified the time period for the records they sought to be January 1, 2021 to May 31, 2023.

- [3] In a letter dated July 11, 2023, the School Division responded to the Applicant that it was withholding the record in full. It cited subsections 17(1)(b), (d) and (f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as its reasons for withholding.
- [4] On September 29, 2023, the Applicant requested a review by my office.
- [5] On November 17, 2023, my office notified both the School Division and the Applicant that my office would be undertaking a review.
- [6] On January 16, 2024, the School Division provided its submission. On the same day, the School Division provided a redacted copy of the record (described below) to the Applicant. However, it was still withholding the majority of the record pursuant to subsections 17(1)(b), (d), and (f) of LA FOIP.

## **II RECORD AT ISSUE**

- [7] The record at issue is the 21-page “Out-of-Scope Personnel Handbook” for the time period September 1, 2022, to August 31, 2026. The title page (page 1), the table of contents (page 2) and the top of half of page 3 was released to the Applicant. However, the bottom half of pages 3, and pages 4 to page 21 in their entirety was redacted.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

- [8] The School Division is a “local authority” as defined by subsection 2(1)(f)(viii) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

### **2. Did the School Division properly apply subsection 17(1)(b) of LA FOIP?**

[9] The School Division applied subsection 17(1)(b) of LA FOIP to pages 15 to 21 of the record at issue. Pages 15 to 17 contains a grid outlining the hourly rates for non-unionized positions for the years 2021 to 2025. Pages 18 to 21 contains the salary grids for out-of-scope employees for the years 2021-22 to 2025 to 2026.

[10] Subsection 17(1)(b) of LA FOIP provides:

17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) financial, commercial, scientific, technical or other information:

(i) in which the local authority has a proprietary interest or a right of use; and

(ii) that has monetary value or is reasonably likely to have monetary value;

[11] My office uses the following three-part test to determine if subsection 17(1)(b) of LA FOIP applies:

1. Does the information contain financial, commercial, scientific, technical or other information?
2. Does the local authority have a proprietary interest or a right to use it?
3. Does the information have monetary value for the local authority or is it reasonably likely to?

(*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated October 18, 2023 [*Guide to LA FOIP*, Ch. 4], pp. 147-150)

**1. Does the information contain financial, commercial, scientific, technical or other information?**

[12] In its submission, the School Division said that the redacted information qualifies as “financial” and “commercial” information. Pages 147 to 148 of the *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- “Financial information” is information regarding monetary resources, such as financial capabilities, assets, and liabilities, past or present. Common examples are

financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a particular party.

- “Commercial information” means information relating to the buying, selling or exchange of merchandise or services. This includes third party associations, past history, references and insurance policies and pricing structures, market research, business plans and customer records.

[13] In its arguments as to why the information qualifies as financial and commercial information, the School Division cited paragraphs 15 to 19 of my office’s [Review Report 342-2019](#). In that report, my office found that total payment amounts paid to 100 physicians qualified as the “financial information” of each third party.

[14] However, I note differences in the case described in [Review Report 342-2019](#), and the case before me in this review. First, the information at issue in [Review Report 342-2019](#) dealt with amounts paid to individual physicians. I said:

[17] The definition of financial information includes information pertaining to “monetary resources”. *Monetary* is defined as “of or pertaining to coinage or currency” (The Shorter Oxford English Dictionary on Historical Principles, Oxford University Press 1973, Volume 1 at p. 1821). *Resources* is defined as “one’s personal capabilities, ingenuity” *The Shorter Oxford English Dictionary on Historical Principles*, Oxford University Press 1973, Volume 2 at p. 2549).

[18] I previously found in Review Report 082-2019, 083-2019 that the total payment amounts paid to 100 physicians qualified as the financial information of each third party. The same information in the same context is at issue here so the same reasoning applies. I find that that the total payment amounts qualify as financial information of each third party.

[15] Therefore, I found that the amounts paid qualifies as financial information of the payee as it describes the monetary resources of the payee.

[16] In contrast, the information on pages 15 to 21 of the record at issue in this review is different. Pages 15 to 21 does not cite the amounts paid to specific employees. It merely sets out the hourly rates and annual salaries of non-unionized and out-of-scope positions. Therefore, it does not describe the monetary resources of any one payee. Further, I note that the information is generic in citing the position and the associated hourly rate or salary.

For example, it sets out the hourly rate for an Educational Assistant but does not say how many Educational Assistants work for the School Division. Therefore, the information does not describe the School Division's monetary resources that have been set aside to pay Educational Assistants. It merely sets out the hourly rates and annual salaries of non-unionized and out-of-scope positions. I find that the information does not qualify as "financial information" of any particular party.

[17] Regarding commercial information, I had found that information about how much a physician has billed the Ministry of Health qualified as "commercial information" in [Review Report 082-2019, 083-2019](#). I said:

However, the fact that they are on the list reveals something of a commercial nature – that being, they are a physician who billed more than \$1 million and where they stand relative to other physicians. For these reasons, I find that the physician's names and specialities qualify as commercial information in the context of this record and review only.

[18] In this review, the information is not about the amount billed by any employee to the School Division. The information merely cites the hourly rate and salaries of non-unionized and out-of-scope positions. It does not describe any transaction between parties where the buying, selling or exchanging of merchandise or services has occurred. Therefore, the information does not qualify as "commercial information". The first part of the three-part test is not met. I find that the School Division has not properly applied subsection 17(1)(b) of LA FOIP.

**3. Did the School Division properly apply subsection 17(1)(d) of LA FOIP?**

[19] The School Division applied subsection 17(1)(d) of LA FOIP to the bottom half of pages 3, and to all of pages 4 to 21 of the record at issue.

[20] Subsection 17(1)(d) of LA FOIP provides:

**17(1)** Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority;

[21] My office uses the following two-part test to determine if subsection 17(1)(d) of LA FOIP applies:

1. Are there contractual or other negotiations occurring involving the local authority?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations?

(*Guide to LA FOIP*, Ch. 4, pp. 157-158)

- 1. *Are there contractual or other negotiations occurring involving the local authority?***

[22] Page 157 of the *Guide to LA FOIP*, Ch. 4, says a “negotiation” is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation”. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion.

[23] In its submission, the School Division asserted that it is currently negotiating a renewal of its collective bargaining agreement with CUPE, Local 4754. The first part of the two-part test is met.

- 2. *Could release of the record reasonably be expected to interfere with the contractual or other negotiations?***

[24] Page 158 of the *Guide to LA FOIP*, Ch. 4, says “interfere” means to hinder or hamper. Page 159 of the *Guide to LA FOIP*, Ch. 4, provides:

The local authority does not have to prove that a harm is probable but needs to show that there is a “reasonable expectation of harm” if any of the information were to be released. In [\*British Columbia \(Minister of Citizens’ Service\) v. British Columbia\*](#)

[\*\(Information and Privacy Commissioner\), \(2012\)\*](#), Bracken J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm.

Local authorities should not assume that the harm is self-evident. The harm must be described in a precise and specific way in order to support the application of the provision.

The expectation of harm must be reasonable, but it need not be a certainty. The evidence of harm must:

- Show how the disclosure of the information would cause harm;
- Indicate the extent of harm that would result; and
- Provide facts to support the assertions made.

[25] In its submission, the School Division said the following:

As outlined in the Guide, “interfere” means to hinder or to hamper. It is Chinook’s position that the release of the Redacted Portions could reasonably be expected to hinder or hamper the ongoing negotiations between [the Applicant] and Chinook in various ways. For example, the Redacted Portions would provide [the Applicant] with an unfair advantage and make it difficult for Chinook to negotiate freely in these and future discussions as they would reveal or provide [the Applicant] with negotiating positions, options, pricing criteria and comparisons. In any negotiation, sharing what is paid to others in similar circumstances may hinder the ability to negotiate based on true market factors. Essentially, the release of the Redacted Portions will require Chinook to negotiate against itself and would provide [the Applicant] with negotiating anchoring points to use for the rest of the negotiation that are not otherwise available in a free market negotiation.

[26] The School Division asserted that the disclosure of the record would reveal “negotiating positions, options, pricing criteria and comparisons” that would make it difficult for the School Division to negotiate freely. However, it is unclear what the School Division means by that. For example, the School Division has not identified which part of the record at issue describes its “negotiating positions” in the negotiations it is currently engaged. Based on a review of the record itself, my office cannot identify any part of the record that describes the School Division’s negotiating position.

[27] Further, it’s unclear what the School Division means by “options, pricing criteria, and comparisons”.

[28] Finally, the School Division has not made clear how the consideration of “true market factors” in the negotiations would be eliminated if the record at issue was released.

[29] The School Division also noted that there is a matter before the Saskatchewan Labour Relations Board (Labour Relations Board). The School Division said the matter is scheduled to be heard by the Labour Relations Board in May 2024 and said that the Board is in a better position to rule on the redactions:

It is the Board that deals exclusively with “good faith collective bargaining” obligations under *The Saskatchewan Employment Act*. [The Applicant]’s request is really about bargaining and a matter before the Board, and it has expressly said that. **Chinook respectfully submits that it is the Board that is in a better position to rule on the negotiation obligations of the parties and the Redacted Portions, and that matter is scheduled to be heard by the Board on May 1 and 2 of 2024.**

While Chinook acknowledges that the Board does not have jurisdiction of the Act, the Board’s determination on the disclosure as a matter of collective agreement negotiation will be highly informative to the OIPC. If the Board rules that for the purposes of good faith negotiations the Redacted Portions are not needed, disclosable, or that it is improper for [the Applicant] to seek them, that would support a conclusion that the Redacted Portions are sought to interfere with ongoing negotiations.

[Emphasis added]

[30] Any process under the Labour Relations Board is independent of my office’s review process. My office’s mandate includes conducting reviews of decisions made by local authorities regarding formal access to information requests under LA FOIP.

[31] The second part of the two-part test is not met. I find that the School Division has not properly applied subsection 17(1)(d) of LA FOIP.

#### 4. Did the School Division properly apply subsection 17(1)(f) of LA FOIP?

[32] The School Division applied subsection 17(1)(f) of LA FOIP to the bottom half of pages 3, and to all of pages 4 to 21 of the record at issue.

[33] Subsection 17(1)(f) of LA FOIP provides:



17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the local authority;

[34] Page 165 of the *Guide to LA FOIP*, Ch. 4, sets out the question my office asks to determine if subsection 17(1)(f) of LA FOIP applies: Could disclosure reasonably be expected to prejudice the economic interests of the local authority?

[35] “Economic interests” refer to both the broad interests of a local authority and, for the government as a whole, in managing the production, distribution and consumption of goods and services. This also covers financial matters such as the management of assets and liabilities by a local authority and its ability to protect its own interests in financial transactions (*Guide to LA FOIP*, Ch. 4, p. 142).

[36] Subsection 18(1)(c) of Ontario’s *Freedom of Information and Protection of Privacy Act* (ON FOIP) is similar to subsection 17(1)(f) of LA FOIP. Subsection 18(1)(c) of ON FOIP provides:

18 (1) A head may refuse to disclose a record that contains,

...

(c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

[37] In [Order P-1190](#) by Ontario’s Office of the Information and Privacy Commissioner, it was stated as follows:

In my view, the purpose of section 18(1)(c) is to protect the ability of institutions such as Hydro to earn money in the market-place. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.

[38] Similarly, the purpose of subsection 17(1)(f) of LA FOIP is to protect the ability of local authorities to earn money in the marketplace and compete for business with other public or private sector entities.

[39] In its submission, the School Division makes two arguments as to why the disclosure of the redacted information could reasonably be expected to prejudice the economic interest of the local authority. It said:

As outlined in the Guide, to rely on this exemption the local authority does not have to prove that a harm is probable but needs to show that there is a “reasonable expectation of harm” if any of the information were to be released.

It is Chinook’s position that in addition to the harms outlined above related to the ongoing collective bargaining negotiations between [the Applicant] and Chinook, the release of the Redacted Portions would prejudice the economic interests of Chinook in several other ways. For example, **release of salary information would prejudice Chinook in future negotiations with staff and executives potentially raising Chinook’s labour costs.** We have outlined this harm in more detail in our submission above on the intrinsic monetary value of the financial and commercial information in the Redacted Portions.

**The Redacted Portions also have budgetary information which could result in segments of the private sector taking actions affecting Chinook’s ability to meet economic goals (e.g., private sector contractors and service providers will learn Chinook’s internal labour costs and may adjust their prices or bids accordingly). This is likely to put Chinook at a competitive disadvantage to other public bodies and private-sector organizations looking to hire or contract from the same pool of labour or services.**

[Emphasis added]

[40] First, I do not agree that the release of the redacted portions would prejudice the School Division’s “future negotiations” with staff and executives potentially raising the School Division’s labour costs. Salary information of employees are released annually in the School Division’s annual report. Therefore, information about salaries and the increases they receive year-to-year will already be released and could be used by any party in any “future negotiations”.

[41] Second, the redacted portions do not contain “budgetary information”. As I have said earlier, the information merely sets out the hourly rates and annual salaries of non-unionized and out-of-scope positions. It does not outline the number of staff in each position and does not describe the monetary resources that have been set aside to pay actual staff. It does not reveal the School Division’s “internal labour costs” as asserted by the School Division.

[42] The School Division has not demonstrated that the disclosure of the record at issue could reasonably be expected to prejudice the School Division’s economic interest. I find that the School Division has not properly applied subsection 17(1)(f) of LA FOIP.

[43] Since I have found that the School Division has not properly applied exemptions to the record at issue, I recommend that the School Division release the record at issue, in its entirety, to the Applicant, within 30 days of issuance of this Report.

#### **IV FINDINGS**

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

[45] I find that the School Division has not properly applied subsection 17(1)(b) of LA FOIP.

[46] I find that the School Division has not properly applied subsection 17(1)(d) of LA FOIP.

[47] I find that the School Division has not properly applied subsection 17(1)(f) of LA FOIP.

#### **V RECOMMENDATION**

[48] I recommend that the School Division release the record at issue, in its entirety, to the Applicant, within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 24th day of January, 2024.

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