



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 313-2023

Saskatchewan Health Authority

April 17, 2024

Summary:

The Applicant submitted an access to information request to the Saskatchewan Health Authority (SHA). SHA responded extending the response time an additional 30 days and included a fee estimate. The Applicant paid the required 50% deposit and requested a review by my office when they did not receive SHA's section 7 decision after the extended timeline. SHA did not provide my office with a copy of the records within the requested timeline; therefore, a Notice to Produce the records was issued and SHA subsequently provided my office with the responsive records and a letter of explanation identifying it was withholding portions of the records pursuant to subsections 16(1)(a), (b), (d) and 14(1)(m) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that SHA did not comply with section 7 and subsection 12(3) of LA FOIP. The Commissioner also found that SHA did not properly apply some exemptions, but did others, as referenced in the Appendix. The Commissioner recommended that within 30 days of the issuance of this Report, SHA return the Applicant's fee deposit and release some of the information to the Applicant.

I BACKGROUND

- [1] On, March 30, 2023, the Saskatchewan Health Authority (SHA) received an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) from the Applicant. The Applicant sought access to records described as follows:

- I'm requesting all emails, memos, guides, discussion papers and briefing notes from Dr. Susan Shaw, Dr. John Froh and Dr. Phillip Fourie regarding the Saskatchewan Health Authority's COVID-19 patient triage preparations, plans and procedures and protocols. September 1, 2021 to October 20, 2021.
- [2] On March 31, 2023, SHA sent the Applicant a letter acknowledging the request and indicated they would provide an invoice to the Applicant for payment of the \$20.00 application fee. This invoice was sent to the Applicant on April 5, 2023.
- [3] On April 29, 2023, SHA advised the Applicant by letter that it was extending the time period for responding to the request an additional 30 days from March 31, 2023, pursuant to subsections 12(1)(a), (b), 12(2) and 12(3) of LA FOIP.
- [4] On October 18, 2023, the Applicant contacted SHA for an update on its response as it was past the due date. On the same day, the Applicant received an email response from SHA stating that they would look into it, provide an update and also asked if anyone got back to the Applicant with a fee estimate.
- [5] On October 19, 2023, the Applicant responded to SHA indicating they had not been contacted about a fee estimate. The Applicant also asked whether SHA had an estimate as to when they would receive the records.
- [6] On November 2, 2023, SHA emailed the Applicant asking what email address they would like the fee estimate sent. On November 21, 2023, the Applicant responded to SHA providing the email address in question.
- [7] On November 21, 2023, SHA provided the Applicant with a fee estimate for approximately 212 pages for a total amount of \$372.00. SHA stated it would require payment of \$186.00 (half of the estimate) in order to proceed with its response to the request.
- [8] On November 22, 2023, the Applicant contacted my office to initiate a request for review.

[9] On November 27, 2023, my office contacted SHA indicating that it had not responded to the Applicant's requests within the legislated timelines and requested that SHA provide its section 7 decision letter to the Applicant by December 4, 2023.

[10] On December 1, 2023, SHA sent the following update to my office:

- Extension letter was sent out to the Applicant on April 28, 2023.
- Fee Estimate letter was sent to the applicant on Nov 21, 2023. Waiting for approval to proceed from the applicant.
- Regular communication has taken place with the applicant throughout the process.

[11] On December 4, 2023, my office responded to SHA requesting again its section 7 decision and indicated that the Commissioner has addressed fee estimates being issued outside of the first 30 days of an access request being received providing the following from [Review Report 323-2019](#), as an example:

[33] In this case, the R.M. received the access to information request on August 6, 2019, and did not issue the fee estimate until November 27, 2019, 112 days later.

[34] If it was the R.M.'s intention to issue a fee estimate, it should have done so within 30 days of receiving the access to information request pursuant to subsection 9(3) of LA FOIP. After the 30 days elapsed, there is no other mechanism within LA FOIP that allows for the local authority to issue a fee estimate. Without a fee estimate, a local authority would be unable to charge fees for searching, preparation and reproduction.

[35] I find that the R.M. did not issue a fee estimate within 30 days of receiving the access request pursuant to subsections 7(2)(a) and 9(3) of LA FOIP. I recommend that the R.M. rescind the fee estimate it issued to the Applicants and issue a response to the Applicants that is compliant with section 7 of LA FOIP within 14 days.

[12] On December 11, 2023, SHA responded to my office indicating that the fee estimate was already provided to the Applicant. On the same day SHA received the deposit for the fee estimate from the Applicant.

[13] On December 14, 2023, my office provided notice to both the Applicant and SHA of my office's intention to undertake a review of whether SHA complied with its obligation to

provide its section 7 decision within the legislated timelines. My office requested that SHA provide copies of its section 7 decision and responsive records along with its submission by January 15, 2023.

[14] On December 28, 2023, the Applicant provided their submission to my office.

[15] On January 11, 2024, my office sent a reminder to SHA of the deadline to provide its section 7 decision, responsive records and submission to my office by January 15, 2024, otherwise, my office would issue a Notice to Produce the records pursuant to section 54 of LA FOIP, which provides the following:

Powers of commissioner

54(1) Notwithstanding any other Act or any privilege that is available at law, the commissioner may, in a review:

(a) require to be produced and examine any record that is in the possession or under the control of a local authority; and

(b) enter and inspect any premises occupied by a local authority.

(2) For the purposes of conducting a review, the commissioner may summon and enforce the appearance of persons before the commissioner and compel them:

(a) to give oral or written evidence on oath or affirmation; and

(b) to produce any documents or things;

that the commissioner considers necessary for a full review, in the same manner and to the same extent as the court.

(3) For the purposes of subsection (2), the commissioner may administer an oath or affirmation.

[16] On January 14, 2024, SHA requested an extension to the time it had to provide the section 7 decision, responsive records and submission to my office to allow it time to provide notice to a third party of its intent to release the records in the upcoming week.

- [17] On January 16, 2024, my office denied the request for extension as SHA had until 30 days after the request was received to provide third party notice. My office also provided SHA with a Notice to Produce the records on January 17, 2024, and if not provided by the deadline, a Summons would be issued.
- [18] On January 17, 2024, SHA provided my office with a copy of the responsive records and a letter explaining the exemptions applied. On the same day, my office asked the SHA when it would be releasing records to the Applicant that it did not apply exemptions. SHA indicated it would provide my office with a date the following day.
- [19] On January 25, 2024, SHA contacted my office to advise it had changed its decision of which records it was withholding and how these changes could be provided to my office. The Deputy Commissioner advised that my office would agree to accept changes until end of day on January 29, 2024.
- [20] On January 29, 2024, SHA provided my office with the updated responsive records and letter of explanation.
- [21] On January 30, 2024, my office asked SHA when it would be providing its section 7 decision to the Applicant. On February 2, 2024, after no response, my office again inquired when the section 7 decision would be provided to the Applicant.
- [22] On February 2, 2024, SHA responded to my office indicating it was in the last stages of its approval process and the section 7 decision would be provided to the Applicant on February 8, 2024.
- [23] On February 9, 2024, SHA sent a copy of its section 7 decision and responsive records to my office indicating they were sent to the Applicant on February 8, 2024.

II RECORDS AT ISSUE

[24] At issue is 277 pages of records, as described in the Appendix. SHA partially withheld the records under subsections 16(1)(a), (b), (d) and 14(1)(m) of LA FOIP. See the Appendix at the end of this Report for further information.

[25] My office is also reviewing whether SHA met its legislated timelines under sections 7 and 12 of LA FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[26] SHA qualifies as a “local authority” pursuant to subsection 2(1)(f)(xiii) of LA FOIP. Therefore, I have jurisdiction under LA FOIP to undertake this review.

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

[27] LA FOIP requires local authorities to respond to access to information requests within 30 days of the request being made. Subsections 7(2) and 7(5) of LA FOIP provide as follows:

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

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 43.1, and setting out the reason for which the request was disregarded.

...

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[28] The *Guide to LA FOIP*, Chapter 3, “Access to Records,” updated May 5, 2023 (*Guide to LA FOIP*, Chapter 3) at page 49, states that subsection 7(2) of LA FOIP requires that a local authority respond to an applicant within 30 calendar days of receiving an access to information request unless the response deadline was extended pursuant to section 12 of LA FOIP. Section 12 of LA FOIP allows for local authorities to extend the 30-day time period for a reasonable period not exceeding 30 days in limited circumstances. In total, local authorities would have 60 days to respond to access requests where an extension has been taken.

[29] Section 12 of LA FOIP provides limited circumstances where a local authority can extend the initial 30-day response time set in subsection 7(2) of LA FOIP by up to an additional 30 days. Subsections 12(1)(a), (b), 12(2) and 12(3) of LA FOIP provide as follows:

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

(a) where:

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

(ii) there is a large number of requests;

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

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

...

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

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

[30] If an extension is applied, subsection 12(3) of LA FOIP sets out the obligation of the local authority to respond to the Applicant within the period of extension.

[31] In this matter, SHA received the Applicant's access to information request on March 30, 2023. On April 28, 2023, within the 30 days, SHA extended the due date another 30 days pursuant to section 12 of LA FOIP which meant it had until May 29, 2023, to provide its section 7 decision to the Applicant. The Applicant did not receive the section 7 decision until February 8, 2024, 256 days after the extended due date.

[32] SHA met its obligations under subsection 12(2) of LA FOIP; however, in my office's Review Reports [122-2023](#) at paragraph [18] and [017-2023](#) at paragraph [20], I indicated that if a local authority has not complied with subsection 12(3) of LA FOIP, I will not consider whether the local authority has complied with subsections 12(1) of LA FOIP. As SHA did not respond within the time of extension, I find SHA was not in compliance with subsection 12(3) of LA FOIP or section 7 of LA FOIP.

[33] SHA also provided the Applicant with a fee estimate of \$372.00 on November 21, 2023, which was 177 days past the date SHA's response was due to the Applicant. The Applicant paid the deposit amount of \$186.00 on December 11, 2023.

[34] The *Guide to LA FOIP*, Ch. 3 at page 73, the Commissioner has recommended that local authorities issue fee estimates within the first three to 10 days of an access request being received so there is still time to process the request once a deposit is received. In this case, SHA issued the fee estimate 237 days after receiving the Applicant's access request.

[35] In past review reports (such as [Review Report 326-2017 to 332-2017](#) and [Review Report 231-2016 to 233-2016](#)), I have recommended that government institutions refund fees due to excessive delays. Given the excessive delay in this case, I recommend that SHA refund the \$186.00 fees paid by the Applicant within 30 days of issuance of this Report.

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

[36] 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;

[37] As described in the *Guide to LA FOIP*, Chapter 4: “Exemptions from the Right of Access,” updated October 18, 2023 (*Guide to LA FOIP*, Ch. 4) at page 118, subsection 16(1)(b) of LA FOIP 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.

[38] 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.

[39] My office uses the following two-part test to determine if the provision has been properly applied:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of the local authority?

[40] My offices *Guide to LA FOIP*, Ch. 4 at pages 119 to 120, defines consultation and deliberation as follows:

- **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.
- **Deliberation** means the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision; A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

[41] In my office's [Review Report 119-2022](#), I referred to [Order F2013-13](#) by Alberta's Office of the Information and Privacy Commissioner (AB IPC). The AB IPC explained the words "consultations" and "deliberations" set out in subsection 24(1)(b) of Alberta's *Freedom of Information and Protection of Privacy Act* (AB FOIP) (which is the equivalent of subsections 16(1)(b) of LA FOIP):

[para 146] I agree with the interpretation Commissioner Clark assigned to the terms "consultation" and "deliberation" generally. However, as I stated in Order F2012-10, section 24(1)(b) differs from the section 24(1)(a) in that section 24(1)(a) is intended to protect communications developed for a public body by an advisor, **while section 24(1)(b) protects communications involving decision makers. That this is so supported by the use of the word deliberation: only a person charged with making a decision can be said to deliberate that decision. Moreover, "consultation" typically refers to the act of seeking advice regarding an action one is considering taking, but not to giving advice in relation to it.** Information that is the subject of section 24(1)(a) may be voluntarily or spontaneously provided to a decision maker for the decision maker's use because it is the responsibility of the employee to provide information of this kind; however, such information cannot be described as a "consultation" or a "deliberation". Put simply, section 24(1)(a) is concerned with the situation where advice is given, section 24(b) is concerned with the situation where advice is sought or considered.

[Emphasis added]

[42] Consultations and deliberations can be revealed in two ways:

1. The information itself consists of consultations or deliberations.
2. The information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual consultations or deliberations.

[43] As set out in my office's *Guide to LA FOIP*, Ch. 4 at pages 120 to 121, the provision is not meant to protect the bare recitation of facts, without anything further, unless it is so intertwined that reasonable separation cannot be made. The exemption does not generally apply to records or parts of records that in themselves reveal only that a consultation took place at a particular time, particular persons were involved, or a particular topic was involved. However, if releasing this information reveals the substance of the consultation or deliberations, the local authority can withhold this information.

[44] In the AB IPC's [Order F2017-65](#), however, it was determined that in some circumstances, factual information can constitute part of the consultations or deliberations as follows:

In some circumstances, factual information can be conveyed that makes it clear a decision is called for, and what is recounted about the facts provides background for a decision that is to be made. Such a case involves more than merely "a bare recitation of facts". Rather, what is recounted about particular events or the way in which they are presented may be said to constitute part of the 'consultations or deliberations' a decision maker uses to develop a decision. This may be so whether the decision maker specifically requests the information, or it is provided unsolicited having regard to the responsibilities of both the provider and receiver.

[45] SHA divided the responsive information into three records. The specific pages to which SHA applied subsection 16(1)(b) of LA FOIP to portions of information in the following records are described in the Appendix of this Report:

- Record 1 – pages 1 to 38;
- Record 2 – pages 1 to 12; and
- Record 3 – pages 47 to 62, 82 to 96, 102 to 106, pages 107 to 110 and 112.

1. Do the records contain consultations or deliberations?

[46] SHA's submission did not specifically address how the withheld portions of information qualify as consultations or deliberations.

[47] I will consider if SHA met this part of the test for the withheld information in Record 1, Record 2 and Record 3. Upon reviewing the records, I note the following:

- Record 1 - is a draft document containing factual information and does not qualify as deliberations or consultations.
- Record 2 – pages 1 to 4, withheld in part are discussions about an attached draft document and what changes might be required.
- Record 2 – pages 5 to 6 and Record 3 – pages 53 to 54, withheld in full is a draft SBAR. An SBAR is a communication tool utilized in the health care setting which typically contains Situation, Background, Analysis and Recommendations. This record would qualify as part of the consultations used to make the decisions.
- Record 2 – pages 7 to 12, withheld in part where question is asked, and a decision is discussed.
- Record 3 – pages 47 to 52, withheld in part are email discussions about the attached draft document on pages 53 to 54 discussed below for consideration and approval and what changes might be required.
- Record 3 - pages 55 to 62, withheld in part contains discussion about critical care processes for consideration.
- Record 3 – pages 82 to 96, withheld in part contains discussion regarding a process for critical care resource allocation for consideration and approval.
- Record 3 – pages 102 to 106, withheld in full are documents which do not contain consultations or deliberations because they do not involve the seeking of advice or the consideration of advice by a decision maker. SHA stated in its submission that this document constitutes plans that relate to the management of personnel and administration of the local authority.
- Record 3 - page 112 is a flow map describing a high-level process plan for managing service slow options down during the pandemic. This does not constitute consultations or deliberations.

- Record 3 – pages 107 to 110, withheld in full are documents which do not contain consultations or deliberations because it does not involve the seeking of advice or the consideration of advice by a decision maker. The documents contain modeling of potential outcomes.

[48] Record 1, Record 3 – pages 102 to 110 and 112, do not contain consultations or deliberations. Therefore, I find that SHA did not properly apply subsection 16(1)(b) of LA FOIP to this information. As SHA also withheld this information under subsections 16(1)(a) and (d) of LA FOIP, I will assess whether it was withheld properly under these exemptions later in this Report.

[49] The information above in Record 2 – pages 1 to 4, 5 to 6, 7 to 12 and Record 3 – pages 53 to 62, 82 to 96, qualify as consultations or deliberations and therefore, meet the first part of the test for these pages. I will now assess whether they meet the second part of the test.

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

[50] As SHA is relying on subsection 16(1)(b) of LA FOIP to withhold information it must also establish that the consultations or deliberations at issue involved officers or employees of the local authority.

[51] My offices *Guide to LA FOIP*, Ch. 4 at pages 116, provides the following definitions:

- **Involving** means including. There is nothing in the exemption that limits the exemption to participation only of officers or employees of a local authority. Collaboration with others is consistent with the concept of consultation.
- **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. When there is a review by the IPC, the local authority is invited to provide a submission (arguments). The local authority should identify the individuals involved in the consultations or deliberations, include the job title of each, list organization affiliation and clarification as to each individuals' role in the decision making process.

[52] Upon reviewing the relevant pages, they contain email correspondence between different SHA employees or groups of SHA employees involved in planning and decision making. These individuals include the Chief Medical Officer, Deputy Chief Medical Officer, President and CEO, Vice President, Division Head, Executive Director and other employees of SHA. Therefore, the records in question meet the second part of the test.

[53] As both parts of the test have been met for the following records, I find the SHA has properly withheld part of Record 2 – pages 1 to 4, 5 to 6, 7 to 12 and Record 3 – pages 53 to 62, 82 to 96, under subsection 16(1)(b) of LA FOIP and recommend that SHA continue to withhold the records. See Appendix for more detail with regards to the records properly withheld.

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

[54] Subsection 16(1)(a) of LA FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a local authority. It provides:

16(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority;

[55] My office's *Guide to LA FOIP*, Ch. 4 at pages 110 to 114, sets out the following two-part test to determine if subsection 16(1)(a) of LA FOIP applies:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for the local authority?

[56] I will assess whether the information in Record 1 meets the first part of the test.

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?

[57] The *Guide to LA FOIP*, Ch. 4 at pages 110 to 111, defines advice as follows:

- **Advice** is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The “pros and cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance Of fact. It includes expert opinion on matters of fact on which a local authority must make a decision for future action.
- A **proposal** is something offered for consideration or acceptance.
- A **recommendation** is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.
- **Analyses** (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements.
- **Policy options** are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant’s identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information.

[58] Record 1 is a draft report. SHA stated that:

This is draft document that contains advice for the final copy. A draft is a version of a document that has not yet been finalized by the local authority. The document was developed by the local authority, specifically by Practitioner Staff Affairs which is portfolio within the SHA.

[59] The information in the report is stating factual material, and not advice, proposals, recommendations, analysis and/or policy options. It, therefore, does not meet the first part of the two-part test. Therefore, I find that SHA did not properly apply subsection 16(1)(a) of LA FOIP to Record 1. As SHA has also withheld this same information under subsection 16(1)(d) of LA FOIP, I will assess whether it was properly withheld under that subsection.

[60] Record 3 – pages 102 to 106 and 112, were withheld in full under subsection 16(1)(a) of LA FOIP. SHA stated the following in its submission for pages 102 to 106:

The document describes plans related to redistribution of employees, service slow downs, and consolidation of services. The document constitutes a plan, as it gives instructions to teams related to both the management of personnel and the administration of the local authority.

[61] Page 112 is a flow map describing a high-level process plan for managing service slow down options during the pandemic. It does not contain advice, proposals, recommendations, analysis and/or policy options.

[62] Record 3 – pages 107 to 110, were withheld in full under subsection 16(1)(a) of LA FOIP. These documents contain data modeling projections presented in charts and graphs. SHA stated that these records were relied upon to make the necessary recommendations to senior leadership related to COVID-19 response. These records, however, do not contain the recommendations that were made.

[63] As Record 1, Record 3 – pages 102 to 106, 112 and Record 3 – pages 107 to 110, do not meet the first part of the test, I do not need consider the second part of the test. Therefore, I find that these records were not properly withheld under subsection 16(1)(a) of LA FOIP. As SHA also withheld these records under subsection 16(1)(d) of LA FOIP, I will assess whether they were withheld properly under this exemption below.

5. Did SHA properly apply subsection 16(1)(d) of LA FOIP?

[64] Given my findings above, I will consider whether SHA properly applied subsection 16(1)(d) of LA FOIP to the following pages: Record 1, Record 3 – pages 102 to 110 and 112.

[65] Subsection 16(1)(d) of LA FOIP is a discretionary exemption. It applies where release of a record could reasonably be expected to disclose plans that relate to the management of personnel or the administration of a local authority which have not yet been implemented. It protects against the premature release of plans that have already been decided by a public body.

[66] Subsection 16(1)(d) 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:

...

(d) plans that relate to the management of personnel or the administration of the local authority and that have not yet been implemented.

[67] The *Guide to LA FOIP*, Ch. 4 at page 129, states that subsection 16(1)(d) of LA FOIP protects as a class of records, plans that relate to the internal management of local authorities, for example, plans about the relocation or reorganization of local authorities or the management of personnel, and plans to abolish positions or programs.

[68] To determine if this exemption applies, my office applies the following three-part test:

1. Does the record contain a plan(s)?
2. Does the plan(s) relate to:
 - i) the management of personnel?
 - ii) the administration of the local authority?
3. Has the plan(s) been implemented by the local authority?

The following is an analysis to determine if the three-part test is met:

1. Do the records contain a plan(s)?

[69] The *Guide to LA FOIP*, Ch. 4 at page 130, defines a plan as follows:

- A **plan** is a formulated and especially detailed method by which a thing is to be done; a design or scheme. A detailed proposal for doing or achieving something; an intention or decision about what one is going to do.

[70] A plan includes detailed information about who is involved and affected, what will happen, when it will happen and the supporting rationale. Where the records do not include information about how work will be carried out, by whom and when, it does not qualify as a plan (see my office's [Review Report 132-2023](#)).

[71] However, as I stated in my office's [Review Report 166-2018](#), which considered subsection 17(1)(d) of *The Freedom of Information and Protection of Privacy Act* (FOIP), the equivalent to subsection 16(1)(d) of LA FOIP, information that qualifies as a plan can be found in documents that form part of the proposed plan, such as communication documents, if they contain sufficient detail that, if released, would reveal the proposed plan.

[72] In a previous report involving the SHA, I found that information that suggests that an action be taken and a request for information to initiate the plan qualify as a plan (see my office's [Review Report 154-2024](#)).

[73] The information in Record 1 contains some information about how resources were managed during the pandemic, what occurred and is reporting on the high-level facts of what had happened rather than a plan of what is to occur. This information does not qualify as a plan and as a result, does not meet the first part of the test.

[74] Record 3 – pages 102 to 106, is a document that contains instruction for staff and factual information. It also includes projections for the number of services that may be required and the number of staff at a high level that may be required to manage the increase in demand. The information does not reveal any detailed plan for these potential requirements

or sufficient information to reveal any plan. This information does not qualify as a plan and as a result, does not meet the first part of the test.

[75] Record 3 – pages 107 to 110, contain data modeling projections presented in charts and graphs. SHA stated that these records were relied upon to make the necessary recommendations to senior leadership related to COVID-19 response. These records however, do not contain the recommendations that were made. This information does not qualify as a plan and as a result, does not meet the first part of the test.

[76] Based on the above, I find that SHA has not properly applied subsection 16(1)(d) of LA FOIP to Record 1 and Record 3 – pages 102 to 110. As all exemptions applied by SHA to these pages have now been addressed and none have been found to apply, I recommend Record 1 Record 3 – pages 102 to 110, be released to the Applicant within 30 days of issuing this Report.

[77] Record 3 - page 112, is a flow map describing a high-level process flow managing service slow down during the pandemic. The document describes the workflow process and includes information about the positions involved in the process, what will happen at each step and therefore qualifies as a plan and meets the first part of the test.

2. Does the plan(s) relate to:

i) The management of personnel?

ii) The administration of the local authority?

[78] My offices *Guide to LA FOIP*, Ch. 4 at page 125, provides the following definitions:

- **Management of personnel** refers to all aspects of the management of human resources of a local authority that relate to the duties and responsibilities of employees. This includes staffing requirements, job classification, recruitment and selection, employee salary and benefits, hours, and conditions of work, leave management, performance review, training, separation and layoff. It also includes the management of personal service contracts (i.e., contracts of service) but not the management of consultant, professional or other independent contractor contracts (i.e., contracts for service).

- **Administration of a local authority** comprises all aspects of a local authority's internal management, other than personnel management, that are necessary to support the delivery of programs and services. Administration includes business planning, financial operations, and contract, property, information and risk management.

[79] Based on a review, the withheld information relates to the business planning to support the delivery of programs and services of SHA. Therefore, the second part of the test is met.

3. *Has the plan(s) been implemented by the local authority?*

[80] My offices *Guide to LA FOIP*, Ch. 4 at page 123, provides the following definitions:

- **Implementation** means the point when the implementation of a decision begins. For example, if a local authority decides to go forward with an internal budget cut or restructuring of departments, implementation commences when this plan of action is communicated to its organizational units.
- **Yet** means at some time in the future, in the remaining time available, before all is over.

[81] In order for the third part of this test to be met, the plan(s) cannot yet have been implemented. SHA has not indicated whether the plan has been implemented or not. Section 51 of LA FOIP places the burden of proof on the local authority to demonstrate that access may or must be refused. The burden of proof has not been met for the information withheld in Record 3 – page 112, pursuant to section 51 of LA FOIP.

[82] Therefore, I find that SHA did not properly apply subsection 16(1)(d) of LA FOIP to Record 3 - page 112. I recommend that SHA release this information to the Applicant within 30 days of issuing this report.

6. Did SHA properly apply subsection 14(1)(m) of LA FOIP?

[83] SHA applied subsection 14(1)(m) of LA FOIP to part of pages 116 and 117 of Record 3. The specific pages to which SHA applied subsection 14(1)(m) of LA FOIP are described in the Appendix of this Report.

[84] Subsection 14(1)(m) of LA FOIP provides:

14(1) A head may refuse to give access to a record, the release of which could:

...

(m) reveal the security arrangements of particular vehicles, buildings or other structures and systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[85] The *Guide to LA FOIP*, Ch. 4 at pages 92 to 93, states that subsection 14(1)(m) of LA FOIP is a discretionary class-based exemption. It permits refusal or access in situations where release of a record could reveal the security arrangements of particular vehicles, buildings, or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[86] Section 14 of LA FOIP uses the word “could” versus “could reasonably be expected to” as seen in other provisions of LA FOIP. The threshold for “could” is somewhat lower than a reasonable expectation. The requirement for “could” is simply that the release of the information could have the specified result. There would still have to be a basis for asserting the outcome could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked.

[87] The following two-part test can be applied. However, only one of the questions needs to be answered in the affirmative for the exemption to apply. There may be circumstances where both questions apply and can be answered in the affirmative:

1. Could the release reveal security arrangements (of particular vehicles, buildings, other structures or systems)?
2. Could the release reveal security methods employed to protect the particular vehicles, buildings, other structures or systems?

[88] The *Guide to LA FOIP*, Ch. 4 at page 93, provides the following definitions:

- **Reveal** means to make known; cause or allow to be seen.
- **Security** means a state of safety or physical integrity.
- **Method** means a mode of organizing, operating, or performing something.
- **Other structures or systems** includes computer and communication systems.

[89] In its submission to my office, SHA indicated that the redacted information are codes and passwords that reveal protected information related to online meeting spaces.

[90] Based on a review of the remaining information in Record 3, it appears the information withheld includes Webex meeting access codes and meeting passwords as well as a link to join the meeting and a telephone access number.

[91] In its submission, SHA stated “these are codes and passwords and are protected under 14(1)(m) as they reveal protected information related to online meeting spaces and codes.” In my office’s [Review Report 138-2021, 185-2021](#), I addressed the issue of online meeting information in a report regarding the Ministry of Social Services as follows:

In its submission, Social Services does not specify what specifically the Applicant can access with the Teams link or with the other information in question. Also, Social Services can share such links and information either internally or externally and may not be aware of what those individuals do with the information, so the question is what security risk is posed? Social Services has not sufficiently argued or provided evidence to support its claim that the alleged harm could occur to support that this exemption would apply. As such, the test is not met, and I find that Social Services did not properly apply subsection 15(1)(m) of FOIP. I will still, however, consider Social Services’ application of subsection 18(1)(b) of FOIP to this information.

[92] Similarly, SHA did not specify what specifically the Applicant can access with the Webex link or with the other information in question or identify what harm could occur if the information was released. As such, the test is not met, and I find that SHA did not properly apply subsection 14(1)(m) of LA FOIP to the information on pages 116 and 117 of Record 3 as identified in the Appendix. I recommend the information be released to the Applicant within 30 days of issuing this Report.

Attachment Links

[93] SHA also withheld information as “attachment links” on the following records rather than applying specific exemptions to the information. These appear to be names of documents attached to emails with links to the attachments:

- Record 2 pages 1 and 7
- Record 3 pages 1, 14, 46 and 61

[94] The records were provided to the Applicant in electronic format. Because of this, clicking on “attachment links,” would open the records without any redactions applied. This could then reveal information where exemptions were properly applied and should be withheld.

[95] Upon reviewing the records, the attachment links in Record 2 and in Record 3 on page 1 are links to documents that were withheld in full, therefore I recommend that SHA continue to withhold these links. The attachment links in Record 2 on pages 14 and 46, are links to the same documents which were released in full, therefore I recommend that SHA release these attachment links. The attachment links in Record 2 on page 61, are links to documents that are released in full and are publicly available documents; therefore, I recommend that SHA release the attachment links. See the Appendix for further information on these pages.

IV FINDINGS

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

[97] I find that SHA has not complied with section 7 and subsection 12(3) of LA FOIP.

[98] I find that SHA has not properly applied subsections 16(1)(a), (b), (d) of LA FOIP to the information in Record 1 and Record 3 – pages 102 to 110 and 112.

[99] I find that SHA has properly applied subsection 16(1)(b) of LA FOIP to Record 2 – pages 1 to 4, 5 to 6, 7 to 12 and Record 3 – pages 47 to 62, 82 to 96.

[100] I find the SHA has not properly applied subsection 14(1)(m) of LA FOIP to the information on pages 116 and 117 of Record 3.

[101] I find that SHA properly withheld the attachment links in Record 2 and in Record 3 on page 1, that links to documents which were properly withheld in full under subsection 16(1)(b) of LA FOIP.

[102] I find that SHA has not properly withheld the attachment links in Record 2 on pages 14 and 46 that links to the documents which were released in full.

[103] I find that SHA has not properly withheld the attachment links in Record 2 on page 61 that are links to documents which were released in full and are publicly available.

V RECOMMENDATIONS

[104] I recommend that, within 30 days of the issuance of this Report, SHA refund the \$186.00 fee paid by the Applicant.

[105] I recommend that SHA release Record 1 and and Record 3 – pages 102 to 110 and 112 to the Applicant within 30 days of the issuance of this Report.

[106] I recommend that SHA continue to withhold part of Record 2 – pages 1 to 4, 5 to 6, 7 to 12 and Record 3 – pages 47 to 62, 82 to 96 under subsection 16(1)(b) of LA FOIP.

[107] I recommend that SHA release the information on pages 116 and 117 of Record 3 within 30 days of the issuance of this Report.

[108] I recommend that SHA continue to withhold the attachment links in Record 2 and in Record 3 on page 1.

[109] I recommend that SHA release the attachment links in Record 2 on pages 14 and 46, and in Record 2 on page 61 within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 17th day of April 2024.

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

Appendix

Page No.	LA FOIP Exemption Applied	Full/Part	IPC Finding	IPC Recommendation
Record 1				
1 to 38	16(1)(a)(b)(d)	full		release
Record 2				
1	Attachment link	part	16(1)(b)	withhold
1 – 4	16(1)(a)(b)(d)	part	16(1)(b)	withhold
5 - 6	16(1)(a)(b)(d)	full	16(1)(b)	withhold
7 top	Attachment links	part	16(1)(b)	withhold
7 -12	16(1)(a)(b)(d)	part	16(1)(b)	withhold
Record 3				
Top 1	Attachment link	part	16(1)(b)	withhold
14	Attachment link	part		release
46	Attachment link	part		release
47 to 52	16(1)(a)(b)(d)	part	16(1)(b)	withhold
53 - 54	16(1)(a)(b)(d)	full	16(1)(b)	withhold
Top 61	Document links	part		release
82 - 96	16(1)(a)(b)(d)	part	16(1)(b)	withhold
102 - 110	16(1)(a)(b)(d)	full		release
112	16(1)(a)(b)(d)	full		release
116 - 117	14(1)(m)	part	14(1)(m)	release