



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 314-2023**

### **Saskatchewan Health Authority**

**June 26, 2024**

#### **Summary:**

The Applicant submitted an access to information request to the Saskatchewan Health Authority (SHA). The SHA extended the 30-day response time set out in subsection 7(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) by an additional 30 days pursuant to subsection 12(1) of LA FOIP. After not receiving a response from the SHA, the Applicant requested a review by the Commissioner. Then, 257 days after the extended due date, the SHA responded to the Applicant. The SHA released some records to the Applicant, but withheld portions pursuant to subsections 16(1)(a), (b), and (d) of LA FOIP. The Commissioner found that the SHA properly applied subsections 16(1)(a) and (b) of LA FOIP in some instances but not all. He found that the SHA did not properly apply subsection 16(1)(d) of LA FOIP. The Commissioner made a number of recommendations to the SHA, including that it provide both my office and the Applicant an explanation as to why it did not respond to the access request within the legislated timeline, that the SHA release information in records to which the Commissioner found that the SHA did not properly apply exemptions, and that the SHA reconsider its discretion and release information in records to which the Commissioner found that the SHA properly applied discretionary exemptions. The Commissioner included an Appendix setting out his findings and recommendations.

#### **I BACKGROUND**

- [1] On March 31, 2023, the Saskatchewan Health Authority received the following access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) from the Applicant:

I'm requesting any and all emails, letters and notes from [Physician Executive – Integrated Rural Health], [Executive Director, Infrastructure Management], [President & CEO], [COVID-19 Immunization Co-Chief, Emergency Operations Centre (EOC)] and [Vaccine Chief, EOC] regarding the provincial government and the SHA providing COVID-19 vaccinations in schools.

- [2] The SHA issued an invoice dated April 3, 2023 to the Applicant for payment of the \$20.00 application fee.
- [3] On April 5, 2023, the SHA received payment of the application fee.
- [4] Then, in a letter dated April 28, 2023, the SHA informed the Applicant that it would be extending the time period for responding to the access request by an additional 30 days. The SHA cited subsections 12(1)(a)(i), (ii), 12(1)(b), and 12(1)(c) of LA FOIP as its reasons for extending the time period.
- [5] On November 22, 2023, after not receiving a response from the SHA, the Applicant requested a review by my office.
- [6] On December 1, 2023, the SHA indicated to my office that it was developing a fee estimate for the Applicant.
- [7] On December 4, 2023, my office indicated the opportunity to issue a fee estimate to the Applicant was within 30 days of receiving the Applicant's access request. Since that time had already elapsed, we asked that the SHA issue a written notice pursuant to section 7 of LA FOIP.
- [8] On December 14, 2023, my office sent notices to the SHA and the Applicant that my office would be undertaking a review.
- [9] On December 28, 2023, the Applicant provided their submission to my office.
- [10] On January 29, 2023, the SHA provided its submission to my office.

[11] In a letter dated February 16, 2024, the SHA provided a written notice pursuant to section 7 of LA FOIP to the Applicant. The SHA provided the Applicant access to records but withheld portions pursuant to subsections 16(1)(a), (b), and (d) of LA FOIP.

## **II RECORDS AT ISSUE**

[12] There are two records at issue. The first record is entitled, “RL Dr. Diener Final”, which is 50 pages. The second record is entitled, “RL Miller Final”, which is 54 pages.

## **III DISCUSSION OF THE ISSUES**

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

[13] The SHA qualifies as a “local authority” pursuant to subsection 2(1)(f)(xiii) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

### **2. Did the SHA comply with section 7 of LA FOIP?**

[14] Subsection 7(2) of LA FOIP provides that the head of a local authority is to provide a written notice to the applicant within 30 days:

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

[15] If the head fails to provide a response within the 30-day time period, then subsection 7(5) of LA FOIP provides:

7(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.

[16] However, the *Guide to LA FOIP*, Chapter 3, “Access to Records,” updated May 5, 2023 (*Guide to LA FOIP*, Ch. 3) at page 100, provides that section 12 of LA FOIP allows for

local authorities to extend the 30-day time period by an additional 30 days for circumstances set out in section 12 of LA FOIP. Section 12 of LA FOIP provides:

**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; or

(c) where a third party notice is required to be given pursuant to subsection 33(1).

(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.

[17] In total, local authorities would have 60 days to respond to an access request where an extension has been taken.

*a. When did the 30-day time period pursuant to subsection 7(2) of LA FOIP begin?*

[18] As noted in the background of this Report, the SHA received the Applicant's access request form on March 31, 2023. Then, the SHA received payment of the \$20 application fee on April 5, 2023.

[19] Subsections 6(1) and (2) of LA FOIP provides:

**6(1)** An applicant shall:

(a) make the application in **the prescribed form** to the local authority in which the record containing the information is kept; and

(b) specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject-matter to identify the record.

(2) Subject to subsection (4) and subsection 11(3), **an application is deemed to be made when the application is received by the local authority to which it is directed.**

[Emphasis added]

[20] The prescribed form, Form A of Part III of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations), requires an application fee of \$20 to be paid to the local authority.

[21] Further, subsection 5(1) of the LA FOIP Regulations provides as follows:

5(1) An application fee of \$20 is payable at the time an application for access to a record is made.

[22] In [Review Report 336-2017](#) at paragraph [56], my office said that a local authority does not have to begin processing an access request until it had received payment of the application fee:

[56] Although not addressed in its submission, the School Division's affidavit raised concerns that the Applicant did not use the prescribed form or provide the application fee with their request. My office has long been of the opinion that it is not mandatory for Applicants to use the prescribed form, provided the request is in writing and contains the information that pertains to the elements on the form. If the School Division required any additional information, it should have advised the Applicant at the time the request was received. Additionally, **when the School Division is processing access to information requests and an application fee is not provided, it can request the Applicant provide the application fee before processing the request.** In this case, the School Division did not choose to request the application fee and instead proceeded to process the request.

[Emphasis added]

[23] Page 50 of the *Guide to LA FOIP*, Ch. 3, explains that the first day the access request is received is excluded in the calculation of time pursuant to subsection 2-28(3) of *The Legislation Act*, which provides:

**2-28(3)** A period described by reference to a number of days between two events excludes the day on which the first event happens and includes the day on which the second event happens.

[24] Since the SHA received payment on April 5, 2023, then the 30-day time period would have begun on April 6, 2023. I note that within the 30-day time period, on April 28, 2023, the SHA extended the time period by an additional 30 days pursuant to section 12 of LA FOIP.

[25] As I have said in past reports, including [Review Report 313-2023](#) at paragraph [32], 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 subsection 12(1) of LA FOIP. In this case, the SHA had not complied with subsection 12(3) so there is no need for me to consider whether the SHA properly extended the time period pursuant to subsection 12(1) of LA FOIP. If it had, then the SHA would have had until June 4, 2023, to provide a written notice pursuant to section 7 of LA FOIP to the Applicant. However, the SHA provided its written notice pursuant to section 7 of LA FOIP on February 16, 2024, which was 257 days after the extended due date. I find that the SHA did not comply with section 7 of LA FOIP.

[26] The SHA did not provide any explanation as to why it did not respond to the Applicant's access request within the legislated timeline. I recommend that the SHA provide an explanation to both my office and to the Applicant as to why it did not respond to the access request within the legislated timeline.

[27] I recommend that the SHA ensure it is properly resourced to respond to access requests within the legislated timeline set out in section 7 of LA FOIP.

**3. Did the SHA properly apply subsection 16(1)(a) of LA FOIP?**

[28] The SHA applied subsection 16(1)(a) of LA FOIP to pages 1, 3, 6 to 9, 11 to 20, 22 to 37, 39, 40, 42 to 44, 46, 48 and 49 of the record entitled “RL Dr Diener Final”. It also applied subsection 16(1)(a) of LA FOIP to pages 1, 3 to 5, 30, 32 to 34, 36 to 46, 49 to 51, and 53 of the record entitled, “RL Miller Final”.

[29] Subsection 16(1)(a) 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:

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

[30] My office uses 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?

(*Guide to LA FOIP*, Chapter 4, *Exemptions from the Right of Access*, updated October 18, 2023 (*Guide to LA FOIP*, Ch. 4), pp. 107-110)

[31] Below is an analysis to determine if the two-part test is met.

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

[32] Pages 107 to 109 of the *Guide to LA FOIP*, Ch. 4 provide the following definitions:

- “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.
- 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”.

- A “proposal” is something offered for consideration or acceptance.
- “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.

[33] In its submission, the SHA asserted that pages 6 to 23, 30 to 37, 42, 43, and 46 of the record entitled, “RL Dr Diener Final” contained advice, recommendations, and analyses. It asserted that pages 1, 3, 4, 30, 32, 33, and 37 to 54 of the record entitled, “RL Miller” contains advice, recommendations, proposals, analysis, and policy options.

[34] Based on a review, I found the following regarding the record entitled, “RL Dr Diener Final”:

- Pages 11, 13, and 32 contains advice. Pages 11 and 13 contains an analysis of a situation by an SHA employee and their guidance on what should be changed. Page 32 is an email by a physician from whom an Executive Director at the SHA sought advice. The email contains the physician’s advice on next steps.
- Pages 6, 22, and 35 are pages from “Situation, Background, Assessment, and Recommendation” (SBAR) records. Pages 6 and 22 are SBAR records by Saskatchewan Public Safety Agency’s COVID-19 Provincial Emergency Operations Centre (PEOC) (of which the SHA was a part of). Pages 6 and 22 contains recommendations by the PEOC. Page 35 contains recommendations that appear in an internal SHA SBAR record.
- Pages 7, 16 and 17 contains analyses of impacts or consequences of decisions.
- Page 30 contains a proposal being made to the PEOC.
- Page 23 contains an alternative policy option in contrast to the recommended course of action.

[35] Therefore, I find that the first part of the two-part test is met by portions of pages 6, 7, 11, 13, 22, 23, 32, and 35 of the record entitled, “RL Dr Diener File”.



[36] I found that portions of other pages to which the SHA applied subsection 16(1)(a) of LA FOIP did not qualify as advice, recommendations, proposals, analyses, or policy options. For example, pages 27, 28, 29, 39, and 40 of the “RL Dr Diener Final” contain draft documents. As I have said in previous report, including [Review Report 007-2024](#) at paragraph [18], simply because a document is in draft form does not make the document advice, recommendations, proposals, analysis or policy options. The information itself in the draft document must still qualify as advice, recommendations, proposals, analysis or policy options. Based on a review of pages 27, 28, 29, 39 and 40 of the “RL Dr Diener Final” record, the contents do not qualify as advice, recommendations, proposals, analysis or policy options. For the pages to which the first part of the two-part test is not met, I will consider them in my analysis of subsection 16(1)(b) and (d) of LA FOIP later in this Report.

[37] Based on a review, I found the following regarding the record entitled, “RL Miller Final”:

- Page 1 contains a summary of a recommendation by the National Advisory Committee on Immunization (NACI).
- Page 53 contains advice. It contains an email by an SHA employee and their guidance on what should be changed.
- Pages 30, 33, 38, 40 contains recommendations. Page 30 is an email by an SHA employee where the employee makes a recommendation to the Ministry of Health. Pages 33 and 38 contains a recommendation that is part of an internal SHA SBAR record. Page 40 contains recommendations in a SBAR record by the PEOC.
- Pages 41, 43 to 45 contains analyses of impacts or consequences of decisions.

[38] Therefore, I find that the first part of the two-part test is met by portions of pages 1, 30, 33, 38, 40, 41, 43 to 45, and 53 of the record entitled, “RL Miller File”.

[39] Similar to my review of “RL Dr Diener File”, I found that portions of other pages to which the SHA applied subsection 16(1)(a) of LA FOIP did not qualify as advice, recommendations, proposals, analyses, or policy options. For example, pages 3 and 4 contains a summaries of school plans for vaccines. These summaries do not qualify as advice, recommendations, proposals, analyses or policy options. Page 49 contains emails

where SHA employees were forwarding an email by another SHA employee. The contents of the emails do not contain any advice, recommendations, proposals, analyses or policy options. For the pages to which the first part of the two-part test is not met, I will consider them in my analysis of subsection 16(1)(b) and (d) of LA FOIP later in this Report.

***2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for the local authority?***

[40] Page 110 of the *Guide to LA FOIP*, Ch. 4 defines the phrase “developed by or for” as follows:

“Developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the local authority, or 2) outside the local authority but for the local authority (for example, by a service provider or stakeholder).

[41] As I have said in [Review Report 292-2017, 348-2017](#) at paragraph [49], the local authority should explain the roles of the individuals involved in the development of the advice, proposals, recommendations, analyses and/or policy options. However, the SHA did not explain the roles of the individuals in its submission. Therefore, I must determine if the second part of the two-part test is met based on a review of the records themselves.

[42] Earlier, I found that portions of pages 6, 7, 11, 13, 22, 23, 32, and 35 of the record entitled, “RL Dr Diener File” qualified as advice, recommendations, proposals, analyses, or policy options. SHA employees involved in the development of the advice appear to be SHA employees, including the 1) Medical Health Officer – Area Lead Regina, 2) Physician Executive – Integrated Rural Health, 3) Executive Director, Infrastructure Management, 4) Vaccine Chief, Emergency Operations Centre, and 4) a Immunization/Communicable Disease lead.

[43] I find that portions of pages 6, 7, 11, 13, 22, 23, 32, and 35 of the record entitled, “RL Dr Diener File” meet the second part of the test. Therefore, I find that SHA properly applied subsection 16(1)(a) of LA FOIP to portions of pages 6, 7, 11, 13, 22, 23, 32, and 35 of the

record entitled, “RL Dr Diener File”. My findings and recommendations are set out in the Appendix.

[44] Earlier, I found that pages 1, 30, 33, 38, 40, 41, 43 to 45, and 52 of the record entitled, “RL Miller File” qualifies as advice, recommendations and analyses.

[45] With the exception of pages 1, I find that the recommendations or advice found on pages 30, 33, 38, 40, 41, 43 to 45, and 53 were developed by the SHA. Therefore, I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to portions of pages 30, 33, 38, 40, 41, 43 to 45, and 53 to the record entitled, “RL Miller Final”. My findings and recommendations are set out in the Appendix.

[46] Page 1 is a description of a recommendation by NACI, which was not developed by or for the SHA. Therefore, page 1 does meet the second part of the two-part test. I find that the SHA did not properly apply subsection 16(1)(a) of LA FOIP to page 1 of the record entitled, “RL Miller Final”. I will consider page 1 in my analysis of subsection 16(1)(b) and (d) of LA FOIP later in this Report.

[47] Before I move onto the analyzing the SHA’s application of subsections 16(1)(b) and (d) of LA FOIP, I note that pages 11 and 12 of the *Guide to LA FOIP*, Ch. 4, provide:

A discretion conferred by statute must be exercised consistently with the purposes underlying its grant. It follows that to properly exercise this discretion, the head must weigh the considerations for and against disclosure, including the public interest in disclosure.

Some factors that should be considered when exercising discretion include:

- The general purposes of the Act (i.e. local authorities should make information available to the public, and individuals should have access to personal information about themselves).
- The wording of the discretionary exemption and the interests which the exemption attempts to protect or balance.
- Whether the applicant’s request may be satisfied by severing the record and providing the applicant with as much information as is reasonably practicable.

- The historical practice of the local authority with respect to the release of similar types of records.
- The nature of the record and the extent to which the record is significant or sensitive to the local authority.
- Whether the disclosure of the information will increase public confidence in the operation of the local authority.
- The age of the record.
- Whether there is a definite and compelling need to release the record.
- Whether the Commissioner's recommendations have ruled that similar types of records or information should be released.

The Supreme Court of Canada ruling [Ontario \(Public Safety and Security\) v. Criminal Lawyers' Association, \(2010\)](#) confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exemption and to return the matter for reconsideration to the head of the public body.

The Supreme Court also considered the following factors to be relevant to the review of discretion:

- The decision was made in bad faith.
- The decision was made for an improper purpose.
- The decision took into account irrelevant considerations.
- The decision failed to take into account relevant considerations.

[48] In the review of a discretionary exemption, I may recommend that the head of the local authority reconsider its exercise of discretion. However, I will not substitute my discretion for that of the head.

[49] In their submission, the Applicant offered the same arguments as they did in my [Review Report 317-2023](#). The Applicant cited [Order F23-95](#) by British Columbia's Office of the Information and Privacy Commissioner (BC IPC). In that decision, the BC IPC reviewed a decision by Metro Vancouver to withhold portions of a report regarding an incident at a dam that resulted in the deaths of two members of the public. The BC IPC considered

subsection 25(1)(a) of British Columbia's *Freedom of Information and Protection of Privacy Act* (BC FOIPPA) that requires a public body to disclose to the public information about a risk of significant harm to the health or safety of the public or a group of people. The BC IPC found that the requirements of subsection 25(1)(a) of BC FOIPPA was met and ordered that the report be provided to the applicant.

[50] In their submission, the Applicant said:

The principles in [BC IPC's Order F23-95] are echoed in Saskatchewan's own Privacy Act and in fundamental democratic principles because governments must be accountable.

But while the principles are the same, the need is even greater because it affects Saskatchewan and, potentially, other Canadian jurisdictions and healthcare systems.

I've requested records from an extremely turbulent time for Saskatchewan: when the provincial healthcare system was so overwhelmed with COVID-19 patients the provincial government needed to transfer patients to Ontario to receive life-saving care; when the healthcare system was so overwhelmed with COVID-19 they were examining and planning how to best treat those they could treat; and when the provincial government was looking at allowing COVID-19 vaccinations in school to keep children and their families safe.

The records I've requested show how, why and with what speed government personnel acted to ensure Saskatchewan residents received the care and protections they desperately needed.

I'm asking you to ensure the records are released, and completely released, because doing so is a matter of transparency and accountability.

The records will show how government decided the fates of their fellow citizens. The public is entitled to know what was done – and, potentially, what more could have been done – during the COVID-19 pandemic.

The public has the right to see those records because they have the right to understand their government, to hold them accountable and to prepare for the next public health emergency when those public servants will again be called upon to make tough decisions quickly.

[51] As I said in [Review Report 317-2023](#), Saskatchewan's *The Freedom of Information and Protection of Privacy Act* (FOIP) does not have an equivalent of BC FOIPPA's subsection 25(1). That means there is no general public interest override. Similarly, LA FOIP does not

have a general public interest override either. However, the Applicant's point is well-taken. It is important for Saskatchewan residents to understand the decisions made by the SHA during the recent pandemic. Disclosing information withheld under the discretionary exemption of subsection 16(1)(a) of LA FOIP that led to the decisions made by the SHA during the pandemic could increase the public's understanding of how the SHA navigated the challenges of the pandemic. While I will not substitute my discretion for that of the head, I recommend that the SHA reconsider its discretion and determine if it will release to the Applicant additional information from the records where it properly applied subsection 16(1)(a) of LA FOIP. The SHA should take into consideration the factors set out at paragraph [47].

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

[52] The SHA applied subsection 16(1)(b) of LA FOIP to the same portions of the pages of each record to which it applied subsection 16(1)(a) of LA FOIP. Where I have already found that subsection 16(1)(a) of LA FOIP applies, I will not consider whether the SHA properly applied subsection 16(1)(b) of LA FOIP.

[53] 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;

[54] My office uses the following two-part test to determine if subsection 16(1)(b) of LA FOIP applies:

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

*(Guide to LA FOIP, Ch. 4, p. 115-116)*

[55] Below is an analysis to determine if the two-part test is met.

***1. Does the record contain consultations or deliberations?***

[56] Pages 115 to 116 of the *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- “Consultation” means the act of consulting or taking counsel together; deliberation, conference; a conference in which the parties consult and deliberation. 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.
- “Deliberation” means the act 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.

[57] In its submission, the SHA asserted that pages 6 to 20, 30 to 37, 42, 43, and 46 of the record entitled, “RL Dr Diener Final” contains consultations and deliberations. It also asserted that pages 3, 4, 30, 32, 33, 37, and 38 of the record entitled, “RL Miller Final” contains consultations and deliberations.

[58] Based on a review, I found that page 33 of the record entitled “RL Dr Diener Final” and page 36 of the record entitled, “RL Miller Final” contained a consultation. Specifically, these pages contain an email timestamped 10:13 a.m. The email contains three paragraphs. The SHA redacted the second and third paragraphs of the email. However, the second, third and fourth sentences of the second paragraph contains a consultation. The Executive Director, Infrastructure Management at the SHA sought the advice of a Physician Executive – Integrated Rural Health at the SHA. A consultation, as defined earlier, is when the views of an employee is sought regarding the appropriateness of a particular proposal or suggested action. Therefore, page 33 of the record entitled, “RL Dr Diener Final” and page 36 of the record entitled, “RL Miller Final” meet the first part of the two-part test for subsection 16(1)(b) of LA FOIP.

[59] All other portions of pages to which the SHA applied subsection 16(1)(b) of LA FOIP do not qualify as a consultation or deliberation. For example, at page 3 of the record entitled, “RL Dr. Diener Final,” the SHA redacted a decision tree pursuant to subsection 16(1)(b) of LA FOIP. The decision tree itself does not qualify as a consultation or deliberation. Another example is at page 46 of the record entitled, “RL Miller Final”, which contains an email exchange between the Ministry of Health and SHA employees where they share a document with each other. The content of the emails does not contain consultations or deliberations. For these pages where I have found that subsection 16(1)(b) of LA FOIP does not apply, I will consider them in my analysis of subsection 16(1)(d) of LA FOIP later in this Report.

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

[60] Page 116 of the *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- “Involving” means including.
- “Officers or employees of a local authority” means an individual employed by a local authority and includes an individual retained under a contract to perform services for the local authority.

[61] The consultation in the email timestamped 10:13 a.m. on page 33 of the record entitled, “RL Dr Diener Final” and page 36 of the record entitled, “RL Miller Final” involve officers or employees of the SHA. As noted earlier, the email involves the Executive Director, Infrastructure Management at the SHA and the Physician Executive – Integrated Rural Health at the SHA. The second part of the two-part test is met. I find that SHA properly applied subsection 16(1)(b) of LA FOIP to the second, third, and fourth sentence of the second paragraph in the email timestamped 10:13 a.m. on page 33 of the record entitled “RL Dr Diener Final” and page 36 of the record entitled “RL Miller Final”. See the Appendix.



[62] However, similar to my recommendation earlier regarding subsection 16(1)(a) of LA FOIP and the exercise of discretion, I recommend that the SHA reconsider its exercise of its discretion and determine if it will release the email timestamped 10:13 a.m. on page 33 of the record entitled, “RL Dr Diener Final” and page 36 of the record entitled, “RL Miller Final”.

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

[63] The SHA applied subsection 16(1)(d) of LA FOIP to the same portions of the pages of each record to which it applied subsections 16(1)(a) and (b) of LA FOIP. Where I have already found that subsection 16(1)(a) or (b) of LA FOIP applies, I will not consider whether the SHA properly applied subsection 16(1)(d) of LA FOIP.

[64] 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;

[65] My office uses the following three-part test to determine if subsection 16(1)(d) of LA FOIP applies:

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?

*(Guide to LA FOIP, Ch. 4, pp. 125-126)*

[66] Below is analysis to determine if the three-part test is met.

**1. Does the record contain a plan(s)?**

[67] According to page 125 of the *Guide to LA FOIP*, Ch. 4, 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.

[68] In its submission, the SHA said pages 6, 7, 8 to 20, and 30 to 37 of the record entitled, “RL Dr Denier Final contains information about the “administration of a program” or the “administration of the vaccine program”.

[69] Based on a review, my office noted the following:

- The bottom of page 6 and the top of page 7 describe plans for vaccine clinics in different parts of the province.
- The bottom of page 15 and the top of page 16 contain four bullets describing plans for clinics in schools.
- Page 17 contains an email timestamped 5:07pm. The email contains a quote that summarizes the plan for a pediatric vaccine campaign.
- Page 48 contains an email that contains the schedule of clinics. It includes the locations and dates for the clinics.

[70] I find that the portions of pages in the record entitled “RL Dr Denier Final” described above to qualify as “plans”.

[71] Regarding the record entitled, “RL Miller Final”, the SHA said pages 3, 4, 34 and 36 contain “plans related to a program of a local authority” or “plans of a local authority”. It also said that pages 30, 36 to 38, and 39 to 54 contain information about the “administration of a plan” and “administration of the vaccine program”.

[72] Based on a review, my office noted the following:

- Pages 3 and 4 describe plans for vaccine clinics in different parts of the province.
- The bottom of page 40 and the top of page 41 describe plans for vaccine clinics in different parts of the province.
- Page 42 contains four bullets describing plans for clinics in schools.
- Page 44 contains an email timestamped 5:07pm. The email contains a quote that summarizes the plan for a pediatric vaccine campaign.

[73] I find that portions of pages in the record entitled, “RL Miller Final” described above to qualify as “plans”.

[74] The remaining pages to which the SHA applied subsection 16(1)(d) of FOIP do not qualify as plans. For example, page 49 of the record entitled, “RL Dr Diener Final” provides that an entity is planning a particular action. However, indicating that planning is happening does not qualify as a “plan” in and of itself. Another example is at pages 32 and 33 of the record entitled, “RL Miller Final”. It is a briefing note (SBAR) which discusses policies and possible policy changes. Policies and policy changes do not qualify as “plans”.

**2. Does the plan(s) relate to:**

**i) The management of personnel?**

**ii) The administration of the local authority?**

[75] Pages 125 and 126 of the *Guide to LA FOIP*, Ch. 4, provide 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.

- “Relate to” should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as “substantial connection”) for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. “Relating to” requires some connection between the information and the management of personnel or the administration of a local authority.

[76] Earlier, I found that plans appear on pages 6, 7, 15, 16, 17, and 48 of the record entitled, “RL Dr Diener Final” and on pages 3, 4, 40, 42, and 44 of the record entitled, “RL Miller Final”. Based on a review, the plans relate to the location and times (or timing) of vaccine clinics. The plans do not relate to the management of personnel or the administration of a local authority. The second part of the three-part test is not met. Therefore, I find that the SHA did not properly apply subsection 16(1)(d) of LA FOIP. See the Appendix for my recommendations.

#### **IV FINDINGS**

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

[78] I find that the SHA did not comply with section 7 of LA FOIP.

[79] I find that SHA properly applied subsection 16(1)(a) of LA FOIP to portions of pages 6, 7, 11, 13, 22, 23, 32, and 35 of the record entitled, “RL Dr Diener File”.

[80] I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to portions of pages 30, 33, 38, 40, 41, 43 to 45, and 53 to the record entitled, “RL Miller File”.

[81] I find that the SHA did not properly apply subsection 16(1)(a) of FOIP to page 1 of the record entitled, “RL Miller Final”.

[82] I find that the SHA properly applied subsection 16(1)(b) of LA FOIP to the second, third, and fourth sentence of the second paragraph in the email timestamped 10:13 a.m. on page

33 of the record entitled, “RL Dr Diener Final” and page 36 of the record entitled, “RL Miller Final”.

[83] I find that the SHA did not properly apply subsection 16(1)(d) of LA FOIP.

## **V RECOMMENDATIONS**

[84] I recommend that the SHA comply with the recommendations set out in the Appendix.

[85] I recommend that the SHA provide an explanation to both my office and to the Applicant as to why it did not respond to the access request within the legislated timeline.

[86] I recommend that the SHA ensure it is properly resourced to respond to access requests within the legislated timeline set out in section 7 of LA FOIP.

[87] I recommend that the SHA reconsider its discretion and determine if it will release to the Applicant additional information from the records where it properly applied subsection 16(1)(a) of FOIP. The SHA should take into consideration the factors set out at paragraph [47].

[88] I recommend that the SHA reconsider its exercise of its discretion in its application of subsection 16(1)(b) of LA FOIP and determine if it will release the email timestamped 10:13 a.m. on page 33 of the record entitled, “RL Dr Diener Final” and page 36 of the record entitled, “RL Miller Final”.

Dated at Regina, in the Province of Saskatchewan, this 26<sup>th</sup> day of June, 2024.

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

## Appendix

## Record entitled "RL Dr Diener Final"

Page #	Exemptions Applied by the SHA	IPC Findings	IPC Recommendations
1	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
2	Released		
3	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
4	Released		
5	Released		
6	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the contents under the header "Recommendations".  16(1)(a) of LA FOIP does not apply to remainder of page.  16(1)(b) and (d) of LA FOIP do not apply.	Reconsider discretion and determine if SHA will release the contents under the header "Recommendations".  Release remainder of the page.
7	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the contents under the header "Considerations or Implications".  16(1)(a) of LA FOIP does not apply to the remainder of the page.  16(1)(b) and (d) of LA FOIP do not apply.	Reconsider discretion and determine if SHA will release the contents under the header "Considerations or Implications".  Release remainder of the page.
8	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
9	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
10	Released		
11	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the first two paragraphs of email timestamped 11:48 a.m.	Reconsider discretion and determine if SHA will release the first two paragraphs of the email timestamped 11:48 a.m.

		16(1)(a) of LA FOIP does not apply to the remainder of the page.  16(1)(b) and (d) of LA FOIP do not apply.	Release remainder of the page.
12	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
13	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to body of email timestamped 11:56 a.m.  16(1)(a) of LA FOIP does not apply to the remainder of the page.  16(1)(b) and (d) of LA FOIP do not apply.	Reconsider discretion and determine if SHA will release the body of the email timestamped 11:56 a.m.  Release remainder of the page.
14	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
15	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
16	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to bullet points under “Impact of decision”.  16(1)(a) of LA FOIP does not apply to the remainder of the page.  16(1)(b) and (d) of LA FOIP do not apply.	Reconsider discretion and determine if SHA will release the bullet points under “Impact of decision”.  Release remainder of the page.
17	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the contents under the quoted indented text (second half of the email timestamped 5:07 p.m.)  16(1)(a) of LA FOIP does not apply to the remainder of the page.  16(1)(b) and (d) of LA FOIP do not apply.	Reconsider discretion and determine if SHA will release the contents under the quoted indented text (second half of the email timestamped 5:07 p.m.)  Release remainder of the page.

18	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
19	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
20	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
21	Released		
22	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the content under the “Recommendations” header.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) of LA FOIP does not apply.</p>	<p>Reconsider discretion and determine if SHA will release the contents under the “Recommendations” header.</p> <p>Release remainder of the page.</p>
23	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the content under the “Considerations or Implications” and “Alternative Options” headers.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) of LA FOIP does not apply.</p>	<p>Reconsider discretion and determine if SHA will release the contents under the “Considerations or Implications” and “Alternative Options” header.</p> <p>Release remainder of the page.</p>
24	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
25	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
26	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
27	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
28	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
29	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
30	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the second sentence of the email timestamped 8:54 a.m.	Reconsider discretion and determine if SHA will release the second sentence of



		<p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) of LA FOIP do not apply.</p>	<p>the email timestamped 8:54 a.m.</p> <p>Release remainder of the page.</p>
31	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
32	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the body of the email timestamped 10:17 a.m.	Reconsider discretion and determine if SHA will release the body of the email timestamped 10:17 a.m.
33	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the second, third and fourth sentences of the second paragraph in the email timestamped 10:13 a.m.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) do not apply.</p>	<p>Reconsider discretion and determine if SHA will release the second, third, and fourth sentences of the second paragraph in the email timestamped 10:13 a.m.</p> <p>Release remainder of the page.</p>
34	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
35	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the content under the "Recommendation" header.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) do not apply.</p>	<p>Reconsider discretion and determine if the SHA will release the content under the "Recommendation" header.</p> <p>Release the remainder of the page.</p>
36	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
37	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
38	Released		

39	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
40	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
41	Released		
42	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
43	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
44	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
45	Released		
46	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
47	Released		
48	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
49	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
50	Released		

**Record entitled “RL Miller Final”**

<b>Page #</b>	<b>Exemptions Applied by the SHA</b>	<b>IPC Findings</b>	<b>IPC Recommendations</b>
1	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
2	Released		
3	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
4	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
5	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
6 to 29	Released		
30	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the last sentence of the second paragraph of the email timestamped 10:23 a.m.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p>	<p>Reconsider discretion and determine if SHA will release the last sentence of the second paragraph of the email timestamped 10:23 a.m.</p> <p>Release remainder.</p>

		16(1)(b) and (d) do not apply.	
31	Released		
32	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
33	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the content under the "Recommendation" header.  16(1)(a) of LA FOIP does not apply to the remainder of the page.  16(1)(b) and (d) do not apply.	Reconsider discretion and determine if SHA will release the content under the "Recommendation" header.  Release remainder of the page.
34	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
35	Released		
36	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the second, third and fourth sentences of the second paragraph in the email timestamped 10:13 a.m.  16(1)(a) of LA FOIP does not apply to the remainder of the page.  16(1)(b) and (d) do not apply.	Reconsider discretion and determine if SHA will release the second, third, and fourth sentences of the second paragraph in the email timestamped 10:13 a.m.  Release remainder of the page.
37	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
38	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies to the content under the "Recommendation" header.  16(1)(a) of LA FOIP does not apply to the remainder of the page.  16(1)(b) and (d) do not apply.	Reconsider discretion and determine if SHA will release the content under the "Recommendation" header.  Release remainder of the page.
39	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.

40	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the content under the “Recommendation” header.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) do not apply.</p>	<p>Reconsider discretion and determine if SHA will release the content under the “Recommendation” header.</p> <p>Release remainder of the page.</p>
41	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the content under the “Considerations or Implications” header.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) do not apply.</p>	<p>Reconsider discretion and determine if SHA will release the content under the “Considerations or Implications” header.</p> <p>Release remainder of the page.</p>
42	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
43	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release this page.
44	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the sentence at the top of the page.</p> <p>16(1)(a) of LA FOIP applies to the paragraph after the quoted indented text in the email timestamped 5:07 p.m.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) do not apply.</p>	<p>Reconsider discretion and determine if SHA will release the sentence at the top of the page.</p> <p>Reconsider discretion and determine if SHA will release the paragraph after the quoted indented text in the email timestamped 5:07 p.m.</p> <p>Release remainder of the page.</p>
45	16(1)(a), (b), (d) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release this page.

46	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
47	Released		
48	Released		
49	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
50	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
51	16(1)(a), (b), (d) of LA FOIP	16(1)(a), (b), (d) of LA FOIP does not apply.	Release.
52	Released		
53	16(1)(a), (b), (d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the first two paragraphs of email timestamped 11:48 a.m.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) and (d) of LA FOIP do not apply.</p>	<p>Reconsider discretion and determine if SHA will release the first two paragraphs of the email timestamped 11:48 a.m.</p> <p>Release remainder of the page.</p>
54	Released		